

Greenway asked that all cell phones on vibrate or turn them off. This includes the members of the Planning Commission. She also reminded the Planning Commission to please state their names before they are speaking for the benefit of the audience as well as the staff recording the minutes of the meeting.

CONDITIONAL USE

11-0726

CU11-08

VERSATILE COLLECTION

1200 Grimes Bridge Road

Land Lot: 487

Brad Townsend stated that this is a conditional use petition located at 1200 Grimes Bridge Road for approximately two acres. This is the vacant old post office building. This application is requesting a conditional use for a used auto dealership. Staff is recommending denial of this proposed application.

Some of the details of the petition include the current building is approximately 12,700 square feet. There are approximately 100 parking spaces existing on the property. The property is non-conforming related to the amount of landscaping buffers as well as planter and tree islands that would be normally in a standard parking lot. Since this building was owned originally by the federal government, they did not have to comply with any type of city requirements at the time when originally developing the building. The subject property is currently zoned C-3. It abuts the residential property to the east, which is zoned R-2. Staff has included in the backup material area photographs, zoning of the property as well as a draft resolution if the Commission chose to recommend approval of this application. They have included seven conditions which they feel would be appropriate to recommend to the council if the Commission wanted to recommend approval.

In summary, staff is recommending denial of this conditional use. They feel that the auto use is inappropriate for this location.

Cheryl Greenway asked the Commission if there were any questions for Brad Townsend.

Harvey Smith stated that his first question would be without getting to the recommendations is there a legal reason that they...is there a deed restriction on the property? Can Townsend elaborate on that, the quit-claim deed to Grady?

Brad Townsend stated that as part of transferring the title of the property from the city of Roswell to the Grady Institution there was a deed restriction placed on it controlling inappropriate uses that the city would not want to be allowed on this property. One of those was car dealership and there were numerous other ones, which Townsend thinks are called out in the top of page 5 of the staff recommendations. There were 14 listed prohibited uses that the city of Roswell

felt would be inappropriate for the location when they deeded the property to the Grady Hospital.

Harvey Smith asked Townsend if the Commission even has the authority to approve the conditional use for the property. Townsend stated that the Commission has to authority to make a recommendation. The council has the authority to actually grant or deny the use. And then it would be put into the legal arena determining whether the city of Roswell would then have the right re-entry of the property and take possession.

Cheryl Greenway asked if there were any other questions for Brad Townsend. She stated that she would like for Townsend to expand on that just for the record that there was a clause that if the purchaser, Grady, did use it for one of these purposes what it gave the city of Roswell the right to do. Townsend stated that the city could re-enter the property and take possession.

Mark Renier inquired just in the Standards of Review, No. 5 he wanted to point out that Brad Townsend had mentioned that this type of use was incompatible with the character area of the comp plan. Is that correct? Brad Townsend stated that was correct. Renier clarified that they just adopted? Townsend stated that was correct.

Hearing no further questions from the Commission Cheryl Greenway asked the applicant to please come forward. She reminded them to please state their name and address and speak clearly into the microphone because they are recording this meeting.

Amad Atta stated that he just wanted to answer a few of the neighbors' questions. They had a question regarding the mechanic shop and stuff like oil changes. Atta stated that he told the neighbors before that it was going to be like simple car sales. No mechanic shop, no nothing. They just want to have a nice, good-looking showroom there because they are five buildings down the street from this current...they are still in the city of Roswell right now. They just need a new, big place. They have an average number of test drives, a couple of customers a day and they don't drive around in the neighborhood. Whenever a customer comes, 99 percent of the customers they go take the car to their mechanic's shop and get it checked out. Or take it to SR 400. They just don't drive around inside the regular neighborhood. That is the thing and Atta stated that he had questions from the city of Roswell like he had been to the city of Roswell more than 10 times before he started this procedure and he asked them if he should do it. The city said to go for it. He just needs to C-3 zoning again because the automobile dealership was not there before. They spent money on the appraisal, they spent money on the inspection, they did everything and all of a sudden they just came up with a denial. If they have to deny it they just have to tell Atta like four or five months ago. He just wasted money for nothing actually. Now the deed just came out and if one reads the deed it says that one cannot

have anything there. No automobiles, no car washes, no clinic, no nothing. Basically one cannot do anything on that property so Atta does not know why it is still on the market for sale. The seller should disclose that to everyone and above there.

Gary Bell stated that he was present in support of the application. He has known Atta for a long time. He used to live in Alpharetta. They run a good business, they take care of their people, they take care of their customers. They just need a bigger place to hire more people and put more people to work.

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

Harvey Smith stated that it sounds like the applicant is blaming the city of Roswell for a non-disclosure and they don't own the property. He asked Atta to explain that to him. He clarified that Atta is purchasing the property from Grady. Atta stated that when he was talking to Grady and then he came to the city of Roswell before he applied for the rezoning. He asked the city more than four or five times, the city told Atta he needs to get a zoning permit for automobiles but they never told him about the deed. They never told him that they were just going to deny it right away. If the city had told Atta about the deed and the denial on the same day, because they have their mind maybe set up, which he does not know. Atta spent almost \$7000 on inspection, appraisal and all of that stuff and basically it is kind of gone. Atta signed an agreement with Grady, the Dekalb authorities like if the city of Roswell says yes on the dealership then they are going to close the deal. They are going to buy it. If the city of Roswell says no, then they are out of it. So before they started that process Atta asked the city more than five times. The city of Roswell should have told him about the deed right away. He cannot do it because the deed says this and that. So, Atta just lost money for nothing. He respects the deed; he knows the deed is there. But they should have told him before five months. He has been doing these things for the past five months.

Harvey Smith asked Brad Townsend if he could expand that comment or does he want to wait for a rebuttal. Townsend stated that it is not the city of Roswell's responsibility to tell a potential owner. It is the owner of the property's to disclose that. Smith stated that he would agree with that. That is seller disclosure there, that is between Atta and Grady. Smith hears what Atta is saying as far as asking for them to do due diligence in the inspection period he would have had with the property he would think.

Atta stated that what is done is done. It is fine now.

Harvey Smith asked Brad Townsend if this has been public. Was the deed restriction something that has been there from day one? Townsend stated that it was recorded at time of sale. Any normal title search would have picked it up. Smith stated that whenever the property has been marketed...but it is up to

Grady. Commercial rules are different from residential he knows that for a fact. But still part of the inspection, due diligence period he wouldn't think that it would have been a surprise. It is not the city's responsibility to tell Atta that.

Atta stated that he is fine now. He just wanted to tell the Commission but it is okay. That is how one learns. That is the first time he tried to do something so now he knows what he is going to do next time. He respects the deed but one cannot have a dealership on the two-acre property with the five buildings down the street. At 110 Mansell Circle there is a building with the exact incentive and there are more than dealers inside that building.

Brad Townsend stated that Atta characterized that. There are not dealerships; there are brokers in those locations. There is a distinctive difference.

Atta stated that actually brokers and dealers can do both same things. There is no difference by law. Atta asked if there were any further questions.

Harvey Smith stated that he does not have anything but he thinks they have addressed another broker and he believes to his knowledge that was denied. It fronted, it was directly on Alpharetta Hwy. because the Commission was concerned that Maxwell Road, Colonial Park Drive, the test drives just from a broker, it was not a dealer. This is not a precedent to Smith's knowledge.

Atta thanked the Commission.

Cheryl Greenway asked if there were any further questions from the Commission. Hearing none she asked if there was anyone in the audience that would like to speak in favor of the applicant. If so, she asked them to please come forward. Seeing no one come forward Greenway asked if there was anyone who would like to speak in opposition of the applicant. She asked the member of the public to please come forward, state his name and address for the record and talk into the microphone.

Tom Ergmanchek
245 Stonebridge Trail

Tom Ergmanchek stated that he lived in Stonebridge subdivision off of Grimes Bridge Road, just on the other side of the wonderful, new roundabout from this property. He has lived there for 23 years. He was here when the property was deeded to Grady. He appreciated the deed restrictions at that time. He appreciates them now. This is a business and office area transferring down from higher use along Holcomb Bridge Road to residential farther down Grimes Bridge Road and immediately east of the property and Ergmanchek would ask the Commission to keep it that way. There are plenty of places for auto dealerships. A lot of them are more amenable to that use, have bigger parking, wider buffers.

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This place has none of those and would be suitable for a health clinic or an office.

Cheryl Greenway asked if there was anyone else who would like to speak in opposition.

Janet Buffkin
404 Maxwell Road

Janet Buffkin stated that Maxwell Road is already a very well-traveled street. It is a cut-through from Alpharetta Hwy. over to Grimes Bridge Road. These people are asking the Commission to put a used car lot at the corner. Buffkin stated that she doesn't know how many of the commissioners know it but she is sure all of them do, there are 18 used car lots in this city. She does not know why they would want another one and especially there, which is a residential area. A lot of the people that live on Maxwell Road are retired people. They are also people that have lived there. They have raised their families there. Some of them have inherited their homes and they are now raising their families there. So, any more traffic is just not what they need. She understands that someone earlier made the suggestion that they might feed off some of the traffic out of the car lot they want to put there onto Grimes Bridge Road onto Colonial Drive but that is just not feasible. It is not going to do a thing in the world but feed right back into Maxwell Road so it can cut through and go over to Alpharetta Hwy. The whole thing just does not make a whole lot of sense to Buffkin. They have a nice car lot on the corner down there on Alpharetta Hwy. They have it double parked. One could not even get an ambulance in there the way they have it parked. She does not know if they are in violation of any of the zoning ordinances or whatever. But they already have it full. She certainly does not want to see them put another car lot or move their business up there and double park all of those cars. The applicant is asking for 115 parking spaces. There is only room for 100 in that lot comfortably. Buffkin really does not know what they think.

The other thing is it is Buffkin's belief that when they cut through from Alpharetta Hwy. over to Grimes Bridge Road they are going to come up Maxwell Road and feed into their new lot. And there are going to be people that are going to be trying out cars that are probably going to use Maxwell Road. She just can't see having Maxwell Road for a test drive. They have a very quiet neighborhood. There are a lot of people and a lot of families that live down in there. When they did their due diligence they had the opportunity then to know that this was a quiet neighborhood. Their application did not even indicate that they had checked. They said that there was no residential neighborhoods nearby. Wrong! Buffkin's neighborhood is there. They are there and they are there to stay. The applicant needs to pay more attention. She thinks that if they put a used car lot up there it is just going to continue. They are going to move all of them off of Alpharetta Hwy. and they are going to start putting them down Grimes Bridge Road. It is going to look like Alpharetta Hwy. before it is ever over with and Buffkin does not

see that they need to be emptying Alpharetta Hwy. and moving it over to Grimes Bridge Road. It reminds her of the blight that they had down in South Atlanta if one remembers. That was where all of the used car lots were on Bankhead Avenue. Buffkin certainly does not want to see Grimes Bridge Road become Bankhead Avenue in metro-Atlanta.

Buffkin asked that the commissioners please consider denying this application for the temporary variance.

Cheryl Greenway asked if there was anyone else who would like to speak in opposition.

Richard Badcock
395 Stonebridge Drive

Richard Badcock stated that he lives off of Grimes Bridge Road and he and his family have lived there for 41 years. He will just echo what this lovely lady said before. They have 17 used car lots in Roswell. They don't need 18.

Cheryl Greenway asked if there was anyone else who would like to speak in opposition.

Seeing no one, Greenway stated that it was time for the applicant to come forward to give any rebuttal to what has been discussed.

Amad Atta stated that he just wanted to say one thing. He is already in Roswell and actually there are more than 17 dealers in Roswell. They just want to move. So it is not going to be 18, it going to be 17 dealers there and Atta just needs the bigger space and that's it.

Cheryl Greenway asked if there were any other questions.

A woman wanted to speak but Cheryl Greenway told her that she had already closed the public hearing. The way it works is the Commission asks people to come up and speak in favor of and then against. Once that is done Greenway can't go back.

Atta's statement was rebuttal. The open discussion for the audience finished once he came up to do his rebuttal.

With that, Cheryl Greenway stated that she would like to close the public portion of the discussion. She asked if there were any other questions or discussion by the Commission or does anyone have a motion.

Harvey Smith stated that he had one question for Brad Townsend. Can he explain the chain of...how did they?...did the postal service quit-claim it to the city



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of Roswell? Did the city have to buy it from the postal service and then they sold it to Grady?

Brad Townsend stated that to his recollection the city did purchase it from the postal service and then sold it to Grady with the deed restrictions attached as part of that sale.

Harvey Smith thanked Brad Townsend. Cheryl Greenway asked if there were any other questions or discussion. Hearing none Greenway called of a motion.

Joe Piontek stated that he was interested; these 14 restrictions are on the title. He clarified that a simple title search, Brad Townsend had seen this and if one were going to start an auto establishment or any of these other restrictions it is clearly on the title.

Brad Townsend stated that would be his understanding if that search was done. Pinotek stated he does not know how that works.

Mark Renier stated that he wanted to make a point. They have 23 standards of review questions that the Commission has to live by and answer for themselves. One of them is, and he hears this a lot from the public. The city has 17 of any use and they don't need another one. The Commission is not here to legislate the economy and how many uses they can have within their city but they do have a comp plan and a zoning ordinance to live by. They do look at a specific property and is it functional for a specific use. In this case Renier stated that he was not going to look at the fact that they have 17 dealers or brokers in Roswell. What he is going to look at is the fact that it is deed restricted. The owner did deed restrict it against this use and it is against the city of Roswell's comp plan that the city spent a lot of time and Roswell residents spent a lot of time and a lot of members of this Commission and past Boards and Commissions spent a lot of time creating.

Motion

For that reason Mark Renier stated that he would have to recommend a denial so he is going to make a motion to deny CU11-08. Harvey Smith seconded the motion.

Cheryl Greenway stated that with a motion and a second she would take a vote. Greenway called the question.

The motion for denial passed unanimously.

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