

## RESOLUTION NO. 24- \_\_\_\_\_

### **A RESOLUTION SETTING FORTH THE FINDINGS OF FACT AND CONCLUSIONS OF THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS PERTAINING TO THE DENIAL OF THE REQUEST FOR A CHANGE OF ZONING CLASSIFICATION FROM RR-1 TO AU ON PROPERTY OWNED BY FL & NC INVESTMENT PROPERTIES LLC.**

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, as follows:

#### **STATEMENT OF THE CASE AND FACTS**

This item came before the Planning & Zoning Board on October 16, 2023. The Planning and Zoning Board recommended approval in a 6-3 vote. The item came before the Board of County Commissioners of Brevard County, Florida, on November 2, 2023. On November 2, 2023, the Board of County Commissioners continued the request to allow for the applicant to work with staff on a binding development plan to mitigate the potential harmful effects of the request on nearby properties. On December 7, 2023, the Board of County Commissioners unanimously denied the request after a public hearing.

The record is attached as Exhibit "A." It consists of documents maintained by the Planning and Development Department as part of the official application file and provided to the Planning and Zoning Board and the Board of County Commissioners, relevant sections of the Brevard County Code of Ordinances, Comprehensive Plan provisions, and minutes and transcripts from the public hearings. The pages will be referred to as R-\_\_\_\_\_.

| Description  | Page Numbers |
|--|--------------|
| Application for Zoning Action  | R-001        |
| Authorization to Act   | R-030        |
| Survey   | R-032        |
| Notice to Applicants   | R-033        |
| Applicant-Owner Notice   | R-034        |
| Sign Posting Affidavit   | R-035        |
| Courtesy Notice  | R-036        |
| GIS Maps   | R-037        |
| Staff Comments   | R-054        |
| Agenda Report, Item G.2., Planning and Zoning Board October 16, 2023 | R-063        |
| Minutes of Planning and Zoning Board, October 16, 2023               | R-065        |
| Agenda Report, Board of County Commissioners December 7, 2023        | R-069        |

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| Attachment – Administrative Policies of the Future Land Use Element   | R-071 |
| Attachment – Staff Comments   | R-079 |
| Attachment – GIS Maps   | R-088 |
| Attachment – Planning and Zoning Board Minutes                        | R-101 |
| Attachment – Written Public Comments                                  | R-105 |
| Transcript of Hearing, Board of County Commissioners November 2, 2023 | R-157 |
| Transcript of Hearing, Board of County Commissioners December 7, 2023 | R-162 |

### **Background and Purpose of Request**

The applicant, FL & NC Investment Properties LLC, has owned the subject property since March 9, 2023. (R-011). The property is a total of 3.12 acres and is currently developed with a single-family residence and a pole barn. (R-054). The Future Land Use (FLU) designation for the property is Residential 15, or RES-15. (R-054). The subject property's existing zoning is Rural Residential, or RR-1. (R-054). The RR-1 classification permits horses, barns, and horticulture as accessory uses to a single-family residence. (R-054). Keeping of horses and agricultural uses are accessory to a principal residence within RR-1 zoning; however, the raising of exotic birds is not permitted in this classification. (R-054).

The subject property originally consisted of a 2.06-acre flag lot, approved on June 26, 1989, as administrative action A-0454. (R-054). The subject parcel as it is currently configured was created of record on September 10, 1991, per Official Records Book 3148, Page 2639 and Official Records Book 3153, Page 1750. (R-054).

The original zoning on the property was AU. (R-054). Zoning Resolution Z-8458 rezoned the parcel from AU to RR-1 effective August 28, 1989. (R-055).

The applicant sought a change of the zoning classification from RR-1 to Agricultural Residential, or AU. (R-001). The applicants plan to use the property to keep exotic birds (non-poultry). (R-002).

The proposed Agricultural Residential (AU) classification allows agricultural pursuits and single-family residential development of spacious character. (R-055). This classification permits cattle, goats, bees, rabbits, horses, mules, lambs, and pigs/hogs (limited to 3) without a Conditional Use Permit (CUP). (R-055). A plant nursery is also a permitted use. (R-055). It permits all agricultural pursuits, including the packing, processing, and sales of commodities raised on the premises as well as the raising of exotic birds. (R-055).

### **Surrounding Area**

To the north is a 19.5-acre parcel developed with a public school within the City of Titusville and zoned Public (P). (R-056).

To the south is a single-family residence on one acre with RR-1 zoning. (R-056).

To the west are four parcels across the abutting right-of-way. (R-056). The northernmost parcel is a 5.06-acre single-family residence with RR-1 zoning. (R-056). The next parcel moving south is a flag lot with a single-family residence on 2.66 acres with AU zoning. (R-056). The next parcel is another flag lot with a single-family residence on 1.17 acres with RR-1 zoning. (R-056). The southernmost parcel is 1.04 acres with a single-family residence zoned RR-1. (R-056).

To the east are four parcels. The northernmost parcel is a 1.36-acre single-family residence with RR-1 zoning. (R-056). The next parcel is a 1.85-acre parcel with a single-family residence with RR-1 zoning. (R-056). The next parcel is a 1.27-acre single-family residence with RR-1 zoning. (R-056). The last parcel is a 1.2-acre parcel with a single-family residence with RR-1 zoning. (R-056).

The current RR-1 zoning classification permits single-family residential land uses on a minimum one-acre lot, with a minimum lot width and depth of 125 feet. (R-056). The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. (R-056). The minimum house size is 1,200 square feet. (R-056). Keeping of horses and agricultural uses are accessory to a principal residence within RR-1 zoning. (R-056).

The proposed AU zoning classification permits single-family residences and agricultural uses on a minimum 2.5-acre lot, with a minimum lot width and depth of 150 feet. (R-056). The minimum house size in AU is 750 square feet. (R-056). The AU classification also permits the raising/grazing of animals including exotic birds and plant nurseries. (R-056). It allows for commercial uses and sale of items grown on the property. (R-056).

There have been no zoning actions within a half-mile radius of the subject property. (R-056).

There are no pending zoning actions within a half-mile radius of the subject property. (R-056).

### **Public Hearing and Public Comment**

In an email dated October 15, 2023, Gordon and Sandra Perry, 3483 Parkland Street, Titusville, wrote that the amount of noise made by exotic birds would impact their sleep and negatively impact their overall health. (R-105).

In an email dated October 15, 2023, Craig McClellan, Baymeadows Subdivision, stated that his property is directly behind the subject property on the east side. He objected to the proposed rezoning, explaining that the wind in the area is primarily from the west and that the stench from bird feces and the noise affects his allergies and hearing aids. He stated that AU is unacceptable in the close environment of the neighborhood, hence the zoning of the area properties as RR-1. In a subsequent email dated November 1, 2023, Mr. McClellan reminded commissioners that individual lots in the neighboring Baymeadows subdivision are on private water wells for home drinking use. Mr. McClellan expressed concerns about the contamination of his and other wells in the area if the subject property were rezoned to allow the housing of livestock. (R-106).

In an email dated October 16, 2023, neighbor Heather Eschweiler, 1185 War Eagle Boulevard, wrote that the requested rezoning would be a disruption and negatively affect the peace and quiet of the established neighborhood. (R-108).

At the Planning & Zoning Board meeting on October 16, 2023, Don Opatha appeared on behalf of the applicant. (R-065). Mr. Opatha stated that he would like to rezone from residential to agriculture. (R-065). Mr. Opatha stated that under the Florida Right to Farm Act he can bring animals to the property, and he has had birds and animals on the property for the past two years. (R-065). He said that the reason he is asking to rezone is to get agricultural benefits and for insurance purposes. (R-065-066). He stated zoning does not stop him from having animals on the property because it is under the Farm Act. (R-065).

Neighbor Jamie Lankford, 1315 War Eagle Boulevard, Titusville, stated she bought her property eight months ago knowing the area was zoned RR-1. (R-065). She said if she had known someone was going to have AU at the back corner of her property she never would have bought it, especially with as many birds as the applicant wants to have, and the cages that are already on the property. (R-065). She stated she works 10-hour shifts at the hospital and when she comes home she needs to mentally and physically wind down, and a large number of birds will prevent her from being able to do that. (R-065). She noted she was also told by her realtor that AU would lower her property value. (R-065).

Mr. Opatha stated that while he has birds and cages in his garage and house, there are not cages outside yet. (R-065). He noted that he is building new cages in the back yard, and that he intends to locate birds outside in the barn on the property. (R-065). He stated that he is raising the birds to sell, and that there will be approximately 25 to 50 pairs of birds on the property. (R-066).

Mr. Opatha further testified that he intends to bring Class III primates to the property in the future. (R-066).

In an email dated October 28, 2023, Chris White, 1155 Baymeadows Drive, Titusville, wrote about other potential uses for the subject property if the rezoning were to be granted, including commercial raising and sailing of chickens, raising and grazing of

animals, and the packing, processing, and sales of commodities raised on the premises. The email further stated:

This parcel of land is located in an entirely residential area zoned RR-1, several blocks from the nearest business, with the nearest non-residential uses being Oak Park Elementary School, Madison Middle School and Astronaut High School. ... This proposed zoning allows commercialization of a property smack in the middle of the residentially zoned properties around them. When considering zoning requests for the City of Titusville we always looked first to see whether the proposed request would be consistent with existing surrounding properties first. If it would not be consistent, and if the surrounding property owners object to the proposed use the zoning request was denied.

(R-114).

In an email dated October 30, 2023, neighbor Frank Eschweiler, 1185 War Eagle Boulevard, wrote that the requested rezoning to AU in a predominantly residential area could open a “Pandora’s box” in the future. (R-124).

On October 31, 2023, Jamie Lankford, 1315 War Eagle Boulevard, Titusville, sent an email stating that she and her husband purchased their property abutting the subject property for the quiet and peacefulness of the street. She expressed concern that noise ordinances applicable to the subject property in its current zoning might not apply if the requested zoning change were granted. Her email further discussed the incompatibility of the requested AU zoning with the residential character of the neighborhood. (R-123).

At the November 2, 2023 Board of County Commissioners meeting, Don Opatha spoke on behalf of the applicant. (R-157). Commissioner Pritchett, the Board’s chairperson and commissioner for County Commission District 1, in which the property is located, asked Mr. Opatha if he would work with staff on a binding development plan (BDP) that would mitigate potential impacts of the proposed zoning change on neighboring properties. (R-157).

Mr. Opatha asserted that he did not need the requested zoning change to keep exotic birds because the Florida Right to Farm Act already allows him to engage in that activity. (R-158).

The County Attorney explained that the Right to Farm Act was inapplicable because the property did not have an agricultural classification from the Property Appraiser and Tax Collector. Further, the County has certain relevant regulations that predate the Right to Farm Act and which were not preempted. (R-158).

Mr. Opatha claimed that he previously had an agricultural exemption on the property, but that he recently received notice that it had been canceled. (R-159). Mr. Opatha also

discussed his plans to bring primates to the property from North Carolina after completing requisite training. (R-160).

Commissioner Tobia moved to continue the item until the Board's December 7, 2023 meeting. The motion was seconded by Commissioner Feltner and passed 4-0. (R-161).

In an email dated November 27, 2023, neighbor Shirley Cherf, 255 War Eagle Boulevard, sent pictures showing numerous cages on the subject property. (R-127).

In an email dated November 29, 2023, neighbor Jamie Lankford, 1315 War Eagle Boulevard, explained that she spoke in opposition of the request at the Planning & Zoning Board meeting. She stated that Mr. Opatha had misrepresented the number of years he had owned and resided at the property to the Plainning & Zoning Board, and that he had not been raising birds there since 2018. (R-134).

In an email dated December 7, 2023, Craig McClellan, 1180 Baymeadows Drive, Titusville, reiterated concerns about the consistency and compatibility of the requested zoning change in a predominantly residential neighborhood and adjacent to public school property. (R-135).

On December 7, 2023, the Board of County Commissioners continued the public hearing on the requested zoning change. County Zoning Manager Jeffrey Ball introduced the item and explained to the Board that the applicant declined to entertain a binding development plan to mitigate the impacts of the requested zoning on neighboring properties. (R-162).

Neither Mr. Opatha nor anyone else appeared on behalf of the applicant. Commissioner Tobia made the following comments and motion:

The neighborhood in which this lot resides is residential in character. The request is intended to introduce an intense agriculture use which is not consistent with the neighborhood. AU could include packing, processing, and sale of commodities, or even a private golf course. Because of this, as well as large amounts of public concern regarding noise resulting from agriculture use in a residential community, I won't be supporting this. So, I'll make a motion here to deny the request of zoning classification change from RR-1 to AU and direct the County Attorney's Office to provide a finding of fact.

(R-162). The motion passed unanimously, 5-0. (R-163).

### **Analysis of Administrative Policy #3 – Compatibility**

Pursuant to Administrative Policy #3, compatibility shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering factors including, but not limited to, the following:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use;
- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development;
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:
  - 1. historical land use patterns;
  - 2. actual development over the immediately preceding three years; and
  - 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

#### **Analysis of Administrative Policy #4 – Character**

Pursuant to Administrative Policy #4, character of a neighborhood shall be a factor for consideration whenever a rezoning or any application involving a specified proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established neighborhood exists, the following factors must be present:
  - 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
  - 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
  - 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-

residential uses have been applied for and approved during the previous five (5) years.

### **FINDINGS**

1. The subject property is located in an established single-family residential area and is in close proximity to seven single-family homes. It is foreseeable that the proposed use would have odor, noise levels, and activity that would significantly diminish the enjoyment of, or quality life in the existing area.
2. The surrounding area is characterized as single-family homes on lots ranging from one acre or more. No changes to the immediate area have occurred within the last three years. There has not been any development approved but not yet constructed within this area in the preceding three years. There are no pending zoning actions within one-half mile of the subject property.
3. If granted, the request would constitute an introduction of the AU zoning classification to the east of War Eagle Boulevard. RR-1 zoning is the predominant zoning classification west and east of War Eagle Boulevard. AU allows the commercial sale of items grown on the property as well as all agricultural pursuits such as the raising/grazing of animals and plant nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration. Abutting the subject property are five properties with single-family residences zoned RR-1. The Board recognizes the residential character of the area.
4. The developed character of the area is single-family residential. The subject property is surrounded by single-family homes zoned RR-1. Further north is a public school on a 19.98-acre parcel located in the City of Titusville and zoned Public. The immediate surrounding parcels are all developed with single-family homes on one-acre or larger lot sizes zoned RR-1.
5. The neighborhood does not have any established commercial uses or non-conforming commercial uses. This area is not considered transitional because there are no commercial, industrial, or other non-residential uses within 0.5-miles of the subject property.
6. The request is not consistent and is not compatible with the surrounding area.

### **CONCLUSION**

Based on the foregoing, the Board of County Commissioners hereby finds the request for a change of the zoning classification from Rural Residential, or RR-1, to Agricultural Residential, or AU, is inconsistent with the character of the existing residential neighborhood and incompatible with the existing and historic development patterns. Accordingly, the requested rezoning is denied.



DONE AND RESOLVED this 9<sup>th</sup> day of January, 2024.

ATTEST:

BOARD OF COUNTY  
COMMISSIONERS OF BREVARD  
COUNTY, FLORIDA

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Rachel Sadoff, Clerk

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Jason Steele, Chair  
As approved by the Board on: 1/9/2024