

**MARCH 18, 2014 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 3**

ITEM # 4

PURPOSE

To consider a stipulation amendment for Mr. Rex Horney regarding rezoning application Z-32 (Rex Horney) of 2009, 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 requires any change in use be approved by the Board of Commissioners as an Other Business Item. Since the 2009 rezoning the property has in several times to amend the use. Most recently, the Board of Commissioners approved a children’s birthday party facility in April 2012, which did not work out. The applicant is requesting a change in use to allow a religious facility to use the property. In order to expedite future users for the property, Staff has submitted a proposed list of permitted uses for the Board of Commissioner’s consideration (Exhibit “1”). 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 stipulation amendment.

ATTACHMENTS

Other Business application, rezoning stipulations and Exhibit “A”.

Application for "Other Business" Cobb County, Georgia

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

COBB COUNTY GEORGIA
FILED IN 1007

BOC Hearing Date Requested: 02-18-14

Applicant: REX E. HORNEY (applicant's name printed) Phone #: 678-409-4090

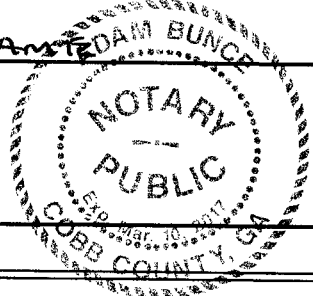
Address: 3141 ROCKMONT LN. MARIETTA GA. E-Mail: REXHORNEY4@GMAIL.COM

SAME Address: SAME
(representative's name, printed)

Rex E. Horney Phone #: SAME E-Mail: SAME
(representative's signature)

Signed, sealed and delivered in presence of:

[Signature] My commission expires: _____
Notary Public



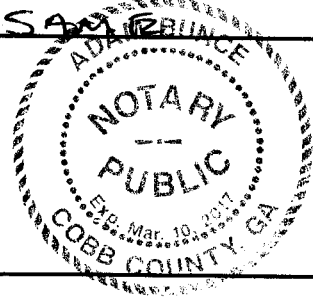
Titleholder(s): REX E. HORNEY Phone #: SAME
(property owner's name printed)

Address: SAME E-Mail: SAME

Rex E. Horney
(Property owner's signature)

Signed, sealed and delivered in presence of:

[Signature] My commission expires: _____
Notary Public



Commission District: 3 Zoning Case: Z-32 of 2009

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

Location: 775 HAWKINS STORE RD, KENNESAW, GA 30144
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 228 & 277 District(s): 16TH

State specifically the need or reason(s) for Other Business: TO CONSIDER
REX E. HORNEY REQUESTING REZONING FROM CRC WITH
STIPULATIONS TO CRC WITH STIPULATIONS FOR THE
PURPOSE OF A HOUSE OF PRAISE WAY OF THE
CROSS CHURCH.

ORIGINAL DATE OF APPLICATION: 11-17-09APPLICANTS NAME: REX E. HORNEYTHE 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.

MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP
WWW.MIJS.COM

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OF COUNSEL:
JOHN L. SKELTON, JR.†

† ALSO ADMITTED IN TN
* ALSO ADMITTED IN FL
** ALSO ADMITTED IN NM
*** ALSO ADMITTED IN NC
**** ALSO ADMITTED IN CA
• 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

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

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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

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Mr. John P. Pederson, AICP
Planner III
Zoning Division
Cobb County Community Development Agency
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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.

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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

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Mr. John P. Pederson, AICP
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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.

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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)

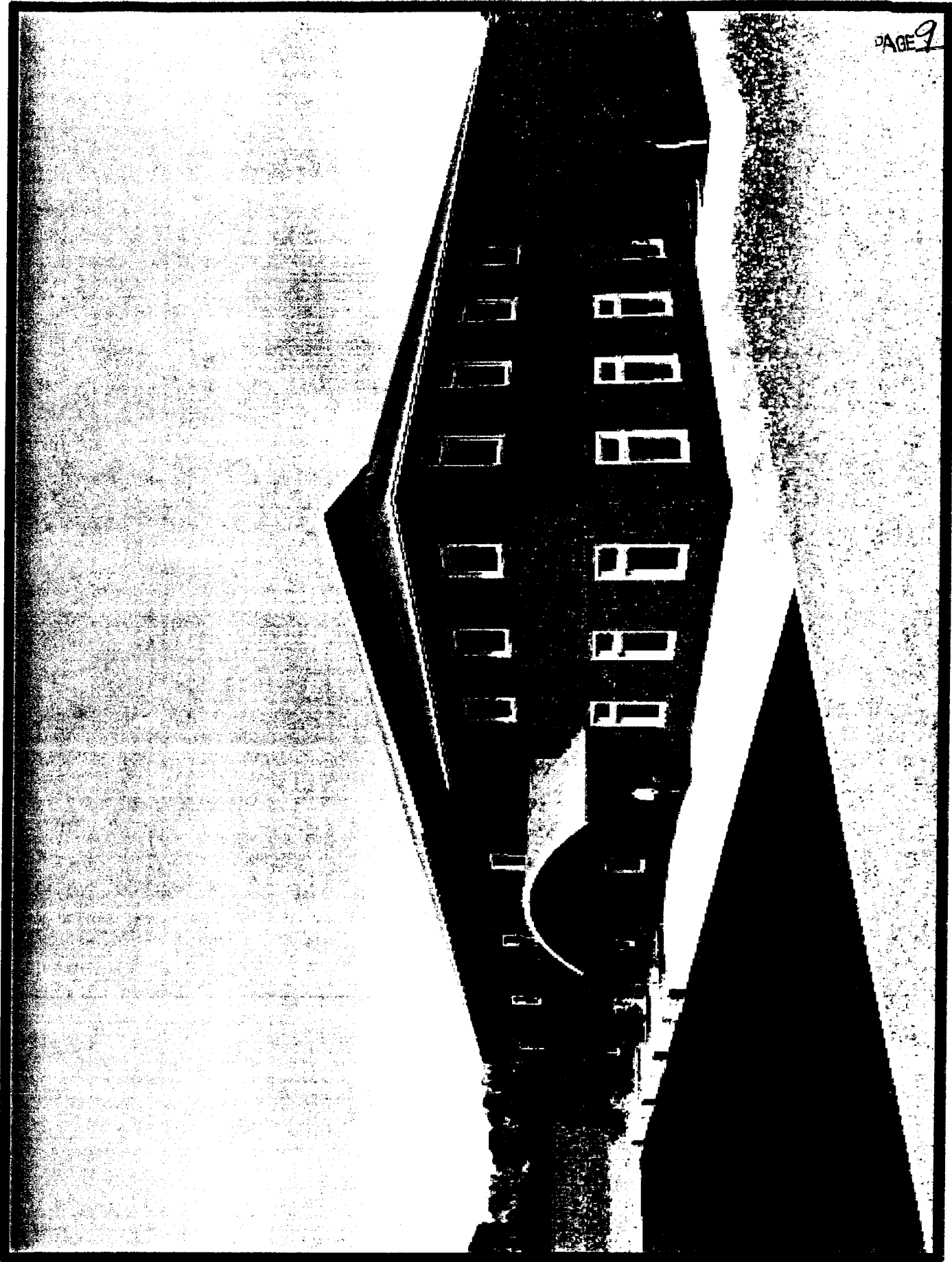


EXHIBIT "A"

ORIGINAL DATE OF APPLICATION: 11-17-09APPLICANTS NAME: REX E. HORNEY

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

BOC DECISION OF 09-20-11 ZONING HEARING:

**OTHER BUSINESS ITEM #8 – TO CONSIDER A STIPULATION AND SITE PLAN
AMENDMENT FOR MR. REX HORNEY REGARDING REZONING APPLICATION Z-
32 OF 2009 (REX HORNEY)**

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.

ORIGINAL DATE OF APPLICATION: 11-17-09APPLICANTS NAME: REX E. HORNEY

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

BOC DECISION OF 10-19-11 ZONING HEARING:

**OTHER BUSINESS ITEM #3 – TO CONSIDER A STIPULATION AND SITE PLAN
AMENDMENT FOR MR. REX HORNEY REGARDING REZONING APPLICATION Z-
32 OF 2009 (REX HORNEY)**

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 a site plan and stipulation amendment. The public hearing was opened and Mr. William Floyd, Ms. Carol Brown, Ms. Linda Thomas and Mr. Rex Horney addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Birrell, second by Ott, to **approve** Other Business Item No. 3 for site plan and stipulation amendment 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, **subject to:**

- **the Certificate of Occupancy to be withheld until such time as the below stipulations have been fulfilled, and should the Applicant/Owner fail to comply with stipulations the permits will be revoked and Cobb County will enter into litigation to remove structure and the zoning of property reverts back to original zoning (Z-174 of 2005)**
- **allowance of volleyball organization training facility as a permitted use in the existing 8,100 square foot structure *only***
- **final site plan to be approved by the District Commissioner**
- **any future site plan amendments or future additions to come back to the full Board of Commissioners for approval as an Other Business Item**
- **approval of entrance to align with Farrington Drive, as recommended by Cobb DOT and the Fire Marshall**
- **as shown on October 17, 2011 site plan as *Phase Two*, the Applicant/Owner to remove the concrete slab and the plumbing is to be capped below grade (to be completed within ninety (90) days of this decision)**
- **Representative stated this is not a tournament or event facility and there are no plans for this, but if parking becomes a problem on Farrington Drive, the Applicant/Owner is to install “No Event Parking” signs along the right-of-way of Farrington Drive, across from the property and is to reimburse Cobb County DOT for such costs**

ORIGINAL DATE OF APPLICATION: 11-17-09APPLICANTS NAME: REX E. HORNEY

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

BOC DECISION OF 10-19-11 ZONING HEARING (Continued):

**OTHER BUSINESS ITEM #3 – TO CONSIDER A STIPULATION AND SITE PLAN
AMENDMENT FOR MR. REX HORNEY REGARDING REZONING APPLICATION Z-
32 OF 2009 (REX HORNEY)**

- exterior improvements to be completed within thirty (30) days of this decision (November 18, 2011), this includes immediate removal of the truck trailer and greenhouse from the subject property, completion of the brick facade on wall facing Canton Road, doors and windows to be installed and a porch with awning to be installed over the entrance door
- interior improvements to be completed within ninety (90) days of this decision (January 6, 2012), to include building interior - floors, bathrooms, fire sprinkler system, voice activated alarm; as well as entrance, driveway and additional parking (26 parking spaces currently shown and 14 more are needed for total of 40 for the 8,100 square foot building/use), with landscaping to be approved by County Arborist and the District Commissioner
- all revisions and/or minor modifications to be approved by the District Commissioner
- Applicant/Owner to meet with Stormwater Management Division representative to review location of proposed additional parking, with final approval in Plan Review
- installation of sidewalks along Canton Road frontage
- all previous stipulations and conditions, *not otherwise in conflict*, to remain in effect (reference Z-32 of 2009 and Z-174 of 2005)

VOTE: **ADOPTED 3-2 (Goreham and Ott opposed)**

ORIGINAL DATE OF APPLICATION: 11-17-09APPLICANTS NAME: REX HORNEY

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

BOC DECISION OF 04-17-12 ZONING HEARING:

**OTHER BUSINESS ITEM #3 – TO CONSIDER A STIPULATION AMENDMENT FOR
MR. REX HORNEY REGARDING REZONING APPLICATION Z-32 (REX HORNEY)
OF 2009**

To consider a stipulation amendment for Mr. Rex Horney regarding rezoning application Z-32 (Rex Horney) of 2009, 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 amendment to allow a business use that caters to children's birthday parties. The public hearing was opened and Ms. Carol Brown and Mr. Rex Horney addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Birrell, second by Thompson, to **approve** Other Business Item No. 3 for stipulation amendment regarding rezoning application Z-32 (Rex Horney) of 2009, 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, **subject to:**

- **use approved for a children's birthday party facility known as Snowie Joe's *only* (no outside programs/events), with future use changes to be approved by the Board of Commissioners as an Other Business Item**
- **hold of Certificate of Occupancy until outside construction debris is removed and inside work completed and approved by Staff and the District Commissioner**
- **hours of operation to end by 9:00 p.m. Sunday through Thursday, and by 10:00 p.m. on Friday and Saturday**
- **all previous stipulations and conditions, *not otherwise in conflict*, to remain in effect**

VOTE: **ADOPTED 4-0**

EXHIBIT "1"

Permitted uses:

Banks and financial institutions (with no drive-in establishment or stand-alone automated transfer machines).

Christmas tree sales or Halloween pumpkin sales, not to exceed 30 days. Adequate off-street parking shall be provided for all such uses.

Churches, chapels, temples, synagogues, and other such places of worship.

Neighborhood retail uses.

Nursery schools and child day care centers.

Professional offices.

Permitted uses defined as:

Neighborhood retail uses means commonly found low scale and low intensity retail uses (with square footages in accordance with the use limitations established within the individual zoning districts of this chapter) that offer basic services and frequently purchased goods to the immediate surrounding residential areas, such as, but not limited to, an auto parts store, antique shop, appliance store (home use), bakery, barbershop or beauty shop, beverage shop, bookstore (but not including adult bookstore), bridal shop, camera shop, china and pottery store, clothing store, dance studio, martial arts, pilates, yoga and the like studio, delicatessen, dog grooming shop, draperies and interior decorating supplies, drugstore, hardware store (no outdoor storage or displays), dry goods store, florist, furniture store, gifts and stationery store, gym and fitness facility, jewelry store, manicurist shop, meat market or butcher shop, music store, novelty shop (no adult items), paint store, pedicurist shop, pet store and pet supply store, shoe repair shop, shoe store, sporting goods store, tailor shop, or toy store.

Professional office means a structure wherein services are performed involving predominately administrative, professional or clerical operations such as the following: law, doctor, optician, audiologist, accounting, tax preparation, real estate, stockbroker, architect, engineer, manufacturer representative, professional counselor, dentist, investigative services, photographer, insurance, contractor, land surveyor, telephone sales, political/campaign, tutoring & music lessons, veterinarian or travel bureau.