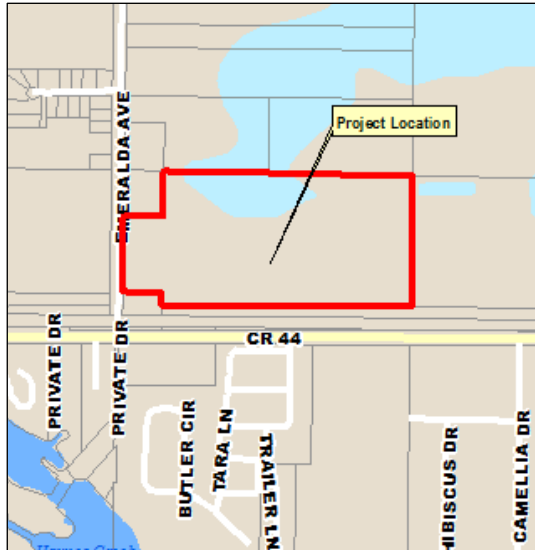




**VARIANCE REQUEST**  
**Presented to the**  
**BOARD OF ADJUSTMENT**  
**January 8, 2015**

<b>Case No. VAR-2015-01-5</b>	<b>Agenda Item: 1</b>
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**REQUESTED ACTION:** The applicant is requesting a variance from **Lake County Land Development Regulations, 9.02.10 (F) (2) Heritage trees** to allow the removal of two heritage trees for development of a general store and associated parking lot; the Code states that the removal of heritage trees is prohibited unless it poses a danger to persons or property.



<b>Owners</b>	Gary S. and Peggy L. Custer
<b>Applicant</b>	Brian Crawford, Concept Development, LLC.
<b>Address</b>	36030 Emeraldalva Ave Leesburg, FL 34788
<b>General Location</b>	Leesburg area – North of County Road 44 and East of Emeraldalva Avenue
<b>Alternate Key</b>	2582952
<b>Zoning District</b>	Planning Commercial (CP), Ordinance #2011-33
<b>Future Land Use</b>	Industrial
<b>ISBA</b>	Not Applicable

<u>Direction</u>	<u>Future Land Use</u>	<u>Zoning</u>	<u>Existing Use</u>
<b>North</b>	Rural Transition (1 du/5 acres)	R-6	Single-family dwelling units and Wetlands
<b>South</b>	Industrial and Urban Low (1 du/5 acres)	R-6, C-2, RMRP	Easement, Mobile Home Park, vacant lot, and Single Family Residence
<b>East</b>	Industrial	CFD (Community Facility District)	Wolverine Advanced Materials (Light Manufacturing)
<b>West</b>	Rural Transition (1 du/5 acres), Industrial	CP, R-6, RMRP	Mobile Home Park

**Property Posted: December 29, 2014**  
**2014**

**Notification cards mailed-out: December 30,**

**JOINT PLANNING AGREEMENT: N/A**  
**LAKE APOPKA BASIN: N/A**  
**GREEN SWAMP AREA OF CRITICAL STATE CONCERN: N/A**

**WEKIVA RIVER PROTECTION AREA: N/A**  
**TRANSPORTATION IMPROVEMENTS: N/A**

**FLOODPLAIN:** Northern portion of the property located within Flood Zone A

**ENVIRONMENTAL ISSUE:** Wetlands located in the northern part of the parent parcel.

**14.15.01 Purpose of Variances.** In the strict application of uniformly applicable Land Development Regulations (LDR), the Board of County Commissioners (BCC) finds that it is appropriate in such cases to adopt a procedure to provide relief to persons subject to the LDR. The Board of Adjustment (BOA) is authorized to grant variances to requirements of the LDR when its application leads to unreasonable, unfair, and unintended results to the development and use of land. However, the variance must be consistent with the rules contained in these regulations. This Section does not authorize the BOA to grant variances inconsistent with the Comprehensive Plan nor to grant a variance to allow uses not generally permitted in the applicable zoning district or any use expressly or by implication, prohibited by the terms of the LDR for that zoning district. Additionally, the existence of nonconforming use of neighboring lands or unpermitted use of neighboring lands shall not be considered grounds for authorization of a variance.

**14.15.02 Granting Variances and Appeals**

Variances may be granted when the person subject to the LDR demonstrates that the purpose of the LDR will be or has been achieved by other means, and when application of a LDR 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. The “principles of fairness” are violated when the literal application of a LDR affects a particular person in a manner significantly different from the way it affects other similarly situated persons or properties who are subject to the LDR.

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 applicant is requesting a variance to allow for the removal of two canopy trees (forty-inch and forty-eight-inch caliper) in order to construct a 9,100 square foot general retail store and associated parking. The subject 16.72-acre property is located on CR 44, in the Leesburg area. Both trees are considered Heritage Trees according to LDR 9.02.10 (B) (1) due to their size. LDR Section 9.02.10 (F) (2) states that heritage trees are only to be removed if they pose a danger to persons or property. Neither tree poses danger to persons nor property thus a variance is required for their removal.

The parent parcel has wetlands on the northern portion of the property and a majority of the property is covered by Flood Zone A.

The applicant provided verbally indication that the subject parcel was chosen so that the proposed right-of-way connection would align with the street to the south of County Road 44 (Rhett Road). He stated that the proposed development site has the least amount of impact on the property’s trees and that this site has the least impact on the property’s flood zones.

In accordance with LDR Section 9.02.06 (B), the applicant is proposing to mitigate one hundred (100%) of the total caliper inches of the heritage trees by planting additional trees on-site (Attachment B). The proposed landscaping plan, submitted with the concurrent site plan application, depicts the heritage tree mitigation which would result in the addition of almost 15, 6 caliper-inch canopy trees to the existing

landscaping. The proposed Board of Adjustment Order includes a condition that states that one-hundred percent (100%) of the caliper inches of the heritage trees are to be mitigated on-site with canopy trees.

The **intent of the Code** (LDR Section 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 applicants submitted the following reasons as proof of meeting the **intent of the Code** (Full memo provided as attachment A):

*“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 new trees planted on-site. A landscape plan will be included with the major site plan application submitted in November.”*

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** (Full memo provided as attachment A):

*“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 Future Land Use category and Zoning district that would be permitted to develop at greater intensities.*

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

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

- The request is consistent with the intent of LDR Section 9.02.00, which regulates the removal and replacement of trees and palms.
- The flood zone on the northern portion of the property limits the developable area of the subject parcel.
- The applicant intends to meet the requirements for the mitigation of heritage 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 stated above, Staff recommends **approval** of the variance request to allow removal of two heritage trees totaling 88-caliper inches.

**Final Development Order  
Gary and Peggy Custer  
VAR-2015-01-5**

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

**WHEREAS**, Brian Crawford (the "applicant"), on behalf of Gary and Peggy Custer (the "Owners"), requested a variance to allow the removal of two heritage trees that are within the development footprint of a commercial retail site; and

**WHEREAS**, the subject property consists of 1.455 acres +/- and is generally in the Leesburg area, North of County Road 44 and East of Emerald Avenue Lake, in Section 35, Township 18 South, Range 25 East, a portion of alternate key number 2582952 and is more particularly described as:

Commence At The Southeast Corner Of Lands Described In Official Records Book 1834, Page 1069 Of The Public Records Of Lake County, Florida, Said Point Also Lying On The North Right Of Way Line Of The Abandoned Seaboard Coast Line Railroad (A 100-Foot Right Of Way); Thence South 89'31'42" West Along The South Line Of Said Lands And Along Said North Right Of Way Line, A Distance Of 280.00 Feet To The Point Of Beginning; Thence Continue South 89'31'42" West Along The Said South Line And Along Said North Right Of Way Line, A Distance Of 264.00 Feet; Thence Departing Said South Line And Said North Right Of Way Line, North 00'28'18" West, A Distance Of 240.00 Feet; Thence North 89'31'42" East, A Distance Of 264.00 Feet; Thence South 00'28'18" East, A Distance Of 240.00 Feet To The Point Of Beginning.

**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 January 8, 2015; 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 January 8, 2015, 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 VAR-2015-01-5 to allow for the removal of two heritage trees, in accordance with the following **conditions**:

- A. One-hundred (100) percent of the total caliper inches of the Heritage Trees shall be mitigated on the subject site with canopy trees.
- B. One-hundred (100) percent mitigation of the total caliper tree inches shall be quantified, specified, and depicted on a landscape plan in-conjunction with any future development application.

**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 8<sup>th</sup> day of January, 2015.

EFFECTIVE January 8, 2015.

**BOARD OF ADJUSTMENT  
LAKE COUNTY, FLORIDA**

\_\_\_\_\_  
**Donald Schreiner, Chairman**

**STATE OF FLORIDA  
COUNTY OF LAKE**

The foregoing instrument was acknowledged before me this January 8, 2015 by DONALD SCHREINER, who is personally known to me.  
(SEAL)

\_\_\_\_\_  
**Signature of Acknowledger**

**Serial Number:** \_\_\_\_\_

**My Commission Expires:** \_\_\_\_\_

# Attachment A (2 Pages)



*Focused on Excellence  
Delivered with Integrity*

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## MEMORANDUM

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**TO:** Amye King, AICP, Lake County Growth Management Director  
**FROM:** Craig Brashier, AICP, Planning Project Manager  
**DATE:** October 31, 2014  
**RE:** CRS-Leesburg – Heritage Tree Variance Request  
A portion of Alternate Key 2582952

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Please accept this memorandum and the information contained herein as competent and substantial evidence supporting the Commercial Retail Store – Leesburg 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 Future Land Use category and Zoning district 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 trees, development on the property would be significantly limited and the value of the land would be greatly decreased. Per LDR Sec. 14.15.00 the identified economic hardship justifies a variance to allow for the removal of the heritage trees significantly impacting the proposed development plan.

A major site plan application will be submitted to Lake County Growth Management Department in November 2014. The Commercial Retail Store – Leesburg project proposes the construction of a 9,100 ft<sup>2</sup> commercial retail store with associated parking areas, stormwater management facilities, and the associated utilities. A proposed site plan with existing tree locations identified is included as part of this variance application package.

The project requires the removal of two (2) heritage trees totaling 88 caliper inches, which the variance is requesting. This includes a 40” Live Oak located within the building footprint and a 48” Live Oak located within the proposed parking area in front of the building. A tree evaluation completed by Brian Borton, a Landscape Architect and certified arborist, is included as part of this variance application package.

As detailed in the tree evaluation, an additional 36” Live Oak is located within the parking area in front of the building. This tree is in poor condition and is recommended for removal without mitigation. This tree poses a danger to persons and/or property and does not require a variance per LDR Sec. 9.02.10.F.2. Another cluster of Live Oaks is located in the drive isle on the west side of the proposed building. As described in the

tree evaluation, this cluster should be considered a specimen tree and the appropriate mitigation is proposed.

The information provided demonstrates that the proposed development plan cannot avoid impacts to the on-site heritage trees. On-site specimen trees will be preserved where possible. The proposed development plan preserves a total of 167 existing specimen tree caliper inches consisting of two (2) 36" Live Oaks, a 32" Live Oak, a 15"/15" Oak cluster, and a 16"/17" Live Oak cluster. These are identified on the Tree Removal Plan included as part of this variance application package.

The removal of heritage trees is necessary to remain consistent with other required Lake County development standards, i.e. buffers, stormwater management facilities, fire protection, driveway alignment, etc. The following bullet points identify Lake County development standards that impact the site's design:

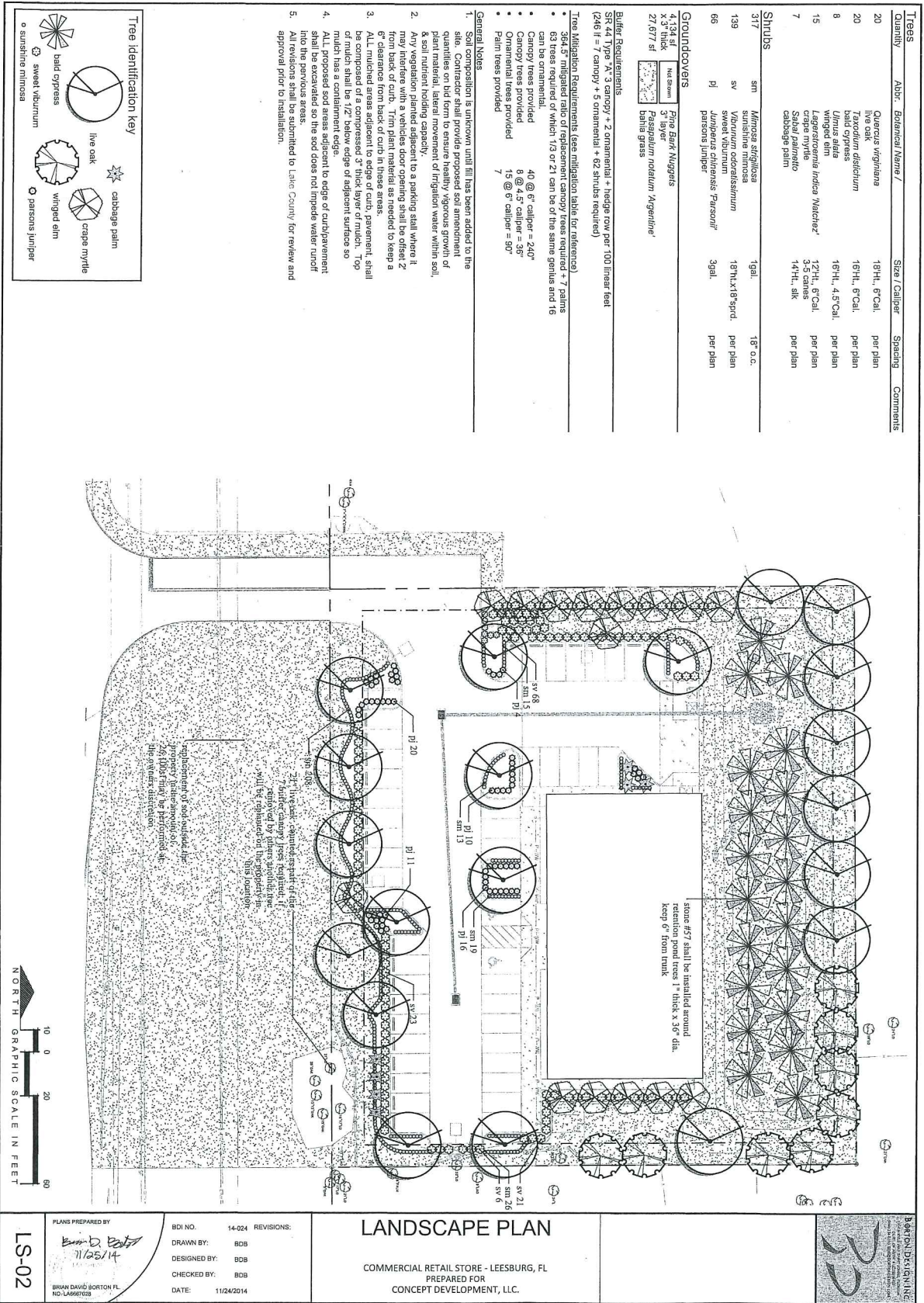
- Buffers: 10 ft. to 20 ft. wide landscape buffers are required around the perimeter of the site.
- Open Space: Thirty-five percent (35%) open space is required and has been provided on the north side of the site.
- Parking: 46 parking spaces are required for the 9,100 sq. ft. general retail store.
- 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.
- FEMA Floodplain: The site has been designed so that the building and stormwater management facility are positioned to minimize impacts to the FEMA floodplain that exists in the northern portion of the site.
- Driveway Placement – The driveway location has been designed to align with the driveway directly across CR 44 to the south.

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 new trees planted on-site. A landscape plan will be included with the major site plan application submitted in November.

The facts provided in this memo and the proposed development plans, provided as attachments, demonstrate that the location of the two (2) specific on-site heritage trees 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.

# Attachment B (1 Page)



Quantity	Abbr.	Botanical Name /	Size / Caliper	Spacing	Comments
20		<i>Quercus virginiana</i>	18"H., 6" Cal.	per plan	
20		<i>Taxodium distichum</i>	16"H., 6" Cal.	per plan	
8		<i>Ulmus sp.</i>	16"H., 4.5" Cal.	per plan	
15		<i>Lagerstroemia indica</i>	12"H., 6" Cal.	per plan	
7		<i>Sabal palmetto</i>	14"H., 6" Cal.	per plan	
<b>Shrubs</b>					
317	sm	<i>Mimosa stipitata</i>	1gal.	18" o.c.	
139	sv	<i>Saururus coccineus</i>	18"H. x 18" Spd.	per plan	
66	pl	<i>Juniperus chinensis 'Parsonii'</i>	3gal.	per plan	
<b>Groundcovers</b>					
		<i>Paroselinum tetradium 'Argentine'</i>			
		<i>Paroselinum tetradium 'Argentine'</i>			
		<i>Paroselinum tetradium 'Argentine'</i>			
<b>Buffer Requirements</b>					
SR 44 Type 'A' 3 canopy + 2 ornamental + hedge row per 100 linear feet					
(240 lf = 7 canopy + 5 ornamental + 82 shrubs required)					
Tree Allocation Requirements (see allocation table for reference)					
• 364 sq' mulched ratio of replacement canopy trees required + 7 rains can be ornamental.					
• 63 trees required of which 1/3 or 21 can be of the same genus and 16 can be ornamental.					
• Canopy trees provided 40 @ 6" caliper = 240'					
• Ornamental trees provided 8 @ 4.5" caliper = 36'					
• Ornamental trees provided 15 @ 6" caliper = 90'					
• Palm trees provided 7					
<b>General Notes</b>					
1. Soil composition is unknown until fill has been added to the site. Contractor shall provide proposed soil amendment quantities on bid form to ensure healthy vigorous growth of plant material. Lateral movement of irrigation water within soil, as well as soil compaction, shall be a concern.					
2. Any vegetation within 10' to a parking stall where it may interfere with a vehicles door opening shall be offset 2' from back of curb. Trim plant material as needed to keep a 6" clearance from back of curb in these areas.					
3. ALL mulched areas adjacent to edge of curb, pavement, shall be composed of a compressed 3" thick layer of mulch. Top of mulch shall be 1/2" below edge of adjacent surface so mulch has a containment edge.					
4. All trees shall be subject to edges of curb/pavement into the pervious areas.					
5. All revisions shall be submitted to Lake County for review and approval prior to installation.					

PLANS PREPARED BY: *Brian D. Borton*  
7/12/14

LS-02

BRIAN DAVID BORTON FL  
NO. LA9997628

BDI NO. 14-024 REVISIONS:

DRAWN BY: BDB

DESIGNED BY: BDB

CHECKED BY: BDB

DATE: 11/24/2014

**LANDSCAPE PLAN**

COMMERCIAL RETAIL STORE - LEESBURG, FL  
PREPARED FOR  
CONCEPT DEVELOPMENT, LLC.

BORTON DESIGN INC.

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SUITE 100  
LEESBURG, FL 34748  
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