

**OCTOBER 18, 2011 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 3**

ITEM # 3

PURPOSE

To consider a stipulation and site plan amendment for Mr. Rex Horney regarding rezoning application Z-32 of 2009 (Rex Horney), for property located at the northwesterly intersection of Canton Road and Hawkins Store Road in Land Lots 228, 277 and 278 of the 16th District.

BACKGROUND

The subject property was zoned CRC with stipulations for a gymnastics training facility in 2009 subject to many stipulations. One of the zoning stipulations require any change in use be approved by the Board of Commissioners as an Other Business Item. The applicant is requesting a change in use to allow a volleyball organization to use the property. The applicant is also requesting to amend the approved site plan to move the entrance farther away from Canton Road, which lines up with Fairington Drive. Leasing the property to the volleyball tenant would provide the property owner with funds needed to finish the building and site work. This item was heard at the September 20, 2011 Board of Commissioners’ Zoning Hearing as Other Business Item 8. The Board of Commissioners’ held the item and gave the property owner until today’s hearing date to receive a Land Disturbance Permit (LDP) and Building Permit from Cobb County. The owner did receive a renewed LDP on October 3, 2011. As of the printing of this document, the applicant was attempting to receive renewed building permits. Staff will update the Board of Commissioners of the status of the building permits at the October 18, 2011 Zoning Hearing. If approved, all other zoning stipulations would remain in effect. The Board of Commissioners' decision is attached.

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners conduct a Public Hearing and consider the proposed site plan and stipulation amendments.

ATTACHMENTS

Rezoning stipulations (Exhibit A)
Other Business application (Exhibit B)
Proposed site plan (Exhibit C)
September 20, 2011 Board of Commissioner minutes and direction (Exhibit D)

October 18, 2011
Exhibit "A"
Other Business Item 03

Application for Rezone Cobb County, Georgia

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

No. Z-32 (2009)

PC Hearing Date: 11/03/2009

BOC Hearing Date: 11/17/2009

Applicant Rex E. Horney Business Phone (678) 409-4898
(applicant's name printed)

Address 3141 Rockmont Lane, Marietta, GA 30066 Home Phone Not Applicable

Moore Ingram Johnson & Steele, LLP Emerson Overlook, 326 Roswell Street
John H. Moore Address Marietta, GA 30060

(representative's name, printed)

BY: [Signature] Business Phone (770) 429-1499 Cell Phone (404) 313-5664
(representative's signature) Georgia Bar No. 519800

Signed, sealed and delivered in presence of:

[Signature]
Notary Public

My commission expires: January 10, 2011

Titleholder Rex E. Horney Business Phone (678) 409-4898 Home Phone Not Applicable
(titleholder's name, printed)

Signature [Signature] Address 3141 Rockmont Lane, Marietta, GA 30066
(attach additional signature, if needed)

Signed, sealed and delivered in presence of:

[Signature]
Notary Public

My commission expires: January 10, 2011

Zoning Request From CRC, with stipulations to CRC, with stipulations
(present zoning) (proposed zoning)

For the Purpose of Teaching Academy for Gymnastics, Cheerleading, Tumbling, and the like Size of Tract 4.68 Acre(s)
(subdivision, restaurant, warehouse, apt., etc.)

Location Northwest intersection of Canton Road and Hawkins Store Road
(street address, if applicable; nearest intersection, etc.)

Land Lot(s) 228, 277 District(s) 16th

We have investigated the site as to the existence of archeological and/or architectural landmarks. I hereby certify that there ~~are~~ are no such assets. If any exist, provide documentation with this application. to the best of my knowledge, information, and belief.

[Signature]
Rex E. Horney (applicant's signature)

We have investigated the site as to the existence of any cemetery located on the above property. I hereby certify that there ~~is~~ is not such a cemetery. If any exist, provide documentation with this application. to the best of my knowledge, information, and belief.

[Signature]
Rex E. Horney (applicant's signature)

ORIGINAL DATE OF APPLICATION: 11-17-09

APPLICANTS NAME: REX E. HORNEY

THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE
COBB COUNTY BOARD OF COMMISSIONERS

BOC DECISION OF 11-17-09 ZONING HEARING:

REX E. HORNEY (owner) requesting Rezoning from **CRC with Stipulations** to **CRC with Stipulations** for the purpose of a Teaching Academy for Gymnastics, Cheering, Tumbling and the Like in Land Lots 228 and 277 of the 16th District. Located at the northwest intersection of Canton Road and Hawkins Store Road.

The public hearing was opened and Mr. John Moore, Ms. Carol Brown and Ms. Cynthia Worrell addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Lee, second by Goreham, to **approve** Rezoning to the **CRC with stipulations** zoning district subject to:

- site plan received by the Zoning Division September, 3, 2009 with District Commissioner approving minor modifications (attached and made a part of these minutes)
- letter of agreeable conditions from Mr. John Moore dated November 17, 2009 with the following additions/clarifications (attached and made a part of these minutes):
 - Item No. 1 - *Clarification that language in this paragraph applies to previous rezoning conditions and stipulations. And to further clarify that for this rezoning that all current staff comments and recommendations apply to this rezoning, but in the event there is a conflict between the staff recommendations and the stipulations in this letter, the letter will prevail.*
 - Item No. 4 – Add to the end of paragraph: *“Any use change must be approved by the Board of Commissioners as an Other Business Item”*
- Southern Athletics, Inc. letter of intent signed September 8, 2009 with clarification that total square footage of the building is 11,314 square feet (attached and made a part of these minutes)
- the following staff comments and recommendations where not in conflict with the stipulated letter of agreeable conditions
 - compliance with Canton Road Corridor guidelines
 - Fire Department comments and recommendations
 - Water and Sewer Division comments and recommendations
 - Stormwater Management Division comments and recommendations
 - Cobb DOT comments and recommendations

VOTE: **ADOPTED** unanimously

Clerk's Note: Commissioner Lee instructed the DOT representative to coordinate with DOT Planning Division Manager, Laraine Vance, to investigate the possibility of building sidewalks along this portion of Canton Road.

October 18, 2011
Exhibit "A"
Other Business Item 03

MOORE IN

STEELE

WWW.MIJS.COM

JOHN H. MOORE
STEPHEN C. STEELE
WILLIAM R. JOHNSON†
ROBERT D. INGRAM†
J. BRIAN O'NEIL
G. PHILLIP BEGGS
ELDON L. BASHAM
MATTHEW J. HOWARD
JERE C. SMITH
CLAYTON D. CARMACK
KEVIN B. CARLOCK†
ALEXANDER T. GALLOWAY III†
J. KEVIN MOORE
RODNEY R. MCCOLLOCH
SUSAN B. STUART
DANIEL A. LANDIS***
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HARRY R. TEAR III

W. TROY HART†
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AMY K. WEBER
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JENNIFER B. SIMPSON
ASPEN S. RAINS*
MARC E. BIROTKIN
BETH GEARHART****
S. NIKOL RICHARDSON*
JENNIFER L. LAFONTAINE*
TIMOTHY H. STALLINGS
WILMA R. BUSH
GREGORY H. FULLER*

CHERYL A. STAUGAITIS
JENNEFER R. TOMMASELLO
VERONICA L. RICHARDSON
CALANIT HAYES
TODD I. HEIRD*
DANIEL W. STARNES*

OF COUNSEL:
JOHN L. SKELTON, JR.†

† ALSO ADMITTED IN TN
* ALSO ADMITTED IN FL
** ALSO ADMITTED IN NM
*** ALSO ADMITTED IN NC
**** ADMITTED ONLY IN TN

November 17, 2009

Hand Delivered

Min. Bk. 59 Petition No. 2-32
Doc. Type letter of agreeable
conditions
Meeting Date 11/17/09

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Mr. John P. Pederson, AICP
Planner III
Zoning Division
Cobb County Community Development Agency
Suite 300
191 Lawrence Street
Marietta, Georgia 30060-1661

RE: Application for Rezoning - Application No. Z-32 (2009)
Applicant/Owner: Rex E. Horney
Property: 4.68 acres located at the northwest
intersection of Canton Road and
Hawkins Store Road, Land Lots 228 and
277, 16th District, 2nd Section,
Cobb County, Georgia

Dear John:

As you know, the undersigned and this firm represent Mr. Rex E. Horney, the Applicant and Property Owner (hereinafter collectively referred to as "Applicant"), in his Application for Rezoning with respect to property located at the northwest intersection of Canton Road and Hawkins Store Road, being approximately 4.68 acres, Land Lots 228 and 277, 16th District, 2nd Section, Cobb County, Georgia (hereinafter the "Property" or the "Subject Property"). After meeting with planning and zoning staff and various Cobb County departmental representatives, additional discussions and meetings with area civic and homeowner representatives, reviewing the staff comments and recommendations and the uses of surrounding properties, as well as the Planning Commission Zoning Hearing held on November 3, 2009, we have been authorized by the Applicant to submit this revised letter of agreeable stipulations and conditions which, if the Application for Rezoning is approved, as submitted, shall become a part of the grant of the requested zoning and shall be binding upon the Subject Property. This letter shall supersede and

Mr. John P. Pederson, AICP
Planner III
Zoning Division
Cobb County Community Development Agency
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Petition No. 2-32
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replace in full the letters of agreeable stipulations and conditions dated and filed October 28, 2009, and November 11, 2009. The revised stipulations are as follows:

- (1) The stipulations and conditions set forth herein shall replace and supersede in full any and all prior stipulations and conditions, in whatsoever form, which are currently in place on the Subject Property; together with any and all Departmental Comments and Staff Recommendations submitted by Planning, Fire, Water, Sewer, and Drainage, relating to the Subject Property.
- (2) Rezoning of the Subject Property shall be from the existing zoning category of Community Retail Commercial ("CRC"), with stipulations, to the proposed zoning category of Community Retail Commercial ("CRC"), with stipulations, site plan specific to that certain Site Plan, prepared by William Floyd & Co. dated November 6, 2008, and submitted with the Application for Rezoning.
- (3) Applicant brings this Application for Rezoning to obtain Board of Commission approval of the Site Plan submitted with this Application for Rezoning, as more particularly set forth in the official Board of Commission minutes pursuant to Z-174 (2005); as well as for a change in certain stipulations relating to the use of the structure constructed upon the Subject Property.
- (4) Applicant proposes the construction of a one-story structure, having a maximum of 11,314 square feet, upon the approximately 4.68 acre tract. The Property shall be used as a teaching academy for gymnastics, cheerleading, tumbling, and the like.
- (5) The exterior of the proposed structure shall be all brick with accents in the gables and shall be substantially similar to the rendering attached hereto as Exhibit "A" and incorporated herein by reference.
- (6) Additionally, there will be no hardi-plank materials used for the exterior finish, excepting only accents.
- (7) All standard windows within the proposed facility shall have interior window treatments. Any windows which have decorative glass, stained glass, beveled glass, or the like shall not be required to have window treatments.
- (8) Applicant agrees that the proposed facility shall not operate past 9 p.m.

MOORE INGRAM JOHNSON

Mr. John P. Pederson, AICP
Planner III
Zoning Division
Cobb County Community Development Agency
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- (9) Entrance signage for the facility shall be ground based, monument style signage. The finish, materials, and colors for the signage shall be compatible with the facility. Further, such signage shall contain no digital or flashing sign components. There shall be no roof signs and no exterior, temporary signs excepting only grand opening signage, leasing signage, and signage indicating the coming development.
- (10) Lighting fixtures for parking areas shall be environmentally sensitive, shoe-box style and shall be fitted with non-glare lenses and cut off shields to prevent light from extending beyond the property line.
- (11) Security lighting on the proposed facility shall be wall packs, hooded, environmentally sensitive and shall be fitted with non-glare lenses and cut off shields to prevent light from extending beyond the property line.
- (12) Additionally, Applicant shall install a lamp post-type light at the monument signage area. The light post and fixture shall be in conformance with Canton Design Guidelines.
- (13) Landscaping for the Subject Property shall be professionally designed, installed, and maintained. All landscaping along Canton Road shall conform to Canton Design Guidelines.
- (14) Applicant agrees that if the exterior finish of the proposed center is not completed within ninety (90) days of final zoning approval, then the Subject Property shall revert to the original zoning of November 15, 2005; excepting only, if Applicant is prevented from timely completion due to force majeure, the time for completion may be extended accordingly; and, if any delays are encountered in the permitting process not caused by Applicant, the ninety-day period shall be tolled until the cause for such delay or delays has been resolved.
- (15) Applicant agrees to employ the following parking surfaces for the on-site parking area:
 - (a) Standard asphalt paving for the entrance, the turnaround to the right of the entrance, and the parking aisle; and

Mr. John P. Pederson, AICP
Planner III
Zoning Division
Cobb County Community Development Agency
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- (b) Pervious pavers (similar to the pavers used at BrandSmart) will be utilized in the actual parking spaces.

- (16) Minor modifications to the within stipulations, the referenced Site Plan, landscaping, architecture, site features, and the like, may be approved by the District Commissioner, as needed or necessary.

- (17) Attached hereto as Exhibit "B" and incorporated herein by reference is a letter agreement from Noonday Baptist Church regarding use of its parking facilities by Applicant. Applicant agrees to provide a shuttle service for those utilizing this area for parking.

- (18) Applicant agrees that he will not be entitled to a Certificate of Occupancy until the stipulations set forth herein, which are required to be performed prior to issuance of a Certificate of Occupancy, have been honored.

- (19) Applicant agrees to remove the greenhouse currently existing upon the Property.

- (20) Applicant, or Applicant's tenant, shall provide shuttle service from the designated Noonday Baptist Church parking area to the site as needed and necessary.

- (21) Applicant, during the construction process, agrees to close that portion of the old driveway/access located upon the Subject Property.

- (22) There shall be no outdoor storage.

- (23) There shall be no overnight parking.

- (24) There shall be no tenant vehicles or vehicles of any type parked in front of the proposed facility containing tenant identification signage or advertising signage. This provision shall be contained within any lease between Applicant and any prospective tenant, and Applicant agrees to enforce these provisions against any tenant which violates the foregoing. Additionally, there shall be no vehicles parked in front of the facility with "for sale" signs posted thereon.

- (25) Staff recommendations will be followed except where in conflict with the above-stated stipulations.

October 18, 2011
Exhibit "A"
Other Business Item 03

MOORE INGRAM JOHN

ion No. 2-32
ing Date 11/17/09

Continued

Mr. John P. Pederson, AICP
Planner III
Zoning Division
Cobb County Community Development Agency
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We believe the requested zoning and use, pursuant to the Site Plan and the revised agreeable stipulations and the attachments set forth herein, is appropriate for the Subject Property. The rezoning will allow the completion of the facility which will be used for the benefit of the surrounding community. We very much appreciate your assistance and the consideration of the Planning Commission and Board of Commissioners in this matter.

With kindest regards, I remain

Very truly yours,

MOORE, INGRAM, JOHNSON & STEELE, LLP



John H. Moore

JHM:cc

Attachments

- c: Cobb County Board of Commissioners:
Samuel S. Olens, Chairman
Helen C. Goreham
George W. (Woody) Thompson
Tim Lee
Robert J. (Bob) Ott
(With Copies of Attachments)
- Carol Brown, Chairman
Canton Road Neighbors, Inc.
(With Copies of Attachments)
- Rex E. Horney
(With Copies of Attachments)

October 18, 2011
Exhibit "A"
Other Business Item 03

Petition No. 2-32
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Continued

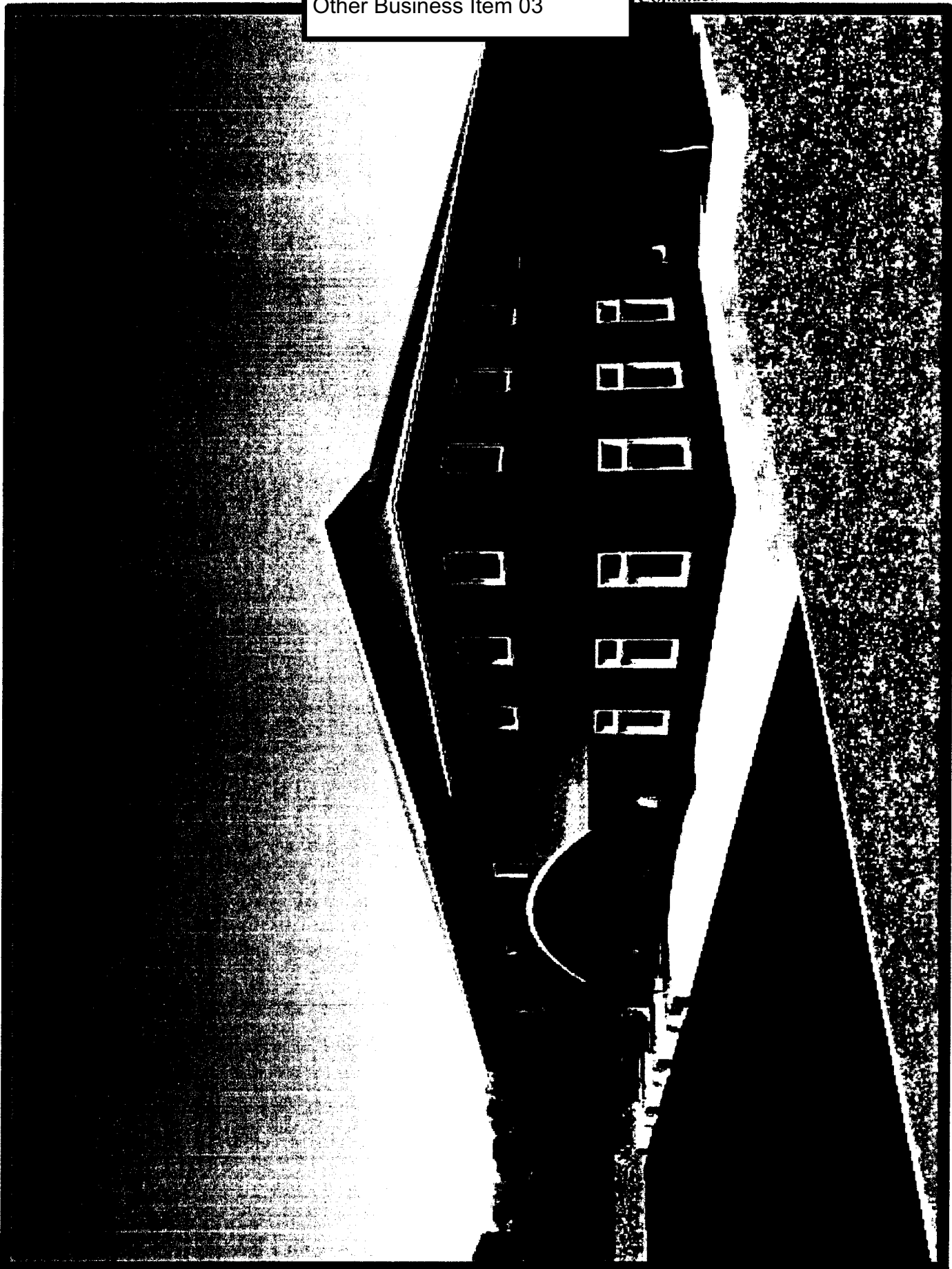


EXHIBIT "A"

Noonday BAPTIST CHURCH

October 18, 2011
Exhibit "A"
Other Business Item 03

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Continued

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October 23, 2009

Kim Sawyer
Cobb County Planning and Zoning
191 Lawrence Street
Marietta, GA - 30060-1689

Re: Additional Parking

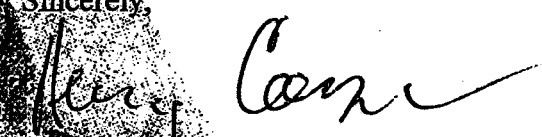
Dear Ms. Sawyer,

Based on conversations with Mr. Rex Horney, it is my understanding that the Gardens of Latimer Mill project is up for additional review. We have been in regular communication throughout this process and have eagerly awaited the project completion. The entire congregation of Noonday Baptist Church supports Mr. Horney and the construction plans that were submitted some time ago. We are also aware that the facility may be used for gymnastics and other such events. Please be advised that we do support and encourage such activities.

According to Mr. Horney, the county requires that he have access to additional parking as "overflow". This letter will serve as authorization and permission for the Gardens of Latimer Mill to use the Noonday Baptist Church, West Campus, Lower Level Parking Lots as overflow parking. There are approximately 160 parking spaces that may be utilized by Mr. Horney at any time that does not conflict with regularly scheduled church events. Mr. Horney has agreed to be responsible for any clean-up necessary.

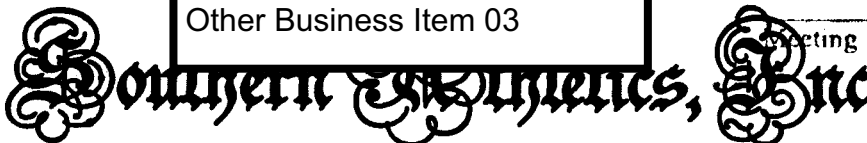
If I may be of any further assistance, please do not hesitate to contact me. Thank you for your cooperation.

Sincerely,



Henry Couser
Executive Pastor





This agreement between Mr. Rex Horney(RH) and Southern Athletics(SA) dated this 4th day of September 2009 as follows: SA hereby proposes to lease space for the under construction properly residing at and approximately on the corner of Canton Rd and Hawkins Store Rd in Marietta, GA.

This letter to serve as an initial intent to Lease providing general information; Exact and more specific build out requirements to be later determined.

General Terms and Conditions:

- 4 year Lease with an Option to renew.
- RH agrees to lease said premises, and finance the completion of the exterior and interior construction build out of said property. It is noted that a preliminary drawing has been executed and presented to RH with SA's build out requirements to calculate the lease rate. Exact build out specifications for SA to be determined in the final lease agreement.
- The proposed 2 level building architectural drawing calls for approximately 14,000 total square ft.
- RH agrees to lease the completed built out space at a rate of [REDACTED] per square foot. This rate will include all taxes, CAM and all associated fees. Based on an approximated 14,000 square foot final built out facility, the total monthly lease rate would be [REDACTED]

The afore mentioned information is intended as a letter to lease property, although does not serve as a final agreement and that all final terms and conditions are to follow in a fully executed lease agreement.

Signed this 8th day of September, 2009

Matt Cremers

Matt Cremers
Southern Athletics/President/Owner

FILED WITH COUNTY CLERK THIS 3rd DAY
OF November 2009 BY John Moore
RE 2-32
John Moore
COUNTY CLERK/ASST. COUNTY CLERK/DEPUTY COUNTY CLERK
COBB COUNTY, GEORGIA

October 18, 2011
Exhibit "B"
Other Business Item 03

Application for "Other Business" Cobb County, Georgia

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

BOC Hearing Date Requested: 09-20-11

Applicant: REX HORNEY Phone #: 6780
(applicant's name printed)

Address: 3141 ROCKMONT LANE E-Mail: REX.HORNEY@Yahoo.Com

William Floyd Address: 3162 JOHNSON FERRY
(representative's name, printed)

William Floyd Phone #: 770-977-3966 E-Mail: W.Floyd@W.FloydCO.com
(representative's signature)

Signed, sealed and delivered in presence of:

Connesha Bates My commission expires: 6/19/2014
Notary Public

My Commission Expires
June 19, 2014

Titleholder(s): REX HORNEY Phone #: 678-409-4898
(property owner's name printed)

Address: 3141 ROCKMONT LANE E-Mail: RE.HORNEY@Yahoo.com

Rex Horney
(Property owner's signature)

Signed, sealed and delivered in presence of:

Connesha Bates My commission expires: 6/19/2014
Notary Public

My Commission Expires
June 19, 2014

Commission District: 3RD Dist. Zoning Case: 7-32

Date of Zoning Decision: 11-17-09 Original Date of Hearing: 11-17-09

Location: 775 HAWKINS STORE ROAD
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 228, 277 & 278 District(s): 16

State specifically the need or reason(s) for Other Business: The zoning states that every tenant has to be approved this is to get the tenant approved. The zoning remains the same CRC, (Site plan + stipulation Amendment)

(List or attach additional information if needed)

CHECK NO. 2166
RECEIPT NO 2287

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
SEPTEMBER 20, 2011**

ITEM NO. 8

To consider a stipulation and site plan amendment for Mr. Rex Horney regarding rezoning application Z-32 of 2009 (Rex Horney), for property located at the northwesterly intersection of Canton Road and Hawkins Store Road in Land Lots 228, 277 and 278 of the 16th District.

Mr. John Pederson, Zoning Division Manager, provided information regarding stipulation and site plan amendment. The public hearing was opened and Ms. Linda Thomas and Ms. Carol Brown addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Birrell, second by Ott, to **hold** Other Business Item No. 8 (Rex Horney) for stipulation and site plan amendment for property located at the northwesterly intersection of Canton Road and Hawkins Store Road in Land Lots 228, 277 and 278 of the 16th District until the October 18, 2011, *with the following directives:*

- **Applicant to obtain/renew land disturbance permit and building permits prior to the October 18, 2011 Board of Commissioners' Zoning Hearing (Notice is hereby provided that Cobb County shall initiate litigation against Applicant/Owner for the purpose of removing structures from the property if this directive is not achieved)**
- **If the above directive is met, then the Board will consider a request for stipulation and site plan amendment at their October 18, 2011 hearing.**

VOTE: **ADOPTED 4-0**

Clerk's Note: If directive is met, the Zoning Division Manager will place on the agenda for the Board's consideration of stipulations regarding the site plan, time frames, and schedules, etc.