

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**CONDITIONAL USE PERMIT REPORT (#FCU-15-10)**  
**FLATHEAD VALLEY HOLDING, LLC**  
**NOVEMBER 17, 2015**

This is a report to the Flathead County Board of Adjustment regarding a request from AXS, LLC, on behalf of Flathead Valley Holding, LLC for a conditional use permit to allow for *'multiple principal uses'* on a lot. The subject property is located within the Willow Glen Zoning District and is zoned *'R-2 One Family Limited Residential'* and *'B-2 General Business/Evergreen Enterprise Overlay.'*

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on December 1, 2015 beginning at 6:00 P.M. in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

**I. APPLICATION REVIEW UPDATES**

**A. Land Use Advisory Committee/Council**

The proposed land use is not located within the advisory jurisdiction of a Land Use Advisory Committee.

**B. Board of Adjustment**

This space is reserved for an update regarding the December 1, 2015 Flathead County Board of Adjustment review of the proposal.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Applicant**

Flathead Valley Holding, LLC  
PO Box 1373  
Williston, ND 58801

**ii. Landowner**

AXS, LLC  
C/o Joel D. Vessie  
PO Box 5717  
Kalispell, MT 59903

**B. Property Location and Size**

The property is located at 1212 Highway 2 East in Evergreen, MT (see Figure 1 below). The subject property is approximately 3.67 acres and can be legally described as Tract 1AB in Section 09, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana.

**Figure 1:** Subject property (outlined in yellow)



**C. Existing Land Use(s) and Zoning**

The property is located within the Willow Glen Zoning District and is zoned ‘R-2 One Family Limited Residential’ and ‘B-2 General Business/Evergreen Enterprise Overlay.’ The R-2 zone is defined as, “A district to provide for large-tract residential development. These areas will typically be found in suburban areas, generally served by either sewer or water lines.”

The B-2 zone is defined as, “A business district to provide for those retail sales and service functions and operations that are typically characterized by outdoor display, storage, and/or sale of merchandise, by major repair of motor vehicles, and by outdoor commercial amusement and recreational activities. This district should also serve the general needs of the tourist and traveler.”

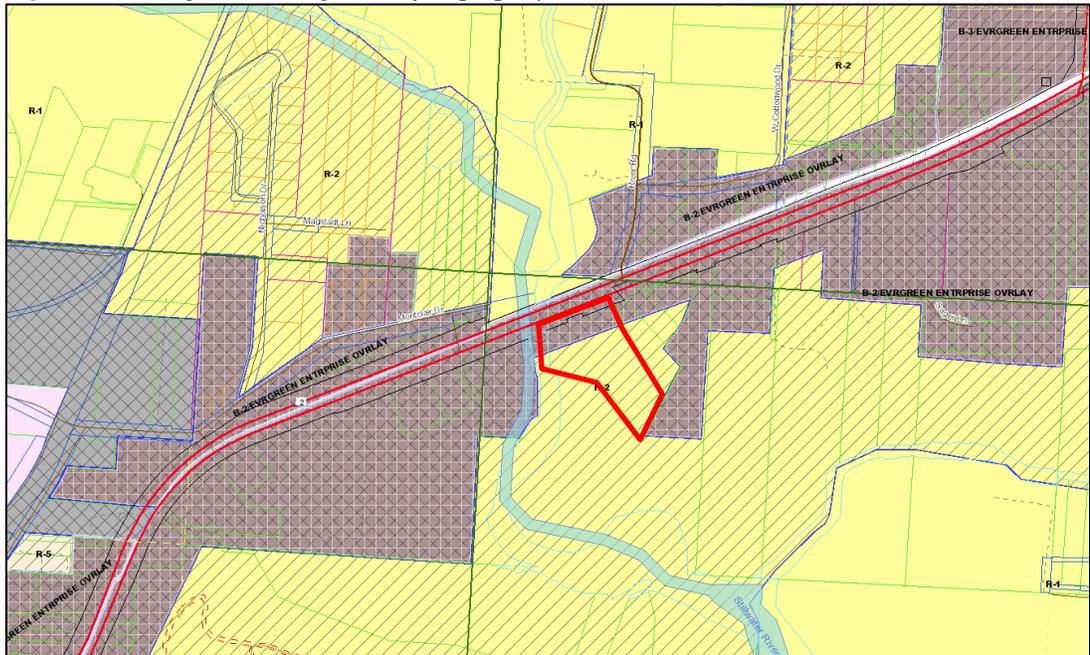
The Evergreen Enterprise Overlay is defined as, “An interim zoning district to temporarily overlay all existing B-2 General Business or B-3 Community Business zoning along the Evergreen commercial corridor with one additional use.”

The property currently contains a building located on the portion of the property zoned ‘B-2/Evergreen Enterprise Overlay.’ The building is currently used for ‘Automobile (new and used) and accessory sales’ and as an ‘Automobile repair shop.’ The southeast side of the property zoned R-2, contains a pond with trees around the edge of the pond.

**D. Adjacent Land Use(s) and Zoning**

All of the surrounding properties are zoned B-2 General Business/Evergreen Enterprise overlay, R-2 and R-1 (see Figure 2 below). The primary uses in the area are businesses, such as new and used car sales, restaurants, retail sales, auto repair shops and open space.

**Figure 2:** Zoning surrounding the subject property (outlined in red)



**E. Summary of Request**

The applicant is proposing to have multiple principal uses on the subject property and principally confined to the portion of the lot zoned B-2/Evergreen Enterprise Overlay. Section 3.03.020(3) FCZR states, “*Except as otherwise specified in these regulations, only one principal use shall be allowed per tract of record in the following zones: AG-80, AG-40, AG-20, SAG-10, SAG-5, R-2.5, R-1 through R-5, RA-1, and B-1. Multiple uses may be allowed on single lots in other zoning districts upon the issuance of a Conditional Use Permit.*” And Section 3.03.030, “*District boundaries shall generally take into consideration property boundaries as platted and not divide a platted lot, parcel, or tract of land into two or more use districts. If, however, a property is divided into two use districts, the property may be utilized in conformance with one zoning designation or the other as long as the use is principally confined to that portion of the property that is zoned for the chosen use.*” Therefore the applicant is requesting a conditional use permit for multiple principal uses and the uses will be primarily confined to the portion of the property zoned ‘B-2/ Evergreen Enterprise Overlay.’

**F. Compliance With Public Notice Requirements**

Notification was mailed to property owners within 150 feet of the subject property on November 13, 2015, pursuant to Section 2.06.040(3) of the Flathead County Zoning Regulations. Legal notice of the public hearing on this application will be published in the November 15, 2015 edition of the Daily Interlake.

**G. Agency Referrals**

Referrals were sent to the following agencies on October 20, 2015:

- Bonneville Power Administration
- City of Kalispell Planning Department
- Evergreen Water and Sewer District

- Evergreen Fire Department
- Flathead City-County Health Department
- Flathead County Solid Waste (FCSW)
- Flathead County Weeds and Parks Department
- Montana Department of Natural Resources & Conservation
- Montana Fish, Wildlife and Parks

### **III. COMMENTS RECEIVED**

#### **A. Public Comments**

No written public comments have been received to date regarding the conditional use permit request. It is anticipated any individual wishing to provide public comment on the proposal will do so during the public hearing scheduled for December 1, 2015. Any written comments received following the completion of this report will be provided to the Board and summarized during the public hearing.

#### **B. Agency Comments**

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Evergreen Water and Sewer District
  - Comment: “we have no concerns about this. The buildings on this property are currently connected to water and sewer.” Email dated October 22, 2015.
- Montana Fish, Wildlife and Parks
  - Comment: “Montana Fish Wildlife & Parks has no comment with regard to the Flathead Valley Holding, LLC.” Letter received October 30, 2015.
- Bonneville Power Administration
  - Comment: “Bonneville Power Administration (BPA) received your notice pertaining to the FCU-15-10 Flathead Valley Holding, LLC application. BPA has no objection to the proposed action.” Email dated October 23, 2015.
- Flathead City-County Health Department – Environmental Health
  - Comment: “If additional facilities are proposed to be constructed, this parcel is subject to review under the Sanitation in Subdivisions Act (Title 76.4.1). When the most recent survey was submitted, COS 19583, an exemption (ARM 17.36.605.2.c.i,ii,iii,iv) was claimed for the parcel: ‘(2) The reviewing authority may exclude the following parcels created by divisions of land from review under Title 76, chapter 4, part 1, MCA, unless the exclusion is used to evade the provisions of that part:... (c) a parcel that will be affected by a proposed boundary line adjustment, if the parcel has existing facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal that were not subject to review, and have not been reviewed, under Title 76, chapter 4, part 1, MCA, and if: (i) no facilities, other than those in existence prior to the boundary line adjustment, or those that were previously approved as replacements for the existing facilities, will be constructed on the parcel; (ii) existing facilities on the parcel complied with state and local laws and regulations, including permit requirements, which were applicable at the time of installation; and (iii) the local health officer determines that existing facilities are adequate

for the existing use. As a condition of the exemption, the local health officer may require evidence that: (A) existing septic tanks have been pumped within the previous three years; (B) the parcel includes acreage or features sufficient to accommodate a replacement drainfield; (C) existing wells are adequate for the proposed uses; and (D) adequate storm drainage and solid waste disposal are provided. Therefore if additional structures/facilities are constructed, the parcel becomes subject to review under Title 76.4.1 Sanitation in Subdivisions Act.” Letter dated November 2, 2015.

- Flathead City-County Health Department
  - Comment: “We have no objections.” Email dated October 23, 2015.

#### **IV. CRITERIA REQUIRED FOR CONSIDERATION**

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations, what follows are criteria required for consideration of a Conditional Use Permit and suggested findings of fact based on review of each criterion.

##### **A. Site Suitability**

###### **i. Adequate Usable Space**

The subject property is approximately 159,865.2 square feet. The existing building is approximately 11,700 square feet, which covers 7.3% of the lot. The B-2 zone does not have a maximum permitted lot coverage and the applicant is not proposing any additional buildings as part of this request.

The building does not appear to meet the front setback requirements of the B-2 zone. However, according to property records the structure was originally constructed in 1972 and the Willow Glen Zoning District was adopted on July 27, 1987. Therefore the structure would be considered non-conforming. As there are no plans at this time for new construction, there appears to be adequate useable space to accommodate the proposed uses in compliance with the applicable bulk and dimensional requirements of the B-2 zone.

**Finding #1** – The subject property appears to contain adequate usable space because the total area of the lot is approximately 159,865.2 square feet, the building covers approximately 7.3% of the lot, the B-2 zone does not have a maximum permitted lot coverage and the building is legally non-conforming.

###### **ii. Adequate Access**

The subject property is located on U.S. Highway 2 with direct access onto the highway. Highway 2 at the location of the property is a paved four lane road with a center median, making the primary access right-in/right-out. The property appears to have two existing approaches which would continue to provide ingress and egress. The property has well over 100 feet of frontage so it would be permitted to have two accesses according to Section 6.16.020(1) FCZR. However the access for the proposed new use will be required to be approved by the Montana Department of Transportation, as applicable, with the issuance of an approach permit.

**Figure 3:** U.S. Highway 2 at the subject property



**Finding #2** – There is adequate access for the proposed use because the property has two paved approaches with adequate sight distance to safely enter and exit the property from U.S. Highway 2 and the new use will be required to be approved by MDT for a new approach permit, as applicable.

**iii. Absence of Environmental Constraints**

The majority of the subject property is located on FEMA FIRM panel 30029C 1810H, in a shaded Zone X, which is classified as an area determined to be inside the 500-year floodplain. A portion on the west side of the property is currently located within a Zone AE, which is classified as special flood hazard areas subject to inundation by the 1% annual chance flood with a base flood elevation determined. The property is located in the recent FEMA detailed study area and a portion of the property was removed from the Zone AE, specifically the west side of the existing building.

The rear of the property is mapped as wetlands by the National Wetland Inventory. The building is located on the top of a hill with a pond in the rear of the lot at the base of the hill. The pond appears to encompass the area mapped as wetlands. It is anticipated that the floodplain and wetlands will not be impacted by this proposal because the applicant is not proposing to construct any new buildings or structures at this time.

**Finding #3** – The use appears to have no environmental constraints because the existing building is not located in a designated floodplain or wetlands and the applicant is not proposing to construct any new buildings.

**B. Appropriateness of Design**

**i. Parking Scheme**

The existing parking area is currently paved with approximately 33 parking spaces demarcated. Section 6.09.010 of the Flathead County Zoning Regulations requires that retail or personal service stores have 1 parking space per every 300 feet of gross floor area. The retail sales portion of the building is

approximately 2,705 square feet and the shop is approximately 9,022 square feet. The applicant would be required to provide approximately 9 parking spaces for retail sales. The vehicle sales and automobile repair on the subject property will likely generate a need for additional parking spaces; however the Flathead County Zoning Regulations do not specifically address parking requirements for those uses. The site plan shows 33 parking spaces 24 more than is required for retail sales and service. Based on staff's site visit to the subject property, there appears to be adequate space for the parking required.

**ii. Traffic Circulation**

The site is accessed from U.S. Highway 2, which is a four lane paved U.S. highway with a raised center median. The property has sufficient area to facilitate safe parking and traffic circulation. Appendix A of the FCZR requires a 24 foot traffic aisle will be for two-way traffic with 90 degree parking. The property has traffic aisles approximately 25 feet wide. The proposed parking area appears large enough to accommodate the number of spaces required and the placement of used automobiles for sale, while affording adequate and compliant internal traffic circulation.

**Finding #4** – The proposed parking scheme and traffic circulation appears to be appropriately designed because the parking and driving lanes where storage units open up are a minimum of 25 feet in width, 33 parking spaces currently exists and only 9 spaces are required.

**iii. Open Space**

The subject property is approximately 159,865.2 square feet. The existing building is approximately 11,700 square feet, which covers 7.3% of the lot. The B-2 zone does not have a maximum permitted lot coverage. The applicant is not proposing any additional buildings as part of this request. Approximately 92.7% of the lot will remain open space. The proposed open space appears to be adequate to support the proposed and existing uses.

**iv. Fencing/Screening**

The application states, "There is no fencing or screening on the property." The applicant is not proposing to install any fencing or screening, and fencing and screening is not required. Any fencing or screening built in the future would be required to meet the standards set forth in Section 5.04 FCZR.

**v. Landscaping**

No landscaping has been proposed by the applicant as part of this conditional use permit. The area surrounding the subject property is currently zoned B-2 except the rear portion of the same lot which is zoned R-2 therefore there are no landscaping requirements.

**vi. Signage**

The applicant states, "Signage would be or is consistent with regulations for existing Flathead County zoning requirements." Any future signage would be required to comply with the applicable standards for signs set forth in Section 5.11040(4) FCZR.

**vii. Lighting**

The application states, “All lighting would be the same as always no further lighting would be needed. Lighting used was installed in past for this use.” All future lighting must comply with performance standards set forth in Section 5.12 FCZR.

**Finding #5** – The proposed use appears to be appropriately designed to meet open space, fencing, screening, landscaping, signage and lighting requirements because 92.7% of the property will remain open, the applicant is not proposing any additional lighting, signage, landscaping, fencing or screening nor is any required for a business zone.

**C. Availability of Public Services and Facilities**

**i. Sewer**

The subject property is located within the Evergreen Water and Sewer District. It is anticipated the property will be served by the public sewer district. Comment received from the Evergreen Water and Sewer District states, “[...] we have no concerns about this. The buildings on this property are currently connected to our water and sewer.” The proposed use does not appear to impact the availability of the Evergreen Water and Sewer District to provide services to the property. The applicant is not proposing any additional facilities and therefore would not be required to be reviewed under the Sanitation in Subdivision Act.

**ii. Water**

The subject property is located within the Evergreen Water and Sewer District. It is anticipated the property will be served by the water district. Comment received from the Evergreen Water and Sewer District states, “[...] we have no concerns about this. The buildings on this property are currently connected to our water and sewer.” The proposed use does not appear to impact the availability of the Evergreen Water and Sewer District to provide services to the property. The applicant is not proposing any additional facilities and therefore would not be required to be reviewed under the Sanitation in Subdivision Act.

**iii. Storm Water Drainage**

The application is not proposing construction of any new buildings as part of this proposal and will utilize the existing building and parking lot for the proposed multiple principal uses. The applicant shall be subject to compliance with applicable storm water management requirements of the Montana Department of Environmental Quality and may require re-review by the Flathead County Environmental Health Department.

**Finding #6** – The proposed use is expected to minimally impact public water services, sewer services and storm drainage because water sewer service is available from the Evergreen Water and Sewer District, the building is currently served by water and sewer and the applicant is not proposing any new construction.

**iv. Fire Protection**

The subject property is located in the Evergreen Fire District and would be serviced by the Evergreen Fire Department. The nearest station within the Evergreen Fire District is located 1.6 miles to the northeast of the subject property on U.S. Highway 2. Due to the proximity to the fire station, it is anticipated response times in the event of an emergency would not be unreasonable.

**v. Police Protection**

The property would be served by the Flathead County Sheriff's Department. Quick response times are possible given the property's proximity to an urban, developed area of the County.

**vi. Streets**

The subject property is located on U.S. Highway 2 with direct access onto the highway. U.S. Highway 2 at the location of the property is a paved four lane road with a center median, making the primary access right-in/right-out.

**Finding #7** – The proposed multiple principal uses appear to have minimal impact on public services and facilities because the Evergreen Fire District and Flathead County Sheriff currently provide service to the subject property, the property is located 1.6 miles from the nearest fire station and the property is accessed by U.S. Highway 2.

**D. Immediate Neighborhood Impact**

**i. Excessive Traffic Generation**

The subject property is located on U.S. Highway 2 with direct access onto the highway. U.S. Highway 2 at the location of the property is a paved four lane road with a center median, making the primary access right-in/right-out. The application states, "No additional impacts from that which has historically occurred at this location."

Staff utilizes the 5<sup>th</sup> Edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual to provide traffic counts for the proposed land uses. The most applicable land uses listed in the ITE are Specialty Retail Center and Automobile Care Center. Specialty Retail Center is defined as, "Specialty retail centers are generally small strip shopping centers containing a variety of retail shops, specializing in quality apparel, hard goods, services such as real estate offices, dance studios, or florists, and small restaurants." According to the 5<sup>th</sup> Edition the average Saturday vehicle trip ends for Specialty Retail Center is approximately 42.04 per 1,000 square feet. The retail sales portion of the building is approximately 2,705 square feet square feet, therefore the estimated average vehicle trips per day is 114.

The ITE defines Automobile Care Center as, "An automobile care center houses numerous tenants providing automobile related service [...]." According to the 5<sup>th</sup> Edition the average Saturday vehicle trip ends for Automobile Care Center is approximately 15.86 per 1,000 square feet. The shop is approximately 9,022 square feet square feet, therefore the estimated average vehicle trips per day is

143. The proposed multiple principal uses would generate an estimated 257 vehicle trips total and 114 vehicle trips per day over the existing traffic.

U.S. Highway 2 west of the Stillwater River Bridge has approximately 27,800 average daily trips based on MDT's 2014 Montana Traffic Flow Map. The proposed multiple principal uses have the potential to generate an additional 114 average daily trips, which would contribute to an increase of average daily trips by 0.4%. It is anticipated that because U.S. Highway 2 is state maintained highway it would be capable of handling the increased traffic.

**Finding #8** – Additional vehicle traffic associated with the proposed use is not anticipated to generate excessive traffic which would adversely impact the immediate neighborhood or adjacent roads because the property is accessed via U.S. Highway 2 which has an average daily traffic count of approximately 27,800 and the proposed use could contribute to a 0.4% increase in traffic on the highway.

**ii. Noise or Vibration**

It is not anticipated the proposed multiple principal uses would generate any excess noise or vibrations. Automobile sales and automobile repair will produce audible noise and vibration during business hours and it is not anticipated that the noise will have any impact on the surrounding neighborhood given the nature of the area.

**iii. Dust, Glare or Heat**

U.S. Highway 2 and the existing parking and access area is currently paved, and therefore the proposed use will not generate substantial dust. It is not anticipated that the proposed use would create inappropriate heat. The automobile sales may create minimal glare from the windshields of vehicles for sale, however along the highway there are existing car dealerships and large parking lots so it appears that any glare created will not be out of character with the neighborhood.

**iv. Smoke, Fumes, Gas, or Odors**

No smoke, fumes, gas or other odors are anticipated to be generated by the proposed use other than those typical of a commercial business.

**Finding #9** – The proposed use is anticipated to have minimal immediate neighborhood impacts because automobile sales and services, automobile repair and retail sales and services will not produce excessive noise, vibration, dust, glare, heat, smoke, fumes, gas or odors that are out of character of the existing neighborhood.

**v. Inappropriate Hours of Operation**

The application states that the proposed business hours will be conducted during normal business hours. There are no specific standards for hours of operation for multiple uses are established in the Flathead County Zoning Regulations. However because of the commercial character of the area late hours will likely not impact neighboring businesses.

**Finding #10** – The proposed hours of operation would be acceptable and would likely have minimal impact on the neighborhood because activity levels associated with normal operation of the multiple uses would primarily occur during regular business hours and the properties adjacent to the subject property are predominantly commercial.

**V. SUMMARY OF FINDINGS**

1. The subject property appears to contain adequate usable space because the total area of the lot is approximately 159,865.2 square feet, the building covers approximately 7.3% of the lot, the B-2 zone does not have a maximum permitted lot coverage and the building is legally non-conforming.
2. There is adequate access for the proposed use because the property has two paved approaches with adequate sight distance to safely enter and exit the property from U.S. Highway 2 and the new use will be required to be approved by MDT for a new approach permit, as applicable.
3. The use appears to have no environmental constraints because the existing building is not located in a designated floodplain or wetlands and the applicant is not proposing to construct any new buildings.
4. The proposed parking scheme and traffic circulation appears to be appropriately designed because the parking and driving lanes where storage units open up are a minimum of 25 feet in width, 33 parking spaces currently exists and only 9 spaces are required.
5. The proposed use appears to be appropriately designed to meet open space, fencing, screening, landscaping, signage and lighting requirements because 92.7% of the property will remain open, the applicant is not proposing any additional lighting, signage, landscaping, fencing or screening nor is any required for a business zone.
6. The proposed use is expected to minimally impact public water services, sewer services and storm drainage because water sewer service is available from the Evergreen Water and Sewer District, the building is currently served by water and sewer and the applicant is not proposing any new construction.
7. The proposed multiple principal uses appear to have minimal impact on public services and facilities because the Evergreen Fire District and Flathead County Sheriff currently provide service to the subject property, the property is located 1.6 miles from the nearest fire station and the property is accessed by U.S. Highway 2.
8. Additional vehicle traffic associated with the proposed use is not anticipated to generate excessive traffic which would adversely impact the immediate neighborhood or adjacent roads because the property is accessed via U.S. Highway 2 which has an average daily traffic count of approximately 27,800 and the proposed use could contribute to a 0.4% increase in traffic on the highway.
9. The proposed use is anticipated to have minimal immediate neighborhood impacts because automobile sales and services, automobile repair and retail sales and services will not produce excessive noise, vibration, dust, glare, heat, smoke, fumes, gas or odors that are out of character of the existing neighborhood.

10. The proposed hours of operation would be acceptable and would likely have minimal impact on the neighborhood because activity levels associated with normal operation of the multiple uses would primarily occur during regular business hours and the properties adjacent to the subject property are predominantly commercial.

## **VI. CONCLUSION**

Upon review of this application, the request to allow for a multiple principal uses on a single lot to allow retail sales in addition to the existing automobile sales and services on the subject property is generally supported by the review criteria and the Findings of Fact listed above. Should the Flathead County Board of Adjustment choose to adopt staff report FCU-15-10 as Findings of Fact and approve the conditional use permit, the following conditions would ensure compliance with the review criteria and appropriate measures to mitigate impacts:

## **VII. CONDITIONS**

1. The operation of the ‘Multiple Principal Uses’ on the subject property shall be in substantial conformance with the application materials and site plan as submitted and approved by the Board of Adjustment and modified by the conditions below [FCZR Section 2.06.010].
2. Changes or modifications to the approved use or the site plan shall not be affected unless specifically approved in writing by the Flathead County Board of Adjustment [FCZR Section(s) 2.06.010 and 2.06.020].
3. The approved use shall conform to the applicable standards of the B-2 General Business zoning district [FCZR Section 3.17].
4. A minimum of 9 standard vehicle parking spaces attributable to the existing use and all other spaces for the used cars sales shall be clearly established and demarcated on the subject property, pinned down curb-stops and not within adjacent highway right-of-way to accommodate customer and employee parking, in accordance with applicable zoning regulations [FCZR Sections 6.01.010, 6.01.030, Appendix A].
5. The proposed use shall be re-reviewed by the Montana Department of Transportation in order to obtain an updated approach permit applicable to multiple principal uses. A copy of the approved permit shall be available upon request by Flathead County Planning and Zoning.
6. All signage on the subject property shall comply with all applicable standards and guidelines set forth under Section 5.11 of the Flathead County Zoning Regulations, and the excess old sign shall be removed.
7. All lighting on the subject property shall adhere to the performance standards set forth in Section 5.12 of the Flathead County Zoning Regulations, with exterior lighting specifically being side-shielded in a manner that the light source is not directly visible as viewed from a horizontal plane at or above the source’s elevation above the ground.
8. The operation of the multiple uses shall commence within one year from the date of issuance of the conditional use permit. The permit may be extended for one additional year if the permittee requests additional time prior to expiration date.

9. At the end of twelve (12) months from the date of authorization of this permit staff will inspect to verify compliance [FZCR Section 2.06.060].

Planner: EKM