

Board of County Commissioners

Agenda Request

Date of Meeting: May 16, 2016

Date Submitted: April 29, 2016

To: Honorable Chairman and Members of the Board

From: David Edwards, County Administrator
Somerset Strickland, Planning and Community Development Director

Subject: Appeal to the Board of Adjustment BOA16-01
Anna Batten-Lange, Appellant

Statement of Issue:

This agenda item involves an appeal to the Board, sitting as the Board of Adjustment, of a decision of the Planning Commission approving Conditional Use CU16-02, to allow for the operation of a cemetery at an existing church. Appellant Anna Batten-Lange is a neighboring property owner who objects to the Planning Commission's granting of the Conditional Use on various grounds.

Background:

The subject Application for a Conditional Use was considered by the Planning Commission at a public meeting that occurred on March 14, 2016. The Subject Property currently contains 6.0+/- acres, of which 1.7+/- acres was proposed for use as a cemetery. Currently, the site contains an existing church and is located at 1255 Rehwinkel Road, located on the northeast side of the intersection and Coastal Highway (Attachment 1).

Prior to the hearing before the Planning Commission, the Planning Department received one phone call from a resident opposing the cemetery and a petition submitted by the Applicant, New Testament Bible Church, signed by residents stating their support of his proposal (Attachment 2). The Application was also reviewed by the Technical Review Committee on February 11, 2016. Planning staff determined that all items required to constitute a complete application were submitted by Applicant, and the item was placed on the agenda for consideration by the Planning Commission at its March 14, 2016, public meeting. Planning staff recommended approval of the Conditional Use, subject to the condition that a landscape hedge be installed along the south and west boundary of the cemetery prior to burial activities being conducted (Attachment 3).

At the hearing before the Planning Commission, one citizen, Appellant Anna Batten-Lange, spoke in opposition to the Application for Conditional Use. Additionally, the agent for Applicant, Charles Creech, spoke in favor of the Application. Concerns expressed by Appellant during the hearing primarily addressed potential adverse impacts to water quality, the possibility of sinkhole activity,

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flooding, traffic on the surrounding roads, and noise levels in the surrounding residential community. After receiving testimony and discussion by the Commissioners, the Planning Commission voted on a motion to approve the Application, with the condition that a landscape hedge be installed along the south and west boundary of the cemetery prior to burial activities being conducted. The motion passed by a vote of 3-2 (Attachment 4).

Subsequently, this Appeal was filed by Appellant Batten-Lange on April 13, 2016. The Appeal was received within the 30 day timeframe prescribed by the Land Development Code (Attachment 5).

Analysis:

Comprehensive Plan: The Future Land Use Map (FLUM) designation for the Subject Property is Agriculture. The Agriculture land use designation allows some non-residential uses that do not exceed a floor-area ratio (FAR) of 0.05.

Land Development Code: The current zoning district for the Subject Property is AG (Agriculture), which allows cemeteries as a Conditional Use.

A Conditional Use is defined in Chapter 2 of the Land Development Code as “a use that would not be appropriate generally or without restriction throughout the particular zoning district or classification in which it is to be located, but which if controlled as to number, area, location or relation to the neighborhood, would not adversely affect the public health, safety, comfort, good order, appearance, convenience, morals and general welfare. Conditional uses may only be permitted in the zoning districts or classifications specifically provided for in Chapter 5 and only under the standards and regulations contained therein.”

Additionally, section 3-21 of the Land Development Code provides that “[t]he planning commission shall grant no conditional use hereunder unless it finds that such use will not adversely affect the public interest.”

Site Conditions: The Subject Property is located in FEMA flood zone designations “X”, and “A”. Zone “X” is an area of minimal flooding, and usually does not require flood insurance by mortgage lenders. Zone “A” is an area of the 100-year flood plain. New structures and substantially improved structures are required to meet specific elevation requirements and flood insurance is typically required by mortgage lenders for structures located in the “A” flood zone. There do not appear to be any prohibitions or regulations concerning the operation of a cemetery on property with the above-described flood zone designations.

Currently, there is a church on the subject property. Staff conducted a site visit on March 3, 2016 and April 29, 2016 (Attachment 6).

Adjacent Parcels:

	Zoning	Future Land Use Designation	Existing Use
Subject Property	AG	AG	Church
North	AG	AG	Single-Family Residential
South	AG	AG & Rural 1	Timberland
East	AG	AG	Single-Family Residential
West	RR1 & PUD	AG & Rural 2	Vacant Residential & Pastureland

(Attachment 7)

Compatibility: The current Agriculture zoning district is compatible with the Comprehensive Plan's Future Land Use Map designation of Agriculture. The proposed use is generally consistent with the current use of the Subject Property.

Public Notification: This request has been noticed and advertised in accordance with the provisions of the Wakulla County Land Development Code. The Planning Department also posted signage on the Subject Property indicating the Application of Appeal to the Board of Adjustments. In response to the Appeal to the Board of Adjustments BOA 16-01, the Planning Department has received a response from the Applicant for Conditional Use CU16-02, regarding the Appeal to the Board of Adjustments BOA16-01, subject of the current Agenda Request (Attachment 8).

The advertisement for this public hearing appeared in the Wakulla News on May 5, 2016 (Attachment 9).

Additional Issues: Pursuant to Section 3-21 of the Land Development Code, a site plan must accompany all conditional use requests. One Application for Site Plan was previously submitted in conjunction with the original approval for the Subject Property to be used as a church in 1994.

More recently, an Application for Site Plan was submitted in conjunction with the Application for Conditional Use CU16-02, which is the subject of the current Appeal (Attachment 10). The Site Plan was approved by the Planning and Community Development Director on April 14, 2016.

At the state level, section 497.260(a), F.S., exempts religious institution cemeteries of less than 5 acres which provide only single-level ground burial, from virtually all of the statutory requirements in chapter 497 (concerning regulation of cemeteries) and all rules adopted pursuant to same.

Standard of Review: The Board of Adjustment’s review should be limited to the record before it now, which was created at the initial hearing before the Planning Commission. The Board should review the record before it and determine: (1) whether the decision of the Planning Commission was supported by competent substantial evidence; and (2) whether the Planning Commission correctly applied the relevant provisions of the County Code in reaching their decision.

This standard of review takes into consideration the relevant provisions of the Land Development Code in addition to case law. Specifically, section 3-23 of the Land Development Code provides:

“In exercising the powers granted by these regulations, the [board of adjustments], by the concurring vote of a majority of the membership of the board, may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as should be made; and to that end shall have all the power of the official from whom the appeal is taken. However, the board may not issue any order that contravenes the provisions of this Code. Rulings of the board of adjustment shall become effective ten days after they are rendered.”

The Code also provides that, at the appeal hearing before the Board of Adjustment, “any party may appear in person, by agent or attorney.” However, the Code does not explicitly provide that the Board of Adjustments may receive new or additional evidence not presented at the initial hearing before the Planning Commission. Case law dealing with similar circumstances has established that while a county may by ordinance permit the introduction of new or additional evidence on appeal, in the absence of such a provision, the scope of an appeal is limited. As stated by the court in *Board of County Comm'rs v. Lowas*, 348 So. 2d 13, 17 (Fla. 3d DCA 1977): “The word "appeal" has a special meaning: it means to review the actions of a lower court or tribunal or agency. It is a plea to a higher supervisory body to reverse, alter, or modify a decision by a subordinate agency upon the record as made before that agency; generally, upon the proposition that the initial determination was not in accordance with law or regulations and/or that the decision was arrived at through bias or prejudice or that the decision of the subordinate agency was not supported by substantial competent evidence....”

As applied to the matter at hand, the Board should review the record before it and determine: (1) whether the decision of the Planning Commission was supported by competent substantial evidence; and (2) whether the Planning Commission correctly applied the relevant provisions of the County Code in reaching their decision.

Options:

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1. Conduct the Public Hearing and vote to overturn the Planning Commission's approval of the Conditional Use for a cemetery, denying CU16-02, based upon the findings of fact and conclusions of law made by the Board and any evidence submitted at the Hearing hereon.
2. Conduct the Public Hearing and vote to uphold the Planning Commission's approval of CU16-02, the Conditional Use for a cemetery, based upon the findings of fact and conclusions of law made by the Board and any evidence submitted at the Hearing hereon.
3. Board Direction.

Recommendation:

Option 2.

Attachment(s):

1. Location Map
2. Petition from Adjacent property owners
3. Planning Commission Agenda Request and Related Attachments
4. March 14, 2016 Planning Commission Minutes
5. BOA16-01 Application and Letter from Applicant
6. Site Photos
7. Zoning Map
8. Response from Applicant for CU16-02
9. Advertisement
10. Site Plan