



LAKE COUNTY
Planning & Community Design Division
Analysis of a
Variance Request
Presented to
LAKE COUNTY BOARD OF ADJUSTMENT
April 14, 2011

CASE NO.: BOA# 3-11-3	AGENDA ITEM #: 1
OWNERS: Robert and Susan Denis	APPLICANT: Wicks Consulting Services, Inc.

REQUESTED ACTION: The owners are requesting a variance from the **Lake County Land Development Regulations, Section 9.01.05.A.2 Landscape Buffer Requirements and Table 3.02.05 Setback Requirements** to allow one existing non-residential structure to remain 25 feet from the right-of-way; to allow one existing non-residential structure to remain five feet from the parcels side property line and to allow a containerized landscape buffer instead of in-ground landscape plantings (+/-23.18 acres).

GENERAL LOCATION: Astatula area – State Road 19 South to County Road 561, turn left on County Road 561 to County Road 48, turn left on County Road 48 to site on right #15426 (Sec. 27, Twp. 20, Rng. 26).

FUTURE LAND USE DESIGNATION: Rural

EXISTING ZONING: Agriculture

SURROUNDING LAND USE:

NORTH: Vacant Parcel / Agriculture

SOUTH: Conservation Lands

EAST: Single-Family Dwelling Unit / Vacant Parcel

WEST: Single-Family Dwelling Unit

SURROUNDING ZONING:

NORTH: A (Agriculture District)

SOUTH: A (Agriculture District)

EAST: A (Agriculture District)

WEST: A (Agriculture District)

DATE POSTED: March 18, 2011

LOCATION: Ranch Road and County Road 48,
Astatula

14.15.02 Granting Variances and Appeals

Variances shall be granted when the person subject to the Land Development Regulation demonstrates that the purpose of the Land Development Regulation will be or has been achieved by other means, and when application of a Land Development Regulation would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. For

purposes of this section, "principles of fairness" are violated when the literal application of a Land Development Regulation affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Land Development Regulation. Variances may also be granted to allow for the reconstruction, rehabilitation, or restoration of structures listed on, or classified as contributing to a district listed on the National Register of Historic Places, Florida Master Site File or local surveys of historical resources. In such instance, the variance shall be the minimum necessary to protect the historical integrity of the structure and its site.

Based on review of the required findings as outlined in Chapter XIV of the Lake County Land Development Regulations, as amended, ~~staff~~ ~~It is recommendeds that the requested variances be approved~~ ~~of the requested variance~~ for the following recitations, analysis, and findings of fact:

ANALYSIS: The owners are requesting a variance to allow one existing non-residential structure to remain 25 feet from the right-of-way; and to allow one existing non-residential structure to remain 5 feet from the parcels side property line. The Code (Table 3.02.05) requires structures to be 50 feet from the right-of-way and 25 feet from the side property line. The owners are also requesting relief from landscape requirements for their pending Conditional Use Permit (CUP). A containerized landscape buffer is being proposed instead of in-ground landscape plantings. The Code (9.01.05 A.2.) requires a "Type A" landscape buffer adjacent to public right-of-ways.

The owners' parcel is located east of Astatula on County Road 448. The parcel consists of approximately 23.18 acres, which is described as portions of Lot 5 and 6 and Lot 7 of Underhill Hammock. The parcel has been under the current ownership since 1999 and has been used for the production of containerized ligustrum, ornamental daylilies and catfish production in man-made ponds. Multiple residential and non-residential structures, which are used to support the agricultural use, have been constructed on site. Currently, the owners are in the process of obtaining a CUP for their agritourism operation, which complements their primary use of the parcel as a working ornamental nursery/catfish farm.

Over the past 21 years the owners have constructed multiple structures to support their agricultural endeavor. The following structures have been built on site: Two single-family dwelling units (one is used as a, care takers residence) and 10 agricultural buildings. The 10 structures were non-residential agriculture buildings which ~~do~~ not require ~~a~~ building permits; ~~the agricultural buildings, but~~ are still required to meet proper setbacks. Four structures did not meet the required setback at the time ~~these buildings they were~~ constructed ~~placed these buildings~~. Two structures (sheds) are semi-portable and are being moved to comply with the setback requirements. Of the two remaining, one structure is too close to the road right-of-way and the other structure is too close to the eastern side property line.

The parcels surrounding the subject parcel are rural in character and are not densely developed. The parcel directly to the east is developed with a home, horse stable and dog run. The parcel is located outside of the 100-year flood zone, designated as "X", and there are no jurisdictional wetlands on the parcel. A copy of the proposed plot plan is attached (Exhibit #1).

In 2009 Lake County Code Enforcement cited the owners for constructing the most recent non-residential agriculture building for use in an Agricultural Tourism ~~agritourism~~ endeavor. The owners corrected this

issue and came to the understanding that a Conditional Use Permit was needed [to pursue the Agri-tourism venture](#) in addition to the requirement of certain setbacks for their structures. If this variance is granted, and the CUP is approved, the owners will be in compliance with the Code.

The Florida Department of Transportation has guidelines concerning clear zones on roadways. A clear zone, as defined in The Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways ([a/k/a the Florida Greenbook](#)), is the area outside of the traveled road available for use by errant vehicles. Vehicles frequently leave the traveled roadway due to loss of control of the vehicle by the driver or to avoid items in the road or other vehicles. The primary function of the clear zone is to allow space and time for the driver to retain control of the vehicle and avoid or reduce collisions with roadside objects. This area can also serve as an emergency refuge location for disabled vehicles. The type of road and the speed limit on the road determines the minimum width for a roadway clear zone. In accordance with the chart in the Florida Greenbook, since County Road 48 is a rural major collector road and has a speed limit of less than 55 miles per hour, the recommended minimum roadway clear zone is 24 feet measured from the edge of the through travel lane. The plans submitted shows the existing structure will be 50 feet from the edge of the through travel lane.

The **intent of the Code** (3.02.05) is to promote safety and aesthetic appeal as well as a reduction of other negative impacts that may be associated with land use activities. The Code also ensures that safe distances between structures and right-of-ways are adhered to.

If the owners receive approval for their CUP, a landscape buffer will be required along their road frontage. This buffer would need to be 15 feet in width, and require the following amount of plants per 100 lineal feet: four canopy trees, three ornamental trees, two foot high hedge and 20 percent landscape groundcover other than turf. The owner is proposing to utilize 100-gallon ornamental trees instead of the mixed landscape plantings. These trees are currently in place along the road frontage of the parcel. Requiring a typical landscape buffer would decrease the amount of area which the owners can use to produce their core product and negatively affect the farm operation.

The **intent of the Code** (-9.01.05) is to encourage water conservation, provide minimum standards for landscaping, buffering and site clearing within the unincorporated area of Lake County. This section is implemented so as to promote the preservation of native plant species, to provide for aesthetic landscaping complements to proposed development and to encourage the use of plants that qualify as Florida Friendly Landscaping.

The owners submitted the following as proof of meeting the **intent of the Code**: *“The purpose and intent of the LDR’s to protect the health, safety, and general welfare of the public will still be achieved if the Variances are granted. The varying of the setbacks and landscape buffer requirements will not adversely affect the purpose of the LDR’s.”*

The owners submitted the following as proof that the application of the Land Development Regulation would create a **substantial hardship** or **would violate principles of fairness**: *“The application for Variance has been submitted to reduce the setbacks for two (2) existing farm buildings. Both structures were constructed during the early 1990’s. The structures were originally constructed as accessory buildings and were classified as “non-residential farm buildings” which did not require building permits to*

Comment [BTS1]: This could be further supported by Comp Plan Policy 11-6.9: Eliminate Unnecessary Regulation. The County shall identify, correct, or eliminate the laws, regulations, and government practices that unnecessarily restrict **agriculture, business,** and industry practices from taking place in suitable locations.

OBJECTIVE 11-2: ENHANCE AND ENCOURAGE A SUSTAINABLE AGRICULTURE INDUSTRY. Lake County Shall Maintain Programs Which Are Designed To Enhance the Opportunity For Sustainable Agricultural Pursuits.

Policy 11-2.1: Continue Beneficial Agricultural Practices. Lake County shall coordinate with the Soil Conservation Service, the Cooperative Extension Service, and the United States Department of Agriculture in order to identify and promote productive and prosperous agricultural practices. Up to date research findings on conservation, production, and marketing techniques of agriculture shall be made available to the public. Farmers markets shall be considered where feasible for local distribution of local produce. Water conservation techniques in relation to agriculture shall be encouraged.

Policy 11-2.2: Agricultural Land Values. In order to maintain the viability of agricultural lands, Lake County shall encourage diversified agricultural pursuits on land formerly in agricultural production.

construct. There were, however, building setbacks that should have been observed based upon County Zoning Regulations. The accessory buildings were originally constructed as open "pole barns" that were used for equipment storage and other farm related uses. As the need for enclosed structures arose, the "pole barns" were improved to provide weatherproof buildings. At present, both structures provide a vital function in support of the farming, nursery and other agricultural activities.

The location of the structures relative to their setbacks from rights of way and property lines has been reviewed and they do not present any public safety issues, including traffic visibility, nor do they interfere with the use of adjacent property by the respective owners. Removal or relocating the structures to meet the required setbacks would be a significant hardship both physically and financially for the current owner. The structures are a vital part of the current farm management plan and play a significant role in the operation of the nursery and other farming functions.

The owner has also developed a Business Plan to engage in Agricultural Tourism. An application for a Conditional Use Permit has been submitted for approval to conduct agricultural tourism activities on the farm in addition to the general agricultural pursuits including the plant nursery, animal husbandry, silvicultural and aquacultural activities. The accessory structures that are the subject of this Variance request are an essential and vital part of the Business Plan, and if the structures are required to be removed or relocated to meet the minimum setbacks, a significant impact to the promotion of Agricultural Tourism and general farming activities would result.

The second request for Variance is to allow the use of containerized plant materials to meet the landscape buffer requirements for the project. As noted above, a CUP application has been submitted to allow Agricultural Tourism activities on the Site. As part of that process, a Site Plan will be required and a Type A landscape buffer provided. The Variance, if granted, will allow the use of containerized plants which will meet the intent of the Land Development Regulations. The required maintenance and irrigation needs can easily be met utilizing containerized materials. A physical and financial hardship will result if this Variance is not granted. The continued operation of the plant nursery will provide a constant supply of healthy materials that are required to maintain the vegetative buffer."

~~Staff believes that~~ The owners and applicant have submitted proof of meeting the intent of the Code, and have shown proof of a substantial hardship or that the application of the Code would violate principles of fairness. Therefore, ~~staff it is recommendeds that the -requested variances to allow one existing non-residential structure to remain 25 feet from the right-of-way; to allow one existing non-residential structure to remain five feet from the parcels side property line and to allow a containerized landscape buffer instead of in-ground landscape plantings be approved~~ ~~of the requested variance~~ with the following conditions:

1. The 15-foot wide Landscape Buffer, required along the road frontage, ~~shall~~ ~~may~~ consist of containerized plants, 100 gallons in size, ~~or planted in-ground or in-ground plantings~~. There shall be a minimum of ten plants per 100-lineal feet. The plants canopy shall average eight feet in height from grade with an average canopy spread of four feet. ~~The Landscape Buffer may be planted in-ground as long as the spacing and height minimum standards are maintained.~~
2. The minimum setback for ~~all~~ ~~any~~ new structures, ~~and~~ ~~or~~ additions to existing structures, shall comply with the Lake County Land Development Regulations, as amended.

Comment [BTS2]: The specific code sections that the variance pertains to) need to be cited here as well.

FINDINGS OF FACT: Staff has reviewed the application for this rezoning variance request and found:

1. The request is consistent with Comprehensive Plan Policies 4-1.611-2 and 4-1.15-311-6.9, which allows agriculture and residential uses in the Suburban Future Land Use Category, encourages sustainable agriculture and elimination of onerous regulations
2. This request is consistent with LDR Tables 3.00.03 and 3.01.03, which allows agriculture/residential uses in the Agriculture Zoning District.
3. This request is consistent with the intent of LDR Tables 3.02.05, which requires a safe setback distance from right-of-ways.
4. This request is consistent with the intent of LDR 9.01.05, which encourages the use of landscape buffers for screening.

The request is consistent with the recommendations of the Sunnyside Report.

Based on these findings of fact, Staff recommends approval, as specified in the proposed ordinance Final Development Order.

WRITTEN COMMENTS FILED: Support: -0- Concern: -0- Oppose: -0-

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Comment [BTS3]: Paul - This is how I would prefer this closing statement be done. Let me know if you have questions. Revise the language as needed as this is just an example from the Wanger rezoning (April)

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LAND DEVELOPMENT REGULATIONS:

TABLE 3.02.05 - Setback Requirements^{1, 3, 4, & 5}

Front		
Zoning District	Existing Development	New Development
A RA AR R1 R2 R3 R4 R6 R7 R10 RP RM	Property adjacent to state, federal, and County secondary highways Shall maintain a 50-foot setback from the highway ROW for any structure. Property adjacent to Roads other than state, federal, and County secondary highways Shall maintain, for any structure, a setback of 62 feet from the centerline of the Road or 25 feet from the Road ROW, whichever is greater	Property adjacent to state, federal, and County secondary highways Shall maintain a 50-foot setback from the highway ROW for any structure. Property adjacent to Roads other than state, federal, and County secondary highways Shall maintain a 25-foot setback from the ROW for any structure or 50 feet from the centerline of the traveling surface of a prescriptive Road. The side and rear setbacks for a farm Building Shall be 25 feet. In the RP and RM districts, in the case of internal easements for ingress or egress, where such easements have been legally created, the setback Shall be 25 feet from the ROW easement.

FB - Farm Building

SF - Single family

AB - Accessory Building

TABLE 3.02.05 - Setback Requirements^{1, 3, 4, & 5}

Side and Rear			
Zoning District	New Existing With Conforming Lots	Development and Development	Existing With Nonconforming Lots
A	25 25 25 AB	SF FB	5 25 5 AB
			SF FB

RA	25 25 25 AB	SF FB	5 25 5 AB	SF FB
AR	25 25 25 AB	SF FB	5 25 5 AB	SF FB
R1	10 25 10 AB	SF FB	5 25 5 AB	SF FB
R2	10 10 AB	SF	5 5 AB	SF
R3	5 5 AB	SF	5 5 AB	SF
R4	5 5 AB	SF	5 5 AB	SF
R6	5 5 AB	SF	5 5 AB	SF
R7	5 5 AB	SF	5 5 AB	SF
R10	5 5 AB	SF	5 5 AB	SF
RP	See Note 2		See Note 2	
RM	5 5 AB	SF	5 5 AB	SF

FB - Farm Building

SF - Single family

AB - Accessory Building

Note 1. All setbacks for structures Shall be measured from the exterior wall of the structure or structural component, excluding eaves or overhangs.

Note 2. The Building Line from any rear or side property line Shall be:

(a) For any Building not exceeding two (2) stories, ten (10) feet.

(b) For any Building exceeding two (2) stories in height, ten (10) feet plus fifteen (15) feet for each story in excess of two (2).

Note 3. A secondary front yard setback Shall be established for Corner Lots and Double Frontage Lots. The following setbacks Shall apply:

(a) Ongoing Development - Lots less than seventy-five (75) feet in width Shall maintain a secondary front yard setback of fifteen (15) feet. For Lots of seventy-five (75) feet and greater, a secondary front yard setback Shall be established at twenty-five (25) feet.

(b) New Development Shall maintain a secondary front yard setback of fifteen (15) feet.

Note 4. The applicable setbacks Shall apply to common private docks as set out in Subsection 10.04.01.

Note 5. See Subsection 3.01.04, Note 1, for the setback for a Livestock Building.

9.01.05 Landscape Buffer Requirements

A. General Buffer Requirements. Any approved development order, other than for a single-family or duplex lot, Shall provide for the following buffers.

1. Buffering from adjacent Properties. Landscape buffering Shall be required at the time of development as specified in Table 1 below.
 - a. If no buffer exists on the adjoining property or if the existing buffer fails to meet the requirements of the table below, buffering Shall be required. In order to utilize a buffer on an adjoining property to meet the regulations, the buffer on the adjoining property must have been required by a development order issued by Lake County or a municipality in Lake County.
 - b. If a buffer exists on the adjoining property that meets the requirements of the table below, no additional buffering Shall be required. In order to utilize a buffer on an adjoining property to meet the regulations, the buffer on the adjoining property must have been required by a development order issued by Lake County or a municipality in Lake County.
 - c. Commercial parcels within a master planned commercial center, or mixed use Planned Unit Developments (PUD) may utilize the buffer installed on adjacent parcels within the same development if such buffers were required by a development order issued by Lake County.
 - d. If an adjacent commercial parcel is vacant, only fifty (50) percent of the buffer width and plants Shall be required for the commercial parcel being developed. The adjacent vacant commercial parcel Shall install the remaining fifty (50) percent of the buffer when it is developed.
 - e. Single-Family residential subdivisions of less than ten (10) lots and a density of less than one (1) dwelling unit per net acre Shall be exempt from this buffer requirement.
2. Buffering from Public Roadways. Any parcel adjacent to a public right-of-way Shall have a landscape buffer along its right-of-way that reflects the landscape requirements of the zoning district across the road/street or a Type A landscape buffer, whichever is greater. A Type C Landscape Buffer is required for parcels along SR 50, US 27, US 192 and US 441. Single-family lots in the A, AR, and RA

Zoning Districts not within a platted subdivision Shall be exempt from this requirement, unless required by another provision of the Landscape Code.

14.15.00 Variances and Appeals.

14.15.01 Purpose of Variances. Strict application of uniformly applicable Land Development Regulations can lead to unreasonable, unfair, and unintended results in particular instances. The Board of County Commissioners finds that it is appropriate in such cases to adopt a procedure to provide relief to persons subject to the Land Development Regulations. The Board of Adjustment is authorized to grant variances to requirements of the Land Development Regulations consistent with the rules contained in these regulations. This Section does not authorize the Board of Adjustment to grant variances inconsistent with the Comprehensive Plan nor to grant a variance to permit uses not generally permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of the Land Development Regulations in the zoning district. In addition, the existence of nonconforming use of neighboring lands or un-permitted use of neighboring lands shall not be considered grounds for authorization of a variance.

14.15.02 Generally. Variances shall be granted when the person subject to a Land Development Regulation demonstrates that the purpose of the Land Development Regulation will be or has been achieved by other means, and when application of a Land Development Regulation would create a substantial hardship or would violate principles of fairness. For purposes of this Section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. For purposes of this Section, "principles of fairness" are violated when the literal application of a Land Development Regulation affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Land Development Regulation. Variances may also be granted to allow for the reconstruction, rehabilitation, or restoration of structures listed on, or classified as, contributing to a district listed on the National Register of Historic Places, Florida Master Site File or local surveys of historical resources. In such instance, the variance shall be the minimum necessary to protect the historical integrity of the structure and its site.

COMPREHENSIVE PLAN POLICY: N/A

ENVIRONMENTAL ISSUE: N/A

WETLANDS: N/A.

FLOODPLAIN: N/A

JOINT PLANNING AGREEMENT: N/A

TRANSPORTATION IMPROVEMENTS: N/A

GREEN SWAMP AREA OF CRITICAL STATE CONCERN: N/A

WEKIVA RIVER PROTECTION AREA: N/A

LAKE APOPKA BASIN: Yes

Comment [BTS4]: In the future let's put this in the analysis portion of the report.

WRITTEN COMMENTS FILED: SUPPORT: ~~0~~ OPPOSITION: ~~0~~

BOA #3-11-3
Photo Evidence



VIEWS OF PROPERTY

**BOA #3-11-3
Photo Evidence**



VIEWS OF PROPERTY



VIEWS OF POSTING