

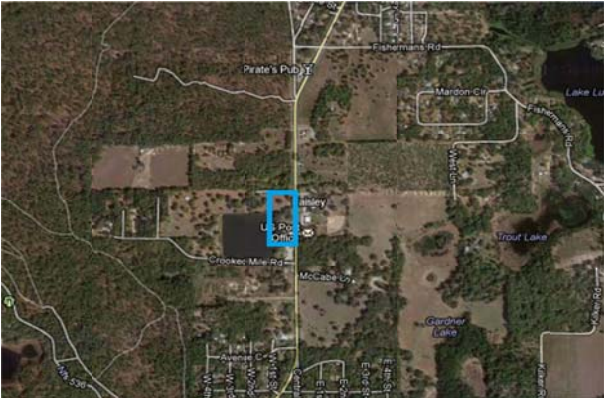
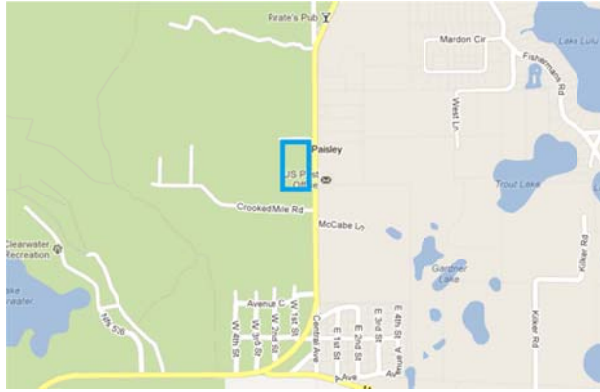


VARIANCE REQUEST
 Presented to
LAKE COUNTY BOARD OF ADJUSTMENT
 April 11, 2013

CASE NO.: BOA# 11-13-5 **AGENDA ITEM #: 1**
OWNERS: Edward and Betsy Duncan, Concept Development, LLC and United Southern Bank
APPLICANT: Matt Cason

REQUESTED ACTION: The owners are requesting a variance from **Lake County Land Development Regulations, Section 9.02.10.F.2. Heritage Trees** to allow the removal of a heritage tree that is within the development footprint of a commercial retail site (+/- 2.29 acres).

GENERAL LOCATION: Paisley area – US Hwy 19 N, E on CR 42 to site on left, Address #24943, 24951, and 24959, AK# 2581646,1709814, and 1709822 (Sec. 30, Twp. 17, Rng. 28).



FUTURE LAND USE DESIGNATION: Rural, Rural Support Corridor, Wekiva-Ocala Rural Protection Area

EXISTING ZONING: CP (Planned Commercial)

<u>Direction</u>	<u>Future Land Use</u>	<u>Zoning</u>	<u>Existing Use</u>
North	Rural (1 du / 5 acres) Rural Support Corridor Wekiva-Ocala Rural Protection Area	A (Agriculture) (1 du / 5 acres)	Single-Family Dwelling Unit
South	Rural (1 du / 5 acres) Rural Support Corridor Wekiva-Ocala Rural Protection Area	C-2 (Community Commercial District)	Restaurant
East	Rural (1 du / 5 acres) Rural Support Corridor Wekiva-Ocala Rural Protection Area Public Services Facility and Infrastructure	CFD (Community Facilities District) CP (Planned Commercial) A (Agriculture) (1 du / 5 acres)	Active Recreation, Post Office, Single-Family Dwelling Unit

<u>Direction</u>	<u>Future Land Use</u>	<u>Zoning</u>	<u>Existing Use</u>
West	Rural (1 du / 5 acres) Rural Support Corridor Wekiva-Ocala Rural Protection Area	A (Agriculture) (1 du / 5 acres)	Agriculture
DATE POSTED:	March 19, 2013 at County Road 42 and Shine On Drive, Eustis		

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 owners are requesting a variance to allow the removal of a multi-trunk heritage tree that limits the placement of a retail store. Since the removal of healthy heritage trees is prohibited, a variance to the Code is required.

The development consists of three separate parcels; the parcels dimensions are 460' wide by 210' deep when combined. In February 2013, the owners rezoned the parcel from Neighborhood Commercial (C-1) and Community Commercial (C-2) to Planned Commercial (CP). This zoning change will allow the construction of a 9,100-square-foot commercial building with a 30 space parking area. A total of 461-caliper inches of trees, located within the proposed building footprint, parking area or storm water retention area are being removed. A site plan detailing the location of the proposed structures and existing trees is attached (Exhibit "A")

The owners are requesting to remove one multi-trunk heritage tree in the center of the parcel. The tree is located in the middle of the drive aisle of the parking lot. This tree is comprised of three trunks (22", 17" 14") with a common root system that combine to equal 53-caliper-inches. The Code requires all of the trunks in multi-trunk trees be combined in order to calculate the diameter of the tree; if calculated separately the tree trunks would not qualify as a heritage tree. The replacement standard requires 100 percent of the diameter of heritage trees being removed be replaced and 50 percent of specimen or protected trees. The owners are proposing to plant 267-caliper inches of replacement trees onsite during the construction of the building. If the commercial building is constructed as proposed all of the minimum standards of the Land Development Regulations will be met, including tree mitigation.

The **intent of the Code** (9.02.00) is to recognize the importance of trees and palms and their meaningful contribution to a healthy, beautiful, and safer community attributable to their carbon dioxide absorption, oxygen production, dust filtration, wind and noise reduction, soil erosion prevention, lakeshore erosion protection, wildlife habitat, surface drainage improvement, beautification and aesthetic enhancement of improved and vacant lands and the general promotion of the health, safety, welfare and well-being of the community.

The owners reduced the amount of trees being removed through building design and placement. The owners will be unable to build their site as designed without the removal of the heritage tree; there is no cost-effective way to allow the heritage tree to remain on site.

The owners submitted the following as proof of meeting the **intent of the Code** and as proof that the application of the Land Development Regulation would create a **substantial hardship or would violate principles of fairness**:

"Please accept this memorandum and the information contained herein as competent and substantial evidence supporting the Commercial Retail Store – Paisley variance application. The application requests a variance from Lake County Land Development Regulations (LDR) Sec. 9.02.10.F.2. regarding heritage tree removal.

Due to the location of the existing on-site heritage trees, the requirement of one hundred percent (100%) preservation significantly limits the development that can be achieved. Therefore, the literal application of LDR Sec. 9.02.10.F.2. violates the "principles of fairness" as defined in LDR Sec. 14.15.00. by referencing similar sized lots within the same zoning district along a Rural Support Corridor that would be permitted to develop at greater intensities. Also, the replacement requirement for heritage trees is outlined in Sec. 9.02.06.B.

The location of the existing on-site heritage trees also creates an economic hardship. Without removal of the designated heritage tree, development on the property would be significantly limited and the value of the land would be significantly decreased. Per LDR Sec. 14.15.00 the identified economic hardship justifies a variance to allow for the removal of the heritage tree significantly impacting the proposed development plan.

The Commercial Retail Store – Paisley project proposes the construction of a 9,100 ft² commercial retail store with associated parking areas, stormwater management facilities, and the associated utilities. A major site plan application was submitted to Lake County Growth Management Department on January 25, 2013 (Lake County Project No. 2012070014, Application Request No. 2192). Comments were received, March 14, 2013, from the Planning & Community Design Division concerning removal of heritage trees from site. During review, staff noted that a variance from the Board of Adjustment would be required for site plan approval per Section 9.02.10.F.2 of the LDR.

The project proposes the removal of 53 caliper inches of a heritage tree, which the variance is requesting. This includes a 22", 17", 14" Oak Cluster located within the drive aisle in front of the store. Note a 36", 46" Cluster Live Oak heritage tree, located within the Stormwater Management Facility, is also being removed

because it poses a danger to persons and/or property and does not require a variance per LDR Sec. 9.02.10.F.2. Refer to the enclosed plans for specific locations and details. In addition, please refer to the enclosed Commercial Retail Store Heritage Tree Evaluation prepared by Buford, Davis, and Associates.

The information provided demonstrates that the proposed development plan avoids impacts to the majority of on-site heritage trees. The proposed development plan preserves a total of 269 existing heritage tree caliper inches while only removing 53 caliper inches. Several other non-heritage trees are also preserved upon the site.

The removal of heritage trees in only one (1) area also demonstrates our effort to minimize the impact to on-site heritage trees while remaining consistent with other required development standards and County requests, i.e. setbacks, stormwater management facilities, driveway alignment, etc. The following bullet points identify Lake County development standards and staff requests that have impacted the site's design:

- *Rear Setback: A 50' rear setback is required by Lake County. The building is located on the rear setback to provide for required parking, drive aisles, etc.*
- *Open Space: Thirty-five percent (35%) open space is required and has been provided on the north side of the site.*
- *Parking: A parking variance has already been approved for reducing the amount of parking from 46 parking spaces to 30 parking spaces. This reduction similarly demonstrates the applicant's efforts to minimize impacts to the site's natural features.*
- *Stormwater Management: The required stormwater management facility has been designed to minimize the size and location, as required per Lake County and St. Johns River Water Management District.*
- *Driveway Placement – County staff required the proposed driveway location to be aligned with the existing post office across County Road 42.*

Per LDR Sec. 9.02.06.B, one hundred percent (100%) of the heritage tree caliper inches that are removed will be mitigated. Mitigation will be accomplished by newly trees planted on-site.

The facts provided in this memo and the development plans, provided as an attachment, demonstrate that the location of the one (1) specific on-site heritage tree and the literal application of LDR Sec. 9.02.10.F.2 violates the "principles of fairness" as defined in LDR Sec. 14.15.00 and creates an economic hardship. Also, the information provided clearly demonstrates that the applicant has made every attempt to avoid, minimize, and finally mitigate impacts to the on-site heritage trees.

On behalf of the applicant, we respectfully request approval of this variance application. Please contact me directly if you have any questions or need any additional information or clarifications to assist in your approval."

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

- The request is consistent with the intent of LDR 9.02.00, which regulates the removal and replacement of trees and palms.
- The applicant is exceeding the replanting requirements for mitigation trees.

The owners 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. Based on the Findings of Fact and Analysis, Staff recommends **approval** of the variance request to allow the removal of a 53-caliper inch heritage tree.

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

9.02.10 Heritage Trees.

- A. Purpose. It is the purpose of this Subsection to acknowledge the existence of certain trees within the County that are significant or unique due to factors such as age, size, historic significance or type and to protect such trees through their designation as heritage trees. Designation of heritage trees by the Board Shall be in accordance with the standards and procedures in this Subsection.
- B. Designation Standards. At least one (1) of the following standards Shall apply in order for a tree to be designated a heritage tree:
 - 1. Size. Trees with a forty-inch caliper or greater, singly or with a combined trunk, measured at fifty-four (54) inches from the surface of the ground.
 - 2. Age. Trees that are determined to be at least one hundred (100) years old or to be at approximate half-life maturity and are in good health.
 - 3. Form. Trees that are determined to have a unique form or shape, due to geography, climate, environmental or natural growth habitat conditions, and are in good health.
 - 4. Ecological Value. Trees that are determined to have an ecological value to the County in terms of soil or water conservation and management, wildlife habitat, or endemic native flora habitat, and are in good health.
 - 5. Rarity. Trees that are determined to be non-indigenous, rare, or unique to the County, and are in good health.
 - 6. Historical Significance. Trees that have been designated as having historical significance by the Lake County Historical Society or the Board of County Commissioners.
- C. Prohibited Trees are excluded from designation as a Heritage Tree.
- D. Application Procedures.
 - 1. Applications may be initiated by owners of the Property or developers as part of their development plan.
 - 2. Applications on forms provided by the County Manager or designee Shall be completed and submitted to the County Manager or designee.
 - 3. The County Manager or designee may request assistance from the Lake County Forester, State Division of Forestry, in determining compliance with any of the designation standards. If the tree poses a potential hazard to persons or property it shall not be designated.
 - 4. The Board of County Commissioners may adopt a resolution recognizing the designation.
- E. Recognition of Heritage Trees. Any non-prohibited trees with forty-inch caliper or greater, singly or with a combined trunk, measured at fifty-four (54) inches from the surface of the ground Shall be recognized as a heritage tree without application. An applicant Shall identify the location, number and size of all

heritage trees on any required tree survey submitted to the County for site plan or plat review. In addition, the County may identify heritage trees that are found to meet this criterion.

F. Approval and Protection.

1. Any non-prohibited tree satisfying one (1) or more of the size criteria for a heritage tree as specified above Shall be recognized and recorded as a heritage tree by the County Manager or designee, without approval by the Board of County Commissioners. The Board of County Commissioners may adopt a resolution recognizing the designation.

2. **Removal of a heritage tree Shall be prohibited, unless it poses a danger to persons or property. A variance may also be granted by the Board of Adjustment. The property owner Shall protect any tree designated as a heritage tree to ensure its long-term health.**

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: N/A

FLOODPLAIN: N/A

JOINT PLANNING AGREEMENT: N/A

LAKE APOPKA BASIN: N/A

WEKIVA RIVER PROTECTION AREA: N/A

TRANSPORTATION IMPROVEMENTS: N/A

GREEN SWAMP AREA OF CRITICAL STATE CONCERN: N/A

BOA# 11-13-5
Photo Evidence



Views of the site / Views of the posting

Final Development Order
Edward and Betsy Duncan, Concept Development, LLC and United Southern Bank / Matt Cason
BOA # 11-13-5

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

WHEREAS, Edward and Betsy Duncan, Concept Development, LLC and United Southern Bank (the "Owners") requested a variance to allow the removal of a heritage tree that is within the development footprint of a commercial retail site; and

WHEREAS, the subject property consists of 2.29 acres +/- and is generally located east of Eustis in Section 30, Township 17 South, Range 28 East, being composed of alternate key numbers 2581646;1709814;1709822 and is more particularly described as:

BEG AT A PT 315 FT S OF NE COR OF S 1/4 OF GOV LOT 1 & RUN S TO PT 150 FT N OF SE COR GOV LOT 1, W 250 FT, N TO A PT 315 FT S OF N LINE OF S 1/4 OF GOV LOT 1, E TO POB--LESS RD R/W IN SECTION 30, TOWNSHIP 17 SOUTH, RANGE 28 EAST IN LAKE COUNTY, FLORIDA

AND

S 150 FT OF E 250 FT OF S 1/4 OF GOV LOT 1--LESS R/W OF SR 42 IN SECTION 30, TOWNSHIP 17 SOUTH, RANGE 28 EAST IN LAKE COUNTY, FLORIDA

AND

N 110 FT OF E 250 FT OF GOV LOT 9--LESS R/W OF SR 42 IN SECTION 30, TOWNSHIP 17 SOUTH, RANGE 28 EAST IN 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 April 11, 2013; 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 April 11, 2013, 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# 11-13-5 to allow the removal of a heritage tree that is within the development footprint of a commercial retail site.

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 11th day of April, 2013.

EFFECTIVE April 11, 2013.

BOARD OF ADJUSTMENT
LAKE COUNTY, FLORIDA

Donald Schreiner, Chairman

STATE OF FLORIDA
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this April 11, 2013 by DONALD SCHREINER, who is personally known to me.
(SEAL)

Signature of Acknowledger

Serial Number: _____

My Commission Expires: _____