

Planning & Zoning Commission

File Number: SE-23-07

Special Exception Use Permit for a Pigeon Aviary

Submitted P&Z
Hearing 1/8/24

Request for Relief

Mr. Crespo has constructed a pigeon loft for use with pigeon fancying / racing on his property which is his homestead and primary residence.

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

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

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

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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).

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Reasonable Accommodation

- To meet the requirements of a reasonable accommodation the requesting party must show the following elements:
 - **Disability**
 - **Reasonableness** – “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).
 - Though a modification of a zoning requirement is a fundamental alteration the question will come down to 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.

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Reasonable Accommodation Continued

- **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)

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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).

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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.”

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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.

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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'

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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.

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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.

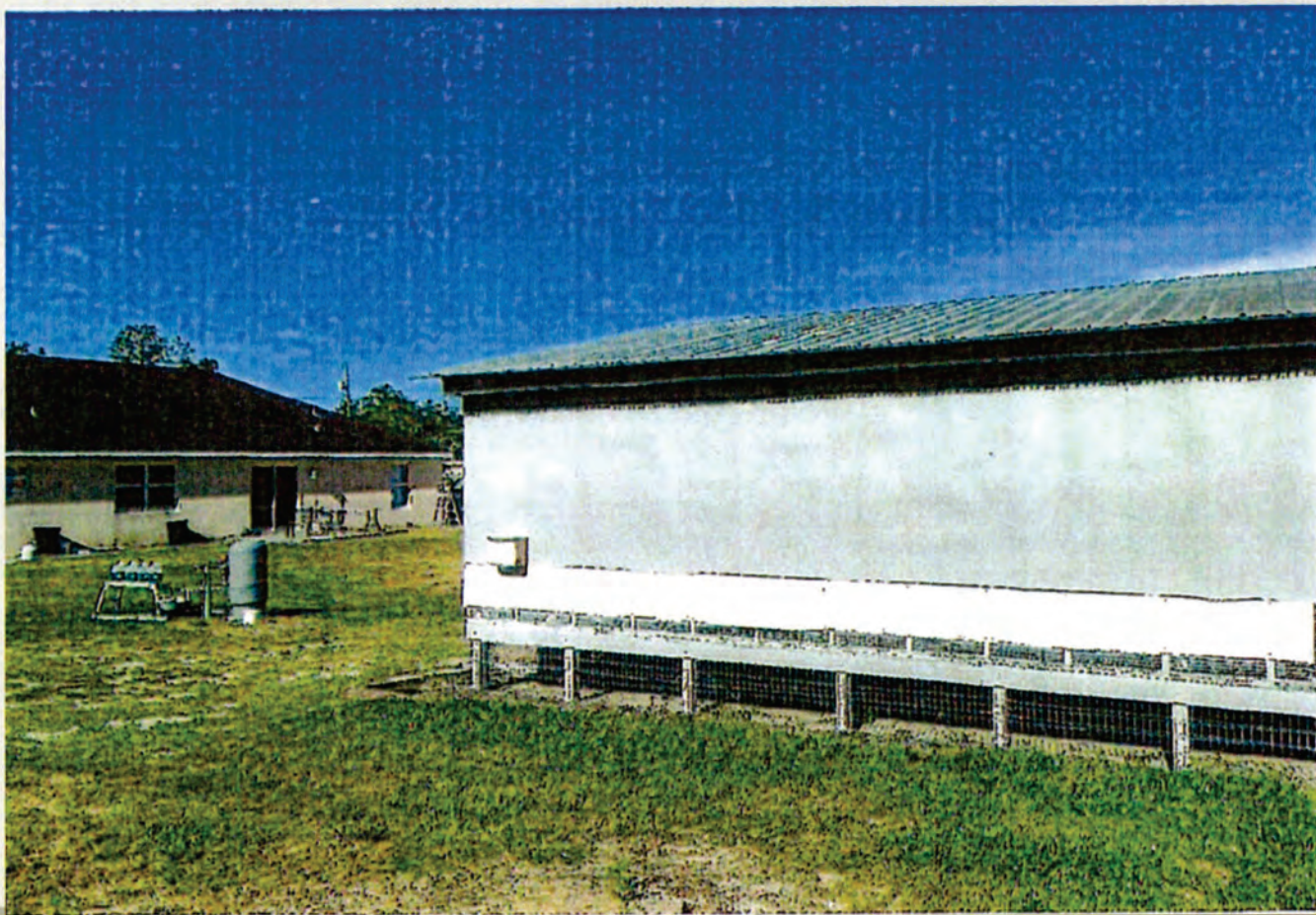
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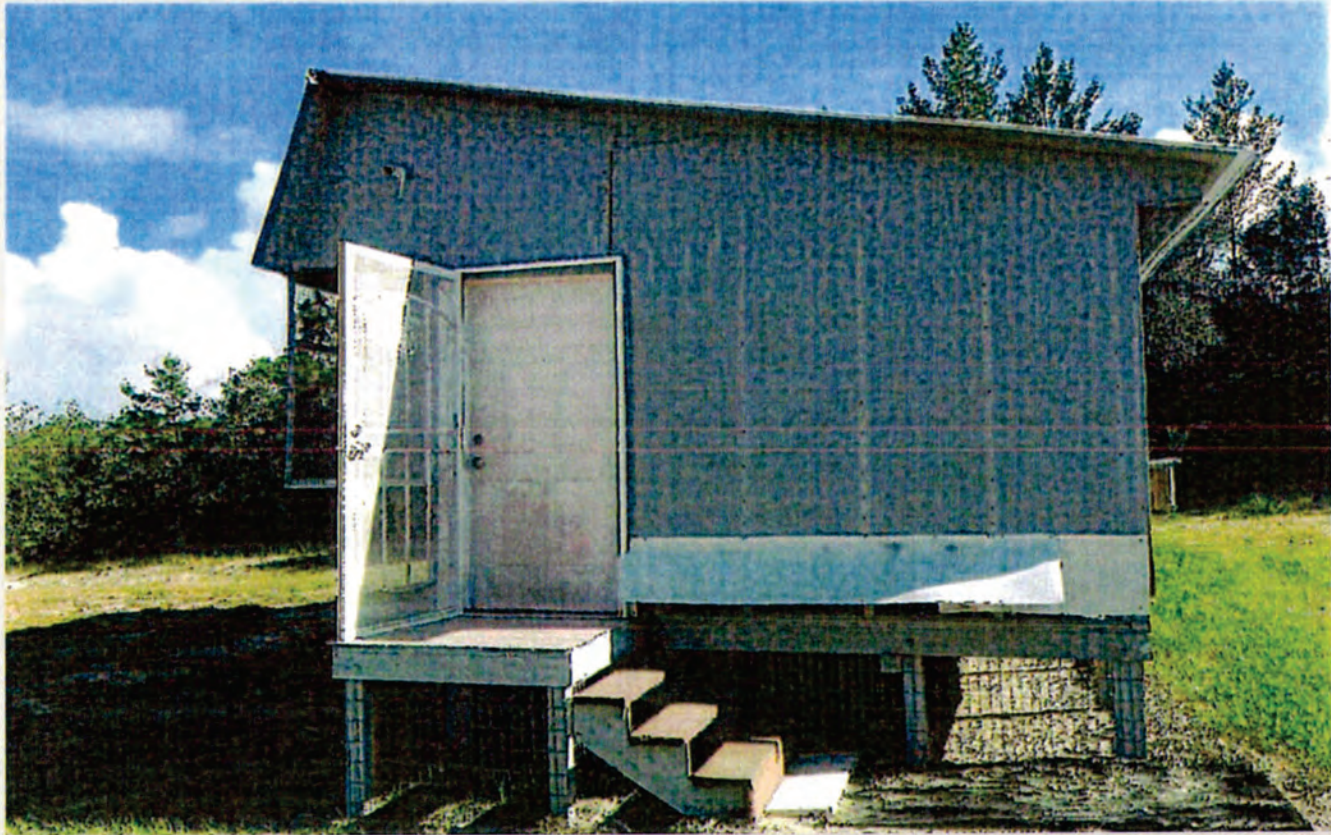
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Accessory Use for Pigeon Loft

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.

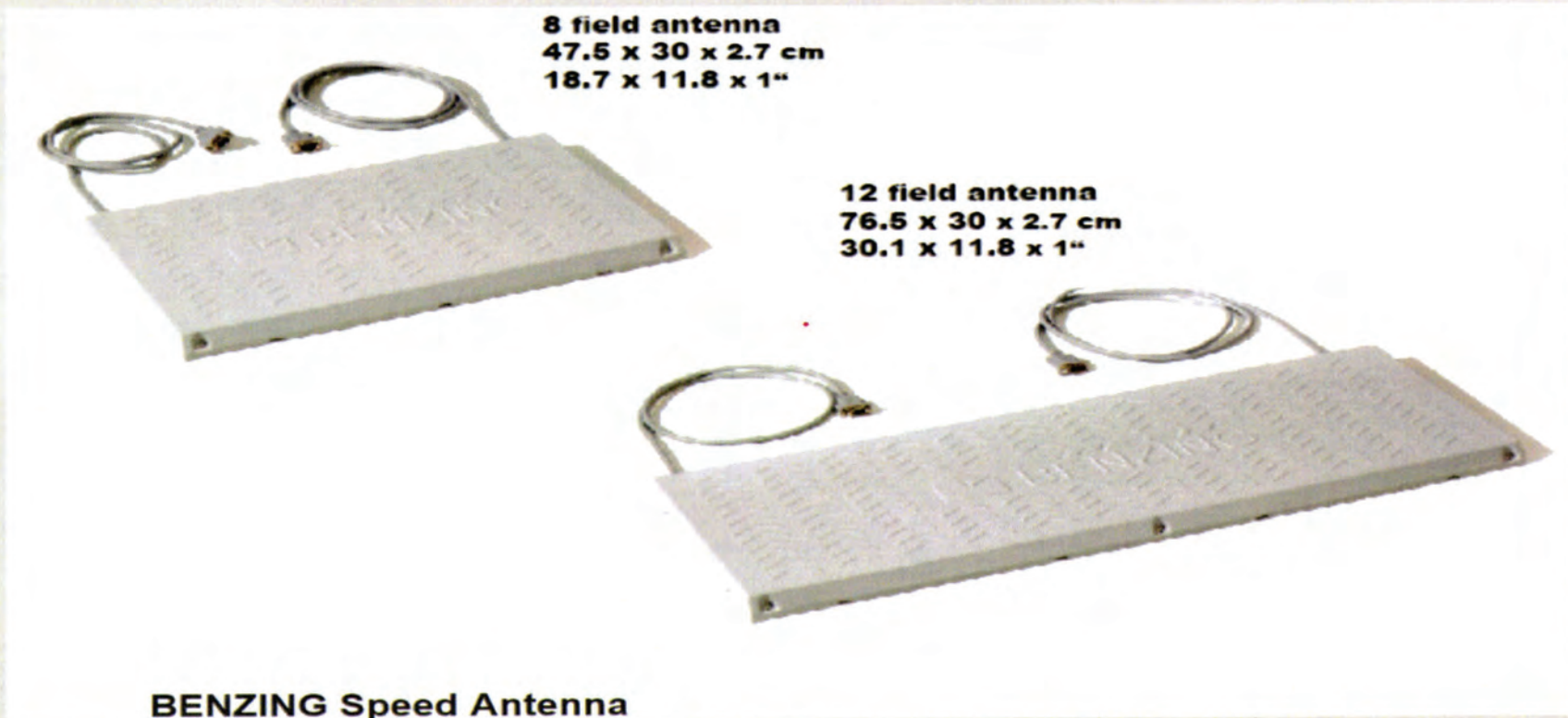
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Related Equipment

- 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.

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Antenna



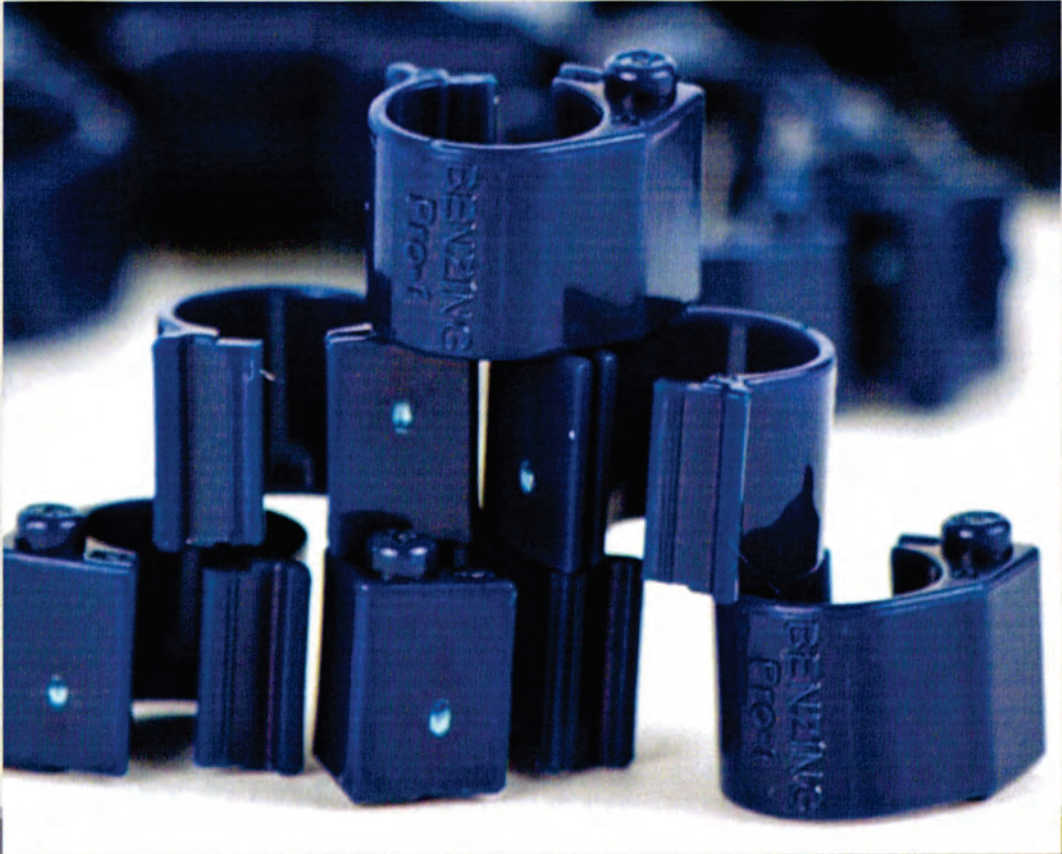
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Clocks

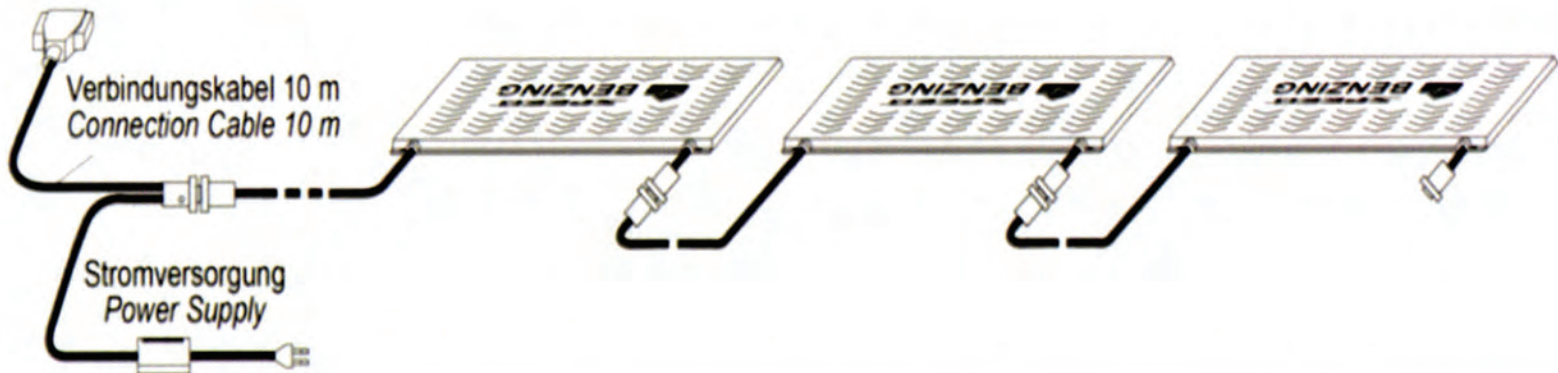


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Chip Rings



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Comprehensive Plan Review

- As previously mentioned, 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 request, although is specifically permitted in AR (Agricultural/ Residential) zoning districts, is being requested on the subject site since it does not qualify for rezoning.

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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.

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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.

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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.

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