

VARIANCE/CONDITIONAL USE APPLICATION FORM  
CITY OF CUMMING, GEORGIA

RECEIVED

JUL 10 2024

CITY OF CUMMING

Request No. 2024176

Date Paid: \_\_\_\_\_ Receipt # \_\_\_\_\_

Residential Variance Request Fee \$400.00

Commercial Variance Request Fee \$750.00

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Property Owner: Name: Ford's Place LLC

Address: 529 Canton Highway

Cumming, GA 30040

Phone: Austin Potts

Applicant: Name: Austin Potts

(if different from owner) Address: 7281 Hunters Trace Drive

Cumming, GA 30028

Phone: 770-557-5410

Agent: (if applicable) Name: Sean Courtney - Lipscomb Johnson LLP Phone: 770-887-7761

Existing Zoning: HB

Proposed Variance: \_\_\_\_\_

Existing Use: Automobile Service

Proposed Use: Conditional Use Permit for Wrecked Motor Vehicle

Compound

Acreage of Site: 1.176 acres

Location of Property: 529 Canton Highway

(street address) \_\_\_\_\_

Tax Map and Parcel # C01-021

Applicants shall submit (22) sets of application as follows in order; Application 3 pages, letter of intent, legal description with metes and bounds, plat survey, required site plans, developments plans, and elevation drawings to the Zoning Administrative Officer for distribution to the applicable bodies and/or review agencies. The Zoning Administrative Officer may require more or less copies depending on the nature and extent of required review. In addition, application needs to include Section 1908 stream buffer variance requirements of the City of Cumming Zoning Ordinance if applicable.

All (22) sets must be on 8 1/2 x 11 inch paper. Do not staple!

Please be advised of the following:

- 1) The applicant is bound by the submitted site plan and letter of intent if this application is approved.
- 2) It is a legal requirement that the public hearing for this Variance be advertised in the legal County organ in addition to posting a variance sign on the subject property.

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Complete the following information. (This section may be addressed in the letter of intent. )

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other land or structures in the same district; and

See attached LOI for Items 1 - 9

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2. A literal interpretation of the provisions of these zoning regulations would create an unnecessary hardship and would deprive the applicant of rights commonly enjoyed by other property owners within the property is located; and

See attached LOI for Items 1 - 9

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3. Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located; and

See attached LOI for Items 1 - 9

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4. Relief, if granted, will be in harmony with the purpose and intent of these regulations and will not be injurious to the neighborhood or general welfare in such a manner as will interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value; and

See attached LOI for Items 1 - 9

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5. The special circumstances are not the result of the actions of the applicant; and

See attached LOI for Items 1 - 9

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6. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure; and

See attached LOI for Items 1 - 9

7. The variance is not a request to permit a use of land, building or structures which are not permitted by right in the district involved.

See attached LOI for Items 1 - 9

8. The extent to which the proposed zoning will result in a use which will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities, schools, parks, or other public facilities.

See attached LOI for Items 1 - 9


9. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan, land use plan, or other adopted plans.

See attached LOI for Items 1 - 9

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**Property Owner's Certification**

I hereby certify that I am the owner of the property described in the attached legal description, that all information contained in this application is true and correct to the best of my knowledge, and that the applicant and/or agent listed above is authorized to act as the applicant and/or agent in the pursuit of the rezoning of this property. I further certify that, within the past two years, the applicant has not made any campaign contributions or made gifts of \$250 or more to members of the Governing Body or Planning Commission who will consider this application, or that if such contributions or gifts have been made, the amount and recipient of such contributions or gifts will be disclosed within ten (10) days after this application is first filed, as required by Title 36, Chapter 85, Georgia Laws.

Signature of Property Owner: 

Printed Name of Property Owner: Ford's Place LLC by Ford Grayitt, owner

Date of Signature: 7-8-24 

LAW OFFICES  
LIPSCOMB JOHNSON LLP

112 NORTH MAIN STREET  
CUMMING, GEORGIA 30040  
TELEPHONE: 770-867-7761  
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EMORY LIPSCOMB  
PUTNAM CLARK SMITH, P.C.  
CHRISTOPHER D. LIGHT  
SEAN COURTNEY  
ASHLEY B. MASHBURN  
ANDERSON LIPSCOMB

COY R. JOHNSON, P.C.  
(1928-2024)  
L. LEE DAILEY  
(1939-2013)

July 10, 2024

VIA HAND DELIVERY

City of Cumming Planning and Zoning Department  
Attn: Mr. Scott Morgan, Zoning Administrator  
100 Main Street  
Cumming, Georgia 30040

Re: Letter of Intent as required by Section 113-110(3) of the Zoning Ordinance of the  
City of Cumming, Georgia – Rezoning for Austin Potts - Request No. 2024\_\_\_\_\_

Dear Mr. Morgan:

This letter of intent is submitted pursuant to Section 113-110(3), and by reference section 113-112, of the Zoning Ordinance of the City of Cumming, Georgia, as part of Austin Potts' (the "Applicant's") proposed Conditional Use Application (the application and all supplemental documents filed contemporaneously therewith are collectively referred to herein as the "Application"). The subject property is commonly known as Forsyth County Tax Parcel Number C01-021 (the "Subject Property"). The Applicant seeks the Conditional Use Permit on the subject property which is currently zoned HB in order to utilize a portion of the subject property for open storage.

With regard to the specific rezoning criteria and requested information contained in sections 1 through 9 of the Application, the Applicant hereby addresses them as follows:

The existing zoning of surrounding properties are HB, PUD and R-3. Based on the fact that the property is already zoned, the proposed use will not adversely affect the existing use or usability of nearby properties but will rather complement existing use patterns.

The City's Comprehensive Plan and Future Land Use Map have no bearing on this request as the property is currently zoned HB. The Applicant believes that the proposed Conditional Use Permit will be in keeping with the developing trend in the area.

The existing use of the Subject Property at its current zoning classification does not allow for the proposed use in which the Applicant is seeking without the proposed Conditional Use Permit, and the Applicant is requesting to continue with the trend of commercial uses in the area. It is



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anticipated that the approval of the proposed Conditional Use Permit will raise and not diminish surrounding property values.

Approval of the Applicant's Application would not cause a safety hazard or noxious condition, would not reduce property values in the surrounding area, and therefore would promote the health, safety, morals and general welfare of the public. The relative gain to the public is also estimated to be significant as the proposed commercial use will mesh well into the existing commercial/office land uses in the area.

The Subject Property is physically suitable for development as requested by the Applicant under the HB zoning district and is not currently suitable for development without the proposed Conditional Use Permit.

The Subject Property is currently being used as an automobile service establishment, office and hair salon to the best of the Applicant's knowledge and belief, there are no existing or changed conditions affecting the use or development of the Subject Property which would give supporting grounds for disapproval of this request. As far as the Subject Property's zoning history is concerned, to the best of the Applicant's knowledge and belief, the Subject Property has at all times been zoned City of Cumming- HB and has been used as it is currently for many years.

The build out and transition of the Subject Property from its current use to the Applicant's proposed use will be gradual and in keeping with current and estimated growth patterns in the City, and it is therefore not anticipated that the proposed development will result in or cause excessive or burdensome use of existing streets, transportation facilities, utilities, schools, parks, or other public facilities.

Refusal to grant approval of the requested Conditional Use Permit as described in the Application would impose a disproportionate hardship on the Applicant without accruing any benefits to any surrounding property owners. The provisions of the Zoning Ordinance that require the development of the property to be different from the Applicant's plan are unconstitutional in that they would constitute a taking of the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section 3, Paragraph 1 of the Constitution of the State of Georgia, and the Fifth and Fourteenth Amendments to the Constitution of the United States.

A refusal by the City of Cumming to approve this Application, so as to permit viable economic use of the property, would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and the owners of similarly situated property in violation of Article I, Section 1, Paragraph 2 of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Furthermore, a decision denying the Application would constitute an arbitrary and irrational

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abuse of discretion and constitute an unreasonable application of local land use authority bearing no relationship to the public health, safety, morality or general welfare of the public in violation of Article I, Section 1, Paragraph 1 of the Constitution of the State of Georgia and the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States. The Applicant maintains that a refusal to approve the Application as requested would be an abuse of discretion under the power granted to local governments by the Georgia Constitution and the Zoning Procedures Law, O.C.G.A. Section 36-66-1, et seq.

The Applicant reserves all other rights and privileges under the Constitutions of the United States and the State of Georgia, and available at law and in equity, in the event that the City of Cumming refuses to approve this Application as requested by the Applicant. The Applicant respectfully asks that the Application be approved as requested and reserves the right to amend this Letter of Intent and the Application by supplementing additional responses and documents

Thank you very sincerely and respectfully for your consideration of this request.

Sean Courtney,  
Attorney for Austin Potts

EXHIBIT "A"

LEGAL DESCRIPTION

TRACT 1 FORD GRAVITT PROPERTY

ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 1129 OF THE 3RD DISTRICT 1ST SECTION OF FORSYTH COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

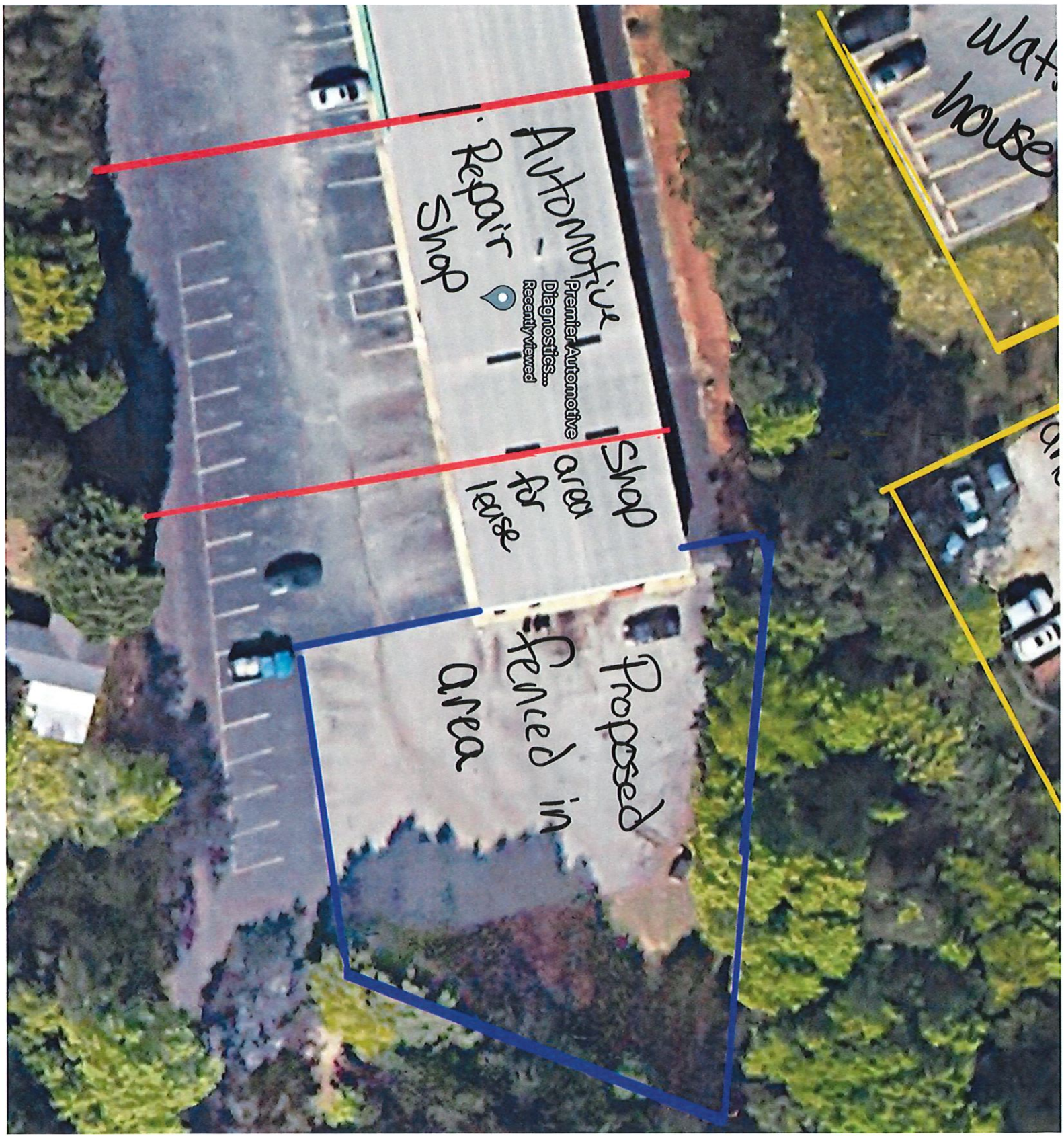
TO FIND THE TRUE POINT OF BEGINNING OF THE PROPERTY BEING DESCRIBED, BEGIN AT THE NORTHEAST CORNER OF LAND LOT 1129, LAND LOT CORNER COMMON TO LAND LOTS 1104, 1105 & 1128; THENCE ALONG THE LAND LOT LINE SOUTH  $04^{\circ}31'05''$  WEST FOR A DISTANCE OF 153.64' TO AN AXLE; THENCE LEAVING THE LAND LOT LINE SOUTH  $77^{\circ}32'36''$  WEST FOR A DISTANCE OF 107.66' TO AN IRON PIN, SAID IRON PIN IS THE TRUE POINT OF BEGINNING OF THE PROPERTY BEING DESCRIBED:

THENCE SOUTH  $13^{\circ}32'43''$  EAST  
A DISTANCE OF 182.80' TO AN IRON PIN;  
THENCE SOUTH  $82^{\circ}00'00''$  WEST  
A DISTANCE OF 280.00' TO AN IRON PIN ON THE R/W OF GEORGIA HWY #20;  
THENCE ALONG THE R/W NORTH  $27^{\circ}50'48''$  WEST  
A DISTANCE OF 167.00' TO AN IRON PIN;  
THENCE LEAVING THE R/W NORTH  $77^{\circ}32'36''$  EAST  
A DISTANCE OF 320.00' TO THE TRUE POINT OF BEGINNING OF  
THE PROPERTY BEING DESCRIBED.  
SAID PROPERTY CONTAINS 1.176 ACRES ACRES MORE OR LESS  
AS SHOWN ON A PLAT PREPARED BY RICHARD WEBB & ASSOC.  
DATED SEPTEMBER 14, 2005.









Repair Shop  
Automotive  
Premier Automotive  
Diagnostics...  
Recently Viewed

Shop area for general

Proposed fenced in area

Water house

Austin Potts – 2024-176

Conditional Use Permit Conditions

1. The tow yard shall be screened by a fence and shall not be visible from the right-of-way or adjacent properties.
2. Vehicles associated with the tow yard shall be placed in the tow yard area within 24 hours of being on the site.
3. A landscape screen shall be provided on the south side of the tow yard adjacent to Tax Map and Parcel C01-095.
4. The wrecked motor vehicle compound shall be located at the rear of the subject property.