

RESOLUTION NO. 2023 - 92

WHEREAS, Hernando County has adopted zoning regulations pursuant to Section 125.01(1) and Chapter 163, Florida Statutes, which authorize the County to regulate the use of land in the unincorporated areas of Hernando County, Florida, and take action on the request herein; and,

WHEREAS, the Hernando County Board of County Commissioners (BOCC) conducted a duly advertised public hearing on December 13, 2022, to consider the requested changes in zoning on the specified parcels in Hernando County, Florida, as more fully described below.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, FLORIDA, AS FOLLOWS:

APPLICANT: A & I Land Association, LLC

FILE NUMBER: H-22-23

GENERAL

LOCATION: South side of Cortez Boulevard, approximately 1,000' east of Frisco Road

PARCEL KEY

NUMBER: 387450 (the "Subject Property")

REQUEST:

The Applicant is requesting a rezoning from AG (Agricultural) to C-4 (Heavy Highway Commercial) in order to allow for a truck service establishment to accommodate commercial truck parking only. The representations contained in the Applicant's evidentiary submission as well as all other documentary evidence entered into the public hearing record are incorporated herein by reference and made a part hereof and are relied upon by the County to be true and correct. For purposes herein, it is presumed that all notice and advertising requirements have been satisfied.

FINDINGS

OF FACT:

ALL of the facts and conditions set forth in the County's staff memoranda and presented to the BOCC in connection with the public hearing in this matter are incorporated herein by reference and made a material part of this Resolution as integral to the BOCC's action. The BOCC finds that the testimony and record supporting the DENIAL of the request to be credible and to constitute competent substantial evidence. In further support thereof, the BOCC makes the following specific findings of fact:

1. The Subject Property is currently zoned Agricultural with agricultural zoned property to the west, south, and east as well as agricultural-residential zoned property to the southeast. Residential zoned property is to the north of the Subject Property across from Cortez Boulevard.
2. The Subject Property is in the residential future land use category.

3. The area surrounding the Subject Property is low density residential and agricultural development.
4. While the Applicant initially requested rezoning to the Euclidean C-4 zoning district, County staff recommended conversion of the Applicant's request to rezoning as a Planned Development Project (Heavy Highway Commercial) ("PDP(HHC)") pursuant to Appendix A, Article VIII, Section 2 of the Hernando County Code of Ordinances ("Code"); however, the BOCC denied the rezoning as a whole, which made conversion of the Applicant's rezoning to planned development district moot.
5. The BOCC finds that the Applicant's proposed use, a truck service establishment to accommodate commercial truck parking, is a commercial use that is not compatible with the adjacent residential zoned property. This proposed commercial use is inherently incompatible with the adjacent residential and agricultural zoned properties. The application is not compatible with the surrounding residential area due to the intensity of the proposed commercial use.

**CONCLUSIONS
OF LAW:**

The BOCC is authorized to act on this matter pursuant to Chapters 125 and 163, Florida Statutes. Accordingly, based on the entire record and based upon competent substantial evidence, the BOCC makes the following specific conclusions of law:

1. Rule 1.04A(3) of the 2040 Hernando County Comprehensive Plan (the "Comprehensive Plan") provides that the Residential Category "accommodates residential growth clustered in and around urbanized areas and those areas that maximize the efficient use of infrastructure contained in long-range facilities plans of the County."
2. In the Residential Category, "[c]ertain commercial uses may be allowed subject to the locational criteria and performance standards of this Plan." Objective 1.04B, Comprehensive Plan.
3. Moreover, "[c]ommercial and institutional uses within the Residential Category are generally associated with medium and high density residential development and may include neighborhood commercial, office professional, recreational, schools, and hospitals. Minor public facilities that do not unduly disturb the peaceful enjoyment of residential uses may also be allowed." Strategy 1.04B(1), Comprehensive Plan.
4. The Applicant's proposed use is inconsistent with the Residential Category because the parking of commercial vehicles is not "generally associated with medium and high density residential development . . ." Objective 1.04B(1), Comprehensive Plan. The Applicant is seeking to add a high-density use in the middle of low intensity residential and agricultural uses. Such proposed commercial use is inconsistent with the Residential Category in the Comprehensive Plan.

5. Objective 1.10A of the Comprehensive Plan requires the County to “promulgate and maintain land development regulations . . .” to implement the Comprehensive Plan.
6. Incompatibility of different individual land uses are implemented through the application of the land development regulations in the Code. Strategy 1.10A(3), Comprehensive Plan.
7. The planned development process “shall be used for those land uses proposed in close proximity to incompatible uses where minimum standards will not sufficiently mitigate the potential land use conflict, such as residential developments near . . . commercial . . . areas.” Strategy 1.10A(4), Comprehensive Plan.
8. Further, Strategy 1.10B(3) of the Comprehensive Plan seeks to “[p]rotect existing and future residential areas from encroachment of incompatible uses that are destructive to the character and integrity of the surrounding residential area.”
9. By definition, the C-4 Heavy Highway Commercial District is incompatible with residential or rural zoning districts by its separation from those zoning districts in the Code. *See* Strategy 1.10A(3), Comprehensive Plan; *see Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 392-95 (1926) (explaining how separating incompatible uses in a general scheme of zoning is constitutional). The Applicant’s proposed commercial use is inherently incompatible with residential or rural zoning districts. *See Village of Euclid*, 272 U.S. at 395 (“Aside from considerations of economic administration, in the matter of police and fire protection, street paving, etc., any business establishment is likely to be a genuine nuisance in a neighborhood of residences. Places of business are noisy; they are apt to be disturbing at night; some of them are malodorous; some are unsightly; some are apt to breed rats, mice, roaches, flies, ants, etc.”) (internal citations omitted); *accord Grefkowicz v. Metro Dade Cnty.*, 389 So. 2d 1041, 1042 (Fla. 3d DCA 1980). Moreover, the parking of commercial vehicles is a prohibited use in residential zoning districts because such use is inherently incompatible with residential zoning districts. *See generally* App. A, Art. III, § 3F., Code. Thus, the Applicant’s proposed use is inconsistent with Objective 1.10B(3) of the Comprehensive Plan because the Applicant’s proposed use is not compatible with the surrounding residential area.

ACTION:

After notice and public hearing, based upon the record in this matter and **ALL** of the findings of fact and conclusions of law above, the BOCC hereby **DENIES** the requested rezoning from AG (Agricultural) to C-4 (Heavy Highway Commercial).

ADOPTED IN REGULAR SESSION THE 9th DAY OF May, 2023.

**BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA**

Attest:

Hiedi Kuppe, Deputy Clerk
Douglas A. Chorvat, Jr.
Clerk of Circuit Court & Comptroller

By:

[Signature]
John Allocco
Chairman

(SEAL)



Approved as to Form and
Legal Sufficiency

By:

[Signature]