

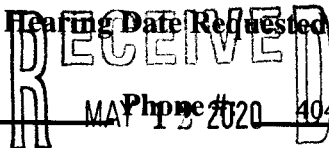
OB-28

Application for "Other Business"

Cobb County, Georgia

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

BOC Hearing Date Requested: June 16, 2020



Applicant: Cornerpoint Partners, LLC
(applicant's name printed)

Phone #: 404-449-3204

Address: 285 Mount Vernon Highway NE, Suite B, Atlanta, GA 30328 **E-Mail:** Gerard@cornerpointpartners.com

SAMS, LARKIN & HUFF, LLP
by: Garvis L. Sams, Jr.

Address: 376 Powder Springs Street, Suite 100, Marietta, GA 30064

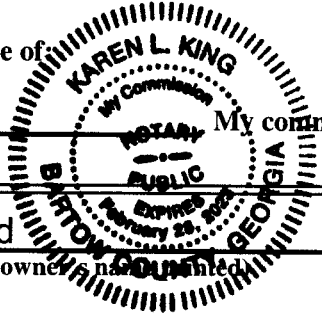
(representative's name. printed)

Phone #: 770-422-7016

E-Mail: gsams@samslarkinbuff.com

(representative's signature)

Signed, sealed and delivered in presence of:



Notary Public

My commission expires: 2-28-2023

Titleholder(s): See Attached
(property owner's name printed)

Phone #: _____

Address: _____

E-Mail: _____

(Property owner's signature)

Signed, sealed and delivered in presence of:

My commission expires: _____

Notary Public

Commission District: 4 (Cupid)

Zoning Case: Z-29 & SLUP-6 (2019)

Size of property in acres: 11.156 (overall) **Original Date of Hearing:** June 18, 2019

Location: On the west side of Floyd Road, south of White Boulevard (4900 Floyd Road)
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 31 & 32

District(s): 17th

State specifically the need or reason(s) for Other Business: To Amend stipulations related to the Conservation Easement set aside as a Stipulation/Condition of the Rezoning.

(List or attach additional information if needed)

* The Applicant specifically reserves the right to amend any information set forth in this Other Business Application or any other portion of the Application, at any time during the Other Business process.

CERTIFICATE REGARDING CORPORATE AUTHORITY TO
PURSUE OTHER BUSINESS

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ZONING DIVISION

1.

My name is GERARD GUNTHER, I am the secretary, assistant secretary or other officer to whom the operating agreement has delegated the responsibility for authenticating records of the Titleholder, **CP 4900 Floyd, LLC**, a Domestic Limited Liability Company (the "Titleholder"). I am of legal age and suffer from no disabilities which would affect my competence to give this Certificate which is being given on my own personal knowledge for use with respect to the Applicant's Other Business Application regarding certain real property owned by the Titleholder located in Cobb County, Georgia.

2.

In accordance with the Requirements for Completing a Cobb County Other Business Application, I hereby attest on behalf of the Titleholder that I have reviewed the Other Business Application and related documents which are being filed simultaneously therewith on behalf of the Applicant (collectively, the "Other Business Application") to which this Certificate is attached and hereby certify:

- (a) That corporate seal or facsimile affixed to the Other Business Application is in fact the seal of the Titleholder or a true facsimile thereof; and
- (b) That the officer or other representative of the Titleholder who executed the Other Business Application does in fact occupy the official position indicated, that the position that the signer occupies has the authority to execute the Other Business Application on behalf of the Titleholder, and that the signature of said officer or other representative is genuine; and
- (c) That the execution of the Other Business Application and the filing of the Other Business Application on behalf of the Applicant by the officer or other representative of the Applicant has been duly authorized by the Titleholder.

CP 4900 Floyd, LLC

By:  (CORPORATE SEAL)

Printed Name: GERARD GUNTHER

Title: MANAGER

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ZONING DIVISION

ATTACHMENT TO APPLICATION FOR OTHER BUSINESS

Application No.: OB -
BOC Hearing Date: June 16, 2020

Applicant: Cornerpoint Partners, LLC
Titleholder: CP 4900 Floyd, LLC
Parcel #(s): 17003100050 & 17003200010

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

CP 4900 Floyd LLC

[Signature] 5.11.2020
Signature of Owner Date

Title: MANAGER

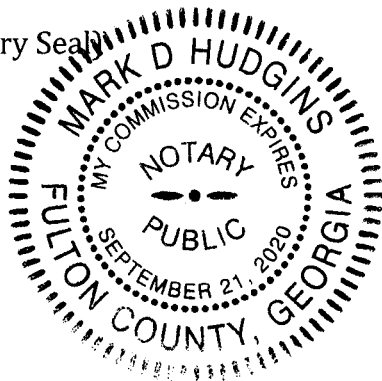
Address: 285 MT. VERNON HWY., SUITE B
ATLANTA GA 30328

Telephone No.: 404.449.3204

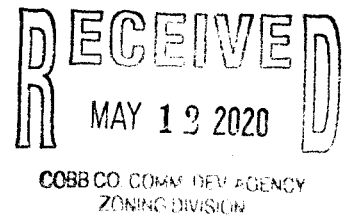
[Signature]
Signature of Notary Public

5/11/2020
Date

(Notary Seal)



MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
JUNE 18, 2019
PAGE 12



REGULAR AGENDA (CONT.)

Chairman Boyce called for a brief recess from 10:48 a.m. until 11:00 a.m.

~~Z-26 SOUTHERN LAND PARTNERS, LLC (SRB INVESTMENT MANAGEMENT GROUP LLC, owner) requesting rezoning from GC to RM-12 for the purpose of a townhome community in land lot 1067 of the 19th district. Located at the southeast corner of Austell Road and the Silver Comet Trail, north of Seayes Road (4561 Austell Road). *(Held by the Planning Commission (PC) until the June 4, 2019, PC hearing)*~~

~~The public hearing was opened, and Mr. Kevin Moore, Mr. Joe Ingram, Ms. Helen Goss, Ms. Sharon Goss, Mr. John Turner, and Ms. Charlotte Sweetland addressed the Board. Following presentation and discussion, the following motion was made:~~

~~MOTION: Motion by Cupid, second by Birrell, to **hold** Z-26, until the July 16, 2019, Board of Commissioners' Zoning Hearing.~~

~~VOTE: ADOPTED 5-0~~

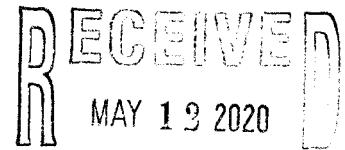
By general consensus, companion cases, Z-29 and SLUP-6 (Cornerpoint Partners, LLC), were considered concurrently but voted on separately.

Z-29 CORNERPOINT PARTNERS, LLC (David Leopard, Charles Bolin and Jeffrey Langley, and other Successors as Trustees for Westside Baptist Church, owners) requesting rezoning from NRC and R-20 to NRC for the purpose of a retail and climate-controlled self-service storage facility in land lots 31 and 32 of the 17th district. Located on the west side of Floyd Road, south of White Boulevard (4900 Floyd Road). *(Continued by the Planning Commission (PC) until the June 4, 2019, PC hearing)*

SLUP-6 CORNERPOINT PARTNERS, LLC (David Leopard, Charles Bolin and Jeffrey Langley, owners) requesting a **Special Land Use Permit** for the purpose of a climate controlled self-service storage facility in land lots 31 and 32 of the 17th district. Located on the west side of Floyd Road, south White Boulevard (4900 Floyd Road). *(Continued by the Planning Commission (PC) until the June 4, 2019, PC hearing)*

The public hearing was opened, and Mr. Garvis L. Sams, Jr. and Ms. Robin Meyer addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Cupid, second by Ott, to **approve** Z-29 to the NRC zoning district **except** for the approximate 3.34 acres on the western portion of the site, which shall be **deleted** to the R-20 zoning district, subject to:



COBB CO. COMM. DEV. AGENCY
ZONING DIVISION

REGULAR AGENDA (CONT.)

Z-29 and SLUP-6 CORNERPOINT PARTNERS, LLC (CONT.)

1. District Commissioner to approve final building elevation with respect to material, color, and elevation
2. Planning Commission comments and recommendations, *not otherwise in conflict*
3. Staff comments and recommendations, *not otherwise in conflict*

VOTE: ADOPTED 5-0

Following the vote for Z-29, the following motion was made for SLUP-6:

MOTION: Motion by Cupid, second by Ott, to **approve** SLUP-6, subject to:

1. Stipulations from companion case Z-29

VOTE: ADOPTED 5-0

~~Z-35 JAMES RICHARDSON (James Richardson, owner) requesting rezoning from R-20 and GC to R-20 for the purpose of a single-family house in land lot 110 of the 20th district. Located on the north side of Ivey Lane, west of Cobb Parkway (5030 Ivey Lane).~~

~~The public hearing was opened, and Mr. Jim Richardson addressed the Board. Following presentation and discussion, the following motion was made:~~

~~MOTION: Motion by Gambrell, second by Ott, to **approve** Z-35, to the R-20 zoning district, subject to:~~

1. The second electrical meter to be removed by December 31, 2019, in order to move to a single meter for the purpose of treating this property as a single purpose property consistent with the R-20 designation
2. Moving forward, only one lease should exist for the two houses and that single lease be to related persons
3. Staff comments and recommendations, *not otherwise in conflict*

~~VOTE: ADOPTED 5-0~~

Deed Book 15692 Page 1012
Filed and Recorded 12/9/2019 7:59:00 AM
2019-0143947
Real Estate Transfer Tax \$1,450.00
Rebecca Keaton
Clerk of Superior Court
Cobb County, GA
Participant IDs: 6405611605

AFTER RECORDING RETURN TO:
Calloway Title and Escrow
4170 Ashford Dunwoody Road
5th Floor, Suite 525
Atlanta, Georgia 30319-1442
CTIC File No. 2-37521

Tax Parcel ID # 17003100050 and
17003200010

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ZONING DIVISION

LIMITED WARRANTY DEED

THIS INDENTURE, made as of the 4th day of December, 2019, between **WESTSIDE BAPTIST CHURCH OF MABLETON, INC.**, a Georgia non-profit corporation, formerly known as Westside Baptist Church (the "Grantor"), and **CP 4900 FLOYD, LLC**, a Georgia limited liability company ("Grantee").

FOR AND IN CONSIDERATION of the sum of TEN AND NO/100 DOLLARS (\$10.00), in hand paid to Grantor by Grantee at and before execution, sealing and delivery hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto Grantee, and the successors, legal representatives and assigns of Grantee, all that tract or parcel of land more fully and completely described as follows:

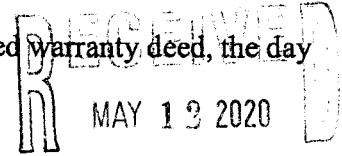
ALL THAT CERTAIN TRACT OR PARCEL of land lying and being Land Lots 31 and 32 of the 17th District, 2nd Section of Cobb County, Georgia and being more particularly described on Exhibit "A," attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD said tract or parcel of land, together with any and all of the rights, members and appurtenances thereof to the same being, belonging or in anywise appertaining to the only proper use, benefit and behoof of Grantee forever, in FEE SIMPLE; and subject to the title matters set forth on Exhibit "B" attached hereto (the "Permitted Exceptions").

GRANTOR HEREBY WARRANTS with Grantee that Grantor will forever defend the right and title to the property described herein, unto Grantee against claims of all persons claiming by, through or under Grantor, subject to claims arising under or by virtue of the Permitted Exceptions. No other covenants or warranties express or implied, are given by this Limited Warranty Deed.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Grantor has signed and sealed this limited warranty deed, the day and year above written.



Signed, sealed and delivered in the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public
My Commission expires: _____

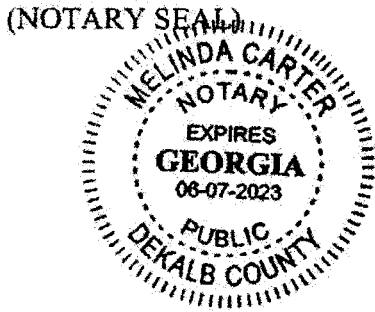
GRANTOR:

COBB CO. COMM. DEV. AGENCY
ZONING DIVISION

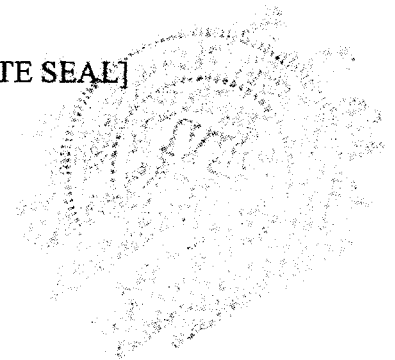
WESTSIDE BAPTIST CHURCH OF
MABLETON, INC.,
a Georgia non-profit corporation

By: [Signature] (SEAL)
Frank D. Robertson, Pastor and CEO

By: [Signature] (SEAL)
J. W. Warnock, Trustee



[CORPORATE SEAL]



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ZONING DIVISION

EXHIBIT "A"

Legal Description

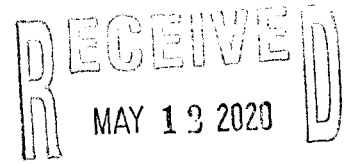
ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 31 AND 32, 17TH DISTRICT, 2ND SECTION, COBB COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT WHERE LAND LOTS 31 AND 32, 17TH LAND DISTRICT MEET ALONG THE LINE COMMON TO LAND LOT 1147, 19TH LAND DISTRICT, 2ND SECTION OF COBB COUNTY GEORGIA; THENCE S 46°30'18" E A DISTANCE OF 501.12' TO A #4 CAPPED REBAR SET, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE N 01°12'48" E A DISTANCE OF 643.51' TO A #4 REBAR FOUND; THENCE N 89°07'13" E A DISTANCE OF 840.31' TO A #4 CAPPED REBAR SET ALONG THE EXISTING RIGHT OF WAY LINE OF FLOYD ROAD (VARIABLE R/W); THENCE ALONG THE AFORESAID RIGHT OF WAY LINE S 04°33'59" E A DISTANCE OF 38.89' TO A CONCRETE MONUMENT FOUND; THENCE CONTINUING ALONG THE AFORESAID RIGHT OF WAY LINE S 04°29'01" E A DISTANCE OF 312.33' TO A PK NAIL SET; THENCE CONTINUING ALONG THE AFORESAID RIGHT OF WAY LINE S 89°52'32" W A DISTANCE OF 35.34' TO A POINT; THENCE LEAVING THE AFORESAID RIGHT OF WAY LINE S 89°52'38" W A DISTANCE OF 197.84' TO A PK NAIL FOUND; THENCE N 00°01'45" W A DISTANCE OF 4.83' TO A PK NAIL SET; THENCE N 90°00'00" W A DISTANCE OF 405.18' TO A #4 CAPPED REBAR SET; THENCE S 00°00'00" E A DISTANCE OF 303.03' TO A #4 CAPPED REBAR SET; THENCE S 88°14'58" W A DISTANCE OF 243.11' TO A #4 CAPPED REBAR SET, SAID POINT BEING THE TRUE POINT OF BEGINNING.

SAID PARCEL HAVING AN AREA OF 365,596 S.F., OR 8.3929 ACRES AND BEING SHOWN ON THAT CERTAIN ALTA/NSPS LAND TITLE SURVEY FOR CP 4900 FLOYD, LLC, BRANCH BANKING AND TRUST COMPANY & FIRST AMERICAN TITLE INSURANCE COMPANY, PREPARED BY FRONTIER SURVEYING & MAPPING, LLC, BEARING THE SEAL AND CERTIFICATION OF KEVIN R. SETTLES, GEORGIA REGISTERED LAND SURVEYOR NO. 3412, DATED NOVEMBER 25, 2019, LAST REVISED NOVEMBER 27, 2019.

EXHIBIT "B"

Permitted Exceptions



1. All taxes for the year 2020 and subsequent years, not yet due and payable.
2. Drainage rights contained in Right of Way from F. S. Garrett to the County of Cobb, recorded in Deed Book 1360, Page 346, Records of Cobb County, Georgia.
3. Easement from Eastside Baptist Church to Georgia Power Company, dated July 3, 1978, filed for record October 3, 1978 at 10:13 a.m., recorded in Deed Book 1932, Page 877, aforesaid Records.
4. Easement from Westside Baptist Church to Georgia Power Company, dated January 12, 1999, filed for record February 22, 1999 at 2:23 p.m., recorded in Deed Book 12223, Page 512, aforesaid Records.
5. Declaration of Reciprocal Easements with Covenants, Conditions and Restrictions by Mableton Partners, LLC, a Georgia limited liability company, and Westside Baptist Church of Mableton, Inc., a Georgia corporation, dated December 28, 2006, filed for record January 4, 2007 at 3:47 p.m., recorded in Deed Book 14435, Page 3385, aforesaid Records; as amended by First Amendment to Declaration of Reciprocal Easements with Covenants, Conditions and Restrictions by and between Mableton Partners, LLC, a Georgia limited liability company, and Westside Baptist Church of Mableton, Inc., a Georgia corporation, dated April 25, 2007, filed for record July 11, 2007 at 4:28 p.m., recorded in Deed Book 14512, Page 2650, aforesaid Records; as further amended by Second Amendment to Declaration of Reciprocal Easements with Covenants, Conditions and Restrictions by MGT Mableton, LLC, a Georgia limited liability company, successor in interest to Mableton Partners, LLC, and Westside Baptist Church of Mableton, Inc., a Georgia corporation, dated October 3, 2008, filed for record October 24, 2008 at 3:07 p.m., recorded in Deed Book 14645, Page 4942, aforesaid Records.
6. Permanent Easement for Construction and Maintenance of Slopes from Trustees of Westside Baptist Church, a/k/a Westside Baptist Church of Mableton, Inc., to Cobb County, Georgia, dated February 20, 2011, filed for record March 16, 2011 at 11:02 a.m., recorded in Deed Book 14841, Page 3031, aforesaid Records.
7. Easement from Westside Baptist Church, Inc., to Georgia Power Company, dated February 8, 2012, filed for record February 24, 2012 at 4:05 p.m., recorded in Deed Book 14922, Page 1638, aforesaid Records.
8. All matters as disclosed by that certain survey entitled "ALTA/NSPS Land Title Survey For: CP 4900 Floyd Road, LLC, Branch Banking and Trust Company & First American Title Insurance Company", prepared by Frontier Surveying & Mapping, LLC, bearing the seal and certification of Kevin R. Settles, Georgia Registered Land Surveyor No. 3412, dated November 25, 2019, last revised November 27, 2019, being designated as Project No. 19CPP004.

TO THE COBB COUNTY BOARD OF COMMISSIONERS
COBB COUNTY, GEORGIA

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ZONING DEPARTMENT

CONSTITUTIONAL CHALLENGE

COMES NOW, CORNERPOINT PARTNERS, LLC, hereinafter referred to as the "Applicant", for itself and/or acting on behalf of the Owner, asserts the following, to wit:

1.

By Application to which this exhibit relates, the 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 "Subject Property", being set forth in said Other Business Application.

2.

The Application seeks approval of an Other Business Application and for grant of a change of stipulations/conditions imposed by the governing authority of Cobb County, Georgia to revise certain zoning condition(s) imposed by the current zoning.

3.

Applicant states that a literal interpretation and enforcement of Ordinance provisions creates an unnecessary and unreasonable hardship with no resulting substantial benefit to the public good.

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4.

The revision sought by the Applicant concerning the Subject Property will not impair the purpose, spirit and intent of the Ordinance and stands to alleviate any and all non-compliance of the foregoing requirements while causing no substantial detriment to the public good.

5.

The current zoning classification and any conditions are unconstitutional in that they deprive the Applicant 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.

6.

The zoning conditions and 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.

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COBB COUNTY ZONING DEPARTMENT

7.

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 12th day of May, 2020.

SAMS, LARKIN & HUFF, LLP



By: _____

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