



Development Services

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MEMORANDUM

TO: Cochise County Board of Supervisors
FROM: Matthew Taylor, AICP, Planner II
FOR: Sharon Gilman, County Administrator
THROUGH: Christine McLachlan, AICP, Planning Division Manager
SUBJECT: SUA25-01; Appeal of a Planning and Zoning Commission Decision
DATE: February 25, 2025

I. APPEAL OF PLANNING AND ZONING COMMISSION DECISION

The appellant, Michael Clement, filed an appeal against a decision made by the Cochise County Planning and Zoning Commission. On January 8, 2025, the Commission failed to approve *Docket SU24-19*, a Special Use Authorization request for two guest lodging units at 163 N. Cherokee Trail near Benson (District 3). The property totals about 4 acres and is zoned RU-4 (Rural District, one dwelling per 4 acres). Guest lodging requires special use approval in rural zoning districts per Section 2.15.070 of the Zoning Regulations.

The Board of Supervisors hears appeals at duly noticed public hearings of Special Use Authorization decisions made by the Planning and Zoning Commission. Following deliberations the Board shall either **affirm**, **reverse**, or **modify** the decision of the Planning and Zoning Commission.

II. PLANNING AND ZONING COMMISSION PUBLIC HEARING

Because of their unique characteristics and potential to impact surrounding properties, special uses may be authorized only if potentially negative offsite impacts are absent or can be mitigated. The Zoning Regulations include ten special use factors representing policy decisions and are intended to reduce uncertainty concerning the potential impacts of the use. The factors focus on how a proposed land use can impact neighboring properties and residents, including increased traffic, demand on services and infrastructure, and potentially negative offsite impacts such as dust, smoke, noise, odors, lighting, or stormwater runoff. In this case, some dissenting Commissioners believed the special use request would allow too many living units on a parcel zoned for one dwelling. The meeting video is available at <https://youtu.be/PbSnm10YrdI?si=4poWaxCmnMejDr2Z> (*SU24-19 begins at 1:11*).

Staff findings utilizing the ten (10) factors identified in the Zoning Regulations to evaluate special use requests are as follows:

Factors in Favor of Special Use Approval

1. Complies with all eight (8) applicable factors.

Factors Not in Favor of Special Use Approval

1. Proposed density of one dwelling per acre.
2. Opposition from nearby property owners.

In addition to factors related to compliance with applicable plans and regulations, traffic impacts, and adequate services/ infrastructure, the Zoning Regulations identifies public input as a factor to evaluate special uses:

Section 2.48.160.4.g: *If there is major public opposition to a proposed Special Use Authorization request, this may indicate that the technical evaluation regarding the compatibility of the use does not concur with the view of local residents, and a recommendation of denial may be appropriate. If public concerns have been raised, it is fair to ask if the Applicant has made a reasonable effort to address these concerns through the Citizen Review Process. If there is major public support for a proposed use, this may be a factor in favor of the request.*

Staff notified 30 unique property owners within 500' of the project parcels and received three (3) property owner responses in opposition to the project (one property owner within the notification area and two outside the notification area – all responses from property owners on Tequila Trail). No one attending in person or remotely spoke in favor or in opposition during the public hearing. After considering all facts during the public hearing, the Commission voted against a motion to approve by a vote of 3 to 4, resulting in the denial of the special use request for two guest lodging units (*see table below*).

Commissioner Vote on Docket SU24-19	
Aye	Gonzalez, Martzke, Watkins
Nay	DePew, Fickett, Limbach, Montgomery

III. APPEAL REQUIREMENTS

The appellant submitted an appeal application on January 14, 2025, that meets minimum submittal requirements. Per Section 2.48.160.4 of the Zoning Regulations, appeal applications must include the following:

- An identification of the decision being appealed.
- A complete statement of all reasons why the appellant believes that the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion; and
- Written presentation of additional testimony and evidence, a full explanation of the additional testimony and evidence that will be submitted, with an explanation of why this was not presented to the Planning Commission.

IV. APPELLANT SUBMITTAL AND STAFF ANALYSIS

The application identifies the decision being appealed and provides additional information that was not discussed during the public hearing. The rationale for why the appellant believes the Commission's failure to approve the special use was in error is summarized below:

- Staff recommended conditional approval for two guest lodging units, finding compliance with all eight (8) applicable factors.
- Structures proposed for conversion to guest units are already in place, making the property's density and character established.
- Dissenting votes based on density are unreasonable.
- "Same as other" rationale for two nay votes.

Per the appeal application, the appellant will offer the following for Board consideration:

- A presentation with images of the property that more accurately reflect current property conditions, invalidating staff and Commission identification of density as a factor against the special use.
- Favorable public comment solicited by Mr. Clement, demonstrating not all parties aware of his special use request are in opposition.
- The applicant is willing to compromise, accepting Board modification of his request by reducing the number of allowed guest units to one (1). Reducing the number of guest units to gain Commission approval was not discussed during the public hearing.

V. STAFF FINDINGS

The applicant and staff met notification requirements for *Docket SU24-19 (Cherokee Trail Guest Lodging)* as required by the Zoning Regulations. Additionally, planning staff advertised the January 8, 2025, Planning and Zoning Commission regular meeting, ensuring the general public had timely notice and both physical and remote access to the meeting. Lastly, the Commission Chair followed procedural requirements for each scheduled public hearing on January 8th, allowing time for staff presentations, applicant statements, public comments, applicant rebuttals, and Commission discussion.

Staff completed the notification process for the appeal between January 24th and February 5th, 2025, and the process is identical to that of the original special use, including the 500' notification list of 30 unique property owners. Public input information will be provided to the Board at the public hearing on February 25, 2025.

Based on the January 8, 2025, public hearing of *Docket SU24-19* and January 14, 2025, appeal application, staff finds the following factors for this appeal:

Factors in Favor of the Appeal

1. Appellant met application submittal requirements.
2. Staff recommended conditional approval of *Docket SU24-19 (Cherokee Trail Guest Lodging)*.

Factors Not in Favor of the Appeal

1. The Zoning Regulations authorize the Planning and Zoning Commission to render Special Use Authorization decisions.
2. The Commission considered special use factors contained in the Zoning Regulations.

VI. ATTACHMENTS

- Staff Memo for *Docket SU24-19*
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Sample Motions

Mister Chair, I move to **approve** Docket SUA25-01, reversing the Planning and Zoning Commission's decision and approving Docket SU24-19 with conditions recommended by Staff.

Mister Chair, I move to **deny** Docket SUA25-01, affirming the Planning and Zoning Commission's disapproval of Docket SU24-19.

Mister Chair, I move to **modify** the Planning and Zoning Commission's decision and allow one guest unit with the following conditions:

1. Quiet hours shall be observed by paying guests from 10pm to 6am.
 2. Street and head-in parking along Tequila Trail are prohibited.
 3. Within 30 days of approval of the Special Use, the applicant shall provide the County a signed Acceptance of Conditions form and a Waiver of Claims form arising from ARS Section 12-1134. Prior to the operation of the Special Use, the applicant shall apply for a building/use permit for the project within 12 months of approval. The building/use permit shall include a site plan in substantial conformance with the approved special use concept plan, the completed Special Use permit questionnaire and application, and appropriate fees. A permit must be issued within 12 months of the Special Use approval. Otherwise, the Special Use may be deemed void upon 30-day notification to the applicant.
 4. It is the applicant's responsibility to obtain any additional permits or meet any additional Conditions that may apply to the proposed use pursuant to other federal, state, or local laws or regulations.
 5. Any changes to the approved Special Use will be considered a Modification to this Special Use and will require review and approval of the Planning and Zoning Commission.
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MEMORANDUM

TO: Cochise County Planning and Zoning Commission
FROM: Matthew Taylor, AICP, Planner II
FOR: Christine McLachlan, AICP, Planning Division Manager
SUBJECT: SU24-19 (Cherokee Trail Guest Lodging)
DATE: January 8, 2025

Docket SU24-19 (Cherokee Trail Guest Lodging)

A Special Use Authorization request for two guest lodging units available to family members and the public. The property has an existing 2,280 square foot single family residence and approval for a 336 square foot accessory dwelling unit.

I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING USES

Applicant: Michael Clement
Location: 163 N. Cherokee Trail
APN: 124-06-004B
Parcel Size: 4 acres
Zoning: RU-4 (Rural District, one dwelling per 4 acres)
Plan Designation: Rural
Growth Area: D – Rural Areas
Existing Use: Residential with Approved Accessory Living Quarters
Proposed Use: Residential with two guest lodging units

Surrounding Zoning and Uses

North	RU-4	Single Family Residential
South	RU-4	Single Family Residential
East	RU-4	Single Family Residential
West	R-36, MH-72	Single Family Residential

II. SITE HISTORY

- 2017-2018: Opt-out permit for single family residence and storage building, septic permit, floodplain use permit, temporary use permit
- 2024: Building and septic permits (#BP24-000936, #SEP24-000228), Accessory Living Quarters application (#ALQ24-11)
- No active code compliance actions

III. SPECIAL USE AUTHORIZATION REQUEST

The applicant requests special use approval for two guest lodging units utilizing existing structures (shed, garage) for use by family members and paying guests.

IV. ANALYSIS OF IMPACTS – COMPLIANCE WITH SPECIAL USE FACTORS

Section 2.48.160 of the Zoning Regulations identifies ten (10) factors to evaluate Special Use applications. These factors determine the suitability of a special use request, whether to recommend approval, and to determine if conditions and/or modifications are needed to mitigate potentially negative impacts on surrounding properties. With the information provided, eight (8) factors apply to this special use request with all applicable factors complying:

1. Compliance with Duly Adopted Plans: Complies

The subject property is designated Rural by the Comprehensive Plan. The applicant is not requesting a rezone or Comprehensive Plan amendment, preserving existing land use designations and zoning category. Adjacent properties are characterized by low density residential development on parcels of 4 acres to the north, east, and west, with higher residential densities to the west.

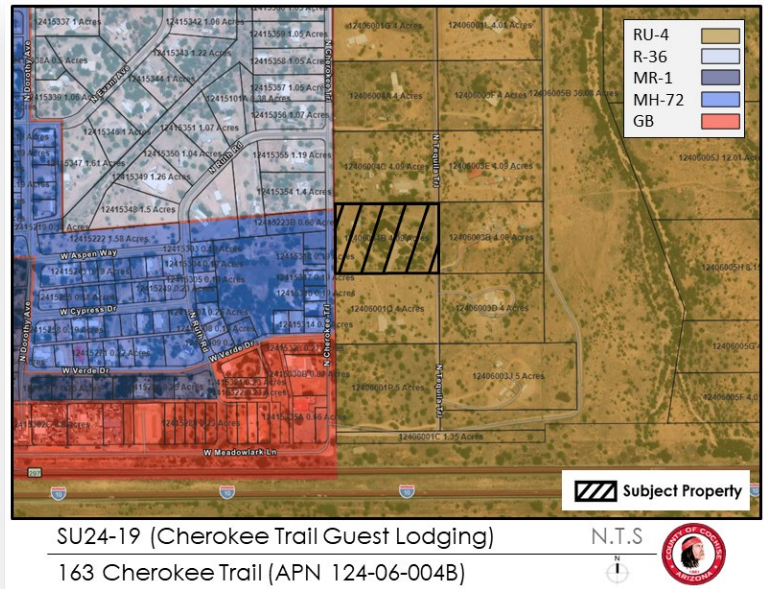
2. Compliance with the Zoning District Purpose: Complies

Rural districts allow non-residential activities that provide services provided they serve local needs, provide recreation support services, or are compatible with rural living. These zoning districts, which range in site area from 2 acres to 36 acres, allow residential and non-residential uses compatible with an area’s rural character. Guest lodging is authorized in rural district with special use authorization approval by the Planning and Zoning Commission.

The subject property is currently used for residential use with a principal dwelling and approved accessory living quarter. If the special use is approved, two guest lodging units will be established using existing detached accessory structures. This property is located near Interstate 10 and J Six Ranch Road and is adjacent to Mescal Lakes Unit #1, which has lots averaging one acre, and nearby Unit #3, which has lots less than ½ acre. The zoning regulations defer to the Comprehensive Plan’s description of rural land use to describe the character of this land use designation (low rates of growth, large lot development, agricultural production, large tracts of public/private lands). While the Plan designates the area east of Cherokee Trail as rural, its proximity to platted subdivisions with smaller lots sizes suggests increased residential density is appropriate.

3. Development Along Major Streets: Not Applicable

The intent of this factor is to consider limiting the number of access points on major thoroughfares, arterials, or collectors by using frontage roads, shared access, and no access easements. Incorporating such measures promotes fewer road cuts to avoid potentially unsafe traffic conflicts, hazardous traffic congestion, and roadway obstruction caused by traffic.



The property has primary access from Cherokee Trail, a Rural Local road maintained by the county. Secondary access is from Tequila Trail, an unimproved local road not maintained by the county. The applicant proposes a new driveway along Tequila Trail which will not require a right-of-way (ROW) permit. Additional traffic generated by guests is unlikely to result in unusual congestion or circulation conflicts.

4. Traffic Circulation: Complies

This Special Use Authorization factor stipulates:

1. The request is consistent with the preservation of the functions of surrounding streets as defined in the County Comprehensive Plan.
2. The request does not result in the use of any residential street for non-residential traffic.
3. Consideration of future circulation needs in the surrounding area has been considered through right-of-way dedication and off-site improvements if warranted.

If approved, two guest units will not cause traffic increases warranting reclassification of Cherokee Trail (rural local road) or other likely access roads such as Meadowlark Lane or Rice Road, which are both collector roads also maintained by the county. The applicant should encourage visitors to use Meadowlark to Tequila Trail, as this is the most direct route from Mescal Road and having the least potential to negatively impact nearby residents. A special use modification reviewed by staff and/or the Commission will be required to add more guest units.

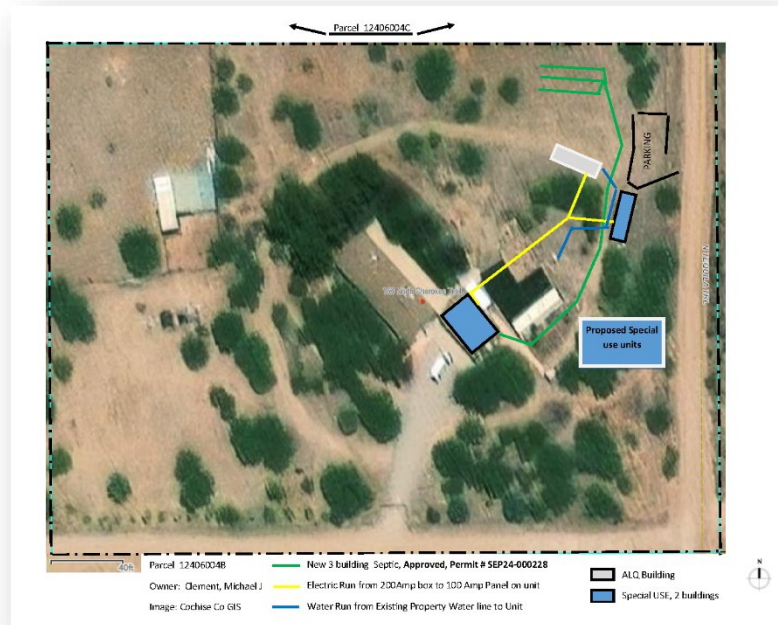
5. Adequate Services and Infrastructure: Complies

The property is served by Mescal Lakes Water System (Hearthstone Water) and Sulphur Springs Valley Electric Cooperative (SSVEC) service areas while the site is served by private septic systems. Fire protection is provided by Mescal-J6 Fire District. An expansion of existing services or infrastructure is not necessary if the special use is approved by the Commission.

6. Significant Site Development Standards: Complies

Applicable development standards identified in Section 2.15 (*RU Districts*) apply to this property, including building setbacks, structure height, and site coverage as well as floodplain and stormwater mitigation standards.

7. Public Input: Complies



Section 2.48.160 of the Zoning Regulations states, "If public concerns have been raised, it is fair to ask if the applicant has made a reasonable effort to address these concerns through the Citizen Review Process." The applicant sent letters to property owners within 500' on September 25, 2024, receiving and responding to one neighbor response expressing concerns about potentially unruly guests.

8. Hazardous Materials: Not Applicable

Hazardous or dangerous materials are not proposed for this special use.

9. Off-Site Impacts: Complies with Conditions

This factor is intended to ensure adequate measures have been taken to mitigate off-site impacts such as dust, smoke, noise, odors, outdoor lighting, and traffic. See also

Section 6 (Significant Site Development Standards):

- **Parking:** Two parking spaces are required for each guest unit. The property is located in Growth Area D which does not require internal driveway improvements.
- **Noise:** Outdoor activities generating significant noise are not proposed by the applicant. However, Staff recommends quiet hours (10pm to 6am) to preserve rural character and to limit possible noise impacts on nearby residents.
- **Lighting and Signs:** Outdoor lighting is regulated by Section 2.45 of the zoning regulations which governs overall brightness and requires shielded fixtures. These standards apply to both residential and non-residential properties. The applicant is not proposing signs (signs are subject to Section 2.54 of the zoning regulations, maximum area 32 square feet, maximum height 6 feet).
- **Landscaping:** Landscaping is not required for properties located in Growth Area D. The property is 4 acres with some mature vegetation which can reduce the visual impact of additional dwellings.
- **Odors:** Odors are unlikely since the applicant is not providing outdoor recreational or common areas for guests.
- **Traffic:** The applicant proposes direct access from Tequila Trail, an unimproved local road. Two guest units are unlikely to create traffic issues, but staff recommends the applicant encourage guests to utilize Meadowlark Lane to access Tequila Trail, bypassing the Mescal Lakes neighborhood to the west.

10. Water Conservation: Complies

County water conservation requirements apply to non-residential uses and properties, potentially including this project. Section 2.51.170 of the zoning regulations requires water saving strategies and applicable water conservation regulations and policies identified in the zoning regulations and comprehensive plan will be identified at permitting.



V. PUBLIC COMMENT

Staff published legal notice, mailed notification letters to property owners within 500', and posted the property December 6-18, 2024.

VI. WAIVERS

None.

VII. SUMMARY AND CONCLUSION

The applicant requests special use authorization approval for two guest lodging units on a 4-acre parcel in addition to an existing single family dwelling and approved accessory living quarter. The site has adequate services to support the residential units, including water and vehicular access. Potential impacts on adjacent properties are similar to those of any residential property, and the applicant is not proposing any outdoor common areas or amenities. Staff recommends conditions to limit potential impacts relative to noise and traffic.

**Factors in Favor of Approval**

1. Complies with eight (8) of eight (8) applicable factors.
2. No opposition from nearby property owners.

Factors Against Approval

3. Proposed density increase to one dwelling per acre in Comprehensive Plan designated rural area.

VIII. RECOMMENDATION

Based on the factors in favor of approval, staff recommends approval of Docket SU24-20 to allow two guest lodging units subject to the following conditions*:

1. Quiet hours shall be observed by paying guests from 10pm to 6am.
2. Street and head-in parking along Tequila Trail are prohibited.

**Standard conditions related to condition acceptance, permitting timeframes, and special use modifications apply and have not been modified by this request.*

Sample Motion

Madam Chair, I move to approve Docket SU24-19 to allow two guest lodging units with conditions recommended by staff, the factors in favor of approval constituting the findings of fact.