

STAFF REPORT

Planning & Zoning Commission: February 12, 2007

APPLICANT: BMA (Bosnian Member Association) **FILE NUMBER:** SE-07-01

PURPOSE: Special Exception Use Permit for a Cemetery

GENERAL

LOCATION: East side of Cherokee Road, approximately 3000' North of Alamo Road

LEGAL

DESCRIPTION: A portion of Section 16, Township 21 South, Range 20 East, Hernando County, FL

FILE STATUS: All requirements necessary to conduct the public hearing have been satisfied.

Citizen correspondence received as of the date of this report? Yes No

STAFF FINDINGS:

Surrounding Zoning

Surrounding Land Uses

North: AG

Single Family

South: AG

Undeveloped

East: A/R-2

Undeveloped

West: AG

Single Family

SUMMARY OF REQUEST

The petitioner requests a Special Exception Use Permit for a Cemetery.

FACTUAL INFORMATION

1. The property is zoned AG/(Agricultural).
2. The subject property contains approximately 5.2 acres.
3. The subject property is vacant unimproved land.
4. The site may contain specimen or majestic trees.
5. The site has access from Cherokee Road.

6. The subject property is located in the Rural Land Use Category on the adopted Future Land Use Map.
7. The on-site soil type is Candler Fine Sand. Candler Fine Sand provides a habitat suitable for gopher tortoises. Since there is the potential for this listed species of special concern to be present, a Florida Fish and Wildlife Conservation Commission permit may be required prior to site alterations.
8. The property is located in flood zone X.
9. The subject property contains no wetlands, Special Protection Areas (SPA) or Wellhead Protection Areas (WHPA) according to County data resources.
10. The Utilities Department has indicated that central water and sewer is available to serve the subject property.
11. There are adequate public facilities available to serve limited uses on the subject property.
12. The surrounding area is characterized by vacant unimproved property, mobile homes, and agricultural uses.

STAFF DISCUSSION

The petitioner is requesting a Special Exception Use Permit for a Cemetery on a vacant unimproved parcel encompassing approximately 5.2 acres. A cemetery, with appropriate performance conditions, is a permitted special exception use in any zoning district. The subject property is located on the east side of Cherokee Road, approximately 3000' feet north of Alamo Road. The property is zoned AG (Agriculture) and is located in the Rural Future Land Use Category on the adopted Future Land Use Map. The surrounding parcels consist of low intensity uses ranging from mobile homes to vacant unimproved land.

The petitioner has indicated in the narrative that the cemetery would be privately owned and used by the Bosnian Member Association. In addition, the narrative states that no plans have been made to hire employees, establish a parking lot, or enclose the property with a fence. A parking area in the grass adjacent to Cherokee Road has been proposed.

The petitioner should meet the following setback regulations for any structures, such as mausoleums or above ground crypts in the AG (Agriculture) zoning district: 75' in the front, 35' on the side, and 50' feet in the rear. In addition, the subject property should be enclosed by a 6' high fence and should provide a 25' native vegetation buffer in conformance with the Community Appearance Ordinance along the perimeter of the subject property. No development or graves would be allowed within the 25' native vegetation buffer.

In addition, a paved parking area would not be in character with the rural nature of the area. It is recommended that the Planning and Zoning Commission approve the use of an unpaved, stabilized parking area within the 75' setback adjacent to Cherokee Road. The petitioner will be required to provide at least one paved handicap space.

All signage for the cemetery shall be in conformance with the Hernando County sign ordinance.

The County Engineer has reviewed the petitioner's request and has stated that the petitioner shall be required to participate in a Municipal Service Benefit Unit (MSBU) when Cherokee Road is scheduled for paving. Additionally, no parking will be allowed in the right-of-way.

The County Transportation Planning Coordinator had no objections to the proposed special exception use.

Soils and vegetation in this area are typical of gopher tortoise habitat. Since there is the potential for this listed Species of Special Concern to be present, the site should be inspected prior to construction. If gopher tortoises or any other listed species are present, this will give the property owner and/or the owner's representative a chance to examine all available options before construction begins. They should be advised to contact the Florida Fish and Wildlife Conservation Commission to discuss available options. Due to the species' protected status, the destruction of their burrows constitutes taking under the law except as authorized by a specific permit.

FINDINGS OF FACT

The subject property is located within the Rural Land Use Category as identified on the adopted Future Land Use Map. Potential uses in the rural land use category include farms, ranches, agri-industrial uses, agricultural commercial, farm worker housing, residential uses, neighborhood commercial uses, recreation, and public and semi-public uses.

A Special Exception Use Permit is an additional use which may be granted by the P&Z in accordance with the Land Development Regulations. As part of the review, the P&Z must determine that the tract of land is suitable for the type of special exception use proposed by virtue of its location, shape, topography and the nature of the surrounding development. The P&Z has the ability to assign reasonable conditions to the approval and may prescribe reasonable time limits for the special exception use permit.

A Special Exception Use Permit is a use which is appropriate in a zoning district if safeguards are imposed but which would impair the integrity and character of the district in which it is located, or in adjoining districts, unless restrictions or conditions on location, size, extent and character of development are imposed in addition to those imposed by the ordinance.

The petitioner's request is consistent with the following policies of the Hernando County Comprehensive Plan:

Policy 1.01B(1): Establish a Rural Land Use Category on the Future Land Use Map within which agricultural activities can be retained and expanded. Potential uses include farms, ranches, agri-industrial uses, agricultural commercial, farm worker housing, residential uses, neighborhood commercial uses, recreation, and public and semi-public uses.

Policy 1.01B(6): Allow new development within the Rural Land Use Category which is compatible with the level of public service provided. The County will not provide water, sewer, transportation, or other infrastructure to support urban development in the Rural Land Use Category so that urban development can be directed to those areas which are planned to receive such services.

The Special Exception request is appropriate based on the following conclusions:

1. The proposed special exception use would be consistent with the Comprehensive Plan and the County LDRs, with the appropriate performance conditions.
2. The proposed cemetery would not adversely impact the intensity of existing surrounding land uses.

The special exception process is a land use determination and does not constitute a permit for either construction on, or use of, the property, or a Certificate of Concurrency. Prior to use of, or construction on, the property, the petitioner must receive approval from the appropriate County department(s) for the proposed use.

The granting of this land use determination does not protect the owner from civil liability for recorded deed restrictions which may exceed any county land use ordinances. Homeowners associations or architectural review committees require submission of plans for review and approval. The applicant for this land use request should contact the local association or the Public Records for all restrictions applicable to this property.

STAFF RECOMMENDATION:

The Planning Staff recommends the Planning and Zoning Commission adopt the petitioner's request for a Special Exception Use Permit for a Cemetery, with the following performance conditions:

1. The petitioner must obtain all permits from Hernando County and meet all applicable land development regulations, for either construction or use of the property, and complete all applicable development review processes.

2. The subject property shall be enclosed by a 6' high fence.
3. A 25' native vegetation buffer in conformance with the Community Appearance Ordinance shall be maintained along the perimeter of the subject property. No development or graves shall be allowed within the 25' buffer.
4. The petitioner should provide an unpaved, stabilized parking area, and shall meet County standards for the provision of one (1) paved handicap parking space.
5. The petitioner shall be required to participate in a Municipal Service Benefit Unit (MSBU) when Cherokee Road is scheduled for paving.
6. The petitioner shall comply with all regulations and requirements governed by Chapter 497 of the Florida Statutes, entitled "Funerals, Cemetery, and Consumer Services".
7. All landscaping and buffering on the subject property shall be maintained in perpetuity by the Bosnian Member Association, heirs or other appropriate entities.