

Application for "Other Business"

Cobb County, Georgia

(Cobb County Zoning Division - 770-528-2035)

BOC Hearing Date Requested: OB-051-2018
10/16/2018

Applicant: Dimitar S. Dimitrov **Phone #:** 404-579-5323

Address: 901 Chattahoochee Ave., Atlanta, GA **E-Mail:** atlantabg@gmail.com
(applicant's name printed)

SAMS, LARKIN, HUFF & BALLI, LLP
by: Garvis L. Sams, Jr. **Address:** 376 Powder Springs Street, Suite 100, Marietta, GA 30064

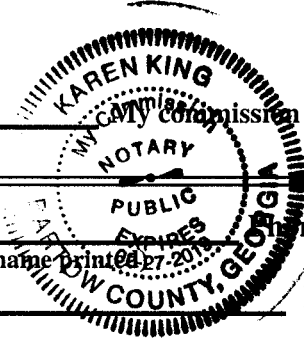
~~(representative's name, printed)~~

[Signature] **Phone #:** (770) 422-7016 **E-Mail:** gsams@slhb-law.com

(representative's signature)

Signed, sealed and delivered in presence of:

Karen L. King
Notary Public **My commission expires:** 2-27-19



Titleholder(s) : See attached **Phone #:** _____
(property owner's name printed)

Address: _____ **E-Mail:** _____

(Property owner's signature)

Signed, sealed and delivered in presence of:

Notary Public **My commission expires:** _____

Commission District: 3 (Birrell) **Zoning Case:** Z-12 of 2013

Size of property in acres: 0.304 acre **Original Date of Hearing:** April 16, 2013

Location: On the south side of Post Oak Tritt Road, east of Sandy Plains Road (2118 Post Oak Tritt Road)
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 556 & 557 **District(s):** 16th

State specifically the need or reason(s) for Other Business: To Amend Stipulations and Site Plan to allow an Emission Station and fully enclosed Minor Vehicle Repair and Service.

(List or attach additional information if needed)

* Applicant specifically reserves the right to amend any information set forth in this Other Business Application at any time during the Other Business process.

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

GARVIS L. SAMS, JR.
JOEL L. LARKIN
PARKS F. HUFF
JAMES A. BALLI

SUITE 100
376 POWDER SPRINGS STREET
MARIETTA, GEORGIA 30064-3448

770•422•7016
TELEPHONE
770•426•6583
FACSIMILE

ADAM J. ROZEN

WWW.SLHB-LAW.COM

September 11, 2018

VIA HAND DELIVERY

Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
1150 Powder Springs Road, Suite 400
Marietta, GA 30064

Re: Other Business Application of Dimitar S. Dimitrov regarding Rezoning
Application No. Z-12 of 2013 to Amend Stipulations and Approve Site Plan.

Dear John:

This firm has been engaged by and represents Dimitar S. Dimitrov concerning the above-captioned Other Business Application. On April 16, 2013, the rezoning of the subject property was approved to the NRC zoning district subject to numerous stipulations and conditions. One of which made the rezoning use-specific to a carwash facility. Mr. Dimitrov has the property under contract for the purposes of rehabbing and retrofitting the existing building for purposes of enclosed minor vehicular repair and one (1) of the carwash bays to be utilized for an office related to the proposed as the Emission Inspections component.

Enclosed please find an original Other Business Application which further communicates the underlying foundation and need for the filing of this Other Business Application. Also enclosed are the following:

1. The requisite number of copies of the proposed site plan prepared by DGM Land Planning Consultants.
2. A copy of the April 16, 2013 Board of Commissioners' approved minutes and referenced exhibits with respect to Z-12 of 2013.
3. A copy of the receipt for payment of 2017 taxes from the Cobb County Tax Commissioner's Office.

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

VIA HAND DELIVERY

Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
September 11, 2018
Page 2

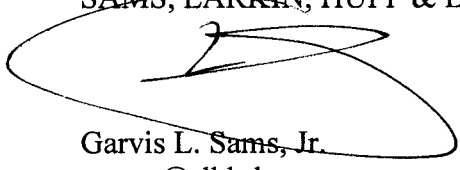
4. A check made payable to Cobb County in the sum of \$300.00 representing the application fee. A check for the signage fees will be submitted separately at the time of submission.
5. A Constitutional Challenge.

We are asking that this Other Business Application be heard on the Board of Commissioners' Other Business Agenda which will immediately follow the regularly scheduled Zoning Hearing on October 16, 2018. We will provide notification in writing to all property owners within a thousand feet of the subject property. My staff will handle that notification process and provide your office with a Certificate of Mailing consistent with existing Other Business notification protocols.

Please do not hesitate to contact me should you have any questions whatsoever regarding these matters. With kind regards, I am

Very truly yours,

SAMS, LARKIN, HUFF & BALLI, LLP



Garvis L. Sams, Jr.
gsams@slhb-law.com

GLS, Jr./lkj
Enclosures

cc: Mr. Dimitar S. Dimitrov (via email w/attachments)
Mr. Jeff Pittman (via email w/ attachments)

ATTACHMENT TO APPLICATION FOR OTHER BUSINESS

Application No.: OB- 51
BOC Hearing Date: _____

Applicant: DIMITAR DIMTROV
Titleholder(s): MUGEES KHAN AND YASIR SYED
PIN#: 16055700340

PROPERTY OWNER'S CERTIFICATION

The undersigned(s) below, or as attached, is the owner of the property considered in this application.

[Signature] 9/8/18
Signature of Owner Date

Title: _____

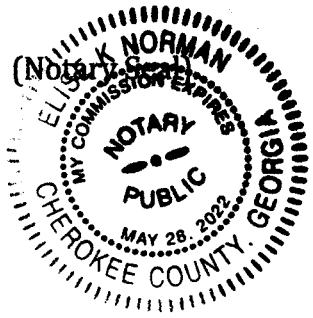
Printed Name: MUGEES KHAN

Address: 2118 post oak hill rd
Marietta GA 30062

Telephone No.: (678) 237-3723

[Signature]
Signature of Notary Public

Date 9/8/18



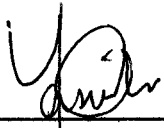
ATTACHMENT TO APPLICATION FOR OTHER BUSINESS

Application No.: OB-51
BOC Hearing Date: _____

Applicant: DIMITAR DIMTROV
Titleholder(s): MUGEES KHAN AND YASIR SYED
PIN#: 16055700340

PROPERTY OWNER'S CERTIFICATION

The undersigned(s) below, or as attached, is the owner of the property considered in this application.

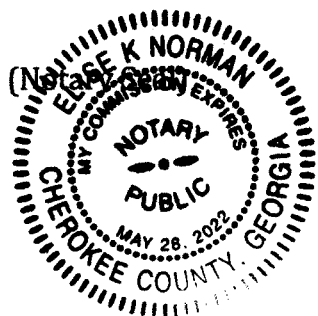
 09/08/18
Signature of Owner Date
Title: OWNER
Printed Name: YASIR SYED

Address: 2623 TWIN LAKES WAY
MARIETTA GA 30062

Telephone No.: (____) _____


Signature of Notary Public

Date 9/18/18



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AFTER RECORDING RETURN TO
O'KELLEY & SOROHAN, LLC
1979 LAKESIDE PARKWAY
STE. 340
TUCKER, GEORGIA 30084

649212

Rebecca Keaton

REBECCA KEATON
CLERK OF SUPERIOR COURT Cobb Cty. GA.

STATE OF NEW YORK
COUNTY OF MONROE

PLEASE RETURN TO:

LIMITED WARRANTY DEED

THIS INDENTURE, made this 31st day of December, 2012 between ACM BROWNCROFT CR, LLC, a Delaware limited liability company (hereinafter referred to as "Grantor") and MUGEES KHAN and YASIR SYED (hereinafter referred to as "Grantee"), the words "Grantor" and "Grantee" to include the heirs, legal representatives, successors and assigns of said parties where the context requires or permits;

WITNESSETH:

That Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATIONS, in hand paid, at and before the sealing and delivery of these presents, receipt of which is hereby acknowledged by Grantor, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto Grantee, all that tract or parcel of land lying and being in Land Lot 557 of the 16th District, 2nd Section of Cobb County, Georgia, the same being more particularly described on Exhibit "A" attached hereto and by reference made a part hereof, TOGETHER WITH all and singular the rights, members and appurtenances thereto, to the same being, belonging, or in anywise appertaining (hereinafter collectively referred to as the "Premises"), SUBJECT TO the matters set forth on Exhibit "B" attached hereto and by reference made a part hereof (hereinafter collectively referred to as the "Exceptions").

TO HAVE AND TO HOLD the Premises, subject to the Exceptions, to the only proper use, benefit and behoof of Grantee, forever, in FEE SIMPLE.

AND GRANTOR will, subject to the Exceptions, warrant and forever defend the right and title to the Premises unto Grantee against the claims of all persons claiming by, through, or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has executed this instrument under seal, as of the date first above written.

Signed, sealed and delivered this
27 day of Dec., 2013,
delivered in the presence of:

John M. Hinnelberg
Unofficial Witness

ACM BROWNCROFT CR, LLC

By: [Signature] (SEAL)
Timothy P. Sheehan, Authorized
Representative

Barbara A. Galvin
Notary Public

My Commission Expires: 5/31/14

[AFFIX NOTARY SEAL]

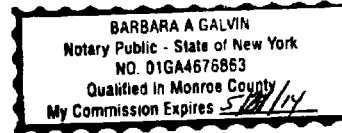


Exhibit A

All that tract or parcel of land lying and being in Land Lot 557, 16th District, 2nd Section, Cobb County, Georgia, and being a tract of land located on the southwesterly side of Post Oak Tritt Road, as shown by plat of property of M.R. Laird made by A.O. Carlile, dated June 1, 1976, and being more particularly described as follows:

BEGINNING at the intersection of the southwesterly Right-of-Way of Post Oak Tritt Road and the east boundary line of Land Lot 557, and running thence South 3 degrees 45 minutes West along the east boundary line of Land Lot 557 for a distance of 160 feet to a point and corner; thence running North 75 degrees 0 minutes West for a distance of 85 feet to a point and corner marked by an iron pin; thence running North 3 degrees 45 minutes East for a distance of 160 feet to the southwest Right-of-Way of Post Oak Tritt Road; thence running South 75 degrees 0 minutes East for a distance of 85 feet along the southwest Right-of-Way of Post Oak Tritt Road to the POINT OF BEGINNING.

Together with those easement rights arising under that certain Warranty deed from Brilliant, LLC, a Georgia limited liability company to Store Smart Self Storage, LLC, a Georgia limited liability company, dated January 6, 2004, filed of record January 14, 2004, recorded in Deed Book 13915, Page 4985, Cobb County, Georgia records.

EXHIBIT "B"
PERMITTED EXCEPTIONS
(ACM BROWNCROFT CR, LLC/KHAN AND SYED)

1. Taxes for 2013 and subsequent years.
2. Easements, or claims of easements, not shown by the public records.
3. Easement to Oglethorpe Power Corporation recorded in Deed Book 5658, Page 91, Cobb County Records.
4. Easement to Cobb County Department of Transportation recorded in Deed Book 4125, Page 527, aforesaid records.
5. Easements to Georgia Power Company recorded in Deed Book 759, Page 445 and Deed Book 1339, Page 408, aforesaid records.
6. Right of Easement as contained in that Warranty Deed recorded in Deed Book 1779, Page 572 and subsequent Deeds, Cobb County Records.
7. All matters as shown on plat recorded in Plat Book 196, Page 46, aforesaid records.
8. All matters relating to that certain billboard structure located on the Property and the Eller Eller Media Company Lease Agreement # 1183 dated November 2, 1998, between Aurum, Inc. and Eller Media Company.



Printed: 9/6/2018

Cobb County Online Tax Receipt

Thank you for your payment!

CARLA JACKSON TAX COMMISSIONER
CHELLY MCDUFFIE CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Payer:
YASIR SYED

KHAN MUGEES & SYED YASIR

Payment Date: 9/27/2017

Tax Year	Parcel ID	Due Date	Appeal Amount	Taxes Due
2017	16055700340	10/15/2017	Pay: N/A or	\$0.00

Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$0.00	\$1,869.55	\$0.00



Scan this code with your mobile phone to view this bill!

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
APRIL 16, 2013
PAGE 2**

CONTINUED, HELD, OR WITHDRAWN CASES (CONT.)

~~Z-9~~ **THE PACIFIC GROUP, INC. (GDCI GA 1, L.P., owner) requesting Rezoning from R-20 to R-15 for the purpose of Single-Family Detached Residential Subdivision in Land Lot 194 of the 19th District. Located on the east side of John Ward Road, north of Lyons Way. (Previously continued by the Planning Commission from their March 5, 2013 hearing)**

Mr. Garvis L. Sams Jr., Applicant's Representative, presented the Applicant's request to withdraw application without prejudice. There was no opposition to this request. Thereafter, the following motion was made:

MOTION: Motion by Goreham, second by Ott, to authorize Z-9 to be WITHDRAWN WITHOUT PREJUDICE.

VOTE: ADOPTED unanimously

CONSENT CASES

MOTION: Motion by Birrell, second by Ott, to approve/delete the following cases on the Consent Agenda:

Z-12 YASIR SYED AND MUGEES KHAN (owners) requesting Rezoning from GC to NRC for the purpose of Carwash And Office in Land Lots 556 and 557 of the 16th District. Located on the south side of Post Oak Tritt Road, east of Sandy Plains Road (2118 Post Oak Tritt Road).

To **approve** Rezoning to the NRC zoning district **subject to:**



- **Final site plan, specific to car wash use *only*, to be approved by the District Commissioner after Applicant has completed the Plan Review process for parking/stripping and landscape improvements**
- **Letter of agreeable conditions from Mr. Yasir Syed, dated March 27, 2013 (attached and made a part of these minutes), *with the following changes:***

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
APRIL 16, 2013
PAGE 3**

CONSENT CASES (CONT.)

Z-12 YASIR SYED AND MUGEES KHAN (CONT)

- **Add new bullet: “Motion detector or other security lighting to be installed on all building sides”**
- **Add new bullet: “District Commissioner to review and approve parking, landscaping and painting improvements to the property”**
- **Signs with emergency contact information to be posted on property**
- **Exterior paint color(s) to be approved by District Commissioner**
- **Attendant is not mandatory for self service carwash; however, if Applicant operates a full service car wash, office building may be used for waiting area, cashier, personnel, and sale of retail accessories**
- **A gate may be installed at the entrance provided Applicant meets with the Fire Marshall and it meets code requirements**
- **Fire Department comments and recommendations**
- **Water and Sewer Division comments and recommendations**
- **Stormwater Management Division comments and recommendations**
- **Cobb DOT comments and recommendations**
- **Owner/developer to enter into a Development Agreement pursuant to O.C.G.A. §36-71-13 for dedication of system improvements to mitigate traffic concerns**

~~**Z-15 SOUTH CENTRAL INDUSTRIAL PROPERTIES OF TEXAS, INC.**
(South Central Industrial Properties III, L.P., owner) requesting Rezoning from GC to GC with Stipulations for the purpose of a HVAC Contractor in Land Lot 781, of the 16th District. Located at the northeast intersection of Canton Road Connector and Guffin Lane.~~

~~To **delete** Rezoning to the NRC zoning district subject to:~~

03/27/2013

Yasir Syed
2118 Post Oak Tritt Rd
Marietta GA 30062

Christi Trombetti
PO Box 649
Marietta GA 30061

Min. Bk. 68 Petition No. Z-12
Doc. Type letter of agreeable
conditions
Meeting Date 4/15/13

Dear Ms. Trombetti,

SUB: Application for Rezoning # Z-12

I have recently purchased Carwash located at 2118 Post Oak Tritt Rd Marietta GA 30062. Since the business has been closed for more than a year it has lost its grandfather status of General Commercial. I am now currently applying for Neighborhood Retail Commercial (NRC). My plan is to have the car wash running in a good clean condition so that it attracts customers. Below is a list of some of my plans.

- Repair the roof which is leaking (this work has already been completed)
 - Machinery and Equipment for 5 bays to be repaired so that they can function properly
 - Repair the office on the property
 - Pressure wash and clean the entire car wash
 - Remove all the weeds from the property
 - Landscaping on the front of the property to beautify the entrance of the carwash
 - Paint the building
 - Other necessary upgrades that are deemed important or "good for business"
- motion detector or other lighting on building all sides.

I also intend to have the car wash open from 6AM to 10PM. I appreciate your consideration in approving my application for Rezoning as I am revitalizing a business that has been closed for several years.

Thanking you,

Yours truly,

Yasir Syed

TO THE COBB COUNTY BOARD OF COMMISSIONERS
COBB COUNTY, GEORGIA

CONSTITUTIONAL CHALLENGE

COMES NOW, DIMITAR S. DIMITROV, hereinafter referred to as the "Applicant", and for himself and/or acting on behalf of the Owners, asserts the following, to wit:

1.

By application to which this exhibit relates, Applicant has applied for an Other Business Item regarding certain real property lying and being in Cobb County, Georgia, a more particular description and delineation of the subject property, hereinafter referred to as the "Property", being set forth in said Application.

2.

The Application seeks approval of an Other Business Application by the governing authority of Cobb County, Georgia to amend the stipulations pertaining to a Rezoning; Application No. Z-12 of 2013 (Yasir Syed and Mugees Khan).

3.

The current zoning stipulations/conditions are unconstitutional in that they deprive the Applicants under and pursuant to Article 1, Section I, Paragraphs I and II of the Georgia Constitution of 1983 and the Equal Protection and Due Process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States. This deprivation of property rights without due process violates constitutional prohibitions against the taking of private property without just compensation.

4.

The zoning conditions/stipulations as they presently exist violate the Applicant's right to the unfettered use of the property in that the existing conditions and stipulations do not bear a substantial relation to the public health, safety, morality or general welfare and is, therefore, confiscatory and void. Further, said requirements are unconstitutional in that they are arbitrary and unreasonable, resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss upon the Applicant.

5.

The Cobb County Zoning Ordinance is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with Other Business Applications also violates the aforementioned constitutional provisions in that said procedures contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issues at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law.

Respectfully submitted, this the 17th day of September, 2018.

SAMS, LARKIN, HUFF & BALLI, LLP

By: 

GARVIS L. SAMS, JR.
Attorney for Applicants
Ga. Bar No. 623950

SAMS, LARKIN, HUFF
& BALLI, LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
SUITE 100
376 POWDER SPRINGS ST.
MARIETTA, GA 30064
770.422.7016

'Other Business' Application Site Plan for

2118 Post Oak Tritt Road

Cobb County, Georgia Land Lot 557, 16th District, 2nd Section

prepared for:
Mr. Dimitar Dimitrov

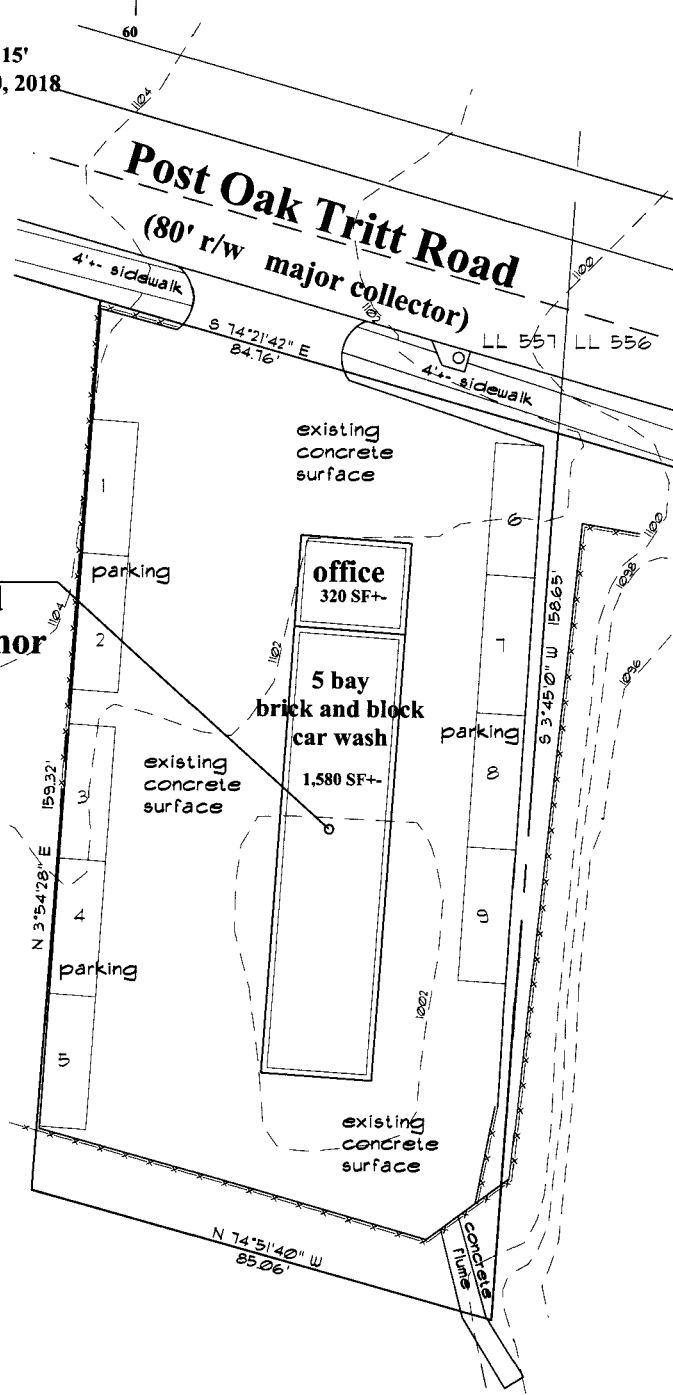
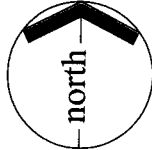


Scale: 1" = 15'
September 10, 2018

DGM
LAND PLANNING
CONSULTANTS



975 COBB PLACE
BLVD, SUITE 212
KENNESAW
GA 30144
770 514-9006
FAX 514-9491



**5 bay, brick and block
carwash to be converted
emission station and minor
vehicle repair facility**

Site Data

- Total Site Area:** .304 AC
- Present Zoning:** NRC
- Proposed Zoning:** NRC
- Total Building Area Shown:** 1,900 SF
 - office: 320 SF
 - carwash bays: 1,580 SF
- Parking Shown:** 9 spaces
- NRC Building Setbacks:**
 - front (major collector) 40'
 - side: 15'
 - rear: 30'

Notes:

1. Boundary by Larry D. Neese, PLS, dated 2015-10-5.
2. Topographic information from Cobb County GIS.
3. According to Flood Insurance Rate Map (FIRM) #13067C0063H, November 2, 2012, no portion of this site contains floodplain.
4. No cemeteries are known to exist on site.
5. No stream and/or wetlands exist on site.
6. No archeological or architectural landmarks exist on site.
7. No utility easements exist on site.
8. Stormwater management and water quality structures (if shown) are conceptual in size and will be revised based on hydrologic study.

