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David W. Brown
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MEMORANDUM

TO: Jasmine Forbes, Lead Planner,
SP-8819-2021, Gaithersburg
Planning and Code Administration

FROM: David W. Brown 

DATE: January 18, 2022

RE: Whip Clean Car Wash Concept Plan
Supplemental Analysis

Over the past two months, the Whip Clean Car Wash Concept Plan has undergone significant revision, to include what appears to be a complete replacement of the cadre of professionals (lawyers and engineers) documenting and presenting it. This firm has been monitoring this process on behalf of multiple clients for the past year. They include Tonimaria Ayers, the owner and operator of a two car washes, one within the City limits and one just outside the City, and several residents who live within sight and sound of the subject property, either on Central Avenue or Poplarwood Place (names and addresses available on request). My previous submissions on behalf of my clients include Exhibits 42, 60, 67 and 78. The purpose of this memo is to briefly update those submissions in light of changes in the application. I have attached a detailed Statement of Tonimari Ayers, which evaluates the Revised Concept Plan from the point of view of one experienced in the operation of car washes. (**Attachment 1**). She concludes that, for a variety of reasons, the chosen property is particularly ill-suited as a location of the proposed express car wash. Her Statement speaks for itself and will not be further characterized in this memo.

1. Environmental Standards Waiver Request

The Environmental Standards Waiver Request has undergone significant revision because the encroachments into the three environmental buffers (stream valley, floodplain and wetland) have undergone significant revision. Unlike in the original Request, the revised Request fails to include a drawing showing the encroachments and quantifying them. I do not have the tools to replace the missing data points, but the encroachments can be depicted on the forest conservation plan. I have attached a colorized version of the applicant's engineered sheet 108-1 to show the

encroachments—wetland (pink); stream valley (orange); and floodplain (also stream valley) (cross-hatched area). These changes are all salutary reductions from what was originally proposed. (**Attachment 2**).

Despite this progress, the fact remains that there are real encroachments into all three environmental buffers, which still triggers the applicant’s obligation to demonstrate that waiver denial would be an unnecessary or undue hardship. This standard sets a high bar for the applicant: it must demonstrate that the property cannot be significantly redeveloped with one or more CD-Zone permitted uses other than a car wash, with limits of disturbance that do not extend into the environmentally protected areas. The waiver request still fails to meet this standard. It is also doubtful, as expressed in opposition to the earlier waiver request (Ex. 42), that where, as here, the applicant is a contract purchaser of the property, the applicant could properly claim undue hardship from property-based loss, since a contract purchaser will lose only the opportunity cost of its chosen development scheme, along with speculative business expense. In other words, merely reducing the quantitative aspect of the waiver request does not demonstrate undue hardship in this case.

2. Master Plan Consistency Analysis

The applicant has modified its analysis of master plan consistency to eliminate the claim that the car wash will be “in keeping with the residential character” of the immediate area. As explained in my June 21, 2021 Memo, Ex. 67, that claim was nonsense. Converting existing residential uses to commercial is not “in keeping” with the residential character; rather, it detracts from it. The applicant now just claims that the conversion to commercial will be “consistent with” the recommendations in the 2001 Frederick Avenue Corridor Land Use Plan. But this is no escape hatch, because, as applicable to this location, the Corridor Plan recommendation for commercial uses envisions “offices, light retail or live-work units in low-rise buildings.” The proposed car wash facility bears no resemblance to anything in this array of examples envisioned for the property.

3. O.R. George Traffic Engineer Reports

Our traffic engineers who studied the site and the proposed use for it, O. R. George & Associates, Inc., submitted two reports -- one dated May 14, 2021, Ex. 60, and an update dated December 21, 2021, Ex. 78 -- submitted in response to the applicant’s traffic study submissions, Ex. 73. The George Reports provide abundant documentation and detail on a number of relevant points, including the following:

- . There are significant traffic and operational safety issues at the MD 355-Central Avenue intersection that prompted the no-left turn sign at that location on Central Avenue;
- . Violation of the no-left turn signage at that intersection is commonplace;
- . Trip generation data should focus on weekends and be locally derived;

- . Car washes do not use residential streets for ingress and egress;
- High car wash vehicle throughput enhances the risk of on-site stacking congestion in the vacuum stalls area;
- The Whip Clean Bowie Site has land and a roadway configuration that has resulted in far more favorable operational success than the Gaithersburg Site can expect;
- The applicant's rip data from car wash sites in Annapolis and Prince Frederick are of little value in assessing traffic issues at the Gaithersburg Site; and

The applicant's traffic analysis and data are misleading and inadequate for the purpose of evaluating the Project, for numerous reasons detailed in the Reports. undone by this Application.

/attachments (Statement of Tonimari Ayers, **Attachment 1**; colorized version of the applicant's engineered sheet 108-1, **Attachment 2**)

STATEMENT OF TONIMARIA AYERS
IN OPPOSITION TO
WHIP CLEAN CAR WASH, SP-8819-2021

My name is Tonimaria Ayers. I am the owner of Touchless Car Wash, a business located in the City of Gaithersburg at 104 N. Frederick. I am also the owner of another car wash, located at 16185 Shady Grove Road, which is just a half-mile south of the City in Montgomery County. I have been in the car wash business my entire life. In the 1950's, my family developed the earliest car washes in Montgomery County. My childhood was spent cashiering on site and attending conventions of car wash operators. After getting an MBA and working for Arthur Young, I start Touchless with my father in 1987 in one location that has expanded to two. I am a member of the Mid-Atlantic Car Wash Association, and have represented the Association in testimony about the car wash industry before the State legislature. I also am a member of the International Car Wash Association. I have served on the campaign to "Wash to Save the Bay" through the Chesapeake Bay Association. It is with this over 30 years of knowledge and experience in the car wash industry, with particular focus on Gaithersburg and nearby Montgomery County, that I wish to explain my opposition to the proposed express car wash facility at 601 – 607 South Frederick Avenue in Gaithersburg (the Whip Clean "Project").

Before detailing my objections to the Project, two preliminary points are in order. First, the Applicant states on page 3 of Ex. 85 that "the Project will bring to Gaithersburg "a car wash option not currently available within the City's Limits...." This is not correct. Touchless Car at 104 N. Frederick in the City, is just 1.2 miles from the proposed site, providing Gaithersburg residents a first-rate car wash experience for over 33 years, one that offers the express service option to Gaithersburg residents, with pay stations, new state-of-the art equipment, and free vacuums. The difference is we give residents our signature personal touch, using eight employees regularly on site to help with the pay stations, entering the wash, exiting the wash, drying the car by hand and hand-applied tire shine. The Touchless location on Shady Grove Road also offers the express car wash option and is even closer to the Project site. Ours are not the only express car wash facilities in the vicinity, and another has been recently approved within the Royal Farms area, giving residents plenty of express car wash options.

Second, the Applicant makes the presumably technically correct argument that the CD zone, by incorporating into it conditional uses allowed in the C-2 zone, permits a car wash use on this CD-zoned property. But that does not make a car wash a good "fit" for this location, and the Applicant offers little evidence that it is a desirable location for a car wash. In his May 14, 2021 report, Exhibit 60, my consultant, O.R. George and Associates, Inc., confirmed for Gaithersburg and Montgomery County what I know from years in the carwash business locally, i.e., that they are not located adjacent to residentially zoned properties. As Mr. George noted:

[W]e also did a fairly detailed search of existing carwash sites (of various types) located within the City of Gaithersburg and Montgomery County. We could find **no location** with its sole/exclusive access off a residential street.

Exhibit 60, George Letter at 5 (emphasis added).

The Applicant avoids discussing this obvious point to emphasize that the two residences on the property are in decline and in need of redevelopment. That is not contested, but that is not sufficient reason to install a car wash at this location. Either razing or redeveloping the declining structures for commercial use, particularly if geared to a residential appearance, would be much closer to what is envisioned in the Master Plan, as my counsel will detail. This should be borne in mind when one examines the operational difficulties and neighborhood impact problems that I have identified below, and that are sure to arise. Most are directly attributable to trying to jam a car wash into this relatively small space, with R-A residential zone uses on three sides of the property, and with substantial challenges relating to vehicular ingress, egress and internal vehicle circulation. Those problems would not be there, or at least greatly reduced, for most other CD-allowed commercial uses, such as professional offices, repair shops, and other low-traffic specialized sales and service establishments.

1. Internal Site Congestion During Heavy Demand Periods

The Applicant reports that the tunnel capacity is 9 vehicles and that the full cycle from start to finish is 3 minutes (180 seconds). This means that during periods of heavy demand, wherein there are many stacked cars awaiting service, one car could be exiting every 20 seconds or so. The Application nevertheless states that vehicles will enter the tunnel every 30 to 40 seconds, for an hourly throughput at high demand times of 80 – 120 vehicles, if not more. Based on my consultation with Israel Spothorse of Vac-U Tech, 70% of customers at an express location can be expected to use the free vacuums. If so, it means the 19 vacuuming spaces can be expected to fill up once 27 cars have gone through ($27 \times .7 = 18.9$). It will on average take 27 cars 27×35 seconds to go through, or 945 seconds, which is 15.75 minutes. According to Mike Trudel, Division Sales Director of Simonz, customers spend an average of 15 minutes to finish their vehicle, more if they wash floor mats and or vacuum every nook and cranny. In theory, therefore, 19 vacuum spaces is just barely enough to avoid congestion when all goes well.

In my experience, however, there will be times when theory does not work and there will be gridlock on site, especially when there is so little margin for error. This situation will be exacerbated by the fact that the point of egress from the car wash is the same as the point of ingress. In addition, unless there is rigorous on-site enforcement of the passive striping on the pavement, patrons who want to use the vacuums without going through the wash cycle will only add to the congestion and confusion in the vacuum area. Lastly, I note that the Applicant has requested a reduction in the drive aisle width from 26' to 21'. If granted, that will just make matters worse, turning a much-needed two-way drive aisle into a congested single lane. For a car wash site to process the high volume of cars

sought for this Project, the facility needs an exit well separated from the entrance. The problem, of course, is that the site is just too small and poorly situated in relation to adjacent properties and Frederick Avenue for that to happen. By contrast, the Applicant's Bowie site works well because it was built on land with adequate space for an exit separate from the entrance.

2. Congestion Associated with the Central Avenue Egress

The planned egress onto Central Avenue is a significant cause for concern. The location was obviously chosen for its proximity to high-traffic volume Frederick Road. Customers will mostly come from and return to Frederick Road. Egress will be much more of a concern than ingress. Egress is a left turn from the property to Central Avenue, where there is stacking space for only three cars awaiting the opportunity to turn onto Frederick Road, where currently there is no left turn. With 30 - 40 second car wash throughput in times of heavy demand, cars will quickly stack up on Central Avenue. They will be awaiting their chance to negotiate a right turn on Frederick Road, because a left turn prohibited. Those exiting cars must take account of northbound, fast-moving traffic on Frederick Road (MD 355), whose visibility is obscured by (a) the short sight line distance along the MD 355 downhill slope approaching Central Avenue, and (b) northbound busses stopping to load/unload passengers on MD 355 just south of the intersection. That this is an accident-prone intersection is confirmed by neighbors who have witnessed them and by the resulting presence of a no-left-turn onto MD 355 sign that has been installed for drivers on Central Avenue—a prohibition that is frequently ignored. The added traffic exiting Central from the car wash will make it all but certain that some exiting customers will try to avoid all this by driving east through the neighborhood instead. But this residential area is already heavily traveled by those cutting through from Oakmont Ave to Frederick Road, and speed bumps have been installed to try to slow down drivers. Yet another alternative is likely to be heading east on Central Avenue just far enough to negotiate a u-turn somewhere in the neighborhood so as to join the queue seeking to enter Frederick Road.

3. Noise

The applicant has greatly overstated what its noise reduction efforts can or will accomplish at this location. First, the blowers that dry the car at the end of the wash are not in a separate room; they are located at the end of the tunnel by large garage door exits. The blowers power on and off all day as cars pass through, emitting noise that will impact the surrounding area. Second, what the applicant states is "white noise" is hardly unnoticeable. For safety reasons, to start the operation of the facility each day, very loud bells are rung. The bells are located by the entrance and exit to be heard inside and outside indicating the equipment is starting. Customers often experience difficulty getting their cars in neutral or braking while in the tunnel, with the effect that the conveyor is stopping and then restarting with the bell ringing all day long. Third, of equal if not greater concern, a central vacuum component will support the 19 individual vacuum hoses. When a customer at one of the 19 stalls pulls the vacuum hose out of the handle,

there will be audible vacuum noise. In addition, a standard feature at vacuum sites is an air hose customers use to get dirt and debris from seat crevasses and wiper blades. These hoses emit a high-pitched sound that will be audible and annoying off site.

The large finishing area also promotes gathering and stereo playing louder than normal to compensate for the vacuum noise. Although the applicant states signs will be posted to limit noise, there will be just one lot attendant to enforce noise reduction, and this "solution" will not be effective or safe. This same problem arose in the City of College Park, where the police gave the car wash owner citations for customers' loud music disrupting nearby residents. Those citations were dismissed in court on the grounds that the excessive noise was the responsibility of the customers, not the car wash, leading to more, not less, nuisance noise from customers. These events are described in detail in the attached article from the Winter 2021 *Northeast Carwasher*, "You Got Noise and It's All Your Fault."

As is clear from this article, the problem of excessive noise is largely a problem of noise perception on abutting properties—a much greater problem when those properties are residential homes, as opposed to other auto service enterprises, such as "Jiffy Lubes," tire shops, car and truck rentals, gas stations repair shops and the like. Here, there are residential homes on two sides and a church on a third side. By contrast, I chose locations for my Touchless facilities that do not abut residences, because homeowners rightly expect peace and quiet, especially at night. I have not had noise complaints from my commercial neighbors. Placing a car wash at the proposed location will result in exactly the same noise problem that confounded the City of College Park.

4. Light Pollution

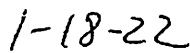
The application ignores the impact on the neighborhood of bright lights. Although the vacuums will be turned off outside operating hours, they are ordinarily installed with light sensors to go on when it becomes dark. The large LED parking lot lights may be on 24 hours a day to protect the property. Considered as a whole, all of these bright lights will adversely impact nearby residences.

5. Conclusion

This Project, if approved will set a key precedent for the future development of the Special Study Area of the Frederick Avenue Corridor Land Use Plan. As my counsel has explained, this development is not consistent with the recommendations in that Corridor Plan supplement. The site is not suited for a car wash and a car wash is not a good fit for the neighborhood in any event. It does not make sense and should not be approved. East Gaithersburg deserves better than this.



Tonimaria Ayers



Date

You Got Noise and It's All Your Fault

by Dave DuGoff

Do you remember those goofy signs over the bar that said things like, "Mama don't allow no banjo picking 'round here." or "No Spitting, Cussing or Gambling?" Whatever might be fun for some is an annoyance to someone else. The problem is that the "someone else's" run for city council and pass laws against fun. The problem is compounded when "someone else" lacks the courage to enforce the new law directly and finds a sneaky way to shift the responsibility of enforcement on to you.

What is "fun" can certainly become obnoxious. Where it crosses the line is difficult to say precisely. Fortunately, there are decibel meters that measure "fun" to tenths of a decibel. Exceed the legal limit and "fun" just became an excessive noise violation citation that bears a \$500 fine. That part is not fun. Is it fair for the police to respond to a noise complaint, "shush" the person just having fun, and then issue a citation, not to the loud fun lover, but to the owner of the property for failing to do enough to control the person having fun? They never cite the loud fun lover, but we have had three citations. I do not think it's fair, and neither did the Judge.

I think that carwashes across the country are dealing with variations of this scenario, especially self-serve carwashes that are open 24/7 and are not staffed at night. The excessive noise comes in two basic types: loud music, especially while vacuuming, and engine revving from modified mufflers that roar and backfire. The fun lovers are usually youngish, under 40, who spend a lot of time and money maintaining their old Hondas, Subaru's and Chargers. I see them working at Home Depot and Best Buy. Some are car mechanics. When you talk to them, they are pleasant and respectful. But, beneath that calm exterior there is a burning need for recognition - "I'm here world, deal with it!" The government can outlaw everything, but that need will pop up somewhere else.

Now, I have owned sports cars. I loved my Atlanta Blue BMW Z3. I should have kept it. It wasn't loud, but I do think it got noticed. Then there came a time when I couldn't really bend down that low to get in and out of it. Now I drive a Chevy Volt, no noise at all, have not bought gas since January, and it's very comfortable. A different kind of thrill, I suppose. Driving is supposed to be fun and as carwashers, we cater to people who want to pamper their car. Right?

There are state, county and city laws that prohibit excessive noise. The City of College Park, MD, Noise Ordinance makes it illegal for a property owner to "permit any noise" above certain decibel levels.¹ What does it mean to "permit any noise?" If the property owner "(h)as failed to take action reasonably calculated under the circumstances to prevent a violation" of the noise limit.² According to the City Attorney, if there is any excessive noise coming from your carwash, you obviously haven't done enough to prevent it.

I think there are a lot of ways of looking at what is "reasonably calculated under the circumstances." I do think that whether an action is likely to be effective and whether it is safe for you and your employees are relevant factors. We might think that doubling our payroll is unreasonable. The City sees that as a cost of doing business. I'd like to share an exchange I had with our Mayor. On October 19, 2020, he sent us an Instagram message on the eve of our hearing in District Court, probably not aware of that.

Many thanks for your work to try to get customers to quiet down and not play loud music and disturb the neighbors. It sounds that, unfortunately, the noise issues continue to be a concern, and a resident informed me that drivers with modified exhaust systems have been gathering at the carwash evenings and weekends and playing loud music and revving their engines. It would be great if you all could have someone on site more frequently during these times to monitor this. Thanks!

At the hearing on October 21, the City presented a rather

¹ Section 138 -5 (A)(2). For the owner or occupant of real property located within the City to make any noise or operate any sound amplifier on said property, or to permit any noise to be made or any sound amplifier to be operated on said property, so as to be clearly audible to any person located beyond the property line of such property at a level higher than 65 dBA during the day or 55 dBA during the night, as such sound may be measured from any point along the curb in front of the property line upon which the noise is being generated ...

² Section 138-5 (B). It shall be unlawful for the nonresident owner of a property to permit the occupants of such property to violate the provisions of Subsection A of this section. The owner shall not be deemed to have violated this subsection unless the owner, or owner's agent:

- (1) Has received notice from any source, that a current or prior occupant of such property has, or is alleged to have, previously engaged in conduct that violates this section regardless of whether a finding of a violation by the Noise Control Board or by a court of competent jurisdiction was made; or
- (2) Has failed to take action reasonably calculated under the circumstances to prevent a violation of this section from occurring or recurring.

long, drawn out case explaining how they take the noise readings and how many complaints there have been. (There have been a lot). At the conclusion of the City's case, our lawyer asked for judgment, which the Judge granted. He said the City failed to offer evidence that we had "permitted" the excessive noise. That was it, we never presented a defense and I never had a chance to say the wrong thing.

I responded to the Mayor on October 27, not knowing that another noise citation was already in the mail.

Mr. Mayor,

In response to your concern about the noise situation, I agree the behavior is very inconsiderate, and that something has to be done. The first question, I think, is what is likely to encourage people to modify such inconsiderate behavior? The second question is who has the ability and authority to effectively encourage people to modify their behavior? There are subsidiary but not insignificant issues that include risks of personal injury or property damage and cost.

As you know, we have posted 14 bilingual signs permanently, and another larger version that rotates in our front sign panel. Two of these signs were posted years ago. Twelve were posted in the spring of 2019. In addition, we have systematically used social media to encourage civility, Practice Kindness, Practice Courtesy, etc. We have posted reminders that there is a City Noise Ordinance and that violators risk getting a \$500 fine.

We feel that the City's refusal to cite the offenders directly undercuts our credibility. We have been saying to people, "please turn it down, you don't want a \$500 ticket." The experience of the offenders is like a game of cat and mouse. If they play the music loud, or rev their engines, the police might ask them to turn it down. But there is never any real consequence for the violators. So, why should they stop? We say that they will get a big fine, but it never happens.

When we say to a "fun lover," the City is on our case and the City wants to fine us for your loud music, you can read the thought

bubble over their head. "Gee, that's too bad. I break the law and the Car Wash pays the fine. Giggle, giggle." Citing us has no impact on the offenders, and in effect gives them a weapon to use against us. If we confront them about the noise and they feel that we are "disrespecting" them, they can come back later, crank up the volume and party on.

You asked that we staff additional hours. I do not think it would be effective, or safe. For example, on Sunday 10/18/20 at

about 11 am, I asked someone to turn down the music and he became very indignant and threatening. I called the police, and none responded.

On 10/21/20, around noon, a customer took two swings at our attendant who was trying to help him use a credit card. These two instances were in broad daylight. When we intervene directly, we risk entering a situation that we cannot control. While the police can leave after a confrontation, we are still here every day and become vulnerable to retribution from people who feel that we have harassed or disrespected them. I have already attended the funeral for an employee killed while on duty. I hope not to attend another.

There has been a significant change in the type of noise and the time of day that it occurs. Until recently, the events were almost entirely on Friday evening at about 7:30 pm,

and the problem was loud music. Over the last year, the problem has become more about engine revving, and the time of occurrence has become later at night. Several have occurred around midnight. The engine revving violation presents unique problems of intervention. Some cars have a switch to control the amount of noise coming from the muffler. I'm no expert, but I understand that factory production cars, like the Corvette, have a "track" setting to turn the excessive noise on and off, but most vehicles with aftermarket modified mufflers do not have a switch. Whether these cars are "street legal" is beyond our ability to determine, much less control. Even if we ask a violator to refrain from "revving" his engine, he cannot or at least, he does not. When he steps on the



College Park uses this signage on light poles and vending machines to keep the noise down!

Continued ...

You Got Noise and It's All Your Fault ... *continued*

gas, it makes noise. It appears he has no control over the volume, and we have no influence over the violator. This is purely a matter for police intervention.

It should go without saying but, during this time of the Novel Coronavirus, it should be our intention to reduce the number of face-to-face interactions between our staff and customers, including noise violators. Every instance of interaction carries the risk of infection.

This is a difficult problem that we do not want to make worse. To be effective in modifying the behavior of the general public, we need to think creatively and marshal resources cooperatively. There must be a way to use technology to confront the noise makers in a safe manner. I do not have a fully thought out plan, but as you may know, we post two webcams on our website. Perhaps we could expand our camera system in some way and make it available to the City. I am open to the City's suggestions.

I hope that we can find a way to work cooperatively and effectively.

So, we won in court without ever putting on a defense, and I reached out to the Mayor to work cooperatively. How do you think that went over? Another noise citation for an event two days after the court hearing. Below is a photo of three police officers confronting the "fun lover," with two more in the background. It takes three police cruisers, two unmarked cars and the city inspector's car to "shush" loud music.

Sheesh.

We are carwash operators. We are good with electricity, plumbing and chemistry. We are not social workers. **MC**

Dave DuGoff has been "picking up after people" for more than 50 years in this industry. He has been on the Mid-Atlantic Carwash Association board for 20 years, and the Northeast Regional Carwash Convention (NRCC) board for 15 years. He has spoken and led panels at the International Carwash Association conventions and the NRCC. He is also a recovering lawyer. You can reach Dave at dave.dugoff@gmail.com



At College Park Car Wash in College Park, MD, it took three police officers (and two more in the background) to get this "fun loving" noise-making customer to keep it down at the wash.

Jasmine Forbes

From: Sharon Freedman <sharonfreedman05@yahoo.com>
Sent: Wednesday, January 26, 2022 12:20 PM
To: Planning External Mailing
Subject: Car wash Site Plan SP- 8819-2021

This email is from an EXTERNAL source. Please use caution when opening attachments, clicking links, or responding.

My name is Sharon Freedman and I have been a Gaithersburg resident since 1973
I would like to state that I am **opposed** to the Site plan to build a car wash at this location on Rt 355.

1. This location is a Gateway to the City of Gaithersburg and a car wash is not what I would want travelers to see as an introduction our lovely city.
2. The traffic interruption created by cars going into and out of the car wash will disrupt the flow of traffic along this already busy stretch of road. Central Avenue leads into a residential community and cars going in and out of the car wash would create a disruption for residents trying to get into and out of their community
3. Other car washes in the City of Gaithersburg have become gathering places for car clubs and unofficial car clubs. These gatherings have created a nuisance for the area surrounding the car wash. The car wash parking lot typically becomes a magnet for a gathering place for excessively loud cars and for drag racers.

I hope that the City of Gaithersburg council will consider my thoughts and not approve the building of this car wash.

Thank you,
Sharon H Freedman
103 Oak Shade Road
Gaithersburg, Maryland
301-990-1113