RESOLUTION NO. 2023 - 91

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: Adam Webster, Wayne Karastury, and Civil-Tech Consulting, LLC o/b/o Mohamed Nazir Hamoui and Nada Hamoui, as Trustees of the N&N Family Revocable Trust dated October 12, 2022

FILE NUMBER: H-22-58

GENERAL LOCATION: Northwest corner of the intersection of Pythia Place and Linden Drive, approximately 300' north of County Line Road

PARCEL KEY NUMBER: 1180322 (the "Subject Property")

REQUEST: The Applicants are requesting to reestablish a Master Plan for a property zoned Planned Development Project (General Highway Commercial) ("PDP(GHC")) to add the specific additional C-2 zoning district use for a Mini-warehouse. 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 PDP(GHC) as part of a vested master plan from 1988, H-88-57, that allows all uses in the C-1 Commercial zoning district on the Subject Property.

2. Adjacent to the Subject Property to the north and east are residential zoned property. Adjacent to the Subject Property to the west is agricultural zoned property. Across Pythia Place to the south of the Subject Property is property zoned PDP(GHC) and Planned Development Project (Special Use) ("PDP(SU)").

3. The Subject Property is in the residential future land use category.

4. The BOCC finds that the Applicant's proposed expansion of the uses on the Subject Property to include the C-2 Highway Commercial District use as a Mini-warehouse is a more intense use that is not compatible with the adjacent residential zoned property. This proposed more intense 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 additional commercial use.

5. Numerous witnesses appeared and testified how the look of a Mini-warehouse would materially impair the natural beauty and change the residential character of the neighborhood based on the proximity of the proposed Mini-warehouse to those preexisting residential uses and the Subject Property's lack of adequate buffering.

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. Objective 1.10A of the Comprehensive Plan requires the County to "promulgate and maintain land development regulations . . ." to implement the Comprehensive Plan.

2. 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.

3. 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.

4. 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."

5. By definition, the C-2 Highway Commercial District is incompatible with residential or rural zoning districts by its separation from residential 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 Mini-warehouse use is allowed only in the more intense C-2 Highway Commercial zoning district. While the Subject property is currently commercial by virtue of its C-1 Commercial zoning, any more intense 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 and emphasis added); *accord Grefkowicz v. Metro Dade Cnty.*, 389 So. 2d 1041, 1042 (Fla. 3d DCA 1980). Thus, the Applicant's proposed use is inconsistent with Objective 1.10B(3) of the Comprehensive Plan because the Applicant's proposed more intense commercial use is not compatible with the surrounding residential area.

6. Moreover, the Applicant's proposed use is inconsistent with objective 1.10B(3) of the Comprehensive Plan because the Applicant's proposed Mini-warehouse use does not protect the existing and future residential areas from an encroachment of a more intense use that is "destructive to the character and integrity of the surrounding residential area." Not only is the proposed Mini-warehouse use incompatible with the surrounding area, there was evidence presented that the proposed Mini-warehouse use would be destructive to the character and integrity of the adjacent residential community. *See, e.g., Bd. of Cnty. Comm'rs of Pinellas Cnty. v. City of Clearwater*, 440 So. 2d 497, 499 (Fla. 2d DCA 1983).

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, **20**23.

BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA

Attest: Heidi Kunze, Deputy Clerk

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

SEAL

By: _____

John Allocco
Chairman

Approved as to Form and
Legal Sufficiency

By: _____