



STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2015-40 **Legistar #:** 20150704
Board of Zoning Appeals Hearing: **Monday, August 31st, 2015 – 6:00 p.m.**
Property Owner: Daniel Kane
133 Nassau Street NW
Atlanta, GA 30303
Applicant: Michael Fitzpatrick
Carlotz, Inc
78055 Rillstone Dr
Lancaster, SC 29720
Address: 1011 Cobb Parkway South
Land Lot: 05810 **District:** 17 **Parcel:** 0130
Council Ward: 1A **Existing Zoning:** CRC (Community Retail Commercial)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to allow the use of auto sales on a lot less than 1 acre (0.346 ac). [*§708.16 (B.6.A)*]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.

3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



1011 Cobb Parkway South



Frontage of subject property

Recommended Action:

Denial. The applicant, Michael Fitzpatrick, is requesting a variance to allow auto sales on a lot less than one (1) acre on the property at 1011 Cobb Parkway South. The requested variance would allow the 0.346 subject property to serve as a used car dealership. The subject property is zoned CRC (Community Retail Commercial) and located on Cobb Parkway – an arterial road. The owner, Daniel Kane, provided a letter stating the history of the property from when he purchased the subject property in 1985. The subject property was used for automobile sales until December 2014. Per the Zoning Ordinance, a property loses its nonconforming or “grandfathered” status after being vacant more than six months. The property was vacant until July 8, 2015, when Mr. Fitzpatrick requested a zoning certification letter. However, by that time the nonconforming use had expired and the site was no longer allowed to operate as a used car dealership.

According to the Zoning Ordinance, in order to use a property for automobile sales, there must be at least one acre of property. The one acre requirement is intended to ensure sufficient area to have an orderly display of vehicles. This particular property is only 120 feet wide and approximately 135 feet deep, and the front of the subject property is located within a 100-year floodplain.

The Board of Zoning Appeals has considered the following cases regarding automobile sales on sites that do not meet the one acre requirement:

Case #	Address	Acreage	Zoning	Ruling	Stipulations
V2000-07	1960 Airport Ind Park Drive	0.46	LI	Approved	None
V2000-12	1326 Cobb Pkwy N	0.64	CRC	Approved	No more than 6 cars for sale at a time
V2000-16	2072 Airport Ind Pk Drive	0.65	LI	Approved	None
V2001-02	484 Cobb Pkwy N	0.611	CRC	Denied	
V2001-07	1195 Cobb Pkwy S	0.426	CRC	Approved	None
V2004-21	44 N Fairground Street	0.3	CRC	Approved	Sale of motorcycles only; vehicles to be stored inside at the end of business day
V2006-06	1791 Roswell Road	0.7	CRC	Denied	
V2007-05	1955 Airport Ind Park Drive	0.348	LI	Approved	None
V2014-28	1245 Bellemeade Drive	0.557	CRC	Approved	None

The area of the subject property is substantially below the one-acre minimum that is currently required, and is partially within a floodplain, and as such, **Staff recommends denial of this request.**

However, if the Board wishes to approve the variance request, Staff recommends the following stipulation at the request of the Marietta Fire Department:

1. If the occupancy changes, the structure must meet the definition of new for the new occupancy type. NFPA 101 2012 edition, Chapter 43 section 43.7.2.1



Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060
Brian Binzer, AICP, Director

APPLICATION FOR VARIANCE OR APPEAL
(Owner/Applicant/or Representative must be present at all public hearings)

Application #: V2015-40 Hearing: 8/31/15 Registrar # 20150704

This is a variance/appeal application for:

Board of Zoning Appeals City Council

Owner's Name Daniel Kane

Address 133 Nassau Street, NW, Atlanta, Georgia Zip Code: 30303

Telephone Number: 404-577-1200 (w) Email Address: dbkane133@gmail.com
678-358-6723 (c)

COMPLETE ONLY IF APPLICANT IS NOT OWNER:
Applicant Michael FitzPatrick Carlutz, Inc
Address 7805 Killstone Dr Lancaster SC Zip Code: 29720
Telephone Number 678-206-6174 Email Address: Mfitzpatrick@carlutz.com

Address of property for which a variance or appeal is requested:

1011 Cobb Pkwy, Marietta, GA Date of Acquisition: January 21, 1985

Land Lot (s) 581 District 17 Parcel 17058100130 Acreage 0.346 Zoned GE Ward 1A FLU CAC

List the variance(s) or appeal requested (please attach any additional information):

Property should be grandfathered in under prior use.

- Required Information**
1. Application fee (\$250)
 2. Completed notarized application. **The original application must be submitted with ALL original signature(s) – Copies of the application or signature(s) will NOT be accepted.**
 3. Legal description of property.
 4. Letter describing the reason for the variance request, stating why strict adherence to the code would result in a particular hardship (as distinguished from a mere inconvenience or desire to make more money).
 5. Site plan - 25 copies of site plan drawn to scale. Site plans must illustrate property lines and all relevant existing information and conditions in addition to proposed additions or modifications within the referenced property lines of the tract(s).
 6. Copy of current tax bill showing payment or documentation certified by the City of Marietta Tax Office.
 7. Documentation authorizing applicant to submit application by property owners if applicant is not owner.

Note: The Department of Development Services reserves the right to obtain additional information that reasonably may be required in order that an informed decision may be made.

OVER

DANIEL KANE, P. C. AND ASSOCIATES

ATTORNEY-AT-LAW

133 NASSAU STREET, N.W.

ATLANTA, GEORGIA 30303

TELEPHONE #: (404) 577-1200

FAX #: (404) 577-1211

July 17, 2015

City of Marietta
Department of Development Services
205 Lawrence Street, NE
Marietta, Georgia 30060

RE: **1011 Cobb Parkway, Marietta, Georgia**

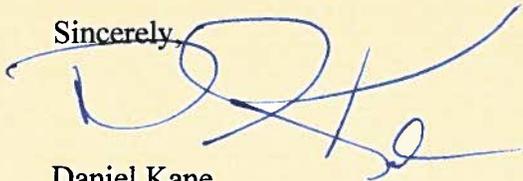
Dear Sir or Madam:

Please allow this correspondence to serve as a letter describing the reason for the "variance request."

I purchased this property in January 1985 from my father to operate Cobb Auto Motive, Inc. Cobb Automotive, Inc. was a Marietta Used Car Dealership. 1011 Cobb Parkway property has been used as a Used Car Dealership consistently since before January 1985 through current, 2015. The current Lessee has assigned the lease to CarLotz, the applicant herein. Therefore, I believe that the consistent long-standing use of the instant property (before January 1985) by my father through 2015 as a used car lot, would grandfather the property for used car sales.

Strict adherence to the Code would create particular hardship for myself, who plans to continue to lease the property as a Used Car Dealership, and also for the Tenants/Applicants who find the City of Marietta an ideal location to operate their unique automotive resale business.

Sincerely,



Daniel Kane

DK:dy

Enclosure

TO: Marietta Daily Journal
FROM: City of Marietta
RUN DATE: August 14, 2015

PUBLIC NOTICE OF VARIANCES

The City of Marietta hereby gives notice that a public hearing will be held to give consideration to the following variance requests. The Board of Zoning Appeals will consider the following requests on **Monday, August 31, 2015 at 6:00 P.M.**, City Hall. Anyone wishing to attend may do so and be heard relative thereto.

V2015-40 [VARIANCE] CARLOTZ, INC (DANIEL KANE) is requesting a variance for property located in Land Lot 05810, District 17, Parcel 0130, 2nd Section, Marietta, Cobb County, Georgia and being known as 1011 Cobb Parkway South. Variance to allow the use of auto sales on a lot less than 1 acre. Ward 1A.

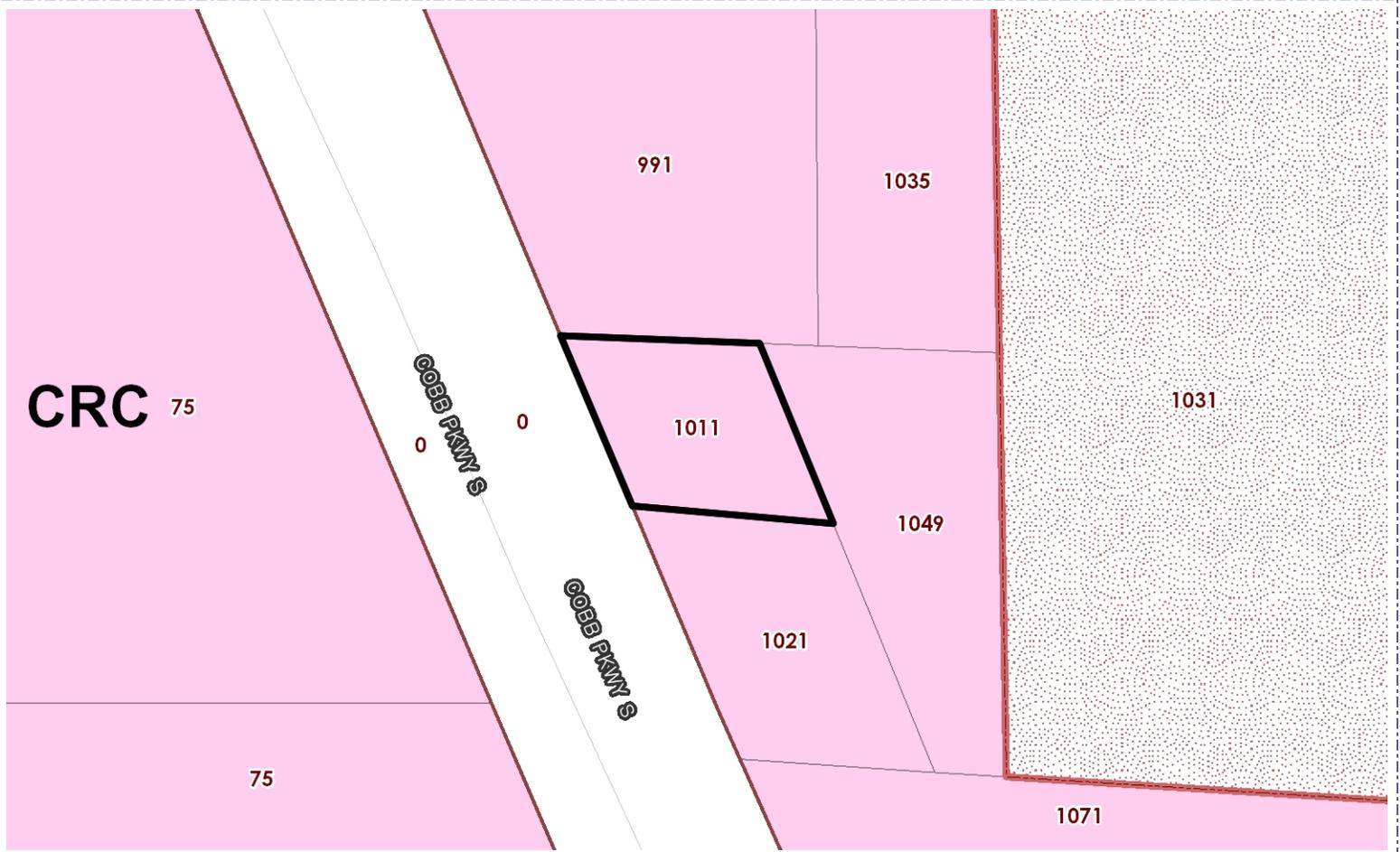
A description and plat of the property sought for the variances are on file in the Planning and Zoning Office, City Hall, and are available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto.

For additional information please call the Planning and Zoning Office (770) 794-5669.

Accessibility to Meetings: If you believe you may need the City/BLW to provide special accommodations in order to attend/or participate in any of the above meetings, please call Mr. Patrick Henley, ADA Coordinator, at 770-794-5558 (voice) or 770-794-5560 (TDD) no later than 48 hours before the date of the above meeting.

City of Marietta
205 Lawrence Street
Marietta, Georgia 30060

Variance

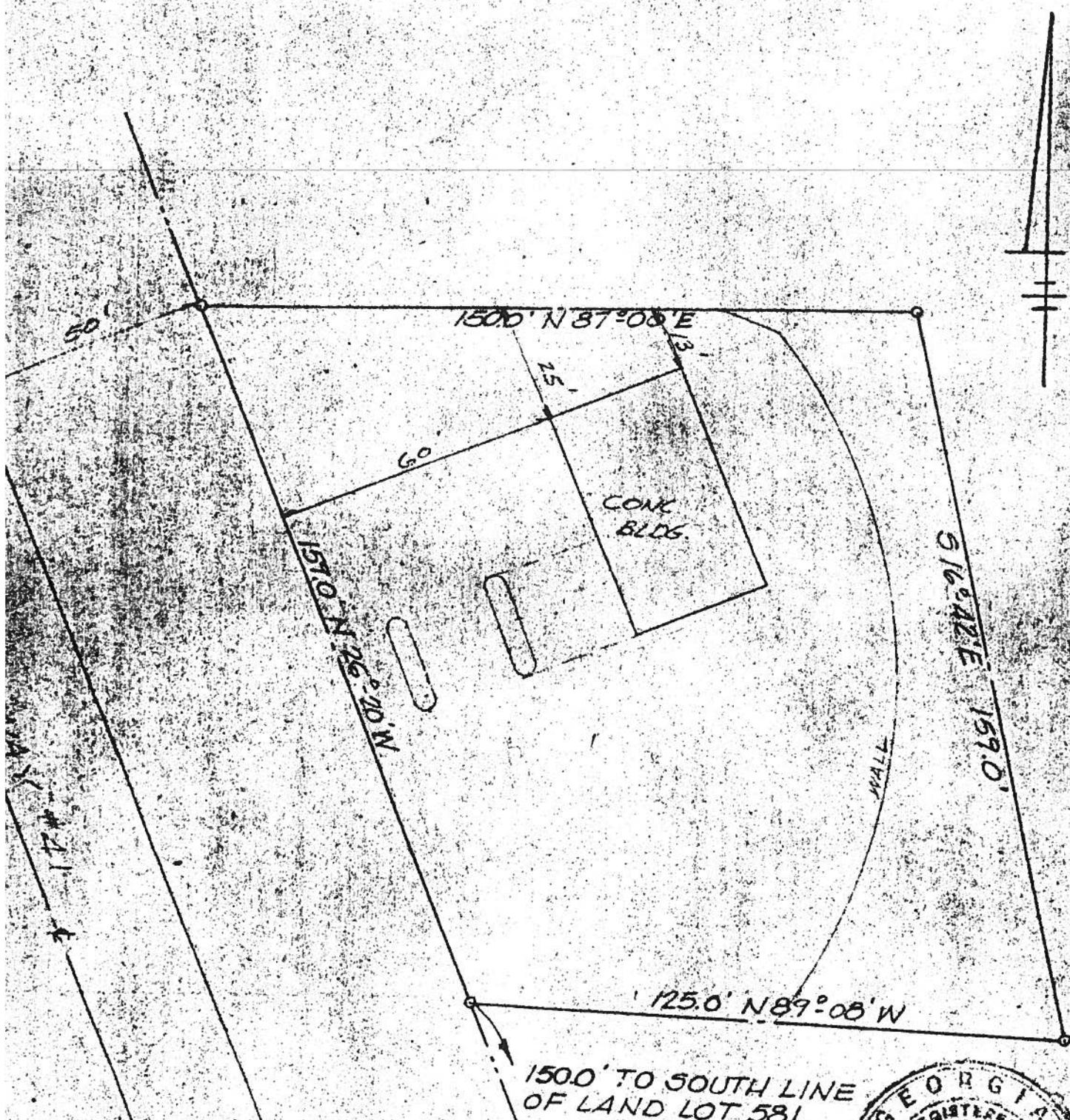


Address	Parcel Number	Acreage	Ward	Zoning	FLU
1011 COBB PKWY S	17058100130	0.346	1A	CRC	CAC

Property Owner:	Daniel Kane
Applicant:	Michael Fitzpatrick (Carlutz, Inc)
BZA Hearing Date:	08/31/2015
Acquisition Date:	
Case Number:	V2015-40
<p>City of Marietta Planning & Zoning</p>	

Zoning Symbols

- Railroads
- City Limits
- Cobb County Pockets
- NA
- R1 - Single Family Residential (1 unit/acre)
- R2 - Single Family Residential (2 units/acre)
- R3 - Single Family Residential (3 units/acre)
- R4 - Single Family Residential (4 units/acre)
- RA4 - Single Family Residential - Attached
- RA6 - Single Family Residential - Attached
- RA8 - Single Family Residential - Attached
- MHP - Mobile Home Park
- PRD-SF - Planned Residential Dev. Single Family
- RM8 - Multi Family Residential (8 units/acre)
- RM10 - Multi Family Residential (10 units/acre)
- RM12 - Multi Family Residential (12 units/acre)
- RHR - Residential High Rise
- PRD-MF - Planned Residential Dev Multi Family
- NRC - Neighborhood Retail Commercial
- CRC - Community Retail Commercial
- RRC - Regional Retail Commercial
- PCD - Planned Commercial Development
- LI - Light Industrial
- HI - Heavy Industrial
- PID - Planned Industrial Development
- MXD - Mixed Use Development
- CBD - Central Business District
- OIT - Office Institutional Transitional
- LRO - Low Rise Office
- OI - Office Institutional
- OS - Office Services
- OHR - Office High Rise



SURVEY FOR
 S. N. HABIF ET AL

31-17TH DISTRICT - 2ND SECTION
 COUNTY GEORGIA
 5-22-70

