

Motion

Bryan Chamberlain stated that he would like to take a stab at making a motion that prior to making it basically would concur with staff and make the modification to item no. 7 eliminating the words "the existing church property to the east as required by Roswell Department of Transportation," and leaving the remainder of the wording in on item no. 7 and all else remaining the same.

Brad Townsend asked that Chamberlain make sure that the motion includes that the variance would be approved as part of the motion.

Bryan Chamberlain added that the variance would be approved as part of the motion.

Cheryl Greenway added referring to the conditional variance. Is that Chamberlain's recommendation? Bryan Chamberlain stated that was his recommendation. Harvey Smith seconded the motion.

Cheryl Greenway asked if everyone was clear on that or does anyone need that motion restated. There was no need for a restatement so the Commission will vote on the motion. Greenway called the question.

The motion passed unanimously.

Cheryl Greenway thanked the applicant for his time. She asked Brad Townsend if he could report to the appropriate person at the city of Roswell that there seems to be some water issues with the North Farms. Townsend stated that he would do that.

CONDITIONAL USE

11-0405

CU11-03

FIVE BROTHERS AUTO SALES, LLC

1280 Alpharetta Street

Land Lot: 449

Brad Townsend stated that this is a conditional use for a used automobile establishment. The property is approximately three acres in size. The current use is an auto service establishment in which they are servicing automobiles. There is a perennial stream, Hog Waller Creek, just to the north. There is existing parking in the front of the building that allows approximately 36 spaces along Alpharetta Hwy. The building is approximately 108 feet from the right-of-way. The applicant has submitted a report regarding installation and maintenance of erosion control related to the stream buffer that was submitted to the city engineer. In 2008 the city adopted several standards dealing with used car/automotive establishments. They are required to have a conditional use.

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They have to have beyond at least three quarters of an acre in size. They are required to have, if available, sufficient parking as well as ingress/egress to the location. This application is looking to utilize a building that was at one time, way back when, an actual automotive dealership. Some of the Commissioners can probably remember that when it was actually Ford at the time.

Staff is recommending numerous conditions to bring this site up to landscape standards and improvements, controlling the number of cars to be parked up front. They have had delivery issues with cars being delivered by carriers in the middle of Alpharetta Hwy. They don't want that for this particular situation so staff has recommended that they be unloaded and loaded on the property instead of on the right-of-way.

As one can see from the aerial there is existing commercial all around. There is residential to the rear of the property. This is the location that would be utilized for the automotive. Staff is recommending approval with the eight conditions in the staff report.

Cheryl Greenway asked if there were any questions for Brad Townsend. Townsend added that there was no change between the neighborhood meeting and this meeting for the site plan because it is in the existing situation.

Bryan Chamberlain stated that he had a question on condition no. 1. He is not following the intent here. Are there more tracts on the survey than tract B? Brad Townsend stated that there were. Chamberlain asked if the Commission had that.

Brad Townsend pointed out the survey that is in the back. He showed tract B as it is referenced. Staff wanted to make sure that that is the only location they are giving the conditional use to. (Tract B)

Bryan Chamberlain thanked Townsend.

Bryan Chamberlain stated that in looking at the property and thinking about that area where there are a lot of car dealerships, it seems to be a natural place for car dealerships. This was used initially as car dealership. This is kind of a two-part thing. One thing Chamberlain has not been clear on is why, in the Roswell building code or the zoning code there is no stated position or code for car dealerships or by right none of the zoning classifications allow for a used car dealership. It must be done by conditions only. He asked Brad Townsend if he could explain the logic of that. Theoretically as Chamberlain reads it the Planning Commission would always have to hear one of these meetings on a used car facility being approved.

Brad Townsend stated that when the code was amended in 2008, that was the intent. Before 2008, new and used car establishments were permitted as a right

in the C-3 zoning category. With the proliferation of them taking over the old restaurant locations, the old gas station sites and things of that nature, there was the directive in the policy of council, that they want to stop that as a type of development that is acceptable and make it conditional as well as saying that one has to have at least three-quarters of an acre to make this as used car establishment. If one does not have three-quarters of an acre, he has all of the other C-3 uses already available to him but he does not have a used car establishment given to him even as an available right as a conditional use. So, staff then created the criteria and is going through three years now of what used car establishments have been able to...if one stops as a used car establishment, he has a three month window of time frame to have another used car establishment go into that location without losing that as a non-conforming use. If he goes past the three months, then it becomes...that used car establishment is non-conforming and cannot re-establish unless it meets the criteria. If it cannot meet the criteria it uses all of the C-3 available uses that are in that category.

Bryan Chamberlain stated that that was very well put. The next phase of his question, and he does not mean to be in observation solely, but that whole area of Alpharetta Street has been kind of a conundrum as to how one goes about improvement. He knows that in the 2030 plan there was some thought given to how Roswell goes about improvement and the prime time was when there is change of use in the property. Brad Townsend stated that was correct.

Bryan Chamberlain stated that in reading conditions one through eight he is not getting a specific sense of required improvement of details on things like landscaping, impervious surface changes, things like that that would cause that, which is a very large property that has a lot of visibility long the way, to change the character of its look for this facility to use it.

Brad Townsend stated that that was a very accurate observation. With the size, depth and location of the property, the size of the buildings don't lend themselves to a re-development, unless one tears them down completely. They still have a viable use as they still stand so that asset would really have to think that someone would come in and do a combination of more than this parcel to be able to feel that it would be...because once one throws in a redevelopment proposal, here is the real crux of the matter. This is a stream. Stream buffers then kick in which then pushes one away from the stream so he has less available developable property which means one had better have at least these three involved.

Look at what has turned over now, the Merlin's' Auto Care is now an automotive establishment today. They have had a major reinvestment in the Dairy Queen. So, that is probably not likely to be ripe for redevelopment at this point. In less one comes around and is able to get...self storage doesn't become non-self storage. They don't redevelop in that point.

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Bryan Chamberlain stated that with that said, looking at the front end of the property between the building and the street. A lot could be done without engaging those issues Townsend just talked about to create some element of an improved look via landscaping. Chamberlain does not want to be too leading but things like trees and landscaping could make a big difference.

Brad Townsend stated that conditions no. 4 and 7, those were the objectives that staff felt could be at least part of this approval, which would not be a large burden on developing the property, but would allow improvement to happen when one has that building at least 100 feet back. There is no reason one can't have a 10-foot landscape strip next to the road as well as like Chamberlain said, trees, shrubbery. There is this expansive area of asphalt that could be landscaped next to the building in some manner...islands or at least control the flow of traffic in some manner in dealing with that for that location.

Bryan Chamberlain stated that his question here is somewhat based on his ignorance of the meaning of condition no. 7 or the intent of no.7, the depth of intent of no.7 and what would be expected in condition no. 4. If those cover that issue that is great.

Brad Townsend stated that was the objectives of no. 4 and no. 7 is to provide a landscaping buffer like anyone else would coming in developing today along Alpharetta Hwy., a 10-foot landscape strip. No. 7 is put in there to give one the opportunity, show staff a design that works and meets the Commission's needs as they feel it should be but also has to conform with the Design Review Board criteria in saying this provides the needed screening or at least green area that is now completely asphalt at this time.

Bryan Chamberlain thanked Townsend.

Cheryl Greenway asked Brad Townsend if the eight conditions been shared with the applicant. Townsend stated that they have been. Greenway asked Townsend to expand for her a little bit on the stream issue. Why she is asking about that is there are a couple of different notes in here about there needing to be a stream buffer mitigation and comments from the engineering division indicating that the approval of the application would cause additional stress on the adjacent stream buffer unless mitigating planning is provided. How much are they looking at? She stated that she went there and look too, and it is pretty close from the fence to where the drop off is for the Hog Waller Creek.

Brad Townsend stated that he knows that the applicant as well as public works/environmental and the city engineer and Jackie Deibel had a meeting so Townsend stated that he would let Deibel respond to that question.

Jackie Deibel stated that staff had a meeting with the applicant and the city engineer, public works/environmental and herself were in there with the

applicants and the owner of the property or landlord of the property also attended the meeting. What the city engineer indicated was not for them to do an overabundance where they would be put on a burden, but to work in some pocket areas. Deibel pointed these out on the aerial. The applicant was to try to pick out a few areas kind of like back in here to do a little work, maybe a little bit up here and then leave a little bit back in this corner area to try to do some work where they can establish something to help mitigate. But they were going to be trying to have them put a burden on the applicant.

Cheryl Greenway asked where Deibel was just pointing toward the road there is a big pipe. Jackie Deibel stated that was discussed. The city engineer and the public works/environmental people did discuss the pipe with the applicant. They might remember a little bit more about the meeting relating to that. Greenway stated that she will see what they say.

Cheryl Greenway asked if there were any other questions for the city. She thanked Brad Townsend and asked the applicant to please come forward. She reminded the applicant to please speak in the microphones and to state his name and address.

Dr. Rob Mitchell stated that he is a representative of the Five Brothers. He is a supporter of Sumon Toshinov and Mistafu Toshinov and Mr. Camille, who is an employee. They entered into an agreement with the landlord who are present to establish an operation of service and repair back in March 2011. Since then, there goal all along has been to establish a used car dealership also. A repair service and sell the cars that they fix. Mitchell wanted to go on record to say that he does not have any financial benefit from this operation; he is a friend of the applicants.

Mitchell stated that he wanted to make a brief introduction. The Toshinov's came to Roswell in 2005, 2006 from Uzbekistan. They understand and speak nine languages, English being the last one. They have succeeded in establishing a small business and Mitchell's intent is to help them succeed in every way.

Mitchell stated that he lives at 1584 Timberland Road in Atlanta, GA, 30345. These gentlemen have just become United States citizens.

Cheryl Greenway offered her congratulations.

Mitchell stated that their wish is to be good stewards of the land. They want to make sure that no trash goes from the property into the nearby creek bed. No trash, no oils, no contaminants, no anti-freeze, they want to contain that off of the property and dispose of it properly. They have established a process of recycling all plastics and paper and also oil. They want to be good stewards of the land.



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The issue though is that the Hog Waller Creek next door is an area that has flooded Mitchell believes two times in recent years and it has flooded the property also. He thinks that flood has damaged the creek beds and eroded the creek bed to the point where it has made the fence dilapidated and that has been a concern. He showed the Commission pictures that were taken today from the new bridge on Alpharetta Street looking down towards the creek. One can see one pipe and in the distance there is a second pipe, which is from the property, which allows for rainwater runoff. It looks to Mitchell like most of the erosion has come from flooding, not from rainwater runoff of the property. Nonetheless, Mitchell does wish to address the rainwater runoff and try to contain it along this very small strip right behind the guardrail. He pointed out the front of the property.

Mitchell stated that the other issue is area no. 4, a 10-foot landscape strip shall be provided. This is from the entrance of Alpharetta Street onto the property looking northeast. As one can see there has already been an area established by the city with new seating, new hay put down to establish a green area. This is the new entrance that has just been paved by the city of Roswell. This is the existing front parking lot. Mitchell's question is, if they are required to adhere to statement no. 4, a 10-foot landscape, do they need to remove a certain amount of asphalt from that area to comply with that?

Brad Townsend stated that was correct.

Cheryl Greenway stated that was her understanding that yes, that would be correct.

Mitchell stated that the other issue is this is the back lot on the right, which is along the creek bed. This picture was taken today. They have re-established the security fence and rebuilt it such that it is not dilapidated anymore. This is an area in which they are wishing to contain any rainwater runoff from the property and plant native trees and native grasses to re-establish a proper buffer, a proper barrier and also provide for shading between themselves and the homeowners who live behind that area.

Mitchell stated that he thought they had talked before about having a drainage ditch from the front to the back and he does not think the gradients are favorable; the slope is favorable because they will be going upstream from that area. So their wish is to contain rainwater runoff, wherever it might go. There is not just one pipe but four pipes going from the property into the nearby stream. Their wish is to plug those four pipes such that all rainwater runoff goes into a buffer area to prevent any contaminants from even possibly of going to the stream. Because this area has been subject to flooding, Mitchell would anticipate perhaps that if there was a large flood that they might need to open up those pipes at times to release any water that might be collected on the property in the event of severe flooding of course.

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The applicants have met with one of the residents behind them at the previous meeting. They were a nice couple and they came to agreements about lighting and noise. Another resident behind them is the Chicken Man of Roswell that they are all familiar with, Mitchell presumes. They hear roosters crowing all of the time. It is really funny.

That is basically all that Mitchell has to say. His other question is when the creek does flood, and it does erode who is responsible for maintaining the banks of the creek. Is it the tenants or the landlord or the city of Roswell in some degree? Who is responsible for that?

Cheryl Greenway stated that she will let Brad Townsend respond to that.

Brad Townsend stated that the property owner is responsible.

Mitchell clarified that it was not the tenants but the property owner. They have met with the D'Angelo family and they have a common goal to help the Toshinovs succeed and there business a success. They have graciously offered to help with some of the expense of bringing the property up to code.

The applicants wish to be good stewards of the property and continue to maintain the property according to the Commission's requirements. Mitchell stated that he would try to answer any questions.

Cheryl Greenway stated that she would like to mention one thing. They are talking about the stream. She wants to be sure that Mitchell understands that it is in the conditions what the city is recommending. The applicant will use mitigation techniques as approved by the city engineer. So the Planning Commission would not make the decisions tonight as to exactly what he would do. That would be between the applicant and the city engineers to work out what is required for that stream maintenance.

Mitchell stated that they were thinking of grading this property a little bit to allow some finger areas to drain from the property and direct the water flow into this area of green space. And then of course to prevent that water from reaching the creek and of course plant native trees, grasses and shrubs there also. This would be a continuing process over time.

Cheryl Greenway stated that that would have to be approved by the appropriate city staff who know how that water is going to flow and can advise the applicants a lot better than any of them here could.

Cheryl Greenway asked if there were any other questions for the applicant.

Greenway stated that a question she had because she really did not see much in the application was about lighting and noise. One, she would think they would want certain lighting from the standpoint of now they are going to have vehicles parked backed there, they will want security and things of that nature. So what are the applicants' plans for lighting and an intercom type system?

Rob Mitchell stated that there plan is for lighting of the lighting of the front parking lot only but not the back parking lot. They have infrared cameras. They have a 24-hour security system, infrared cameras that can pick up any activity. They have pledged not to have any lighting at night in the back lot. Also, regarding noise they have talked to the nearby residents and talked about how they will not make any noise before 9:30 a.m. because they really do not get things started before 9:30 a.m. There is no use of air guns before that time and of course concluding that by 6:30 p.m. On Saturdays they have talked about not having noise before 10 a.m. and concluding that at a reasonable hour. They plan to continue to work with the neighbors. They have become friends with the neighbors to talk them if they are causing any disturbance or if they have any plans for use of their backyard for any particular reasons the applicants will be happy to minimize the noise.

Cheryl Greenway clarified that the used cars that will be kept in the back part will be within the fenced area so the applicant will be able to lock that up at night. Mitchell stated that they will be in a locked fenced area. They do not anticipate having any cars in the front lot during the night. They will move them back at night behind the security fence. Mitchell stated that he actually heard that an establishment up the street had eight break-ins that took place at an automobile service place up the street. Everything was removed from those vehicles. Cars were smashed. So the applicants anticipate having no cars out front during the night at all. And of course they can abide by the requirement of 15 or less cars in the front.

Cheryl Greenway thanked Mitchell and asked if anyone else had any questions. Hearing none she asked if anyone would like to speak in favor of the applicant.

Leigh Daly Lonjaneau
340 Autumn wood Lane
Roswell

Leigh Daly Lonjaneau stated that she was present to support the applicants. They have been, so far, great tenants. The one's before, she cannot say so. That place was in horrible condition before these men got there, especially on the left hand side. It was just a mess and it took Lonjaneau's family months and months to clean it out. They spent lots of money and it still could use some more. But it was a mess the way it was handled before. The Dumpsters and all of that kind of stuff were never....so she thinks it is a great opportunity to clean it up. The problem she has is they put the sidewalk in, so they gave a little bit up at the front

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and as one knows, it has always been as used car lot. The sidewalk is there so they came back a little bit and now they are going to come back more and put in some trees and stuff which actually blocks the view. They don't have a lot of frontage. They have a lot of depth but not a lot of frontage. Then she gets concerned about taking care of it. As she recalls, they met with the engineer before they put the sidewalk in many years ago, three or four years ago and the city of Roswell was going to put some green stuff down the middle of Roswell Road right there and the staff was concerned about the upkeep on that and the draught and all that. It just concerns Lonjaneau that she needs to be putting trees, not so much coming back 10 more feet; that would be fine but that is a lot of taking care of trees to keep them and they are in a dry area. It is a draught area. The creek, whatever they can do she wants to do to help the creek but it is just all of this expense. They were almost a year without tenants because of the economy. And they had the expense of cleaning up what was there before and now they are going to have the expense of doing all of this and they are paying one-third of what she used to get.

They are trying to make it. She is trying to want them to make it obviously, and they want to make Roswell...she lives in Roswell. Her father owned this property since the 1970's. They are Roswell people and she wants Roswell to look good and the area scares her. That whole area she would love to see cleaned up. This isn't a quarter-of-an-acre that used to be a gas station that has turned into a used car lot. This is three acres. Granted it has buffers and Lonjaneau still pays taxes on it since the 1970's and she can't do much with it because of all of these buffers but she does want to take care of it and she does pay her taxes. But she has got to have a little bit of help here in bad times. It can't be done before these men get their license to sell and they are going to move the cars back. No one else on Alpharetta Hwy. does that. If they could get their license and they could take some time to get these things done that would really, really help. That is all Lonjaneau has to say.

There were no questions for Lonjaneau. She added that she has three brothers that she answers to, she is just the executrix. So she understands the brother deal.

Bob Nagel
1615 Brookhaven Circle, NE
Atlanta, GA

Bob Nagle stated that he has been the leasing agent for the Daly's on this property for a long time. The Daly's own Vinson Chevrolet and Vinson Ford and where the Shireys are out there were joined. That property was joined. So they sold the big piece to the Shireys, which are up the street and they cut this one off and used it. They have the mini storage warehouses as one goes up the hill and after that Nagle leased the property to a Dallas....he was Roswell Tool Rentals. Then United Auto on the smaller part that sticks out to the left. Nagel has tried to

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keep some real good tenants in there and the market has just been terrible. These fellows are really good. He has talked to a lot of people that looked at this property and Nagle has been in business long enough to be able to judge people's character. These people have done an unbelievable job in that building. Just Right Auto that was there before them had to get out because they lost all of their money because they were doing a lot of financing back in 2007-2008. And so these people, Nagle really speaks highly of them. They have already done a beautiful job inside that building and they are trying to good stuff outside.

All Nagle is saying is that he has had two-and-a-half to three years of talking to a great number of people and the problem with most of them is one just knows that they are not going to treat this property the way that this area should be treated. These fellows will.

Nagle hopes that the Planning Commission will try its best to work with them because it is going to be expensive, whatever they have to do out there. Business is still not that good. Nagle would appreciate any compassion the Commission can show these gentlemen because they are really going to do a good job, he is convinced of that.

Cheryl Greenway thanked Bob Nagle and asked if there was anyone else who would like to speak in favor of the applicant. No one came forward. Greenway asked if anyone would like to speak in opposition to the applicant. For the record Greenway noted that no one came forward. She stated that the applicant would have a chance now if there is anything else that he would to say, rebuttal or since no one spoke against him there is really not a rebuttal.

Rob Mitchell stated that since there was some discussion about what has been done inside the building, he would like to show the Planning Commission some pictures. First of all, he thinks that there was a question about a tractor-trailer navigating the property. Mitchell stated that he had a video that he would like to show of a tractor-trailer backing up from the left side and navigating to the front parking lot very easily.

Cheryl Greenway stated that she thinks the concern there from the city of Roswell just from her own experience of going up and down Alpharetta Hwy is they just don't want them unloading on Alpharetta Hwy. Mitchell stated that was correct and the applicants have no intention of unloading in the middle of the highway. They can easily navigate this property with an 18-wheeler rig as evidenced by pictures that were submitted previously. This is just a nice little video showing how easily this gentleman can navigate from the side parking lot to the front parking and he has actually navigated to the back parking lot also.

Mitchell pointed out the old showroom which can accommodate three cars. There are new lifts which the brothers have installed. On the side of the building there is a new frame machine. This pictures show Toshinov working on the cars and

other lifts and alignment machines. There was one of their employees driving his Ford Falcon and other pictures. There is a new paint booth which is huge and has been installed as well as other lifts. Mitchell stated that he really wants to compliment the brothers. They can to this country five years ago with nothing and look what they have achieved.

Cheryl Greenway asked if there were any questions from the Planning Commission.

Bryan Chamberlain clarified that the nature of the business would be a continuation of the service but adding used car sales. Brad Townsend stated that was correct. Chamberlain asked if there were any indications as to the target market of the used cars. The types of cars or the quantity of cars expected to be sold. Would this be incidental to the business or the primary focus of the business? Brad Townsend stated that it wouldn't make a difference to the staff.

Cheryl Greenway asked if there were any other questions. She stated that she had one question for Brad Townsend. Being the economic times as they are, she can appreciate where the owners are coming from. And since they are technically already in the space and operating, they just haven't expanded to the used car business. Could the Commission give them some time and do a phase in for the different requirements? She thinks that the stream buffer has to come first. But for widening and now the other could they say that it has to be done within a certain period of time to give them some leeway?

Brad Townsend stated that the Commission can give them some time frames but he would be specific in what they would be. Once they are granted the conditional use and once they have a business license there really is no, in essence, leverage that the city of Roswell would have unless they would remove the business license if they didn't come into compliance. That is usually pretty difficult and one does not really want to do that to a business. They wouldn't want a tenant that says, "Okay, I could lose my business if I don't go in there and do the landscaping" and things of that nature. They don't know to what extent that plan would be. They need to make sure that it does coordinate with the trees and landscaping that the city of Roswell is proposing for that area on Alpharetta Hwy. They want to be plopping in trees that they are going to be plopping right next to two or three years from now. So they want some coordination of that to take place and that is why staff said that they are just going to hang on to the business license because that is the next approval that the city has to give them if they are granted the conditional use. It could be...the incentive for them is to get it taken care of. They can get their business license and start selling cars. Staff saw that as the motivation for them to make sure that this does come into compliance or at least the city's effort in trying to create some improvement along Alpharetta Hwy. It is definitely the intention of what the city is doing along the street now is their intention to improve the locations. Townsend thinks that is one of the efforts that they are trying to maintain there.

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Cheryl Greenway stated that there is nothing that gives the Commission the ability to issue a license and say that if within six months the applicant hasn't done this, he loses his license. It is either he gets the license or he doesn't get the license.

Brad Townsend stated that was correct. The judge would look very unfavorable with the city of Roswell trying to revoke something that they have given them at one time.

Cheryl Greenway stated that she would hope that within that buffer they really wouldn't be looking at trees other than maybe small plants because that would become an issue for people turning in and out. Brad Townsend agreed.

Cheryl Greenway thanked Townsend and asked if there were any other comments or questions? Hearing none, she closed the public section of the meeting. Greenway called for a motion or any other discussion.

Harvey Smith stated that the only comment he has that he think adds to the presentation since the applicants have done such a wonderful job cleaning the property up and improving it over a period of time. Hopefully the rent, as the economy improves, one is going to be able to justify an increase for rent. Again that is between the landlord and the tenants. That is something that as everyone prospers more maybe that will be a win-win situation based on the improvements that will be made. Hopefully that is what their crystal ball will say. But Smith can definitely appreciate those comments because finding good tenants that will be there and pay rent on time and all that, that is very important, too.

Motion

Harvey Smith made a motion to approve CU11-03 per the eight conditional uses as recommended by the staff.

Lisa DeCarbo seconded the motion. The motion passed unanimously.

Cheryl Greenway thanked the applicants and congratulated them again on being citizens.

CONDITIONAL USE

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