

**REZONING APPLICATION FORM
CITY OF CUMMING, GEORGIA**

Rezoning Request No. 2024177

Date Paid _____ Receipt# _____

Amount Paid _____

Property Owner: Name: Central Forsyth Properties LLC

Address: 5200 Avalon Boulevard, Building 5000

Alparetta, GA 30009

Phone: 770-887-7761

Applicant: Name: Boxville Storage, LLC

(if different from owner) Address: 1776 Peachtree Street, NW, Suite 210N

Atlanta, GA 30309

Phone: 678-469-9795

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

Existing Zoning: PCS

Proposed Zoning: HB

Existing Use: Vacant

Proposed Use: Self-service storage, climate controlled facility

Acreage of Site: 3.697 acres

Location of Property: Southeast corner of Mary Alice Park & Market Place Blvd.

(street address) _____

Tax Map and Parcel # Part of C38-140

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, 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.

All 22 sets must be on 8 ½ 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 Rezoning, be advertised in the legal County organ in addition to posting a rezoning sign on the subject property.

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

1. The existing uses and zoning of nearby property and whether the proposed zoning will adversely affect the existing use or usability of nearby property.

See LOI for items 1 - 9

2. The extent to which property values are diminished by the particular zoning restrictions.

Type text here

3. The extent to which the destruction of property values promotes the health, safety, morals or general welfare of the public.

4. The relative gain to the public, as compared to the hardship imposed upon the individual property owner.

5. The physical suitability of the subject property for development as presently zoned and under the proposed zoning district.

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

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.

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.

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

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: Mark Morgan

Printed Name of Property Owner: Mark Morgan

Date of Signature: 7.7.24

LAW OFFICES
LIPSCOMB JOHNSON LLP

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CUMMING, GEORGIA 30040
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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 Boxville Storage, LLC - 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 Boxville Storage, LLC's (the "Applicant's") proposed Rezoning Application (the application and all supplemental documents filed contemporaneously therewith are collectively referred to herein as the "Application"). The Applicant is seeking to purchase the property subject to this rezoning application, commonly known as part of Forsyth County Tax Parcel Number C38-140 (the "Subject Property"). The Applicant seeks to rezone the Subject Property from its existing PSC Classification to the HB Classification in order to utilize the subject property for a self-service storage, climate controlled facility.

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 OMCS, PSC and R1-A. Based on the fact that it is already adjacent to existing commercial districts, the proposed rezoning 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 anticipates the proposed use of the subject property as commercial, the Applicant believes that the proposed HB Classification will be in keeping with the developing trend in the area of commercial uses.

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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, and the Applicant is requesting to continue the developing trend of commercial uses, therefore it is anticipated that approval of the proposed rezoning to the HB district 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 under its existing zoning designation.

The Subject Property is vacant 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 the rezoning 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 been zoned OCMS and PSC previously.

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 rezoning/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 rezoning as described in the Rezoning 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.

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States. Furthermore, a decision denying the Application would constitute an arbitrary and irrational 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 Boxville Storage, LLC

LEGAL

All that piece, parcel or tract of land, lying and being located in Land Lots 67 and 78, 2nd District, Forsyth County, City of Cumming, State of Georgia, being a portion of Tract B as shown on plat recorded in Book 204, pages 53 & 54 Forsyth County Records, and being more particularly described as follows:

Beginning at a right-of-way monument (disturbed) located at the intersection of the eastern right-of-way of Market Place Boulevard (variable right-of-way) and the southern right-of-way of Mary Alice Park Road (variable right-of-way); thence along said southern right-of-way, S 86°44'38" E for 19.87 feet to an iron pin; thence S 79°40'31" E for 288.92 feet to a right-of-way monument; thence N 89°35'15" E for 108.53 feet to an iron pin; thence leaving said right-of-way, S 13°50'43" W for 173.97 feet to an iron pin; thence S 13°50'43" W for 220.42 feet to a point; thence N 76°09'17" W for 474.89 feet to a point located on the eastern right-of-way of Market Place Boulevard; thence along said right-of-way, N 23°57'49" E for 351.74 feet to the Point of Beginning. Said tract contains 3.697 acres (161,044 sq. ft.), more or less.

Boxville Storage, LLC - 2024177

Zoning Conditions

1. Building exterior shall be of a similar quality as the rendering attached as Exhibit "A" hereto and incorporated herein by this reference. The final exterior building elevation shall provide a mixture of materials and the colors shall be on the earthtone spectrum. The owner/developer shall submit the final exterior building elevations to the City of Cumming Design Review Committee (DRC) to seek concurrence prior to submitting to the City of Cumming, however, both the DRC and the owner/developer shall work together in good faith, and the DRC shall provide its comments and/or concurrence not more than ten (10) business days after the owner/developer provides DRC its exterior design plan, and in no way shall DRC unreasonably delay or inhibit the owner/developer from submitting its plans to the City of Cumming after such ten (10) day review period.
2. Street lights and/or exterior lighting must be decorative in nature, LED, and designed so as to minimize light spillage along the exterior of the development along any residential, commercial, or office property line.
3. A landscape plan shall be approved by the DRC.
4. Any building equipment (HVAC, etc.) must be screened from the public ROW, or located so as not to be seen from the public ROW.
5. All development signage must be in accordance with the City's current Sign Ordinance and approved by the Department of Planning & Zoning.
6. Owner/developer will perform water pressure tests to determine if water and fire booster pumps will be required.
7. All garbage dumpsters shall be architecturally screened from view and designed to be aesthetically similar to the principal building on the subject property and comply with the Cumming Department of Utilities Ordinance requirements.
8. The use shall be limited to a climate-controlled storage facility and if such other use is sought, it shall require approval of the City Council.
9. The facility structure shall be limited to three (3) stories, 40,000 square feet per story, total 125,000 +/- square feet..
10. Any detention facility shall be enclosed by a minimum four-foot (4') high metal or aluminum fence and shall be screened from any existing or future ROW, as per the approved landscape plan.
11. The facility shall be connected to the Cumming Department of Utilities public water and sanitary sewer systems.
12. The facility parking shall be connected to any future eastern or southern access road or drive.