

**ORDINANCE NO. 96-9**

**AN ORDINANCE PERTAINING TO EMINENT DOMAIN; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR A SHORT TITLE; PROVIDING FOR INTENT AND PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE CONDEMNING AUTHORITY OR PROPERTY OWNER THE AUTHORITY TO APPLY FOR WAIVERS, EXCEPTIONS AND VARIANCES FROM THE HERNANDO COUNTY LAND DEVELOPMENT REGULATIONS AND HERNANDO COUNTY CODE OF ORDINANCES ON PROPERTY SUBJECT TO EMINENT DOMAIN PROCEEDINGS; PROVIDING FOR AUTHORITY OF HERNANDO COUNTY STAFF TO GRANT WAIVERS, EXCEPTIONS AND VARIANCES FROM THE HERNANDO COUNTY LAND DEVELOPMENT REGULATIONS AND HERNANDO COUNTY CODE OF ORDINANCES ON PROPERTY SUBJECT TO EMINENT DOMAIN PROCEEDINGS; PROVIDING FOR AUTHORITY OF HERNANDO COUNTY BOARD OF COUNTY COMMISSIONERS TO GRANT WAIVERS, EXCEPTIONS AND VARIANCES FROM THE HERNANDO COUNTY LAND DEVELOPMENT REGULATIONS AND HERNANDO COUNTY CODE OF ORDINANCES ON PROPERTY SUBJECT TO EMINENT DOMAIN PROCEEDINGS; PROVIDING FOR AN ADMINISTRATIVE PROCEDURE TO APPLY FOR WAIVERS, EXCEPTIONS AND VARIANCES ON PROPERTY SUBJECT TO EMINENT DOMAIN PROCEEDINGS; PROVIDING FOR STANDARDS FOR THE ISSUANCE OF WAIVERS, EXCEPTIONS AND VARIANCES FROM THE HERNANDO COUNTY LAND DEVELOPMENT REGULATIONS AND HERNANDO COUNTY CODE OF ORDINANCES ON PROPERTY SUBJECT TO EMINENT DOMAIN PROCEEDINGS; PROVIDING FOR STATUS IF WAIVER, EXCEPTION OR VARIANCE IS GRANTED; PROVIDING FOR THE AUTHORITY OF STAFF TO TESTIFY AT JUDICIAL PROCEEDINGS; PROVIDING FOR CODE VIOLATIONS; PROVIDING FOR THE RIGHT TO APPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION INTO THE CODE; PROVIDING FOR AN EFFECTIVE DATE.**

SECRETARY OF STATE

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**THE HERNANDO COUNTY BOARD OF COUNTY COMMISSIONERS FINDS THAT:**

**WHEREAS,** Hernando County and other governmental or public agency entities have

the authority to acquire property through the procedures and guidelines established in Chapters 73 and 74 of the Florida Statutes; and

**WHEREAS**, it is necessary from time to time to acquire properties in whole, or in part, by negotiations or eminent domain proceedings in order to provide the public improvements necessary to adequately serve the general public and citizens of Hernando County; and

**WHEREAS**, in certain cases, hardships are imposed upon property owners when public projects require the acquisition of private property which causes the remainder parcels to become nonconforming under the County's land development regulations and codes; and

**WHEREAS**, The Hernando County Board of County Commissioners hereby finds that the acquiring of private property by various governmental or public agency entities, so authorized, by law through the eminent domain process, through trial, or negotiations prior thereto, is an extremely costly and burdensome process.

**WHEREAS**, Allowing the appropriate Hernando County staff, pursuant to established guidelines, procedures and criteria, to grant waivers and exceptions from certain County land development regulations or code of ordinances, or to apply for variances on behalf of affected property owners serves a valid public purpose and promotes the general safety and welfare of the citizens and land owners of Hernando County.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, FLORIDA, THAT THE FOLLOWING PROVISIONS ARE HEREBY ENACTED AND HEREBY BECOME THE ORDINANCE PERTAINING TO THE ISSUE OF EMINENT DOMAIN IN HERNANDO COUNTY:**

**SECTION 1: SHORT TITLE:**

This ordinance shall be known and may be cited as The Ordinance Pertaining to the Issue of Eminent Domain.

**SECTION 2. INTENT AND PURPOSE**

It is the intent of this ordinance to allow the appropriate Hernando County staff pursuant to established guidelines, procedures and criteria, to grant waivers and exceptions from certain County Land Development Regulations and/or Code of Ordinances, or seek such waivers or variances before the Board of County Commissioners.

The granting of such waivers, exceptions or variances is intended to provide property owners who have been subjected to the eminent domain process either through acquisition or

negotiation, a viable and fair alternative in preventing any adverse impact to their property as a result of the acquisition process, and allow the continued use of their property in a manner similar to its preacquisition condition. By providing a method for the acquiring authority and/or property owner to determine the remaining allowable uses of the property, the cost of acquisitions of real property needed for public facility improvements would be reduced.

### **SECTION 3. AUTHORITY TO APPLY FOR WAIVERS, EXCEPTIONS AND VARIANCES**

Pursuant to Chapter 73 and 74, Florida Statutes, Hernando County and other governmental or public agencies have the authority to acquire property in order to provide public improvements necessary to adequately serve the general public and citizens of Hernando County. In certain cases, acquisition causes the parcel, structure or use on the property to become nonconforming under the County's Land Development Regulations and/or Code of Ordinances.

The acquiring agency and/or the property owner are hereby granted the authority to apply for an exception, waiver, or variance from the Hernando County Land Development Regulations and/or Hernando County Code of Ordinances pursuant to the conditions of this ordinance.

### **SECTION 4. AUTHORITY TO GRANT WAIVERS, EXCEPTIONS AND VARIANCES**

The County Administrator or his designee having jurisdiction over land development regulations and/or the code of ordinances shall have the authority to grant waivers, exceptions or variances pursuant to the terms and conditions of this ordinance.

The Hernando County Board of County Commissioners shall have the authority to grant waivers, exceptions or variances pursuant to the terms and conditions of the Hernando County Land Development Regulations and/or Code of Ordinances..

### **SECTION 5. STANDARDS FOR ISSUANCE OF WAIVERS, EXCEPTIONS AND VARIANCES**

- (1) Existing lots, parcels, structures or uses which become nonconforming or increase in nonconformity as a result of a governmental acquisition, (excluding parking areas, and lots or parcels zoned for construction of a residential unit involved in a partial taking for establishment of new roadways or other facility corridors), may be granted a waiver or exception by the County Administrator or his designee provided a determination is made that:
  - (A) The requested exception or waiver will not adversely affect visual, safety,

aesthetic or environmental concerns of neighboring properties; and,

- (B) The requested exception or waiver shall not adversely affect the safety of pedestrians or operations of motor vehicles; and,
  - (C) The requested exception or waiver does not deviate from the standards of the Hernando County Land Development Regulations and/or Code of Ordinances by more than 10%.
- (2) Existing lots, parcels, structures or uses which become nonconforming or increase in nonconformity as a result of a governmental acquisition, and constitute a deviation from the standards of the Hernando County Land Development Regulations and/or Code of Ordinances of greater than 10%, may be granted a variance by the Board of County Commissioners provided a determination is made that:
- (A) The requested exception or waiver will not adversely affect visual, safety, aesthetic or environmental concerns of neighboring properties; and,
  - (B) The requested exception or waiver shall not adversely affect the safety of pedestrians or operations of motor vehicles.
- (3) If the size of any parking area is reduced, or if the parking area must be relocated because the terms and conditions of the Hernando County Land Development Regulations cannot be met, a variance may be granted by the Board of County Commissioners provided a determination is made that:
- (A) The requested exception or waiver will not adversely affect visual, safety, aesthetic or environmental concerns of neighboring properties; and,
  - (B) The requested exception or waiver shall not adversely affect the safety of pedestrians or operations of motor vehicles.
- (4) When lots or parcels zoned for construction of a residential unit are involved in a partial taking for establishment of new roadways or other facility corridors where such takings result in a deviation from the standards of the Hernando County Land Development Regulations and/or Code of Ordinances, the Board of County Commissioners may grant a variance provided a determination is made that:
- (A) The requested exception or waiver will not adversely affect visual, safety, aesthetic or environmental concerns of neighboring properties; and,
  - (B) The requested exception or waiver shall not adversely affect the safety of pedestrians or operations of motor vehicles.

- (C) The requested exception, waiver, or variance will not encourage or promote the continuation of existing uses of the property which have been or will be rendered unfeasible or impractical due to the impacts of the taking and/or construction of the roadway or other facility including but not limited to aesthetic, visual, noise, dust, vibration, safety, land use compatibility, environmental and other impacts.

#### **SECTION 6. STATUS OF LOTS, PARCELS, STRUCTURES OR USES AFTER GRANTING OF A WAIVER, EXCEPTION OR VARIANCE**

- (1) The granting of a waiver, exception or variance pursuant to Section 5 of this ordinance shall constitute a covenant of compliance with the Hernando County Land Development Regulations and/or Code of Ordinances.

#### **SECTION 7. ADMINISTRATIVE PROCEDURE TO APPLY FOR WAIVERS, EXCEPTIONS AND VARIANCES**

- (1) The acquiring authority or property owner may apply in writing to the County Administrator or his designee, for a waiver, exception or variance pursuant to Section 5 of this ordinance. The applicable fee established by resolution for development review and approval by the Department of Development shall be submitted with the application.
- (2) If an application for a variance, waiver or exception is submitted by an acquiring authority on behalf of a property owner, the property owner shall be notified via certified mail with return receipt requested, of the application by the County Administrator or his designee.
- (3) If pursuant to Section 5(1), the County Administrator or his designee is authorized to grant a waiver or exception, a certified letter with return receipt requested shall be issued within thirty (30) days of the application to the acquiring authority and the property owner granting or denying the waiver or exception.
- (4) If the waiver, exception or variance is denied by the County Administrator or his designee, the acquiring authority and/or property owner may apply for a variance before the Hernando County Board of County Commissioners.
- (5) Hearings before the Board of County Commissioners resulting from a staff denial, or pursuant to Section 5(2), 5(3) or 5(4) of this ordinance will be conducted in accordance with the process described in the Hernando County Land Development Regulations and/or Code of Ordinances.
- (6) Within thirty (30) days of the Board of County Commissioners determination, the County

Administrator or his designee will notify the acquiring authority and the property owner via certified mail, return receipt requested, of the final determination.

#### **SECTION 8. CODE VIOLATIONS**

- (1) The provisions of this article shall not be interpreted to allow for the continued existence of building or other safety code violations that are determined to be an immediate threat to the public health, safety or welfare.
- (2) The appropriate building officials and inspectors are hereby authorized to take any and all necessary steps to enforce all applicable building and safety codes even though the subject property is part of a acquisition action.

#### **SECTION 9. RIGHT OF APPEAL**

The acquiring authority and/or the property owner may appeal a determination made by the county staff to the Board of County Commissioners within thirty (30) days of the date the certified mail return receipt card is signed. The decision of the Board of County Commissioners can be subjected to judicial review as determined by general law.

#### **SECTION 10. SEVERABILITY**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application and to this end the provisions of this Ordinance are declared severable.

#### **SECTION 11. INCLUSION INTO THE CODE**

Provisions of this Ordinance shall be included and incorporated into the Land Development Regulations (LDR's) of Hernando County as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the code.

#### **SECTION 12. EFFECTIVE DATE**

The effective date of this ordinance shall become official upon recording of the official acknowledgment from the Office of the Secretary of the State of Florida that this Ordinance has been filed with said office.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS IN REGULAR  
SESSION THIS 21ST DAY OF MAY, 1996.

BOARD OF COUNTY COMMISSIONERS  
HERNANDO COUNTY, FLORIDA

ATTEST: Michelle Heintzman,  
Karen Nicolai, Clerk *Deputy Clerk*

BY: Hannah M. Robinson  
Hannah M. Robinson, Chairwoman

