

County Commission

File Number: SE-23-07

Special Exception Use Permit for a Pigeon Aviary

Request for Relief

Mr. Crespo seeks a reasonable accommodation from the Hernando County Land Development and Zoning regulations due to a service-related disability pursuant to the federal and Florida Fair Housing Act.

Mr. Crespo has constructed a pigeon loft for use with pigeon fancying / racing on his property which is his homestead and primary residence. Engaging in pigeon racing is an essential component to his treatment plan for his PTSD.

A request for a variance is also not applicable in this circumstance.

Based on Staff's recommendation the best course is for the issuance of a special exception use.



Fair Housing Act (FHA) 42 USC CODE §3601- §3619

- The FHA limits the ability of local governments to impose zoning and land use restrictions against a person based on their handicap.
- For a claim to arise under the FHA, a person must ask for a reasonable accommodation. *Sherrer v. Miami-Dade Cnty.*, 2015 WL 4396784 at *2 (S.D. Fla. 2015).
- To access a claim for a reasonable accommodation, the reasonableness and necessity of the accommodation must be reviewed. *Shwarz v. City of Treasure Island*, 544 F. 3d 1201, 1219-30 (11th Cir. 2008).

Reasonable Accommodation

A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have equal opportunity to use and enjoy a dwelling including public and common use spaces.

A reasonable accommodation can be made before or after acquiring the assistance animal. *See Joint Statement, Q and A 12 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.*



Reasonable Accommodation Continued

- To meet the requirements of a reasonable accommodation the requesting party must show the following elements:
 - Disability
 - Reasonableness
 - Necessity

Disability Element

Does the requester have an observable disability or does the housing provider (or agent making the determination for the housing provider) already have information giving them reason to believe that the person has a disability?

Disability Element

- Evidence of a Disability may include the following:
 - i. A determination of disability from a federal, state, or local government agency.
 - ii. Receipt of disability benefits or services (Social Security Disability Income, Medicare or Supplemental Security Income for a person under age 65, veterans' disability benefits, services from a vocational rehabilitation agency, or disability benefits or services from another federal, state, or local agency)
 - iii. Eligibility for housing assistance or a housing voucher received because of disability
 - iv. Information confirming disability from a health care professional – e.g. physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse.



Service-related Disability

- Crespo is a military veteran from the United States Armed forces
- Crespo has been diagnosed with Post-Traumatic Stress Disorder (PTSD) resulting from his services in the United States military and overseas deployments.
- Crespo has sought treatment from the US Department of Veterans Affairs (VA).



Service-related Disability Continued

- Dr. David E. Cueva (“Cueva”) with the VA has treated Crespo for his PTSD symptoms.
- Though Crespo has been treated for his PTSD by the VA, that treatment has been limited.
- Cueva has confirmed that a successful treatment in addition to the treatments from the VA is Crespo’s hobby of pigeon fancying.
- Cueva has stated that Crespo’s hobby is “extremely therapeutic.”
- Cueva continues that pigeon fancying “give him a purpose, serve as motivation and inspire him to interact with other people through pigeon clubs and competitive races.”



Reasonableness Element

- “An accommodation is not reasonable if it either [1] imposes an undue financial and administrative burden on a grantee or [2] requires a fundamental alteration in the nature of the program.” *Schwarz v. City of Treasure Island*, 544 F. 3d 1201, 1220 (11th Cir. 2008).
- Whether a modification of a zoning requirement is a fundamental alteration depends on whether the requested accommodation completely defeats the purpose of the zoning requirements such that it is not reasonable in light of the surrounding property. *Id.* at 1221.

Property Location

- Located at 12483 Covent Garden Road, Weeki Wachee, FL 34613
- Parcel Key Number: 726888 and 726897
- Owned by Alejandro Crespo
- Two adjoining lots.
- Future Land Use Classification is Residential.
- Current Zoning Classification is R-1C:
 - District is designed to encourage and protect low-density, single-family development and is intended to be the district most utilized for regulating future single-family development within the county.

Property Location Continued

- Surrounding Land Uses:
 - i. North – R1-C: Single Family
 - ii. South – R1-C: Single Family
 - iii. East – R1-C: Single Family
 - iv. West – R1-C: Single Family
- Building Setbacks:
 - i. Front – 25'
 - ii. Side – 10'
 - iii. Rear – 20'
 - iv. Accessory – 5'

Comprehensive Plan Review

- The subject property is located within a Residential Land Use classification on the Hernando County Future Land Use Map. The property is composed by two (2) half-acre R1-C parcels. Mr. Crespo's request. Pigeon aviaries are permitted in Agricultural/ Residential zoning districts. But since Mr. Crespo's property is R1-C it cannot be rezoned to Agricultural citing the need for a special exception use permit.

Permitted Accessory Structure

The structure itself would be a permitted accessory structure or use under Appendix, Article V, Section 2.(C)(2).

- (2) Permitted accessory structures and uses: (a) Carport, garage or other buildings not used as a dwelling and customarily incidental to the principal use of the premises. (b) Accessory uses customarily incidental to the principal use of the premises.

The accessory structure is 31 feet long, 12 feet wide. Roof is slanted with 13 feet high at its highest point and 9 feet high at its lowest point. The square footage of 327 square feet.

The accessory structure is used as a pigeon loft.

Permitted Accessory Structure Continued

- The current aviary sits on a parcel that is roughly half an acre, but Mr. Crespo also owns an additional parcel adjacent to this parcel that brings the total property to almost one (1) acre.
- A typical competitive pigeon aviary has around 150 pigeons. Mr. Crespo's pigeon aviary houses around 127 pigeons.
- Pigeon aviaries are distinguishable from a chicken coop in several ways.
 1. Competitive Pigeons are given a specific organic food and dietary supplement designed to eliminate the spread of germs and keep pigeons in a healthy condition.
 2. Additionally, the Aviary is cleaned on a daily basis.

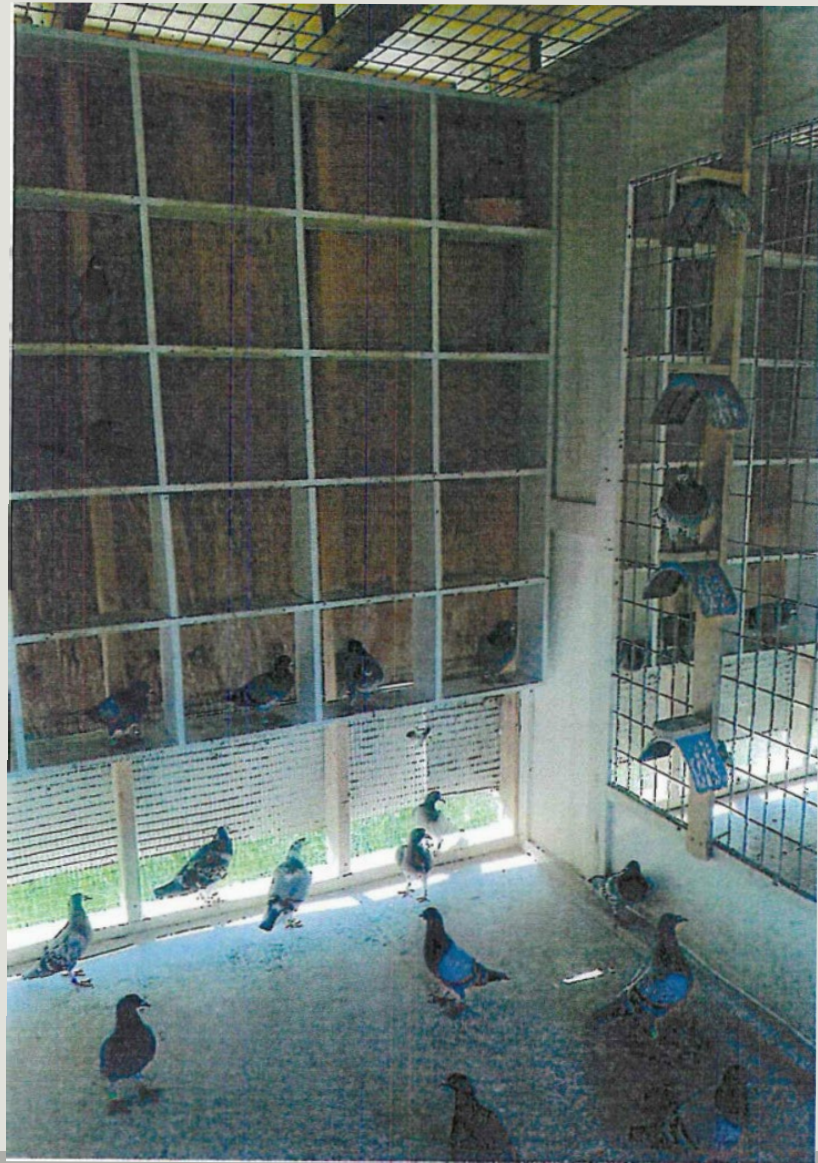














Accessory Use for Pigeon Loft

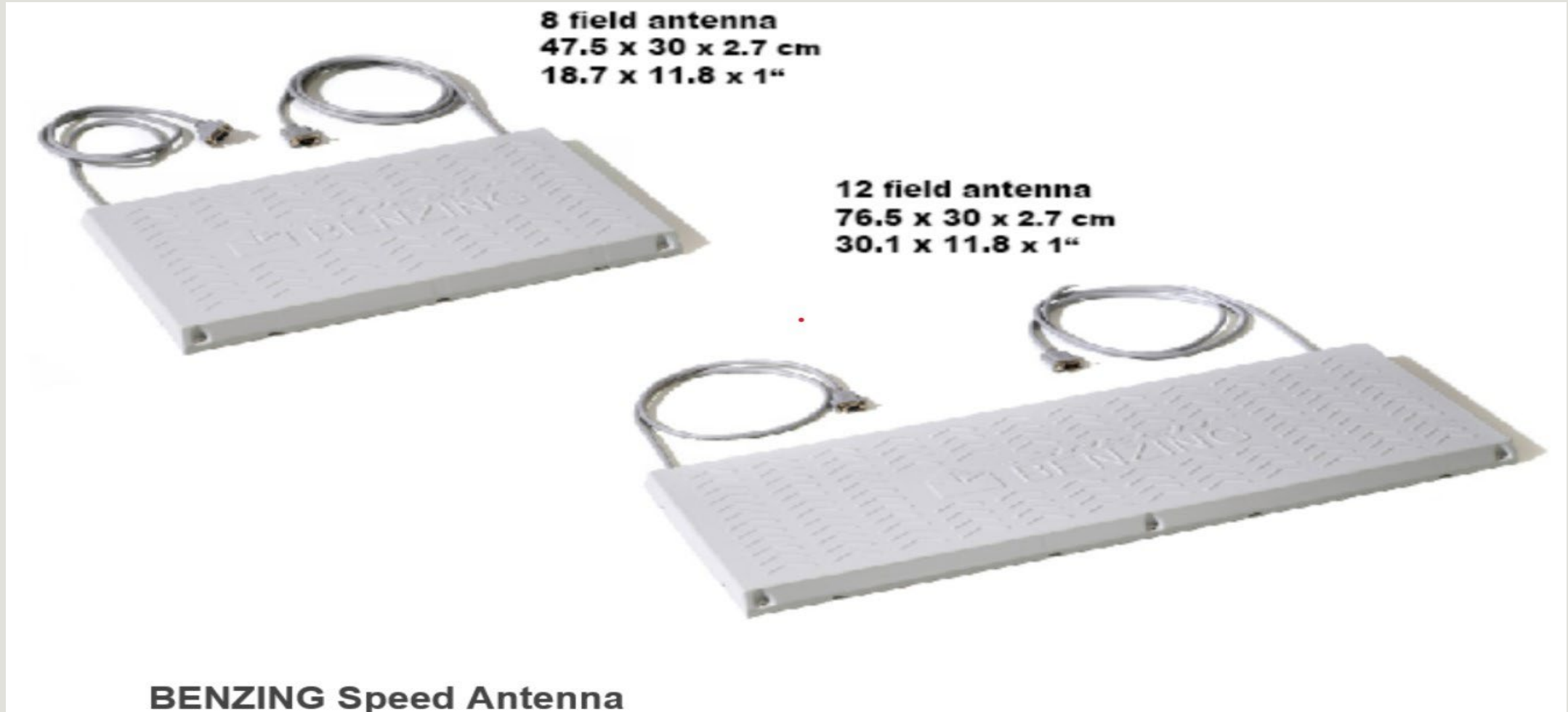
Pigeon Fancying / Racing

- Pigeon fancying or pigeon racing are a series of seasonal races that occurs between the months of July to December. These races can range from 100-120 miles to 360 miles. Depending on the type of race, the pigeons will go through two different types of training.
- Races for 360 Miles – Pigeons are allowed to fly freely for 45 minutes a day prior to the race. The Pigeons are trained to return to the loft at the same time after flying around freely.
- Race for 100-120 Miles – Pigeons are taken off-site to a location 60-70 miles away and released. The Pigeons will fly back to the pigeon loft at varying times of the day. This type of training is called “Road Training.”
- During the off-season the pigeons reside in the pigeon loft.

Related Equipment

- Antenna – Lays at the entrance point in the pigeon coop when pigeon returns to the loft. Scans the chip rings on the pigeon.
- Clock – Connected to the Antenna, it records the time of scan when the pigeons return
- Chip Rings – Placed on the foot of the pigeons and is scanned by the Antenna. Helps identify the specific bird and is color coded for the type and class of the pigeon.

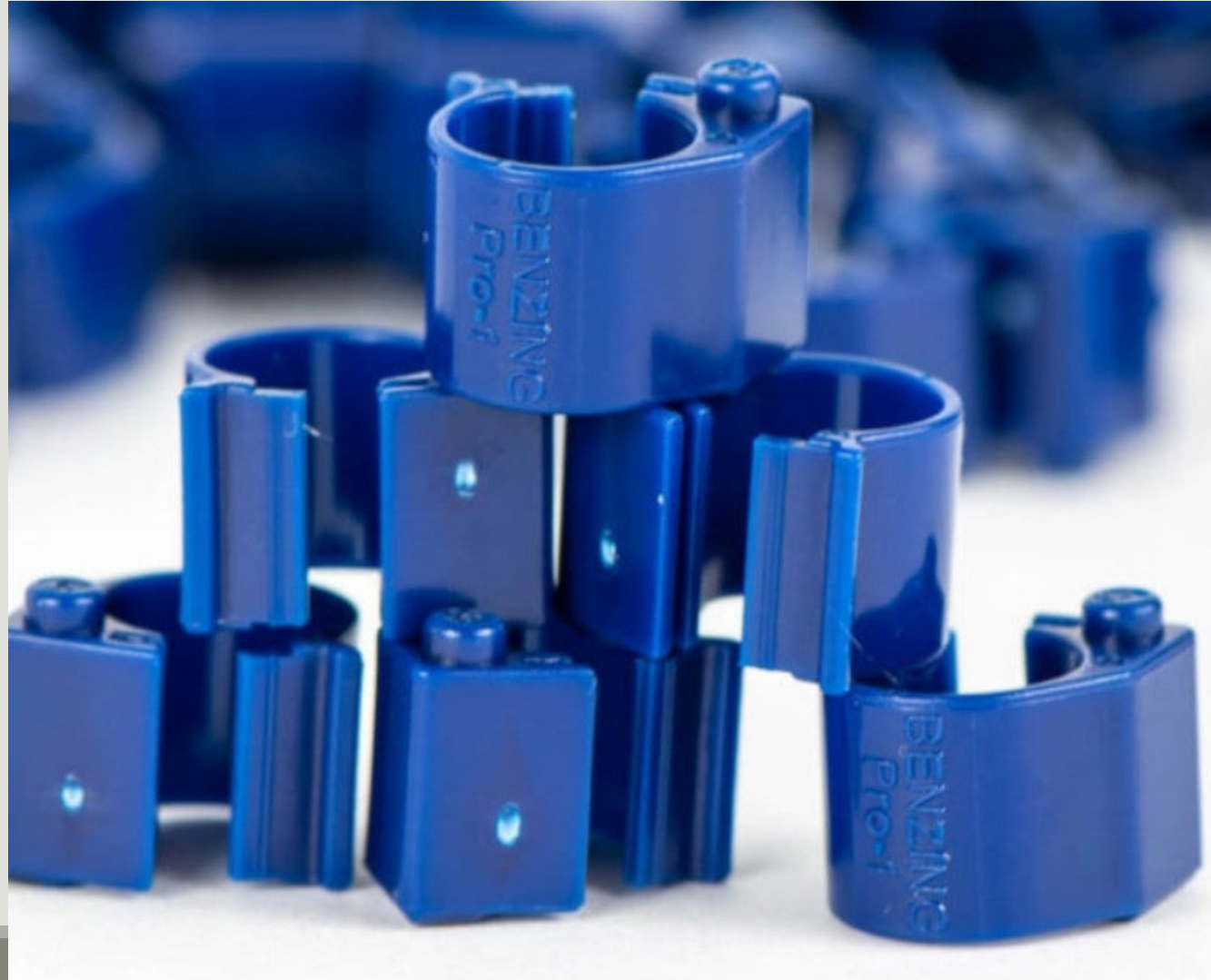
Antenna



Clocks



Chip Rings



BENZING M3

BENZING M1





Not shown on satellite but there is a Pigeon Loft here

Google Earth



shown on satellite but there is a ridge in this area

Line	Path	Polygon	Circle	3D path	3D polygon
Measure the distance between two points on the ground					
Map Length:				100 Meters	
Ground Length:				1.67	
Heading:				170.62 degree	
<input checked="" type="checkbox"/> Mouse Navigation	Save	Clear			

Always measure measuring positive



Necessity

- “An accommodation should also be granted if it is necessary to afford the disabled person an equal opportunity to use and enjoy a dwelling when compared to nondisabled people.” *Schwarz v. City of Treasure Island*, 544 F. 3d 1201, 1225 (11th Cir. 2008)
- “The Act (FHA) is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the resident *of their choice* in the community. *Id.*
- Moreover, “there must be a direct linkage between the proposed accommodation and the equal opportunity to be provided.” *Caron Foundation of Fla., Inc. v. City of Delray Beach*, 879 F. Supp. 2d 1353, 1366 (S.D. Fla. 2012)

Necessity Element Continued

- When applying this element for animal service accommodation requests it will come down to whether or not the animal is commonly kept in households.
 - If the animal is commonly kept in a household, the FHA requires that it generally be included. Examples include a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small domesticated animal that is traditionally kept.
 - If the animal is a unique animal, then the requester has to demonstrate a disability-related therapeutic need for the specific animal or the specific type of animal. This can be met by submitting documentation from a health care professional confirming the need for the animal and how the animal is therapeutic.

Necessity Element Continued

■ Examples of Unique Animals

- i. The animal is individually trained to do work or perform tasks that cannot be performed by a dog.
- ii. Information from a health care professional confirms that allergies prevent the person from using a dog (service animal under ADA) or without the animal the symptoms or effects of the person's disability will be significantly increased.
- iii. The individual seeks to keep the animal outdoors at a house with a fenced yard where the animal can be appropriately maintained.

Necessity Element Continued

- Before denying a reasonable accommodation request due to lack of information confirming an individual's disability or disability-related need for an animal, the FHA encourages the parties participate in a good-faith dialogue or "interactive process." Specific types of evidence cannot be required and disclosure of details about the diagnosis or severity of a disability or medical records or a medical examination cannot be required.

Service-Related Disability Necessity

- Mr. Crespo suffers from PTSD and several other physical ailments rendering Mr. Crespo one hundred percent (100%) service-connected disabled.
- Dr. Cueva has determined that Mr. Crespo suffers from anxiety symptoms related to his PTSD. Mr. Crespo has been under the care of VA physicians for a number of years, and traditional treatment methodologies have had limited success in enabling Mr. Crespo to live a normal and fulfilling life.
- To help treat his PTSD, Mr. Crespo has engaged in pigeon fancying. A hobby that requires him to have a daily routine, engage in the care of something other than himself, and connects with structured, focus opportunities for socialization. Pigeon fancying has proven to be extremely therapeutic for him, as a supplemental to regular care from his treating physician.

Staff Findings and Recommendations

The request for a Special Exception Use Permit for a Pigeon Aviary is appropriate based on the following conclusions:

- 1.) The proposed use is compatible with the surrounding area, is not adverse to the public interest, and is consistent with the County's adopted Comprehensive Plan with appropriate performance conditions.
- 2.) The request meets the minimum requirements for a reasonable accommodation.

We concur with Staff Findings.

Staff Recommendation

Staff recommends approval with the following conditions:

- 1.) The petitioner must obtain all permits from Hernando County and other applicable agencies 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 site shall be limited to a single pigeon aviary.
- 3.) The pigeon aviary shall be screened by an opaque fence and shall not be visible from neighboring parcels.
- 4.) The pigeon aviary shall be kept clean, and the industry's Best Management Practices shall be followed to ensure no odor leaves the subject site.
- 5.) Pigeon waste shall be disposed of in accordance with the Hernando County Health Department.
- 6.) The Special Exception shall run with the petitioner and shall not be transferable should the parcel be sold.

We concur with Staff Recommendations with an explanatory note that the height of the aviary is 9ft and slopes to 6 ft. Therefore, fence height of six feet will only obscure a substantive portion of the structure.

Denial by Planning and Zoning

Planning and Zoning Denied the application based on the following:

- “The motion I’m about to make is probably going to dump this problem back on our Board of County Commissioners. They can accept what we’ve done or deny it, and if they deny it or accept it, it may wind up in the courts. But I will make a motion that we deny this application as not being compatible with the surrounding neighborhoods, inasmuch as we have other disabled veterans in the close vicinity to that, and he’s testified that this does affect him. And it makes it very difficult for us to weigh the rights of one disabled veteran against the rights of another. And, therefore, I make a motion we deny this application.”

Denial by Planning and Zoning Continued

The County Attorney had the PNZ Commission clarify the motion as follows:

“So what you’re saying with your motion is that the request is not reasonable, based on the way that the other properties around this property are being used, including one which is also a veteran that is experience negative effects.”

“Yeah. By that person’s testimony. We have nothing before us to say that his disability I don’t want to accuse him of lying to us – but is real or unreal, to what extent he has a disability. He’s just testified and under oath. We have to leave it at that.”

This is not the legal standard on which requests for reasonable accommodation are to be determined.

Request for Relief

Crespo seeks a reasonable accommodation in the form of a deviation from the Hernando County Land Development Code Zoning regulations for an assistance animal - pigeon loft – in an R1C zoning due to a service-related disability for which the pigeon loft is a necessary means to aid in his treatment.

1. Concur with Staff Recommendations and agree to the delineated conditions.
2. The request is consistent with the Comprehensive Plan and Land Development Code.
3. Crespo has a service-connected disability for which an accommodation is necessary.
4. The requested accommodation is necessary for the treatment and management of Crespo's disability and for the equal opportunity to use and enjoy his home.
5. The requested accommodation is reasonable under the circumstances and does not require a fundamental alteration of the intent or nature of the Code, since there exists more than 10 pigeon lofts within 1 mile of Mr. Crespo's property.