

APPLICANT: Platinum Auto Spa **PETITION NO.:** V-136
PHONE: 678-560-6060 **DATE OF HEARING:** 11-14-07
REPRESENTATIVE: Robert E. Burrows, Pres. **PRESENT ZONING:** CRC
PHONE: 678-560-6060 **LAND LOT(S):** 67
PROPERTY LOCATION: Located on the west side of **DISTRICT:** 1
of Johnson Ferry Road, north of Shetland Avenue **SIZE OF TRACT:** .793 acre
(1075 Johnson Ferry Road). **COMMISSION DISTRICT:** 2
TYPE OF VARIANCE: Waive the front setback from the required 50 feet to 18 feet.

COMMENTS

TRAFFIC: This request will not have an adverse impact on traffic.

DEVELOPMENT & INSPECTIONS: If this variance request is approved, a plat must be recorded reflecting the revised setback. The surveyor must submit the plat to the Site Plan Review Section, Community Development Agency for review and approval prior to recording. For questions, call 770-528-2147.

STORMWATER MANAGEMENT: No adverse stormwater management impact. Canopy is located over existing paved area.

HISTORIC PRESERVATION: After examining Civil War trench maps, Cobb County historic property surveys, county maps, and various other resources, staff has no comments regarding the impact or treatment of historic and/or archaeological resources.

CEMETERY PRESERVATION: There is no significant impact on the cemetery site listed in the Cobb County Cemetery Preservation Commission's Inventory Listing which is located in this, or adjacent land lot.

WATER: No comment.

SEWER: No comment.

OPPOSITION: NO. OPPOSED **PETITION NO.** **SPOKESMAN**

BOARD OF APPEALS DECISION
APPROVED **MOTION BY**
REJECTED **SECONDED**
HELD **CARRIED**
STIPULATIONS:



Cobb County Fire and Emergency Services

Applicant Name: Platinum Auto Spa

Petition Number: V-136

Date: 10.15.2007

Fire Marshal Comments

Fire Apparatus Access Road

All access roads shall have an all weather driving surface capable of supporting 75,000 pounds with an unobstructed width of not less than 20 feet, 25 feet inside turning radius, 50 foot outside turning radius and unobstructed vertical clearance of not less than 13 feet 6 inches.

Access road shall extend to within 150-feet of all portions of the facility or any portion of the exterior wall of the first floor.

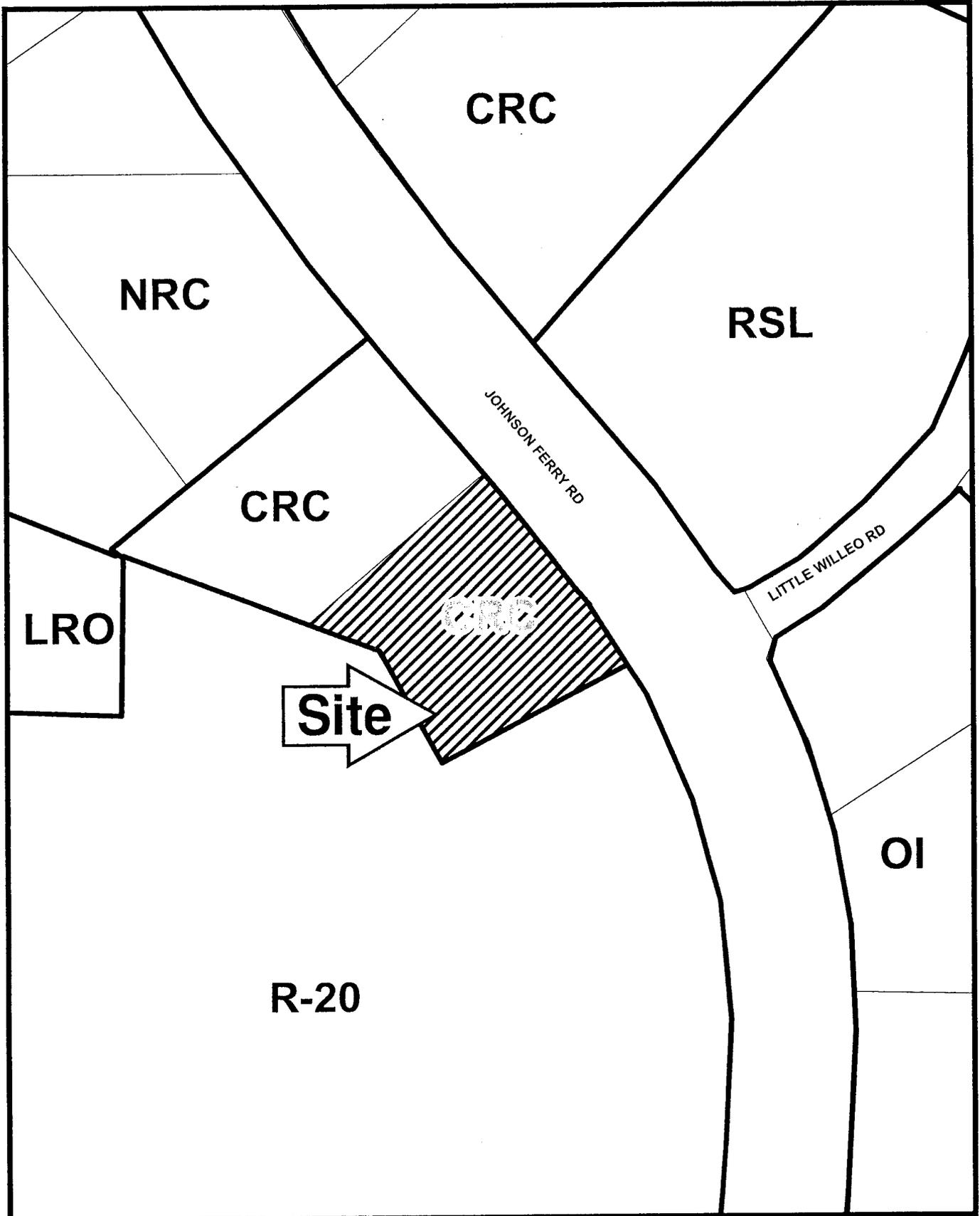
Dead-end access roads in excess of 150-feet shall be provided with a turn-around by one of the following methods:

Commercial: Cul-de-sac without an island to have a 60 foot paved radius **or** Hammerhead turnaround – total of 110-feet needed (45 feet + 20 foot wide roadway + 45 feet).

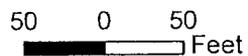
Fire Hydrant

Commercial: Fire hydrant within 500 feet of most remote part of structure.

V-136



This map is provided for display and planning purposes only. It is not meant to be a legal description.



-  Draft Parcel Boundary
-  Approximate Zoning Boundary

Application for Variance Cobb County

(type or print clearly)

Application No. V-136

Hearing Date: 11-14-07

Applicant PLATINUM AUTO SPA Business Phone 678-560-6060 Home Phone 770-442-5153

ROBERT E. BURROWS, PRES. Address 1075 JOHNSON FERRY RD MARIETTA, GA 30068
(representative's name, printed) (street, city, state and zip code)

Robert E Burrows Business Phone 678-560-6060 Cell Phone 404-543-3550
(representative's signature)

My commission expires: May 9, 2009

Signed, sealed and delivered in presence of:

Jane Wu
Notary Public

Titleholder KANBUR PROPERTIES LLC Business Phone 678-560-6060 Home Phone 770-442-5153

Signature Robert E Burrows Address: 1075 JOHNSON FERRY RD, MARIETTA, GA 30068
(attach additional signatures, if needed) (street, city, state and zip code)

My commission expires: May 9, 2009

Signed, sealed and delivered in presence of:

Jane Wu
Notary Public

Present Zoning of Property CRC

Location 1075 JOHNSON FERRY RD. MARIETTA, GA 30068
(street address, if applicable; nearest intersection, etc.)

Land Lot(s) 67 District 1 Size of Tract .793 Acre(s)

Please select the extraordinary and exceptional condition(s) to the piece of property in question. The condition(s) must be peculiar to the piece of property involved.

Size of Property _____ Shape of Property _____ Topography of Property _____ Other _____

The Cobb County Zoning Ordinance Section 134-94 states that the Cobb County Board of Zoning Appeals must determine that applying the terms of the Zoning Ordinance without the variance would create an unnecessary hardship. Please state what hardship would be created by following the normal terms of the ordinance.

THIS CANOPY IS FOR THE PROTECTION OF THE MAJORITY OF THE CAR WASH EMPLOYEES. WITH THE CANOPY THE CAR WASH IS IN COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) GUIDELINES FOR PROTECTION FROM HEAT STRESS/STROKE AND SKIN CANCER BY PROVIDING SHADE FROM DIRECT SUNLIGHT. (OSHA Pub 3154 AND FACT SHEET 95-16); Please see attached letter of intent

List type of variance requested: FROM 50' SETBACK IN FRONT YARD TO ALLOW FOR CANOPY. WAIVE THE FRONT SETBACK FROM REQUIRED 50 FT TO 18 FT

**PLATINUM AUTO SPA
LETTER OF INTENT FOR VARIANCE**

The Applicant, Platinum Auto Spa (the "Applicant"), respectfully requests a variance from the front yard setback requirements of the Community Retail Commercial ("CRC") zoning classification set forth in Article IV, Section 138-218 of the Cobb County Zoning Ordinance ("Zoning Ordinance") for approximately .793 acres located at 1075 Johnson Ferry Road in Land Lot 67 of the 1st District, 2nd Section, Cobb County, Georgia ("Subject Property"). The Property is zoned to the CRC zoning classification. Platinum Auto Spa is currently conducting business as a full-service auto care facility. When the Applicant purchased the Property two years ago, it was an existing car wash facility in complete disrepair. The Applicant has successfully revived the Property, and as part of this process, inadvertently constructed a protective canopy for its workers within the fifty (50) foot front yard setback required in the CRC zoning district. Accordingly, the Applicant now respectfully requests a reduction in the front yard setback from fifty (50) feet to eighteen (18) feet to accommodate this canopy, which is used to protect employees from the elements while they are detailing automobiles.

The protective canopy allows the Applicant to be in compliance with Occupational Safety and Health Administration ("OSHA") guidelines for employees. Section 134-94 of the Zoning Ordinance authorizes the Board of Zoning Appeals to grant a variance request which is not "contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will, in an individual case, result in unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done." In this case, the grant of the variance request will allow the Applicant to continue to protect the health and welfare of its employees, and as a result, the variance request is in the public interest.

Furthermore, the way the existing structures are situated on the Property causes a hardship to the Applicant such that there is no other place for a protective canopy to be placed on the Property. In other words, the flow of the vehicles through the existing tunnel would be completely impeded if the protective canopy were to be placed anywhere else on the Property. Additionally, the protective canopy cannot be placed anywhere else on the Property without interfering with the existing parking spaces. Finally, Cobb County Development Regulation Section 134-266 addresses setbacks for gasoline pumps and canopies and provides that "Within any zoning district which allows for gasoline pumps and canopies (attached or detached) covering the pumps, pumps and canopies shall be set back at least 15 feet from the future right-of-way." The CRC zoning classification, to which the Property is zoned, allows for gasoline pumps and canopies. The canopy at Platinum Auto Spa is detached and is set back 18 feet from the right-of-way and is analogous to a gas pump canopy. For the foregoing reasons, the Applicant respectfully requests approval of this variance request.

A denial of this variance request would be unconstitutional in that it would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Any interpretation or application of the Cobb County Zoning Ordinance that does not permit the requested variance as proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Equal

Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its property while not substantially advancing legitimate state interests.

A denial of the foregoing variance request would also constitute an arbitrary and capricious act by the Cobb County Board of Zoning Appeals without any rational basis therefor constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the Cobb County Board of Zoning Appeals to grant the variance requested by the Applicant would also be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of the similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

The provisions of the Cobb County Zoning Ordinance that delegate authority to the Cobb County Board of Zoning Appeals to hear matters such as the variances requested by the Applicant do not set forth sufficient standards for the Board of Zoning Appeals to follow and are an unconstitutional delegation of authority from the Board of Commissioners of Cobb County to the Cobb County Board of Appeals.

The Applicant's rights to due process, which are guaranteed by the state and federal constitutions, are denied by the procedures followed by the Cobb County Board of Appeals in that there are not sufficient rules and regulations governing the procedures of the Board, there is

insufficient time allowed to present evidence to the Board and there is no right to discovery and cross examination of witnesses.

In addition, this Letter of Intent constitutes formal written notice to Cobb County, Georgia pursuant to O.C.G.A. § 36-11-1 that the Applicant plans to seek to recover all damages that it might sustain or suffer as a result of the denial of this application. Such damages may include, but are not necessarily limited to, damages related to the diminution in the value of the Subject Property, attorneys' fees and expenses of litigation.

The Applicant, therefore, respectfully requests that the Cobb County Board of Zoning Appeals grant the variance as requested above.

DILLARD & GALLOWAY, LLC

By: 
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