



VARIANCE STAFF REPORT

OFFICE OF PLANNING & ZONING

Tab Number: 3

Public Hearing Date: September 12, 2019

Case No. and Project Name: VAR-19-30-3 Barningham Property

Applicant: Jamie Blunt (the "Applicant")

Owner: William and Jennifer Barningham (the "Owners")

Requested Action: Variance to Lake County Land Development Regulations (LDR) Section 14.20.01(5) to allow for development (single-family dwelling unit) to be located within the flood-prone area.

Staff Determination: Staff recommends **denial** of the variance request.

Case Manager: Ruth Mitchell, Associate Planner

Subject Property Information

Size: 3.86 +/- acres

Location: East of Grand Oak Lane, in the Tavares area.

Alternate Key No.: 3838663

Future Land Use: Rural

Current Zoning District: Planned Unit Development (PUD) – Ordinance #2003-41

Flood Zone: "A" and "X"

Joint Planning Area/ISBA: N/A

Overlay Districts: Yalaha – Lake Apopka Rural Protection Area (RPA)

Adjacent Property Land Use Table

Direction	Future Land Use	Zoning	Existing Use	Comments
North	Rural	Planned Unit Development (PUD)	Residential	Vacant Lot 46 of Beauclair Ranch Club Subdivision
South	Rural	Planned Unit Development (PUD)	Residential	Vacant Lot 44 of Beauclair Ranch Club Subdivision
East	Rural	Planned Unit Development (PUD)	Residential	Vacant Lot 55 of Beauclair Ranch Club Subdivision
West	N/A	N/A	Road	Grand Oak Lane

Summary of Request.

The subject parcel is zoned Planned Unit Development (PUD) in accordance with Ordinance #2003-41, and is designated as Rural Future Land Use Category (FLUC) by the 2030 Comprehensive. The property is located east of Grand Oak Lane, in the Tavares area of unincorporated Lake County. The property is legally described as Lot 45 of Beauclair Ranch Club Subdivision, as recorded in Plat Book 55, Page 3, Public Records of Lake County, Florida.

The Federal Emergency Management Agency (FEMA) maps placed the majority of the parcel within Flood Zone "A," with a small portion of the property lying within Flood Zone "X". Pursuant to Land Development Regulation (LDR) Section 14.20.01.5, "where buildable area exists out of the flood-prone area, development shall take place in that area." Chapter II of the LDR defines flood-prone area as, "any area which lies at or below the water surface elevation of the Base Flood." In regards to this request, buildable area is defined as land outside the limits of the flood-prone area, any easements, and/or setback requirements. Staff advised the Applicant that all development on the property would need to be located within Floodzone 'X.' Staff referred the Applicant to the Lake County Department of Public Works, to speak with the Flood Plain Administrator about potentially developing the property within the portion of the property located within Floodzone "A."

Land located within Flood Zone "A" have a one (1) percent annual chance of flooding and are generally determined using approximate methodologies. Because detailed hydraulic analyses have not been performed by the agency, no Base Flood Elevations (BFEs) or flood depths are determined by FEMA for Flood Zone 'A.' The Federal Emergency Management Agency (FEMA) determines the Base Flood Elevation for areas located within flood zone "AE"; the Flood Plain Coordinator for Lake County determines where the Base Flood Elevation are located within Flood Zone "A." The Flood Plain Coordinator reviewed the subject property and determined that the base flood elevation (BFE) for the subject property is sixty-seven and one-half (67.5) feet (Attachment A). In order to be compliant with LDR Section 14.20.01.5, all development on the property needs to be constructed on that portion of the lot 67.5 feet or higher in elevation.

The Applicant was issued a zoning permit on March 15, 2019, to construct a single-family dwelling unit on the parcel within Floodzone 'A' but on the portion of the property above the established BFE with the condition that the Applicant apply for a formal Letter of Map Amendment (LOMA) to formally remove that portion of the property from Flood Zone "A." The Applicant applied for a revision to the approved zoning permit, to relocate the proposed dwelling closer to the front property line. Staff was unable to approve the proposed revision, because moving the single-family dwelling unit closer to the front property line would place the proposed structure in the flood-prone area (area of the lot below 67.5 feet elevation).

The Applicant is seeking to construct the single-family dwelling unit within the flood-prone area (area of the lot below 67.5 feet elevation) when there is buildable area outside of the flood-prone area (area of the lot above 67.5 feet elevation). As such, in order to facilitate approval of the zoning permit, an approved variance request to Land Development Regulations (LDR) Section 14.20.01(5) is required.

Staff Analysis.

LDR Section 14.15.02 states that variances will 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.

1. The purpose of the Land Development Regulation will be or has been achieved by other means.

The intent of the Code, Land Development Regulations (LDR) Section 14.20.01, *Minimum Requirements*, is to establish minimum requirements to safeguard the health, safety and general welfare of the public, and to minimize public and private losses due to flooding through regulation of development in flood hazard areas. It is also the intent of Lake County, LDR Section 9.07.01.B, to preserve the natural and beneficial function of the floodplain areas as well as reduce the

likelihood of flooding being shifted to properties that are not located in the special flood hazard (SFHA) through fill activities.

The Applicant submitted the following statement as proof that the purpose of the Land Development Regulations will be or has been achieved by other means *“Creating compensating storage for the portion of the home that will be in the flood area in addition to complying with FEMA and submitting a LOMR for the fill that will brought in. The double oak will be saved along with the additional trees and remaining privacy that land in its natural state provides.”* Additionally, the Applicant submitted a Variance Justification Statement (see Attachment B).

Pursuant to Land Development Regulations (LDR) Sections 14.20.00(4) and 14.20.00(5), development shall not result in an increase in the base flood elevation; and where buildable area exists out of the flood-prone area, development shall take place in that area. The Applicant has offered to provide compensating storage for the portion of the lot impacting the flood-prone area.

2. The 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.

The Applicant submitted the following statement as proof of their substantial hardship; *“Previously we have submitted an application to FEMA to remove the subject lot from flood zone as it is above the BFE for this lot. Upon clearing the proposed site the land owners realized placing the home at the location on the site plan, it would require the removal of an additional substantial amount of underbrush and trees as well as a very large double oak located on the right side of the building envelope costing the land owners quite a large sum of money to meet the requirements. We are requesting to place the home at 125’ from the edge of the pavement which would place the home in the true flood zone remaining on the lot. The land owners are willing to place fill and go through all the proper procedures to accomplish their goal of placing the home at 125’ from the edge of the pavement.”*

The Applicant submitted a Variance Justification Statement which refers to the removal of trees (Attachment D). At the time of the initial zoning application for the single-family dwelling unit, the Applicant submitted, and received approval for, a tree removal permit (TRP-2019-06-3, Attachment E). The tree removal permit was approved to remove a total of eleven (11) trees. The removal of a heritage tree was not indicated on the approved tree removal permit. There is sufficient buildable are on the property which is not in the originally approved location nor within a flood-prone area to accommodate the proposed development.

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

- The Applicant intends to meet the intent of the code by provide compensating storage to mitigate the impacts to the flood-prone area; and
- The subject property has ample buildable area to accommodate the residence in a location which does not adversely impact the flood-prone area nor the heritage tree; and
- The Applicant has not provided a demonstrated economic, technological, legal, or other type of substantial hardship to justify the variance request.

The Applicant has not submitted sufficient evidence of meeting the intent of the code, and has not provided evidence of a substantial hardship indicating that the application of the Code would violate principles of fairness. Based on the Findings of Fact and Analysis stated above, staff recommends **Denial** of the variance request to Lake County Land Development

Regulations (LDR) Section 14.20.01(5), to allow a single-family dwelling unit to be located within a flood-prone area, when buildable area exists outside the flood-prone area.

Should the variance request be approved, staff has prepared a draft development order with the following conditions:

- 1) A one-for-one compensating flood storage excavation elsewhere on the lot for all fill placed in areas having existing grades of 67.46 feet or below.
- 2) The finished floor elevation of the dwelling unit shall be constructed at an elevation of 72 feet, per the approved subdivision construction plans.

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ATTACHMENT A. FLOODZONE ON SUBJECT PROPERTY.



**VAR-19-30-3
Barningham Property
Flood Zone**



Wetland Setback Adjustment

Legend:

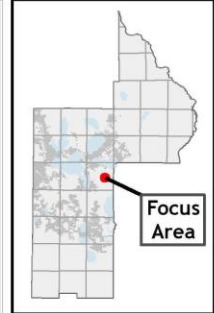
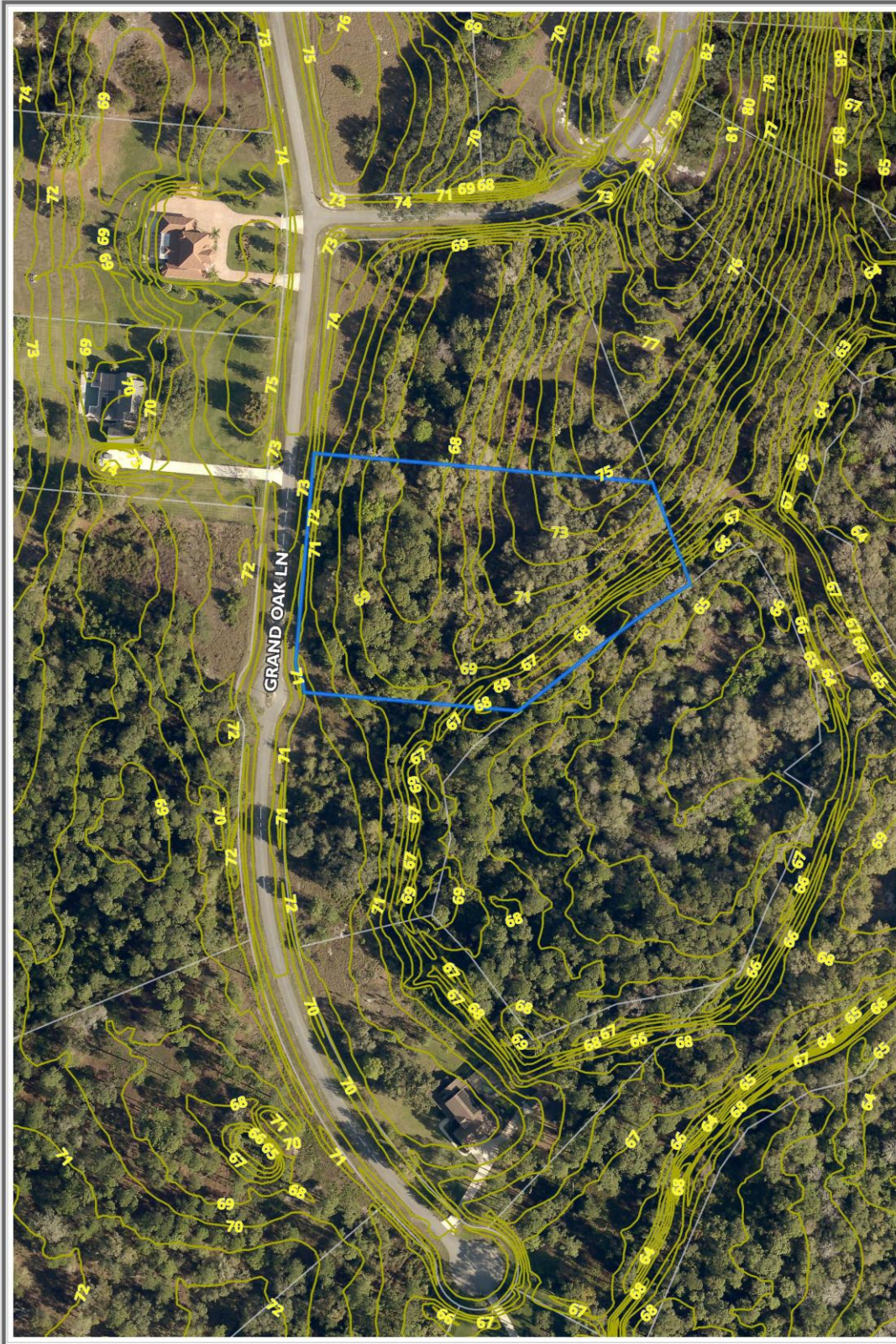
- Subject_Property
- Flood Zone**
- A
- AE



ATTACHMENT B. COUNTOURS ON SUBJECT PROPERTY.



VAR-19-30-3 Barningham Property Contour Lines



Wetland Setback Adjustment

Legend:

- Subject_Property
- Contour Lines

ATTACHMENT C. BASE FLOOD ELEVATION DETERMINATION

Date: 2/25/2019

Sec: 23 Twp: 20 Rng: 26

Department of Public Works
323 N. Sinclair Ave.
Tavares, FL 32778-7800



Voice: (352) 253-9081
FAX: (352) 253-6016

FLOOD INSURANCE RATE MAP INFORMATION

Person Inquiring: WILLIAM & JENNIFER BARNINGHAM

Phone Number: _____

Fax Number: _____

Email: _____

Lake County Community No: 120421

Map No: 12069C Panel No: 0505E

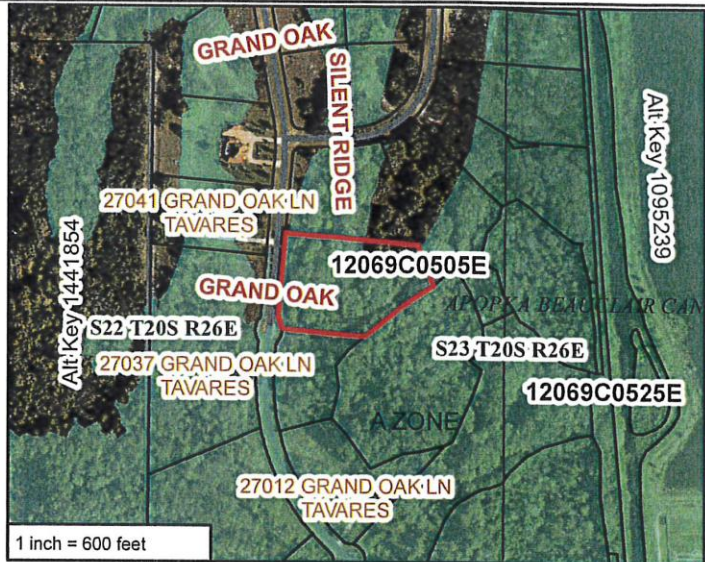
Effective Date: 12/18/2012

LEGAL DESCRIPTION OF PROPERTY:
BEAUCLAIR RANCH CLUB SUB LOT 45 BEING . . .

ALT KEY NUMBER 3838663

PARCEL I.D. NUMBER 14-20-26-0105-000-04500

GRAND OAK LN., TAVARES, FL 32778



This Property is Located (Partially, _____ Fully) in the Special Flood Hazard Area (SFHA):

- ZONE "X" (Areas of minimal flooding; no shading)
 - ZONE "X Shaded" (Areas between limits of the 100-yr flood and the 500-yr flood; light shading)
 - ZONE "A" (Areas of 100-yr flood; BFE not determined by FEMA)
 - ZONE "AE" (Areas of 100-yr flood; BFE determined by FEMA)
- Please note: Lake County Base Flood elevation Determinations of "A" Zones may be used for development activities not requiring commercial / subdivision site plan approval and which are less than five (5) acres or fifty (50) lots. Reference Lake County Land Development Code Chapter IX & XIV and Title 44 CFR Sec. 60.3.*

BASE FLOOD ELEVATION (BFE): 67.5 FT. NAVD 1988 , DERIVED FROM:

- Flood Insurance Rate Map (FIRM) identified above (Panel Number)
- Base Flood Elevation (BFE) is undetermined by FEMA
- Exact location of property cannot be determined on the FIRM
- Aerial Topographic Map _____
- Flood Study MISTY MEADOWS SUBDIVISION CONSTRUCTION PLANS
- USGS Survey (quad) Map _____

NOTES: REVISED BFE TO 67.46 PER MISTY MEADOWS CONSTRUCTION PLANS AKA BEAUCLAIR RANCH CLUB SUBDIVISION AS PREPARED BY COASTAL ENGINEERING.

*** Some land may have the presence of Wetlands even if no floodplain is located there. Please refer to those agencies that handle wetlands issues such as FL. D.E.P., S.J.R.W.M.D. and S.W.F.W.M.D for more information ***

Federal law requires that a Flood Insurance Policy be obtained as a condition of a Federally backed mortgage or loan that is secured by the building located in a flood zone. For more information on flood insurance visit your public library system or ask your insurance agent. NOTE: This information is based on the Flood Insurance Rate Map (FIRM) for Lake County. This Document does not imply that the referenced property will or will not be free from flooding or damage. A property not located in a Special Flood Hazard Area may be damaged by a flood greater than that predicted on the FIRM or from a local drainage problem not shown on themap. This document does not create liability on the part of Lake County, nor any officer or employee thereof, for any damage that results from reliance on this determination.

Insurance Information Distributed

County Official

ATTACHMENT D. VARIANCE JUSTIFICATION STATEMENT

Variance Justification Statement **Lake County, Florida**

Variances shall be issue only upon:

1. Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of the floodplain regulations or the required elevation standards.

The unique characteristics of the configuration and topography of the Subject Property limit compliance with the required elevation standards. The Subject Property is a 3.855 acre parcel located off of Grand Oak Lane in Mount Dora, Lake County, Florida. Presently, the Subject Property and each parcel adjacent to it on the east side of Grand Oak Lake are entirely undeveloped and feature numerous large mature trees, including mature oak and magnolia trees native to the region. In addition, the floodplain is peculiarly located on the central interior portion of the Subject Property instead of immediately landward of the lake bottom.

Requiring the owners of the Subject Property to strictly comply with the elevation standards would result in the removal of numerous Protected Trees and at least one Heritage Tree. According to the Lake County Flood Insurance Rate Map, the current Base Flood Elevation (“BFE”) for the Subject Property is 67.5 feet. The distance between the edge of the pavement (located at the western boundary of the Subject Property) and the BFE line is 179.6 feet. If required to build the residence behind the BFE line—instead of 125 feet from the edge of the pavement, as requested—the property owners would have to cut down numerous trees designated as “Protected Trees” under Section 9.02.01, Lake County Code of Ordinances (the “Code”). Worse yet, strict compliance with the required elevation standards would necessitate the cutting down of at least one oak tree that is no less than 100 years old, making it a Heritage Tree under the Code. Under Section 9.02.10 of the Code:

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. (Sec. 9.02.10(A)).

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. (Sec. 9.02.10(F)(2)).

Because all floodwater impacts will be mitigated by onsite compensatory storage, strict compliance with elevation standards at the cost of the Subject Property’s Protected and Heritage Trees is plainly at odds with the policies set forth in the Code and should not be required. As a result, the unique characteristics of the configuration and topography of the Subject Property limit compliance with the required elevation standards.

2. Determination by the Board of Adjustment that:

a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship.

Failure to grant the requested variance would result in exceptional hardship due to the physical characteristics of the Subject Property. As stated above, requiring the owners of the Subject Property to strictly comply with the elevation standards and build the residence in the uplands behind the central floodplain area would result in the removal of numerous Protected Trees, native vegetation, and at least one Heritage Tree. Due to the physical characteristics of the Subject Property, allowing the property owners to encroach on the BFE line by building the residence 125 feet from the edge of the pavement is the only way to avoid the removal of the native vegetation and Protected and Heritage Trees.

b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances.

ATTACHMENT D. VARIANCE JUSTIFICATION STATEMENT (CONT.)

Granting the variance will have no impact on flood heights and will not conflict with Lake County Code of Ordinances. The owners of the Subject Property plan to install onsite compensatory storage that will entirely mitigate floodwater impacts associated with the portion of the residence that will be in the flood zone. The owners of the Subject Property will submit a Letter of Map Revision (“LOMR”) to FEMA concurrently with the installation of the compensatory storage. In addition, the proposed location of the residence is in compliance with all existing setback requirements. As a result, granting the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances.

c. The variance is the minimum necessary, considering the flood hazard, to afford relief.

Allowing the owners of the Subject Property to partially encroach on the central floodplain area by building the residence 125 feet from the edge of the pavement is the minimum necessary to afford relief. Building the residence any further back from the edge of the pavement would require cutting down Protected and Heritage Trees as well as the destruction of other existing native vegetation.

ATTACHMENT E. TREE REMOVAL PERMIT (TRP-2019-06-3)



**Office of
Planning and Zoning**

Tree Removal Permit

Exemptions – Please see Tree Removal Exemption form.

Owner's Name Bill & Jennifer Barningham Phone 407-748-0911

Owner's Address (Mailing) 511 S. Simpson St Mt. Dora FL 32757

Applicant/Agent Name Jamie Blunt Phone 352-800-8986

Applicant/Agent Address (Mailing) 2801 S. Bay St Eustis FL 32726

Project Name (if applicable) Barningham Build

Project Physical Location Grand Oak Ln. Tavares FL 32778

Zoning _____ Section _____ Township _____ Range _____ Alt. Key # 3838663

Subdivision /Phase Beauclair Ranch Club Block _____ Lot 45

Type of Development: SFR

Submittal Information

A tree inventory, including an aerial photograph or drawing at a scale of one inch equals two hundred feet (1" = 200) or a greater legible scale, if needed, showing:

- Property boundaries, type of trees being proposed for removal, number of trees and size of trees.
- All protected trees that are proposed for removal.
 - The following trees and palms are designated protected trees:
 - All trees and palms native to Florida or Florida Friendly (for listing go to www.FloridaYards.org), three inches or larger in diameter at breast height.
 - Sand Pine and Xeric Oak Scrub community trees two inches diameter or larger at breast height.
 - Wetland trees of any size.
 - Historic, Specimen, and Heritage trees.
- Preserved trees and/or remaining forested areas can be generally noted.
 - Location, caliper and common name of individual trees or tree groupings
 - Location and caliper of Historic, Specimen or Heritage Trees
- General schedule of when the trees will be removed and when replacement trees will be planted.
- Mitigation plan, if required, indicating location, size and species of trees used as replacements.

Reason for tree removal: Site prep - SFR

Owner/Applicant Signature: _____ Date: _____

Application Fee:	\$200.00
Tree Removal Fee:	\$500.00 after the fact (subdivision/site plans/nonresidential) development
After the Fact:	\$35.00 per tree (maximum residential \$1,000 and maximum commercial \$8,500)
Mitigation Fee:	\$70.00 after the fact per tree (maximum residential \$2,000) and maximum commercial \$17,000)
	\$75.00 per every 2.5 caliper inches of the total caliper tree inches not being replaced. (See Ratio on next page)

ATTACHMENT E. TREE REMOVAL PERMIT (TRP-2019-06-3, CONT.)

Tree Removal Permit

Notes: This site could be subject to inspection by County staff. This permit expires 12 months after issuance.
Total caliper of protected trees removed or to be removed:

TREE TYPE	# of Trees	Caliper Total (CT) inches	*Mitigation Percentage	*Equivalent Mitigation Fee
Three inch (3") & Specimen			CT x .50 =	
Sand Pine and Xeric Oak min. 2"			CT x .50 =	
Wetland Tree of any caliper			CT x .50 =	
Historic & Heritage Tree(s)			CT x 1.0 =	
Clearing without a Permit Specimen & Heritage			Ratio - 2.5 Trees to 1.0 Tree =	
Three or more trees			Ratio - 2.0 Trees to 1.0 Tree =	
TOTAL				

**To measure Caliper (Trunk Diameter), measure the tree trunk at 4.5 feet above the ground.
An applicant may choose to provide the mitigation through either tree replacement OR mitigation fee.**

To be completed by staff only

TRP# 2019-06-3 Address # 28109
 Tree Removal Permit: Approved Denied Permit Expiration Date: 3/15/2020

Fees	Amount	Total
Application fee	\$200.00 or \$500.00 (ATF)	<u>200.00</u>
Tree Removal – Residential	\$35 per tree (maximum \$1,000)	<u>350.00</u>
Tree Removal – Commercial	\$35 per tree (maximum \$8,500)	
Tree Removal – After the Fact Residential	\$70 per tree (maximum \$2,000)	
Tree Removal – After the Fact Commercial	\$70 per tree (maximum \$17,000)	
Mitigation (if required)	\$75.00 per every 2.5 caliper inches	
Total Fees Paid:		<u>550.00</u>

Comments or Conditions: Approved to remove total of 8 yellow pines and 3 oaks. One of the 11 trees are exempt per 9.02.4; the other 10 trees were approved per ~~9.01.08~~ 9.02.02
Ruth Mitchell Date 3/15/19

Staff Name and Signature

Date

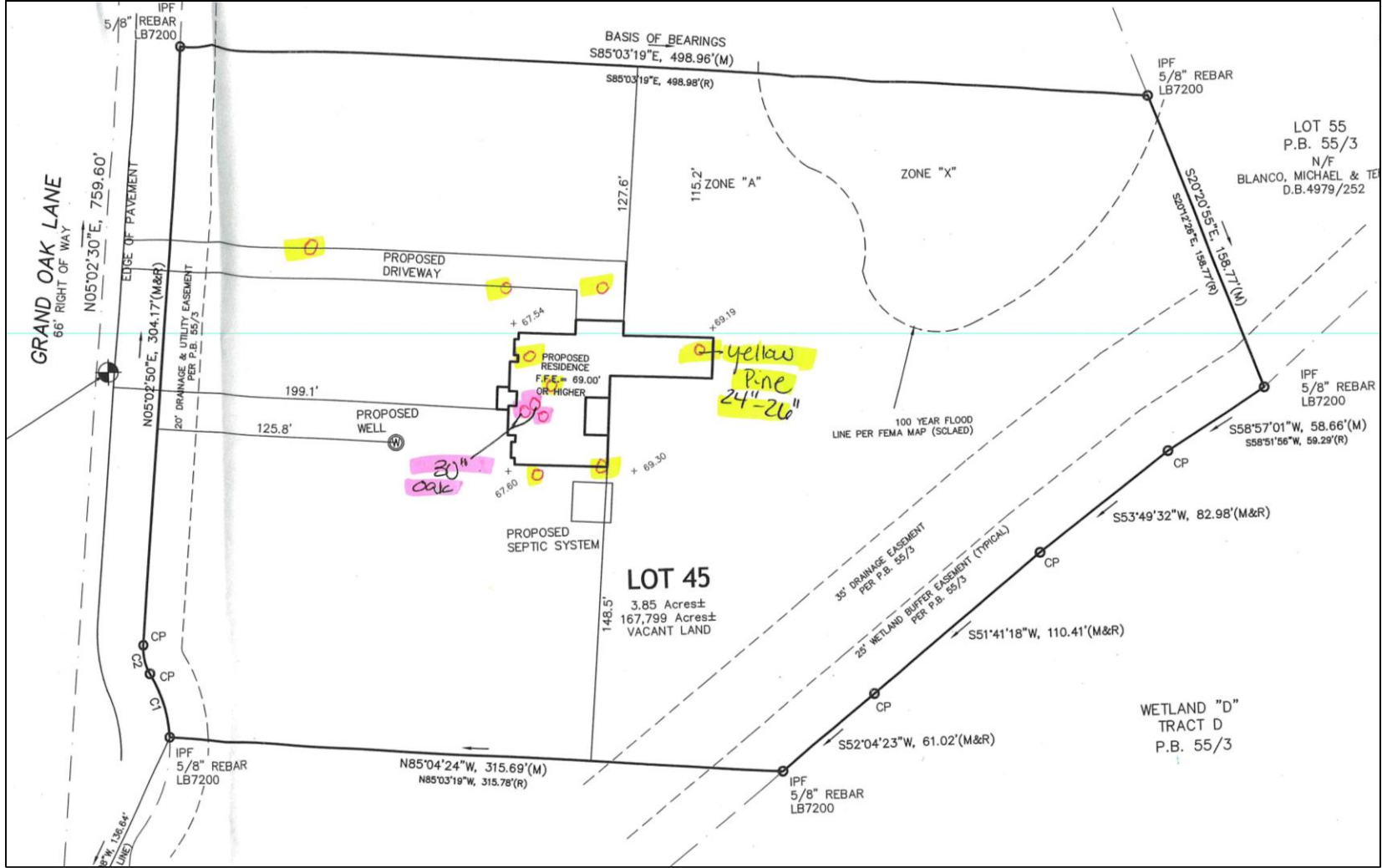
Inspection

Inspection Date: _____

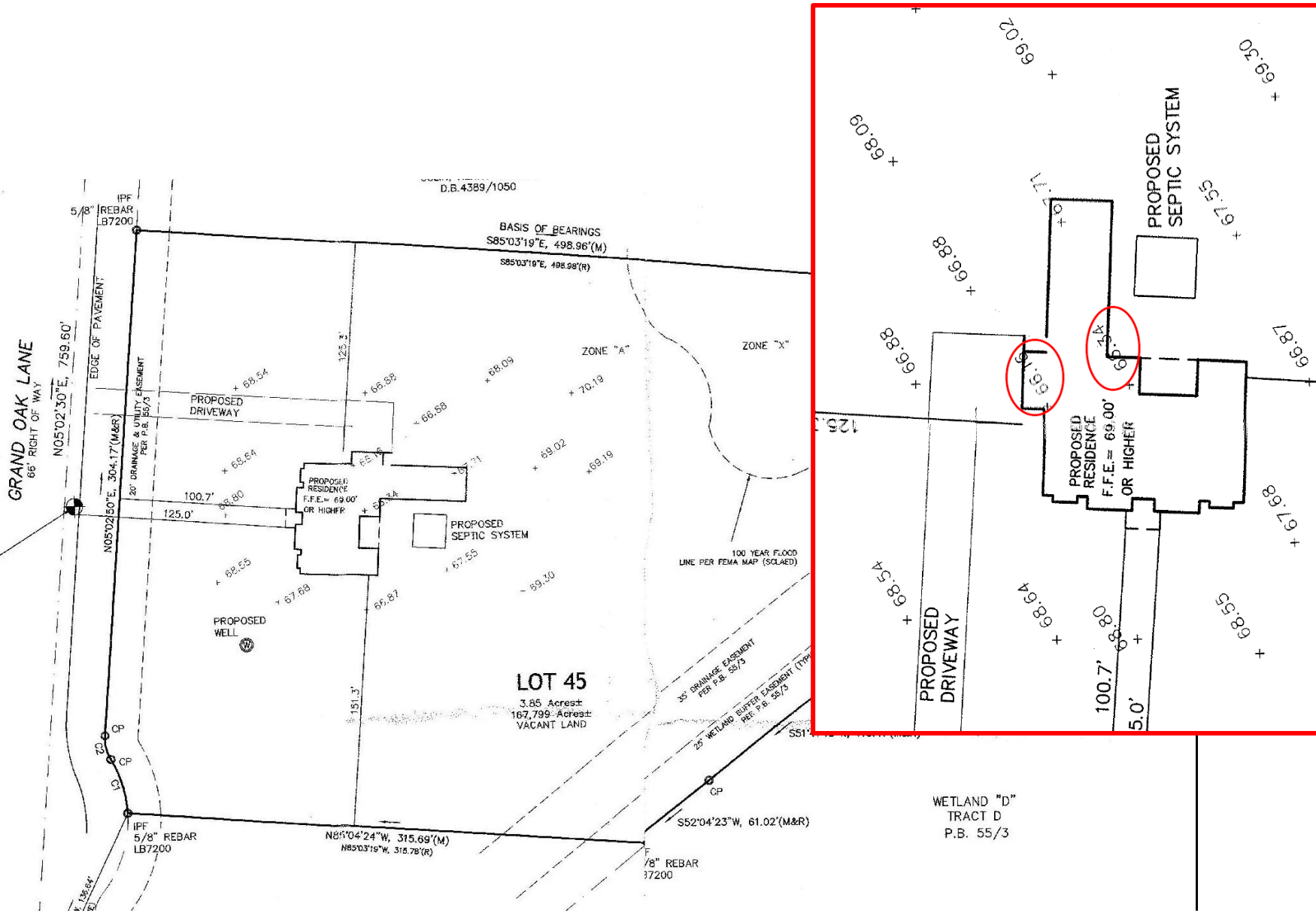
Approved Denied

Comments or Conditions: _____

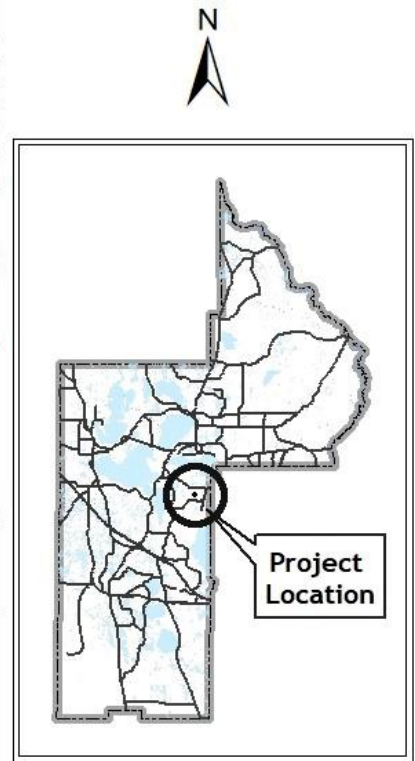
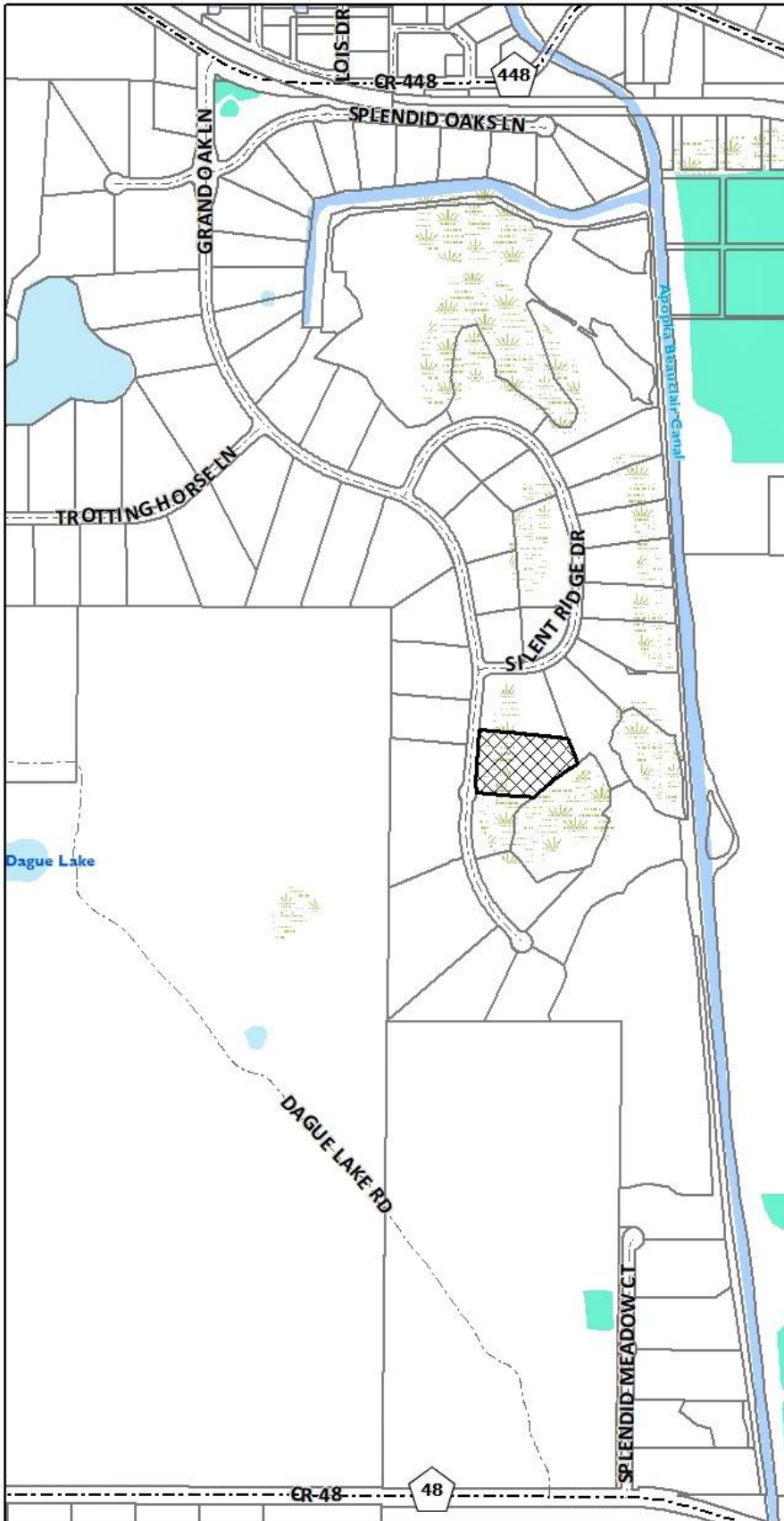
ATTACHMENT E. TREE REMOVAL PERMIT (TRP-2019-06-3, CONT.)



ATTACHMENT F. CONCEPT PLAN.



MAP OF SUBJECT PROPERTY



**Final Development Order
VAR-19-30-3
Barningham Property**

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

WHEREAS, Jamie Blunt (the “Applicant”), on behalf of William and Jennifer Barningham (the “Owners”), made a variance request to Lake County Land Development Regulations (LDR) Section 14.20.01(5) to allow for development (single-family dwelling unit) to be located within the flood-prone area; and,

WHEREAS, the subject property consists of 3.86 +/- acres and is located on East of Grand Oak Lane, in the Tavares area of unincorporated Lake County, in Section 14, Township 20, Range 26, having an Alternate Key Number 3838663 and is more particularly described below as:

Lot 45, Beauclair Ranch Club, according to the plat thereof as recorded in Plat Book 55, Page 3, Public Records of Lake County, Florida.

WHEREAS, after giving notice of a hearing on a petition for a variance to the Lake County Land Development Regulations, including notice that the variance would be presented to the Board of Adjustment of Lake County, Florida, on September 12, 2019; and

WHEREAS, the Board of Adjustment reviewed the 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 September 12, 2019, the Lake County Board of Adjustment approved the variance for the above property.

NOW THEREFORE, BE IT ORDAINED by the Board of Adjustment of Lake County, Florida, that:

Section 1. Terms: The County Manager or designee shall amend the Official Zoning Map to reflect the approval of VAR-19-30-5 to Lake County Land Development Regulations (LDR) Section 14.20.01(5) to allow for development (single-family dwelling unit) to be located within the flood-prone area with the following condition:

1. A one-for-one compensating flood storage excavation elsewhere on the lot for all fill placed in areas having an existing grade of 67.46 feet or less; and;
2. The finished floor elevation of the dwelling unit shall be constructed at an elevation of 72 feet, per the approved subdivision construction.

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, the holding will in no way affect the validity of the remaining portions of this Ordinance.

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

ENACTED this 12th day of September, 2019.

EFFECTIVE September 12, 2019.

**BOARD OF ADJUSTMENT
LAKE COUNTY, FLORIDA**

Lloyd Atkins, Chairman

**STATE OF FLORIDA
COUNTY OF LAKE**

The foregoing instrument was acknowledged before me this 12th day of September, 2019, by _____, who is personally known to me or who has produced _____, as identification and who did _____ or did not _____ take an oath.

(SEAL)

Signature of Acknowledger