

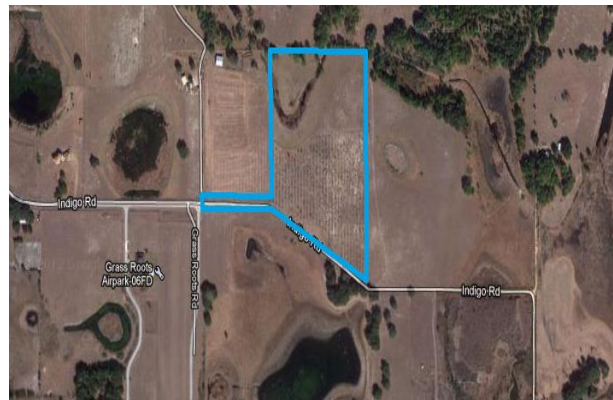
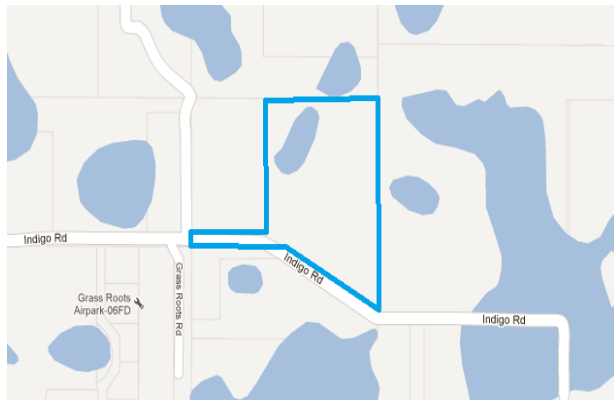


VARIANCE REQUEST
 Presented to
LAKE COUNTY BOARD OF ADJUSTMENT
 August 9, 2012

CASE NO.: BOA# 21-12-1	AGENDA ITEM #: 1
OWNER: Robert K. Hogan	APPLICANT: Bill Webb

REQUESTED ACTION: The owner is requesting a variance from the **Lake County Land Development Regulations (LDRs) 14.11.01.D.1 & 2** to allow a minor lot split on the subject parcel that has been previously split through the minor lot split process and does not front on a paved publicly-maintained road (+/- 20 acres).

GENERAL LOCATION: Groveland area – State Road 50 West to County Road 33, North to Indigo Road to site on left, AK# 3847239 (Sec. 23, Twp. 21, Rng. 24).



FUTURE LAND USE DESIGNATION: Rural

EXISTING ZONING: A (Agriculture)

<u>Direction</u>	<u>Future Land Use</u>	<u>Zoning</u>	<u>Existing Use</u>
North	Rural (1 du / 5ac)	Agriculture (1 du / 5 ac)	Agriculture
South	City of Mascotte	City of Mascotte	Agriculture
East	City of Mascotte	City of Mascotte	Agriculture
West	Rural (1 du / 5ac)	Agriculture (1 du / 5 ac)	Agriculture
Date Posted:	July 23, 2012 at Indigo Road and Private Easement, Groveland		

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 the 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.

ANALYSIS: The owner is requesting a variance to allow a minor lot split creating two lots when the parcel does not front on a paved publicly-maintained road and the parent parcel was created through the minor lot split process in 2009. The Code (14.11.01.D.1 & 2) states that only two lots may be created from the original legally created lot or lot of record. The proposed lot split will create lots less than 20 acres in size; the Code requires each lot created through the minor lot split process that is less than 20 acres in size to front on a publicly-maintained paved road and conform to the required minimum lot dimensions for the land use category and zoning district where the lots are located.

The original parcel consisted of approximately 30 acres; one person owned 10 acres and another person owned 20 acres. The 10-acre and 20-acre parcels were not recognized as buildable parcels on the zoning maps. The parcels had to be created through a lot split process before either parcel could be considered a buildable lot. In December 2008, a variance was submitted and approved, allowing the owners to submit for a minor lot split on an easement instead of a paved publically-maintained road. The owners completed the minor lot split in March 2009 creating a 10-acre parcel and a 20-acre parcel. The owner of the 20 acres is requesting a variance to allow the parcel to be split into two 10-acre parcels.

The parcel is zoned Agriculture and the future land use is Rural; the future land use and the zoning allow a density of one dwelling unit per five acres. The subject 20-acre parcel consists of 18.7 acres of uplands and 1.3 acres of wetlands, which is enough upland acreage to create two buildable parcels. Portions of the parcel are located within the 100-year flood zone, designated as “A”; there is sufficient area to construct a home outside of the 100-year flood zone. A copy of the survey, which indicates the size of the parcel along with the acreage of uplands and wetlands, is attached (Exhibit #1).

The parcel fronts on a 50-foot wide private easement and is approximately 550 feet east of Indigo Road, which is a publicly-maintained paved road. The private easement is a two-lane mixed base road and appears to be well maintained. A representative from the Public Works Department has reviewed the request and will not oppose a minor lot split.

The minor lot split process was created to allow a parent parcel to be split, creating two parcels fronting on a publicly-maintained paved road. The **intent** of the Code (Section 14.11.01.D.1 & 2) is to ensure that properties being split have the facilities that are required for the development of parcels such as roads, schools, parks, fire, and sewer and water facilities. This minor lot split would not create high density development in this area.

The applicant submitted the following as proof of meeting the **intent of the Code**: *“Property has been listed for sale for over 1400 days. With current market conditions the only opportunity we have had to sell is to have two lots. This has put a hardship on the owners to sell this property even at a large loss.”*

The applicant submitted the following as proof that the application of the Land Development Regulation would create a **substantial hardship or would violate principles of fairness**: *“After the property is divided both tracts will be located in a one unit per five acre zone. Granting of the variance will not change or violate the current Land Development Regulations. I will maintain low density dirt road (approx.1300) Ft. to facilitate increased traffic.”*

The applicant has submitted proof of meeting the intent of the Code and has shown proof of a substantial hardship or that the application of the Code would violate principles of fairness. Therefore, staff recommends **approval** of the requested variance with the following **condition**:

- **The newly created parcels shall not be further subdivided through an administrative lot split process.**

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

1. The request is consistent with Comprehensive Plan Policy 1-1.13: Land Use Density and Intensity Standards, which allows one dwelling unit per five acres in the Rural Future Land Use Category.
2. This request is consistent with LDR Table 3.02.06, which allows a density of one dwelling unit per five acres in the Agriculture Zoning District.
3. This request is consistent with the intent of LDR 14.11.01.D.1, which discourages high density development when the infrastructure is not in place to support the development.

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

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

LAND DEVELOPMENT REGULATIONS:

14.11.00 Minor Lot Splits, Family Density Exception and Agricultural Lot Splits.
14.11.01 Minor Lot Splits

- A. Generally. The County may approve a minor lot split of a legally created lot that conforms to the requirements of this Subsection. An applicant for a minor lot split shall have six (6) months from the date the application is submitted to the County to finalize the lot split. No extensions shall be permitted.
- B. Initial Submittal. The County shall consider a proposed minor lot split upon the submittal of the following materials:
 - 1. An application form provided by the County.
 - 2. One (1) paper copy of the proposed minor lot split.
 - 3. A statement indicating whether water and/or sanitary sewer service is available to the property.
 - 4. Soils map showing the proposed minor lot split boundaries overlain.
 - 5. Two (2) aerial photographs no older than the most recent aerials available from the County Manager or designee showing the proposed minor lot split boundaries overlain.
 - 6. Current property record card for the subject property.
 - 7. Current warranty deed for the subject property.
 - 8. Federal Emergency Management Agency (FEMA) flood insurance map with property boundaries overlain.
- C. Review Procedure.
 - 1. The County Manager or designee shall transmit a copy of the proposed minor lot split to any other appropriate departments of the County for review and comments.
 - 2. If the proposed minor lot split meets the conditions of these regulations and otherwise complies with all applicable laws and ordinances, the County Manager or designee shall approve the minor lot split.
 - 3. Any other information as required by the County Manager or designee.
- D. **Standards. All minor lot splits shall conform to the following standards:**
 - 1. **Only two (2) lots may be created from the original legally created lot or lot of record. The total number of lots created shall include the original parcel. The original parcel shall be known as the parent parcel and those lots created out of the parent parcel shall not be entitled to another minor lot split.**
 - 2. **Each lot Shall either (1) front on a publicly maintained paved road and conform to the required minimum lot dimensions for the land use category and zoning district where the lots are located OR (2) contain a minimum of twenty (20) acres with at least one (1) acre of uplands AND front either on a publicly maintained clay road OR an easement meeting the following requirements:**
 - a. **Non-exclusive easement for ingress and egress, dedicated to the public for road, utility, and drainage purposes, if satisfying the criteria set forth in Section 14.00.08, Land Development Regulations, and accepted by the Board of County Commissioners. However, a private easement may be permitted if it is determined that there is no need for a future road corridor.**
 - b. **Connect to a publicly maintained road.**
 - c. **Have a minimum width of fifty (50) feet.**
 - d. **Not obligate the County to maintain the easement.**
 - e. **Have road name signs installed in accordance with applicable County regulations.**
 - f. **Record deed restrictions which require the property owners to maintain the paved private road or easement. Such restrictions must be recorded prior to the recordation of the approved lot split.**

3. If any lot abuts a publicly maintained road that does not conform to the right-of-way specifications provided or adopted by reference in these regulations, the owner may have to dedicate the required right-of-way width necessary to meet the minimum design if satisfying the criteria set forth in Section 14.00.08, Land Development Regulations.
 4. Easements created pursuant to this Section shall comply with the Federal Emergency Management Agency (FEMA) regulations and Lake County floodplain management regulations.
 5. The creation of a lot wholly within the 100 year flood zone is prohibited.
 6. Flag lots are prohibited.
 7. A minor lot split shall not be approved within a platted subdivision when such lot split changes the character of the subdivision, or where the lot split increases the density, beyond the general nature of the subdivision.
 8. A minor lot split which authorizes the development of five (5) or more lots or dwelling units shall not be approved by the County Manager, or designee, unless the School Board has provided a certification in accordance with Chapter V-A of these regulations indicating that there is or will be sufficient school capacity to provide education services for the students who will live in dwelling units placed or constructed on such lots.
 9. All other Sections of the Land Development Regulations, and all requirements of the Comprehensive Plan shall apply.
- E. Final Submittal. Prior to final approval, in addition to any other requirements the following shall be required:
1. Legal descriptions, acreage and square footage of the original and proposed lots together with the legal description of any existing or proposed easements shall be shown on a boundary survey prepared by a professional land surveyor registered in the State of Florida. In the event the proposed lot split contains parcels greater than forty (40) acres in size, a sketch of description for the land area containing such parcels shall be accepted instead of a boundary survey. However, a boundary survey shall be required for the land area containing parcels forty (40) acres or less in size. (Example: A fifty (50) acre parcel being split into a twenty (20) acre parcel and a thirty (30) acre parcel would require a boundary survey of the fifty (50) acre parcel, but a fifty (50) acre parcel being split into a forty-five (45) acre parcel and a five (5) acre parcel would only require a boundary survey of the five (5) acre parcel.) The survey must show all structures, easements, surface water bodies, flood zones with base elevation, wetlands and amount of acreage inside and outside of the wetland jurisdiction line.
 2. A title opinion of an attorney licensed in Florida or a certification by an abstractor or a title company dated through the date of final approval, showing all persons or entities with an interest of record in the property, including but not limited to, the record fee owners, easement holders, mortgage and lien holders. The report shall include the tax identification number(s) for the property and copies of all documents such as deeds, mortgages etc. referenced in the title opinion.
- F. Recordation. Upon approval of the minor lot split, the County shall record the minor lot split on the appropriate maps and documents, and shall, at the applicant's expense, record the minor lot split in the public records of Lake County, Florida.

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.

ENVIRONMENTAL ISSUE: There are jurisdictional wetlands on the parcel.

FLOODPLAIN: Portion of the parcel located within the 100-year flood zone, designated as "A"

JOINT PLANNING AGREEMENT: N/A

WEKIVA RIVER PROTECTION AREA: N/A

LAKE APOPKA BASIN: N/A

TRANSPORTATION IMPROVEMENTS: N/A

GREEN SWAMP AREA OF CRITICAL STATE CONCERN: N/A

**BOA# 21-12-1
Photo Evidence**



Views of the site



Views of the easement to the site



Views of the postings

**Final Development Order
Robert K. Hogan
BOA # 21-12-1**

A VARIANCE OF THE LAKE COUNTY BOARD OF ADJUSTMENT AMENDING THE LAKE COUNTY ZONING MAPS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Robert K. Hogan (the "Owner") made a request to allow a minor lot split on the subject parcel that has been previously split through the minor lot split process and does not front on a paved publicly-maintained road; and

WHEREAS, the subject property consists of 20 acres +/- and is generally located north of Mascotte in Section 23, Township 21 South, Range 24 East, being composed of Alternate Key Number 3847239, and is more particularly described as:

BEGIN AT SOUTHEAST CORNER OF NORTHWEST 1/4, RUN N 0-23-54 E 1320.85 FT TO NORTHEAST CORNER OF SOUTHEAST 1/4 OF NORTHWEST 1/4, N 89-20-22 W 791.66 FT, S 0-22-06 W 821.80 FT, N 89-24-45 W 533 FT, S 0-22-31 W 65.99 FT, S 89-24-42 E 514.58 FT, S 59-42-56 E 148.99 FT, S 89-24-42 E 50.47 FT, S 59-41-46 E 726.74 FT TO POINT OF BEGINNING IN SECTION 23, TOWNSHIP 21 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA.

AND, after giving Notice of Hearing on petition for a variance to the Lake County Land Development Regulations, including notice that said variance would be presented to the Board of Adjustment of Lake County, Florida, on August 9, 2012; and

WHEREAS, the Board of Adjustment reviewed said petition, staff report and any comments, favorable or unfavorable, from the public and surrounding property owners at a public hearing duly advertised; and

WHEREAS, on August 9, 2012, the Lake County Board of Adjustment approved the variance for the above property; and

NOW THEREFORE, BE IT ORDAINED by the Board of Adjustment of Lake County, Florida, that the Land Development Regulations of Lake County, Florida, be altered and amended as they pertain to the above subject property, subject to the following terms:

Section 1. Terms: The County Manager or designee shall amend the Official Zoning Map to reflect the approval of BOA# 21-12-1 to allow a minor lot split on a private easement and to allow a minor lot split when the parcel has previously been split through the minor lot split process, with the following condition:

- The parcel shall not be divided by any additional administrative lot splits.

Section 2. Severability: If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 3. Effective Date. This Ordinance shall become effective as provided by law.

ENACTED this 9th day of August, 2012.

EFFECTIVE August 9, 2012.

**BOARD OF ADJUSTMENT
LAKE COUNTY, FLORIDA**

Donald Schreiner, Chairman

**STATE OF FLORIDA
COUNTY OF LAKE**

The foregoing instrument was acknowledged before me this August 9, 2012 by DONALD SCHREINER, who is personally known to me.
(SEAL)

Signature of Acknowledger

Serial Number: _____

My Commission Expires: _____