



City of Pensacola

Zoning Board of Adjustments

Agenda

City of Pensacola
222 W. Main Street
Pensacola, FL 32502

February 21, 2024, 3:00 PM

Hagler-Mason Conference Room, 2nd Floor

The meeting can be watched via live stream at cityofpensacola.com/video.

CALL TO ORDER / QUORUM

APPROVAL OF MINUTES

1. 24-250 MINUTES FROM JANUARY 17, 2024 ZBA MEETING

Attachments: MINUTES 1.17.24

REQUESTS

2. 24-247 ZBA 2024-004
1613 E JACKSON STREET
R-1AA

Attachments: Complete Packet

3. 24-248 ZBA 2024-002 - APPEAL
1720 W GARDEN STREET

Attachments: Complete Packet

4. 24-249 ZBA 2024-003 - APPEAL
6541 JOY STREET

Attachments: Complete Packet

ADJOURNMENT

ADDITIONAL INFORMATION:

SUBSEQUENT APPLICATION(S): If denied a variance by the Board, that request for a variance cannot be heard again for a period of one (1) year.

JUDICIAL REVIEW OF DECISION OF BOARD OF ADJUSTMENT:

Per section 12-12-2 (D) of the City of Pensacola Land Development Code, any person or persons, jointly or severally, aggrieved by any decision of the board, or the city, upon approval by the city council, may apply to the circuit court of the First Judicial Circuit of Florida within

thirty {30} days after rendition of the decision by the board. Review in the circuit court shall be by petition for writ of certiorari or such other procedure as may be authorized by law.

If any person decides to appeal any decision made with respect to any matter considered at this meeting or public hearing, such person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and any evidence upon which the appeal is to be based.

If a Notice of Appeal has not been received within thirty-five {35} days of the date of the meeting the variance was denied, the petitioner shall be notified by the Building Official that they have ten {10} days to remove or correct the violation.

ADA Statement:

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable accommodations for access to City services, programs and activities. Please call 850-435-1670 (or TDD 850-435-1666) for further information. Requests must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.

If any person decides to appeal any decision made with respect to any matter considered at such meeting, he will need a record of the proceedings, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable accommodations for access to City services, programs and activities. Please call 850-435-1606 (or TDD 850-435-1666) for further information. Request must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.



Zoning Board of Adjustment

MINUTES OF THE ZONING BOARD OF ADJUSTMENT

January 17, 2024

MEMBERS PRESENT: Chairperson White, Board Member Shelley, Board Member Dittmar, Board Member Stepherson, Board Member Price, Vice Chairperson Weeks

MEMBERS ABSENT: Board Member Sebold, Board Member Williams, Board Member Jacquay

STAFF PRESENT: Planner Hargett, Development Services Coordinator Statler, Assistant City Attorney Lindsay, City Arborist Kris Stultz, Network Engineer Johnston, Network Engineer Russo

STAFF VIRTUAL: Development Services Director Morris, Assistant Planning & Zoning Division Manager Gregg Harding

OTHERS PRESENT: Scott and Mary Bell

1) CALL TO ORDER/QUORUM PRESENT

Chairperson White called the meeting to order at **3:05** p.m. with a quorum present.

Chairperson White then read the ZBA rules and instructions and explained the procedures of the Board meeting. Chairperson White then explained what a quasi-judicial hearing is and the process.

Chairperson White then motions to approve last month's meeting minutes.

2) APPROVAL OF MINUTES

The ZBA October 18, 2023, minutes were approved without objection by the Board.

Chairperson White proceeded to move forward with the appeal and asked Assistant City Attorney Lindsay if he had covered everything. Assistant City Attorney Lindsay stated for due process that the applicant had a chance to rebut anything that has been stated and further explained the procedures for an appeal.

Assistant City Attorney Lindsay proceeded to swear in Mr. Bell and staff person Kris Stultz.

3) ZBA 2024-001 2875 Bayou Blvd R-1AAAAA

Mr. Scott Bell has filed an appeal of the City's Arborist decision to issue a tree removal permit.

The appellant applied for a tree removal permit and was denied. Supporting documentation, including Mr. Kris Stultz's comments has been provided for review.

Chairperson White asked the appellant Mr. Bell to state his name and address for the record.

The appellant Mr. Bell addressed the Board and stated that he has a garage apartment on the property and would like to add an addition and unfortunately there is a heritage tree that sits within the proposed addition's footprint. He also stated that he met with Mr. Stultz, the city's Arborist, on site and understands that the heritage tree is healthy. Mr. Bell further explained to the Board that there is an ECUA sewer easement which runs along the rear property close to the water side. Mr. Bell stated that he wants to save the tree, however any construction near it would potentially cause damage. Mr. Bell continued to explain that since ECUA was not as accommodating as he thought about the easement, he felt like his only relief would be to remove the tree.

Chairperson White then asked the Board if they had any questions for the appellant. Chairperson White himself asked the appellant to clarify the grayed-out section in the survey. Mr. Bell responded that he spoke to Development Services Coordinator Statler previously about subdividing a portion of the property but that he is not proposing to do so anytime in the near future.

Board Member Dittmar asked if the appellant removed the third garage would it still be an issue for the canopy diameter of the tree and he wanted to know what that diameter was. Mr. Stultz responded that you would want to take the

diameter of the trunk and multiply it by a foot to equal the tree space.

Chairperson White then asked the Board if they had any further questions for the appellant. There was none.

Chairperson White then asked City Arborist Stultz to address the Board. Mr. Stultz stated he investigated the tree which was a Sand Live Oak and found the tree to be in good health and further stated the tree had no defect that would allow him to condemn it for structural reasons and therefore he felt compelled to deny the removal of the tree. Mr. Stultz stated that his decision was based solely on the structural condition of the tree.

Board Member Shelley asked staff what the City's take is on mitigation. Mr. Stultz responded that if the Zoning Board of Adjustments gave Mr. Bell (appellant) permission to remove the tree, Mr. Bell would still be required to pay the permit fee of \$190.00 and the cut-off mitigation fee of \$1000.00.

Vice-Chairperson Weeks addressed staff for clarification that the Board is not granting or denying a variance, they would be overturning a city's staff decision. Assistant City Attorney Lindsay responded that was correct.

Assistant City Attorney Lindsay further explained Section 12-6-6 – Protected Trees – and read into record. She also stated that getting this process approved with staff with the ordinance that controls staff's discretion does not allow staff to say this could be approved, unless the Building Official could state that every reasonable effort was made to save the tree.

Board Member Shelley stated for clarification that in the end the Board is not finding that the appellee (staff) is not wrong in his decision, because everyone agrees the tree is healthy, he further stated the Board is really discussing whether or not they should allow Mr. Bell to go through to the next step in order to remove the tree and mitigate.

Assistant City Attorney Lindsay responded that according to the appellant's application they had tried to draw 4 different designs to preserve the tree and that City staff has not reviewed those designs. She further stated that staff can only propose what could happen if, for example, the Building Official could determine if every reasonable effort was made to preserve the tree.

Board Members and staff continue to discuss the appeal process.

Chairperson White asked if there were any more questions for staff. Vice-Chairperson Weeks stated for clarification, that the tree's diameter was 34 inches, Mr. Stultz responded that was correct. Weeks then asked the estimated age of the tree, Mr. Stultz responded appropriately 125 years plus.

Vice-Chair Weeks then asked staff for clarification that the lot was just one parcel and was not subdivided. Development Services Coordinator Statler responded that was correct.

Chairperson White asked if there were any more questions for the appellee, there were none.

Chairperson White asked if there were any final questions for staff, there were none.

Chairperson White asked Mr. Bell if he had any closing remarks. Mr. Bell clarified to the Board that he was not proposing a duplex and the dilemma is that he cannot design the addition and move it forward because of the tree, he could not move it back towards the water due to the sewer easement.

Chairperson White asks for a motion. Assistant City Attorney Lindsay asked that the Board state for the record to disclose of any ex parte communications. The Board stated there were none.

Board Member Shelley made a motion to approve the appellant's request to overturn the City Arborist's decision; seconded by Board Member Price.

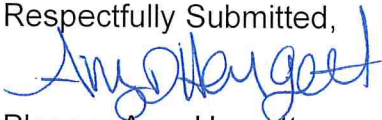
There was further discussion between the Board Members.

The motion to approve the appellant's application failed with a split vote of 3 – 3. Assistant City Attorney Lindsay clarified that a split decision is a “no”, therefore the request to overturn the City Arborist's decision was denied. It was further stated that the Zoning Board of Adjustments must have 5 positive votes to approve.

ADJOURNMENT –

There being no further business, the meeting adjourned at 3:35 p.m.

Respectfully Submitted,



Planner Amy Hargett
Secretary to the Board



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-247

Zoning Board of Adjustments

2/21/2024

ACTION ITEM

SUBJECT:

ZBA 2024-004
1613 E Jackson Street
R-1AA

SUMMARY:

Mr. Wayne Davis, Bella Vita Construction LLC on behalf of the homeowner Ms. LeAnne Bennett is requesting a variance to increase the maximum rear yard coverage from 25% to 32%. This request is to accommodate a porch addition to an existing accessory structure.

Supporting documentation has been provided for your review.

ATTACHMENTS:

1. Complete Packet



- ☒ **Zoning Board of Adjustment**
☐ **Architectural Review Board**
☐ **Planning Board**
☐ **Gateway Review Board**

VARIANCE APPLICATION

A COMPLETE APPLICATION SHALL INCLUDE THE FOLLOWING:

- A. One (1) copy of this completed application form. *(Please type or print in ink.)*
- B. Site plan and/or survey showing the following details:
 - 1. Abutting street(s)
 - 2. Lot dimensions and yard requirements (setbacks)
 - 3. Location and dimensions of all existing structures
 - 4. Location and dimensions of all proposed structures and/or additions
 - 5. Dimension(s) of requested variance(s)
- C. Other supporting documentation (drawings, photographs, etc) to support request(s).*
- D. A non-refundable application fee of **\$500.00**.

** The Applicant must provide fourteen (14) copies of any documents larger than 8½ x 11 or in color.
Maximum page size for all submitted material should be 11" x 17" to allow for processing and distribution.*

(To be Completed by Staff)

Provision(s) of Zoning Ordinance from which the variance(s) is/are being requested:

Section(s)/ Tables(s) 12-3-55(4)2 Zoning RIAA

(To be Completed by Applicant)

The Applicant requests consideration of the following variance request(s):

Property Address: 1613 E Jackson St., Pensacola, FL 32501
 Current use of property: Single Family Residence

1. Describe the requested variance(s): Requesting additional square footage over the standard
allowed to add porch to garage for dry access to multi-room. Increase allowed
rear yard coverage 25% - 32%

2. Describe the special condition(s) existing on this property which create(s) the need for the variance(s), but which are not applicable to other properties in the same district and which are not the results of the applicant's actions:

Owner has single car garage which, with car and various lawn equipment, is tough to navigate. Would

like to add single access door to rear multi-room with dry access walkway.

3. Explain why the requested variance(s) is/are necessary to permit the property owner to obtain the right commonly enjoyed by other property owners in the same district:

4. Explain why the requested variance(s) is/are not detrimental to the general welfare or to property rights of others in the vicinity:

It would be a small 6' porch with low roof line, not visible to neighbors. Neighbors to left and right were both kind enough to provide letters stating they didn't have a problem with the addition. Rear neighbor is not property owner, so couldn't reach.

5. Explain what other condition(s) may justify the proposed variance(s):

Rear yard is large and the porch will take up a very small portion of the area and make access to lawn care products and other necessities less of a hazard.

Application Date: 2-1-24

Applicant: Bella Vita Construction LLC

Applicant's Address: 1807 E LAKEVIEW AVE, PENSACOLA, FL 32603

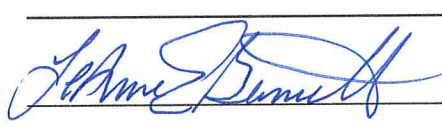
Email: whdavis100@gmail.com Phone: 850-393-1963

Applicant's Signature: 

Property Owner: LeAnne Bennett

Property Owner's Address: 1613 E Jackson St., Pensacola, FL 32501

Email: leannebennett@mac.com Phone: 917-693-8545

Property Owner's Signature: 

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable modifications for access to City Services, programs, and activities. Please call 435-1600 for further information. Requests must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.

Variance Application

VARIANCE GRANTED BY THE BOARD OF ADJUSTMENT: The petitioner must secure a building permit and commence work within one hundred-eighty (180) days of the date of the granting of the variance, unless additional time is granted by the Board at that particular meeting.

JUDICIAL REVIEW OF DECISION OF THE BOARD OF ADJUSTMENT: If denied a variance by the Board, that request for a variance cannot be heard again for one year. The petitioner has thirty (30) days from the date of the meeting to appeal the decision according to Section 12-12-2 of the Land Development Code. Any person or persons, jointly or severally aggrieved by a decision of the Board may apply to the Circuit Court of the First Judicial Court of Florida. The Board, Building Inspector, or Attorney of the City of Pensacola must be notified of an appeal within five (5) days of the application being made to the Circuit Court. If a Notice of Appeal has not been received within thirty-five (35) days of the date of the meeting the variance was denied, the petitioner shall be notified by the Building Inspector that they have ten (10) days to remove or correct the violation.

Amy Hargett

From: LeAnne Bennett <leannebennett@me.com>
Sent: Friday, February 2, 2024 12:19 PM
To: Amy Hargett
Cc: Wayne Davis
Subject: [EXTERNAL] 1613 E Jackson submission for the Feb 21 ZBA meeting

THIS EMAIL IS FROM AN EXTERNAL EMAIL ACCOUNT

Hi Amy- Thanks again for ALL your help, guidance and patience with us! Here is what we still owe you to complete our submission:

- 1) photo of backyard
- 2) arial photo showing my property and adjacent neighbors properties/backyards
- 3) Wayne's calculations, arriving at a 7% overage beyond allowed use of backyard
- 4) and finally, my answer to question 3:

3. Explain why the requested variance is necessary to permit property owner to obtain the right commonly enjoyed by other property owners in the same district:

My goals in this overall renovation of the garage is to preserve the past while making it more user-friendly, functional for today. It is a single car garage with one access point (the main electronic-controlled roller door). There is an original workroom at the very back of the garage that is only accessible now through the main roller door and navigating through the garage to the back. To improve flow, access and safety (should anything happen to the main door), I want to add a door directly to the back work room (for lawn/gardening tools/crafts, etc). The proposed porch along the side of the garage would add a covered path to that door, protecting from elements. It is less than 10% over the code-allowed square footage and leaves plenty of yard space (for my Camellia trees, future herb garden and other landscaping). See enclosed arial view of my yard relative to how neighbors have made best use of their back yards. I have also shared my plans with my 2 side neighbors and both are fully supportive (see enclosed letters signed by Mr. Langston and Mrs Loux).

Do let us know if you need anything else from us, and sincerely, thanks again!!

Kind regards,
LeAnne Bennett
917-693-8545

A

B

C

D

E

1613 E JACKSON REQUESTED VARIANCE

REAR SETBACK	YARD WIDTH	REAR YARD SQ. FT.	25% COVERAGE ALLOWED
30	60	1800	450

LENGTH OF GARAGE IN SETBACK	GARAGE WIDTH	GARAGE SQ. FT. IN SETBACK	REMAINING USEABLE SQ. FT.	PERCENT REMAINING
25.7	16	411.2	38.8	2%

LENGTH OF PORCH ADDITION	WIDTH OF PORCH ADDITION	TOTAL ADDITION	ALLOWANCE OVERAGE REQUEST	PERCENT OVERAGE REQUEST
28	6	168	129.2	7%



E Jackson St

E Jackson St

PORCH

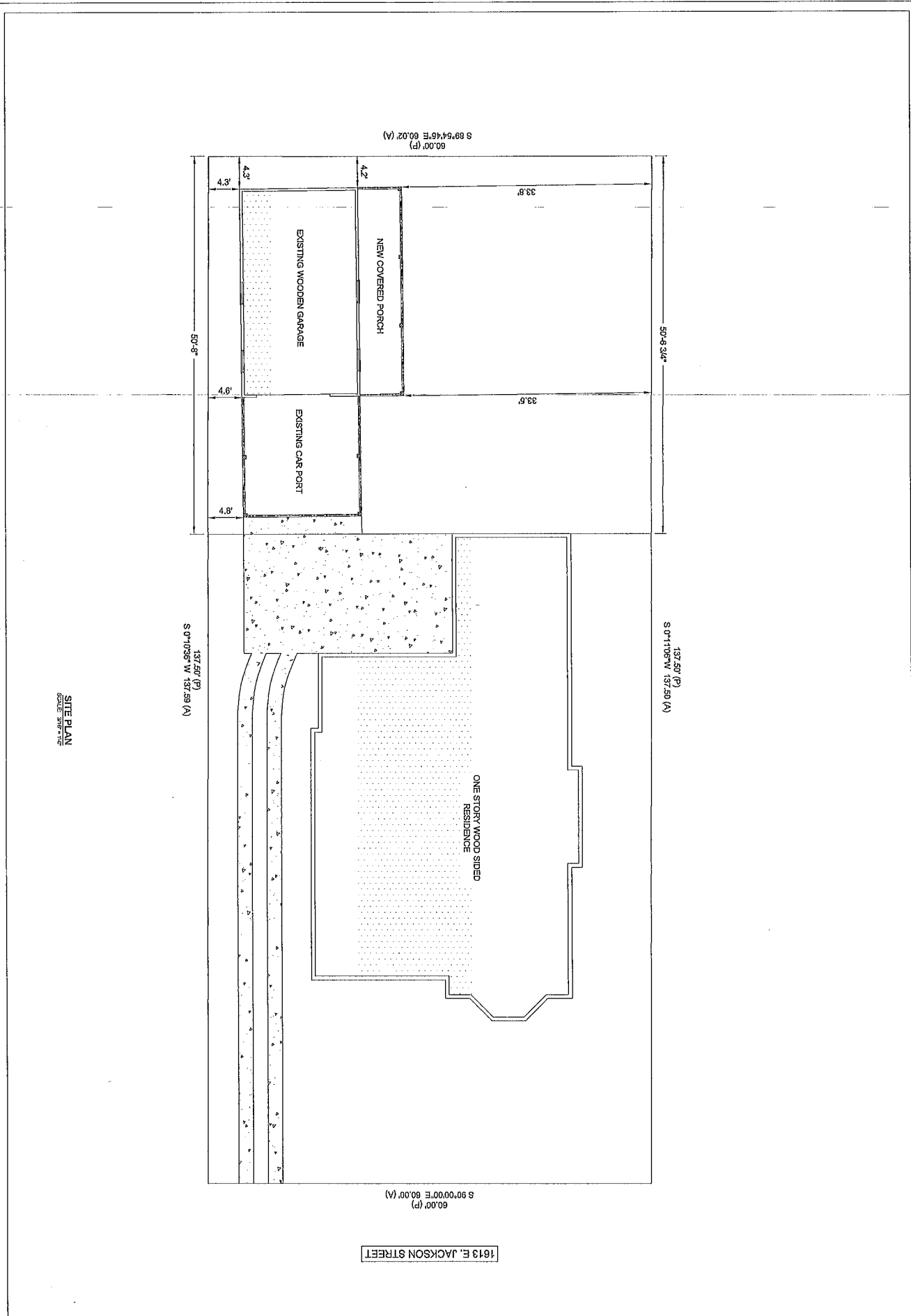
1613

1607

1615

1617



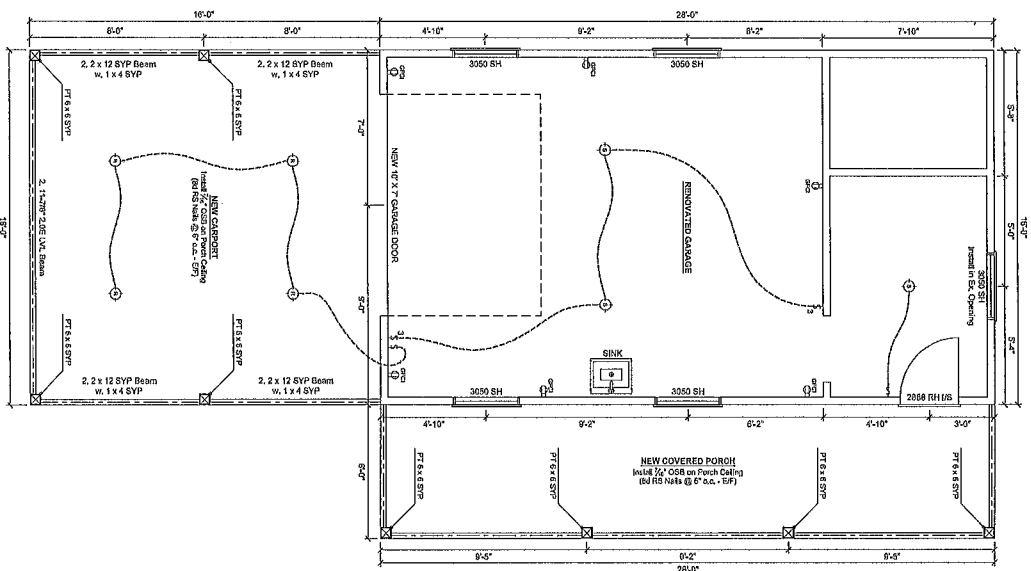


Any reproduction, reuse, or modification of this document is strictly forbidden without the written consent of the owner of Landmark Engineering & Land Planning, Inc.		PROJECT NAME AND LOCATION Detached Garage Renovation 1613 E. Jackson St Pensacola, FL	
SHEET NUMBERS C1 SHEET 1	DRAWN BY LAS CHECKED BY LAS	DATE JUN 30, 2024	PROJECT NUMBER 20023149
SHEET CONTENTS Site Plan		LANDMARK ENGINEERING & LAND PLANNING 2001 W. 10th St., Pensacola, FL 32504 Phone: 904.433.1111 Fax: 904.433.1112 WWW.LANDMARK-FL.COM	
This item has been digitally signed and sealed by Lawrence S. Spector, P.E. on January 30, 2024. Printed copies of this document are not considered signed and sealed and the digital signature must be verified on any electronic copies.		1613 E. JACKSON STREET	

[illegible]

NOTICE TO CONTRACTORS
Any deviation from these plans authorized unless obtained in accordance for the structural design is at the contractor's risk. The contractor shall be responsible for obtaining all necessary permits and approvals.

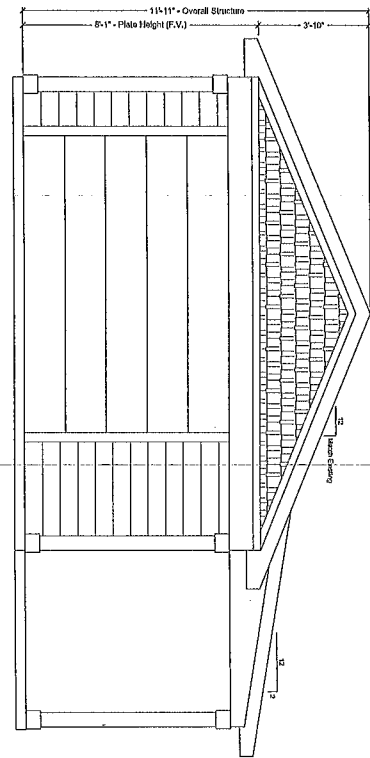
responsibility for damages or costs resulting from the modification. If site conditions are found to differ from those set forth in those plans or if any discrepancies are discovered, notify the Engineer-of-Record immediately. The engineer shall not be responsible for work that continues



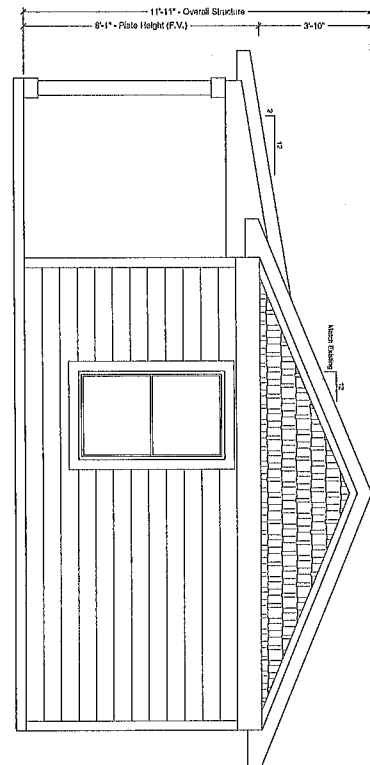
PROPOSED FLOOR PLAN
SCALE: 3/8" = 1'-0"

POSED FLOW

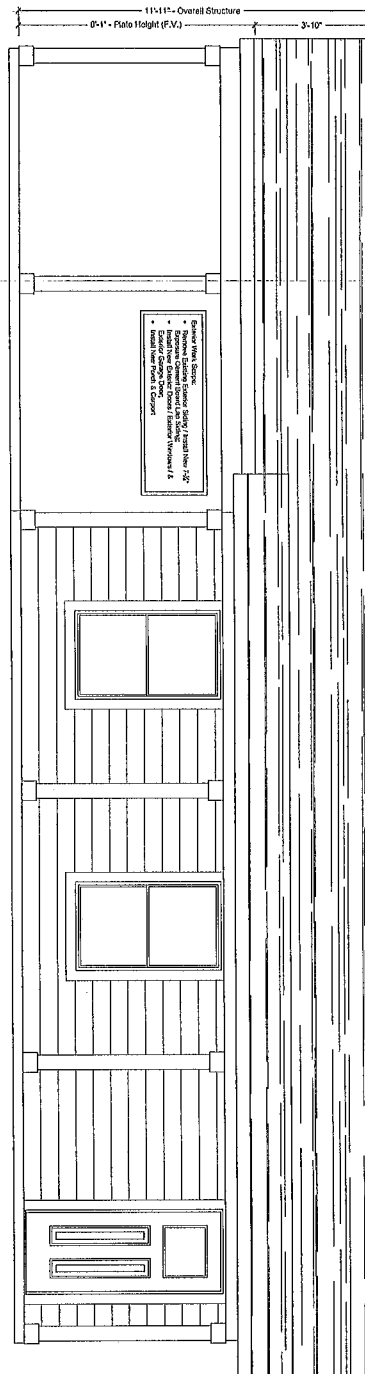
PROJECT NAME AND LOCATION
Detached Garage Renovation
1618 E. Jackson St
Pensacola, FL



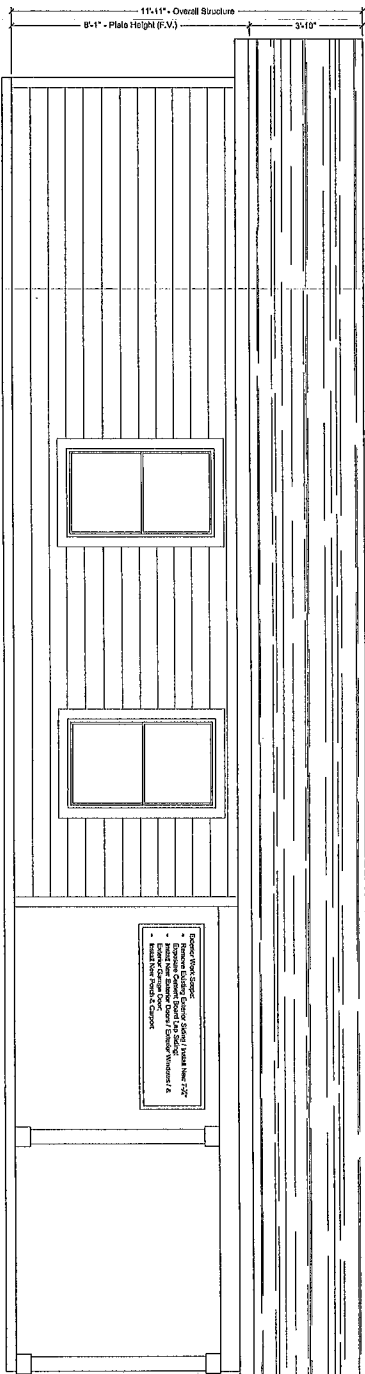
FRONT ELEVATION
SCALE: 1/8" = 1'-0"



REAR ELEVATION
SCALE: 1/8" = 1'-0"



RIGHT ELEVATION
SCALE: 1/8" = 1'-0"



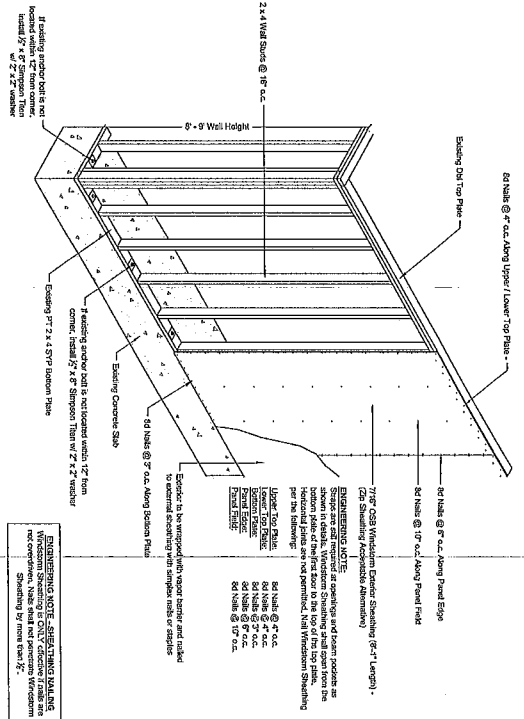
LEFT ELEVATION
SCALE: 1/8" = 1'-0"

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This item has been digitally signed and sealed by Lawrence Stephens, P.E. on December 21, 2023.
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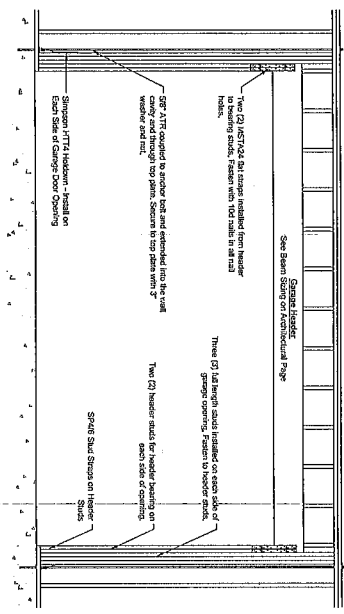


PROJECT NAME AND LOCATION
Detached Garage Renovation
1618 E. Jackson St
Pensacola, FL



WALL FRAMING - TYP
SCALE: 1/2\"/>

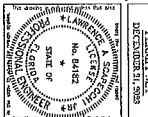
ENGINEERING NOTE: SHEETING WALLS
SHEETING WALLS SHALL BE CONSTRUCTED WITH 1/2\"/>



GARAGE OPENING FRAMING - TYP
SCALE: 1/2\"/>

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This icon has been digitally signed and sealed by Lawrence S. Karpovich, P.E. on December 21, 2023.
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PROJECT NAME AND LOCATION
Detached Garage Renovation
1618 E. Jackson St
Pensacola, FL

SHEET CONTENTS	
Structural Details	
PROJECT NUMBER	3023149
DATE	Dec 21, 2023
DRAWN BY	LAS
CHECKED BY	LAS
SHEET NUMBER	S4
OF 1	1 OF 1

February 1, 2024

To Whom It May Concern:

I am the next-door neighbor to LeAnne Bennett at 1613 E Jackson St

in East Hill Pensacola. I reside at 1615 E. Jackson Street

and am aware of the renovations planned on the garage in the

backyard of 1613 E Jackson St. I have no concerns with the planned

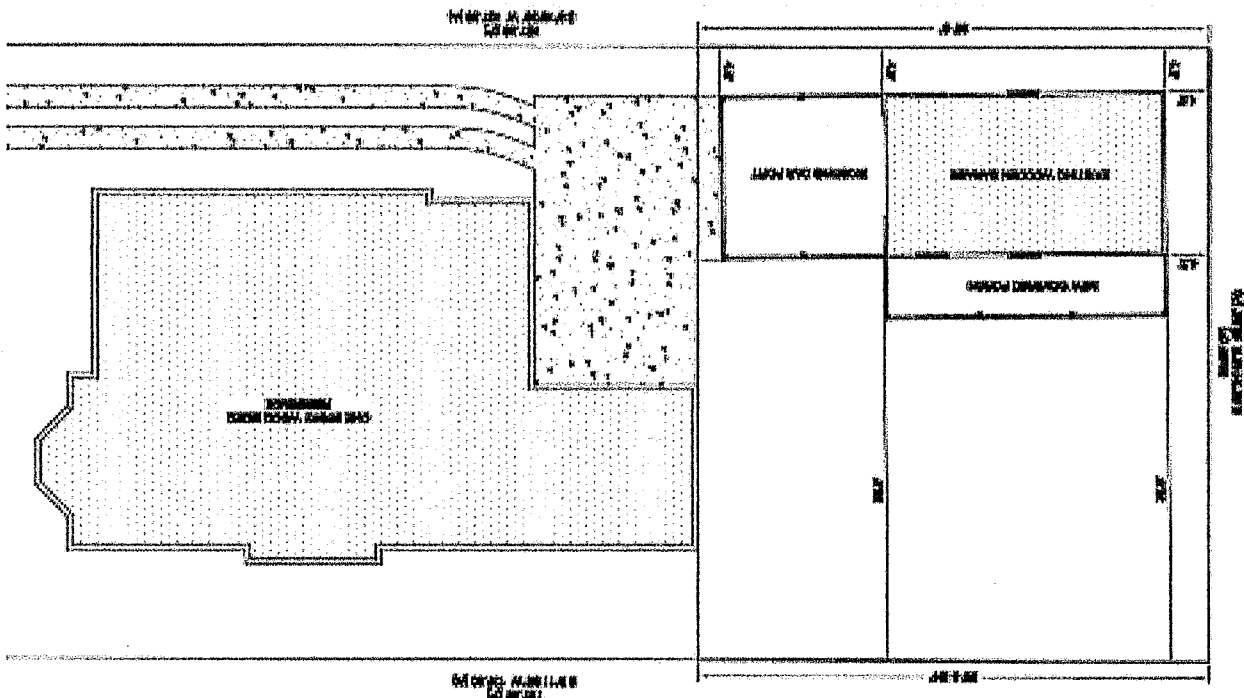
work to refurbish/restore the existing garage and to add a side,

covered porch to the west side of the existing garage.

Kind regards,

Barbara B. Loux

Address:



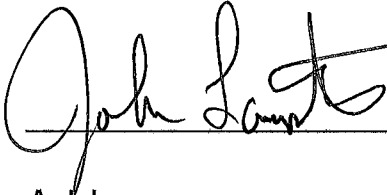
February 1, 2024

To Whom It May Concern:

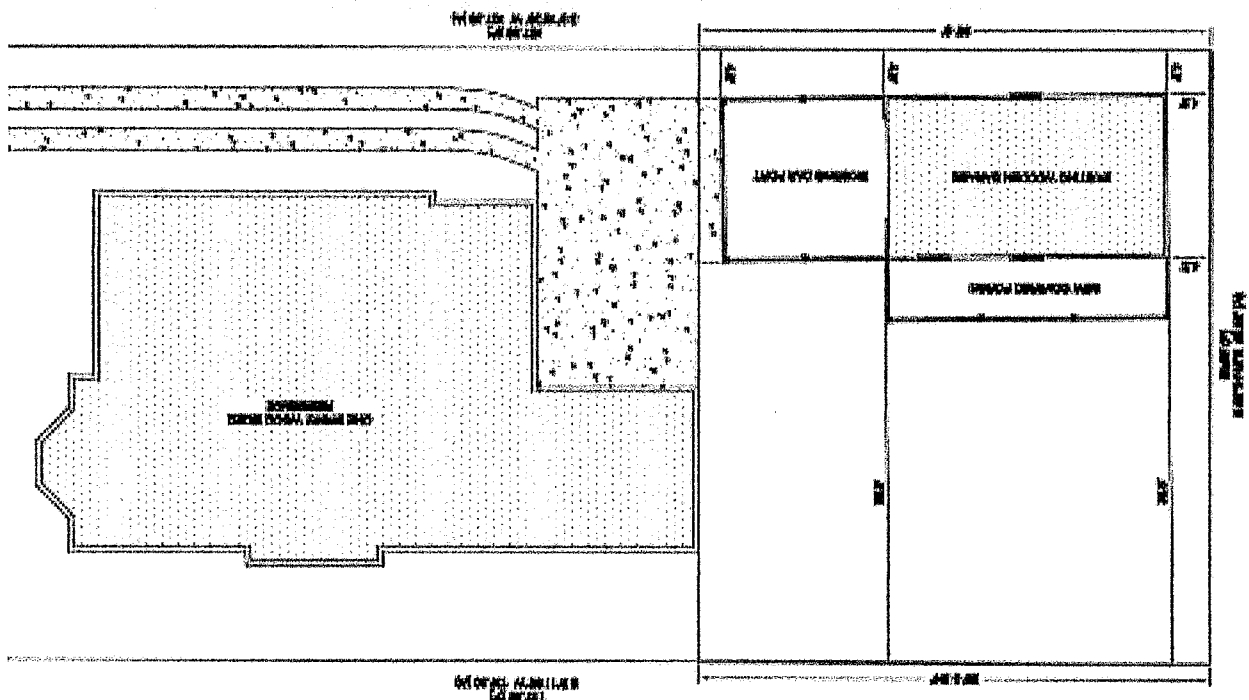
I am the next-door neighbor to LeAnne Bennett at 1613 E Jackson St
in East Hill Pensacola. I reside at 1607 EAST JACKSON ST.

and am aware of the renovations planned on the garage in the
backyard of 1613 E Jackson St. I have no concerns with the planned
work to refurbish/restore the existing garage and to add a side,
covered porch to the west side of the existing garage.

Kind regards,



Address:





City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-248

Zoning Board of Adjustments

2/21/2024

ACTION ITEM

SUBJECT:

ZBA 2024-002 - APPEAL
1720 W Garden Street

SUMMARY:

Mr. Richard Forsley, on Behalf of Annunciation Greek Orthodox Church, has filed an appeal of the City's Arborist decision to issue a tree removal permit.

The appellant applied for a tree removal permit and was denied. Supporting documentation, including Mr. Kris Stultz, City Arborist's comments have been provided for review. Please note, one smaller tree was approved for removal while the larger oak was denied removal.

ATTACHMENTS:

1. Complete Packet

**ZONING BOARD OF ADJUSTMENT
APPEAL APPLICATION**

ZONING BOARD OF ADJUSTMENT
CITY OF PENSACOLA, FLORIDA
P. O. Box 12910
Pensacola, FL 32521-0053
436-5600

REQUEST # ZBA 2024-002
HEARING DATE FEB 21, 2024
ZONE B-1A
DATE RECEIVED 1-3-24
RECEIPT # PAID CHECK # 5652
(ABOVE FOR OFFICE USE ONLY)

FEE: \$500.00 (Includes sign & notification costs)

AN APPEAL TO AN ORDER, REQUIREMENT, DECISION OR DETERMINATION made by an Administrative Official in the enforcement of the Land Development Code is hereby requested in accordance with Section 12-12-2 of the Code of the City of Pensacola.

Address or location of project, structure, land to which this appeal applies:

Annunciation Greek Orthodox Church
1720 W Garden St
Pensacola FL 32502

Reasons and justifications for this appeal are as indicated below (or attached).

With so many beautiful trees on the block it seems
counterproductive to preserve an eyesore which is
inhibiting our ongoing efforts to beautify our
campus which would benefit the whole neighborhood.
Additionally our Greek Festival supply delivery and
tenting options were severely restricted by this tree

A fee of \$500.00 is submitted herewith along with an original and ten (10) copies of this application (including any attachments).

"The City of Pensacola adheres to the Americans With Disabilities Act and will make reasonable modifications for access to City services, programs, and activities. Please call 435-1600 for further information. Requests must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services."

NAME & ADDRESS OF OWNER/PETITIONER
(Please Print)

Richard Forsley
3758 Bengal Rd
Gulf Breeze Fl
32563

parish council member
Richard Forsley
SIGNATURE OF OWNER/PETITIONER

(850) 2068969
TELEPHONE NUMBER

DATE: 1/3/24

**City of Pensacola Building Inspections Dept.
Plan Review Correction List**

PHONE: (850) 436-5600
FAX: (850) 595-1464

DATE: 1/3/2024

REVIEWED BY: Kristopher Stultz

JOB ADDRESS: 1720 W GARDEN ST, PENSACOLA, FL 32502 **PERMIT #** 23-12-8167

To Whom It May Concern:

DATE SUBMITTED FOR REVIEW:

Corrections listed below are to be made on plans and resubmitted before a permit can be issued. The submittal of revisions does not guarantee approval, as further information may be required based on the resubmitted information.

The approval of plans and specifications does not permit the violation of any section of the current editions of the Florida Building Codes, National Electrical Code, Life Safety Code, City of Pensacola Land Development Code and Ordinances, or State Law.

Contact the Plans Examiner(s) whose name appears above at 436-5600, if you have any questions.

Engineering Division Review

The following comments have been provided by Kristopher Stultz. Should you have any questions or require additional information regarding any of these comments, please contact Kristopher Stultz at by telephone at (850) 490-4033 or by email at kstultz@cityofpensacola.com.

Permit **Pending** for tree removal of perimeter 2-*Quercus hemisphaerica* , Please provide diameter inch & tree condition for consideration of tree mitigation.

 Removal of Heritage *Quercus geminata* **Denied**. This Heritage Tree may be retained and persevered on site with root and tree base invigoration, upper crown Reduction Pruning and major deadwood wood removal.

Please submit new permit application for the 2-*Quercus hemisphaerica* (Darlington oak), removals for approval.

Kristopher Stultz
Engineering

Statement from D's Trees certified Arborist:

The large Live Oak has a severely imbalanced canopy. This was caused by the loss of a large leader years ago. The crown is showing signs of die back which can indicate the loss of roots. Typically trees with a severely imbalanced canopy combined with the loss of roots have a high likelihood of failure.

updated.



3415 Quantrill Ln – Pace, FL 32571

Jan 25, 2024

To: City of Pensacola

Subject: Heritage tree risk assessment for 1720 West Garden St Pensacola, Florida 32502

Doug Doll ISA Certified Arborist NE-7126A completed a risk assessment for a Sand Live Oak located in the parking lot on the west side of the above property. The DBH of the tree was measured at 29.9 inches. A large leader equating to half of the tree was removed several years ago and has left a large significantly decayed wound. The remainder of the tree leans sharply away from the large wound. Due to the lean, the tree will eventually break at the base where the decay is undermining the area of the trunk experiencing the largest loads. The tree is surrounded with pervious pavers and all the critical root zone is severely compacted from years of vehicular traffic. As a result of this compaction, several large branches in the top of the tree are dead or declining. This condition is not reversable and will most likely continue to worsen over the coming years. An ISA level 2 inspection was completed for this tree and a risk rating of Moderate was assigned. Mitigation to reduce the risk would involve end weight reduction of the leaning leader and leave this disfigured tree even more disfigured. The tree would still be in decline due to the heavily compacted soil and continued decline would be expected. This tree should be removed as it meets the requirements set forth in the City of Pensacola Tree/Landscape regulations as being a diseased or weakened tree.

Email-Doug@ds-trees.com

Web-www.ds-trees.com

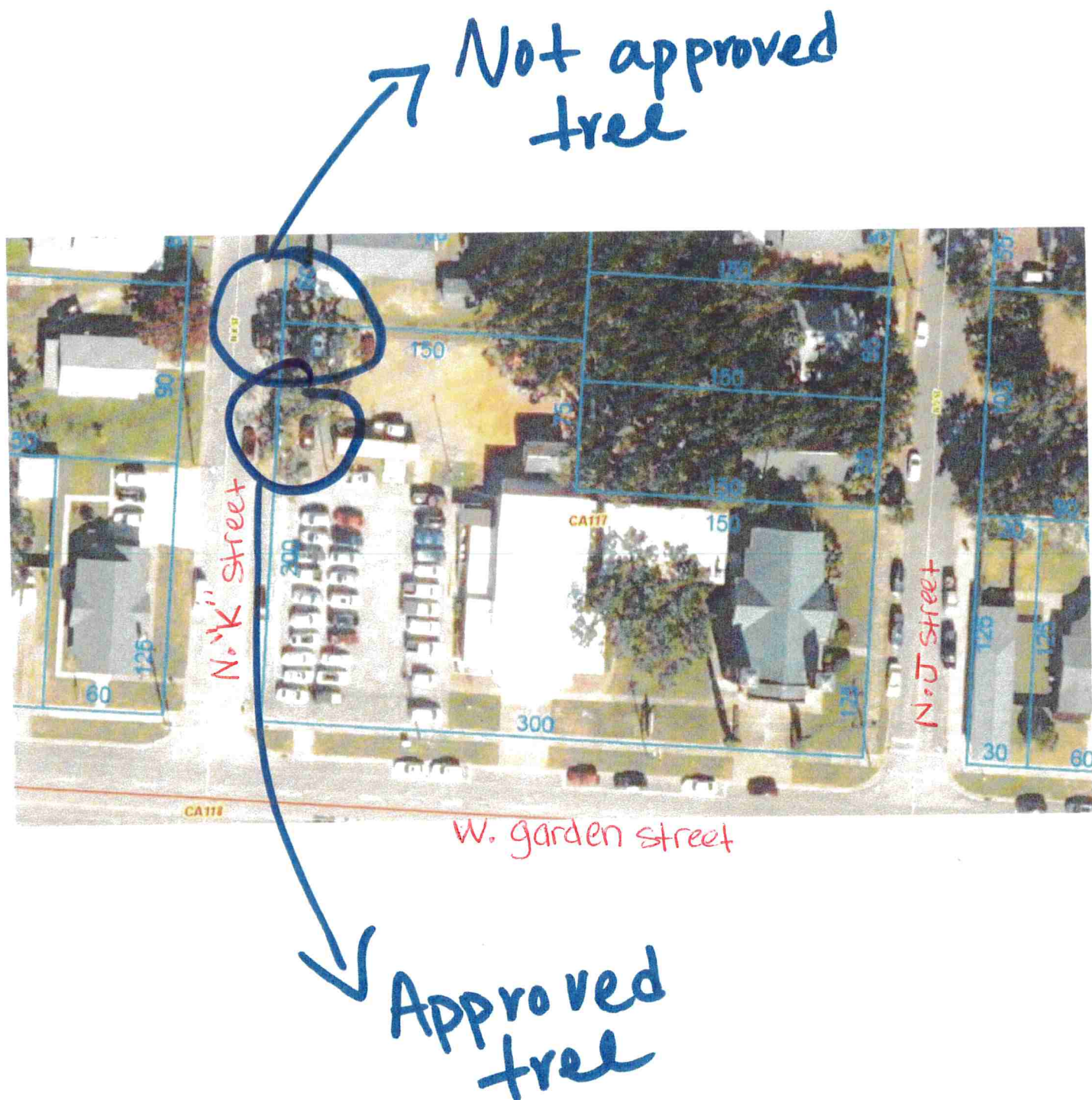
Tel-850-516-7373

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Doll', with a large, stylized initial 'D' and a cursive 'Doll'.

Douglas Doll, President

Certified Arborist NE-7126A









City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-249

Zoning Board of Adjustments

2/21/2024

ACTION ITEM

SUBJECT:

ZBA 2024-003 - APPEAL
6541 Joy Street

SUMMARY:

Mr. Charles Petrice has filed an appeal of the City's Arborist decision that a health heritage live oak was removed. The tree was removed without obtaining a permit. Mr. Stultz was notified of the removal and reviewed the debris to make his determination. The appellant disagrees with Mr. Stultz evaluation that the tree was healthy, therefore it needed to be removed.

The appellant was issued a Notice of City Code Violation. Supporting documentation, including Mr. Kris Stultz's comments has been provided for review. Mr. Petrice has stated he had conversations with an independent arborist approximately 4 years ago to support his assertion; however, he has not been able to provide this documentation to staff.

ATTACHMENTS:

1. Complete Packet

**ZONING BOARD OF ADJUSTMENT
APPEAL APPLICATION**

ZONING BOARD OF ADJUSTMENT
CITY OF PENSACOLA
222 West Main Street
Pensacola, FL 32502

REQUEST # ZBA-2024-003
HEARING DATE FEB 21-24
ZONING DISTRICT R1AAA
DATE RECEIVED 1-9-24
(ABOVE FOR OFFICE USE ONLY)

FEE: \$500.00 (Includes sign & notification costs)

AN APPEAL TO AN ORDER, REQUIREMENT, DECISION OR DETERMINATION made by an Administrative Official in the enforcement of the Land Development Code is hereby requested in accordance with Section 12-12-2 of the Code of the City of Pensacola.

Address or location of project, structure, land to which this appeal applies:

6541 JOY STREET
PENSACOLA FL 32504

Reasons and justifications for this appeal are as indicated below (or attached).

ATTACHED

A fee of \$500.00 is submitted herewith along with an original and ten (10) copies of this application (including any attachments).

"The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable modifications for access to City services, programs, and activities. Please call 435-1600 for further information. Requests must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services."

NAME & ADDRESS OF OWNER/PETITIONER
(Please Print)

Charles Petrice
6541 JOY STREET
PENSACOLA FL 32504


SIGNATURE OF OWNER/PETITIONER

703-232-5746
TELEPHONE NUMBER

DATE: 1-9-24

Charles Petrice @ Gmail.com

City of Pensacola
222 West Main Street
Pensacola, FL 32502

Dear Mr. Stultz:

This letter is to inform the council of my appeal of the decision to fine us for the removal of dying Oak tree on the above-mentioned property address. (Reference account number 032250000)

The appeal is based off the following reasons.

1. Description and history of the tree.

The tree was not "healthy" as stated in the Notice of City Code Violations document I received. When we moved to the property address 4 years ago, there were 2 dead oak on the property that we hired a tree removal service (Sid *unknown* (850) 816-7463) who was also an arborist to remove the trees. These trees were obviously dead, as they did not carry leaves anytime during the year, and the centers were like a mud consistency. He acquired the proper permits and removed the trees. At that time, we asked him to assess all the trees on our property as we would like to have some pine trees removed at a later date as well. He informed us that the oak tree on the back of our property should be removed as it was dying from the middle out. He wanted \$5000 but we didn't have the money.

The tree leaned at about a 45-degree angle over our fence, and over the rear portion of the neighbor's house. At some point in its life, it had been struck by lightning, split about halfway up and bark tore off. This resulted in a gray area about 1/3 the circumference of the tree from the base of the trunk, to around 50 ft up the tree. No branches grew below this 50 ft mark, and all the canopy was at the top making this tree top heavy. We felt the safest course of action would be to have this tree removed before risking that the next big storm blew this tree onto the neighbor's house.

You can see the included pictures that the base of the tree had dark lines where the dead streak started and spread upward. You can also see a hole in the middle of the trunk, and two gray dying areas of the trunk that also spread upward.

Those same neighbors were having their fence that share our property line replaced and we felt we would take the opportunity to have this tree removed at the same time as that neighbor recommended using "his tree guy".

2. C. C. Tree Service Land Cleaning (850)356-5668

The "tree guy" our neighbors recommended were C.C Tree Service Land Cleaning. The neighbor sent him over and we discussed the tree, he said it also should be cut down as it was dying from within. Once they fell the tree, there were so few branches on the top of the tree that the guy doing the cutting and his girlfriend were able to remove everything but the trunk in a few hours with a Bobcat. I state this to further emphasis that the tree was not a full, nice healthy tree. One afternoon my wife told me there was a man in our backyard. I went out to greet him, he informed me he was the city arborist, and asked "Why did you cut down a heritage tree?" I asked, "what is a heritage tree?" He said it was a protected tree. I told him that I didn't cut it

down, the tree company did. He stated that the responsibility to get the correct permits falls on the homeowner. I find this absurd. If I hired an electrician, I would not be required to get those permits, why is a tree service treated differently?

He then told me I should get an attorney to go after the tree company and left.

I confronted the owner of the company (the "tree guy") when I saw him later that day. He said he never heard of this and not to worry about it. His employee who was doing the cutting of the tree came over (Guy with the Bobcat), listened to my story as I explained it to the tree guy, looked at him and said "yeah, you should have gotten a permit". The owner then stated that this was stupid as it was my tree, and nothing would become of it to not worry about it.

Included you will find a copy of the contract between us and C.C Tree Service Land Cleaning to remove the tree.

3. The Recent City Council passing of Ordinance 26 - 23 Chapter 7 - 13.

In November Mayor DC Reeves openly discussed this exact issue where homeowners were being taken advantage of by tree cutting service companies either intentionally or because they did not know the city codes. He proposed an ordinance to combat this practice and have the tree company held responsible instead of the homeowner.

On December 14th, this Ordinance passed with a 7-0 vote from the city council.

Included is the vote result and copy of the ordinance description itself.

Although we had our tree removed before the ordinance was passed, we feel that this highlights that there was a problem with tree companies taking advantage of homeowners and that the city council did the right thing to have the penalties for code violations directed toward the tree companies themselves.

In conclusion. We feel that the tree did indeed need to be removed due to safety concerns, not just to "get rid of it", and the responsibility of knowing the city codes, obtaining the correct permits falls on the tree cutting service. We enjoy having trees on our property and cutting them down is something we do not do just because. In fact, we have planted orange, fig, and a peach tree on our property since we have moved in.

We also feel that since this was a known problem brought to the forefront by the mayor and city council that maybe a little leniency be afforded to us as the unknowing participant in violating the city code.

I would like to thank you for your time in considering our appeal. We also appreciate you trying to keep the City of Pensacola beautiful by trying to maintain healthy trees for all of us to enjoy.

Sincerely,

Charles Petrice
6541 Joy Street
Pensacola, FL 32504

Appellants Statement

Amy Hargett

From: Charles Petrice <charlespetrice@gmail.com>
Sent: Sunday, February 11, 2024 6:53 PM
To: Amy Hargett
Subject: Re: [EXTERNAL] Re: 6541 Joy Street - Appeal to the Zoning Board of Adjustments

Hello Amy!

The conversation with the arborist that recommended the tree be cut down was almost 4 years ago when we first moved in so I do not have any documentation.

Sent from my iPhone

On Feb 9, 2024, at 1:33 PM, Amy Hargett <ahargett@cityofpensacola.com> wrote:

Good afternoon Mr. Petrice –

As a follow up to the emails below, I wanted to clarify a few things as we move forward with your request to appeal.

Your appeal application will need to include the statement you made in the email below regarding what you are appealing, which is Kris Stultz's (City Arborist) decision to deny an approval for a permit due his evaluation that the removed tree was healthy. Although the permit was not obtained before the tree was removed.

However, your second statement would not be something the Zoning Board of Adjustments would hear. This is a civil matter between you and the tree company. The new ordinance was NOT in place at the time the unpermitted tree was removed.

I can use this email and put with your application, but I wanted you to be aware of the second statement.

Do you have any documentation for your argument that the tree was not healthy? You stated in your application that an unknown Arborist Sid "informed you that the tree in the back yard should be removed as it was dying..." – this is your argument, I think you want to submit documentation validating this?

I will be putting my staff letter together Monday, so let me know if you have any questions.

Amy D Hargett
Planning Services
Visit us at <http://cityofpensacola.com>
222 W Main St.
Pensacola, FL 32502
Office: 850.435-1670

ahargett@cityofpensacola.com

<image001.png>

Florida has a very broad public records law. As a result, any written communication created or received by City of Pensacola officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

From: Amy Hargett
Sent: Tuesday, February 6, 2024 2:39 PM
To: Charles Petrice <charlespetrice@gmail.com>
Subject: RE: [EXTERNAL] Re: 6541 Joy Street - Appeal to the Zoning Board of Adjustments

Thank you – Do you have an independent Arborist that evaluated the removed tree?

From: Charles Petrice <charlespetrice@gmail.com>
Sent: Tuesday, February 6, 2024 1:01 PM
To: Amy Hargett <ahargett@cityofpensacola.com>
Subject: [EXTERNAL] Re: 6541 Joy Street - Appeal to the Zoning Board of Adjustments

THIS EMAIL IS FROM AN EXTERNAL EMAIL ACCOUNT

Good afternoon!

I am appealing first that the tree was "healthy", as it was not. The tree was dying and was at risk of falling. Second that the responsibility of the permit should fall on the tree company that removed the tree. Thanks Amy!

On Tue, Feb 6, 2024 at 12:11 PM Amy Hargett <ahargett@cityofpensacola.com> wrote:

Mr. Petrice –

I am following up on your request to appeal the City's Arborist decision for you to mitigate any fees associated with the unpermitted removal of the heritage tree. Can you clarify what you are appealing, the application is unclear. Per section 12-11-2 below, you must be clear in what you are appealing. In other words, what is the alleged error that the Arborist. Mr. Stultz determined?

Also, you mentioned you had an independent arborist evaluate this particular tree, I suggested you provide this report as part of your appeal.

If we need to schedule an appointment, please let me know.

Sec. 12-11-2. - Appeals, modifications, and variances.

(a) *Duties and powers of zoning board of adjustment.* The zoning board of adjustment, created pursuant to section 12-12-1, shall have the following duties and powers:

(1) *Appeals.* To hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any provision of this title.

a. Appeals to the zoning board of adjustment may be filed by any person aggrieved or by any officer or board of the city affected by any decision of an administrative official under this title. Such appeal shall be filed within 30 days after rendition of the order, requirement, decision, or determination appealed from by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof.

b. The administrative official from whom the appeal is filed shall, upon notification of the filing of the appeal, forthwith transmit to the zoning board of adjustment all the documents, plans, papers, or other materials constituting the record upon which the action appealed from was made.

c. An appeal to the zoning board of adjustment stays all work on the premises and all proceedings in furtherance of the action appealed from, unless the official from whom the appeal was filed shall certify to the board that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceeding or work shall not be stayed except by a restraining order, which may be granted by the board or by a court of competent jurisdiction on application on notice to the officer from whom the appeal is filed and on due cause shown.

Amy D Hargett

Planning Services

Visit us at <http://cityofpensacola.com>

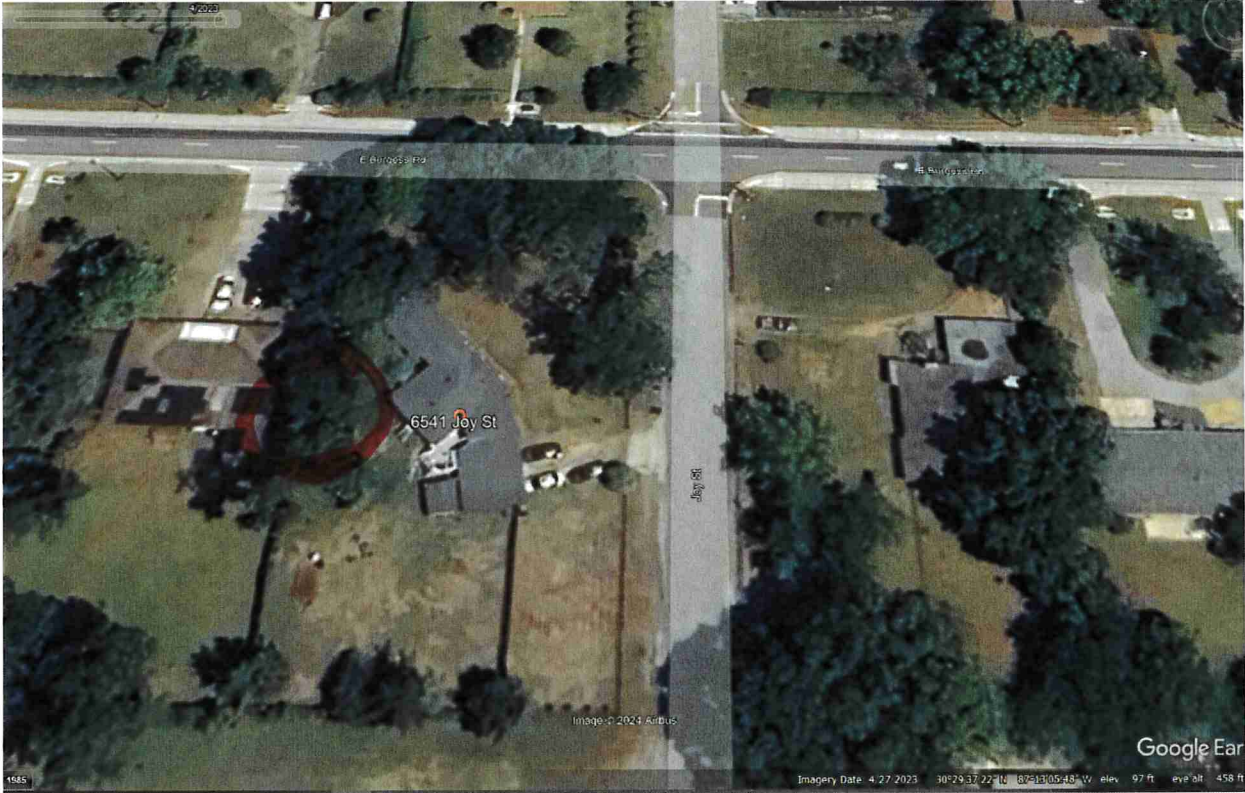
222 W Main St.

Pensacola, FL 32502

Office: 850.435-1670

ahargett@cityofpensacola.com

April 27 2023 Aerial





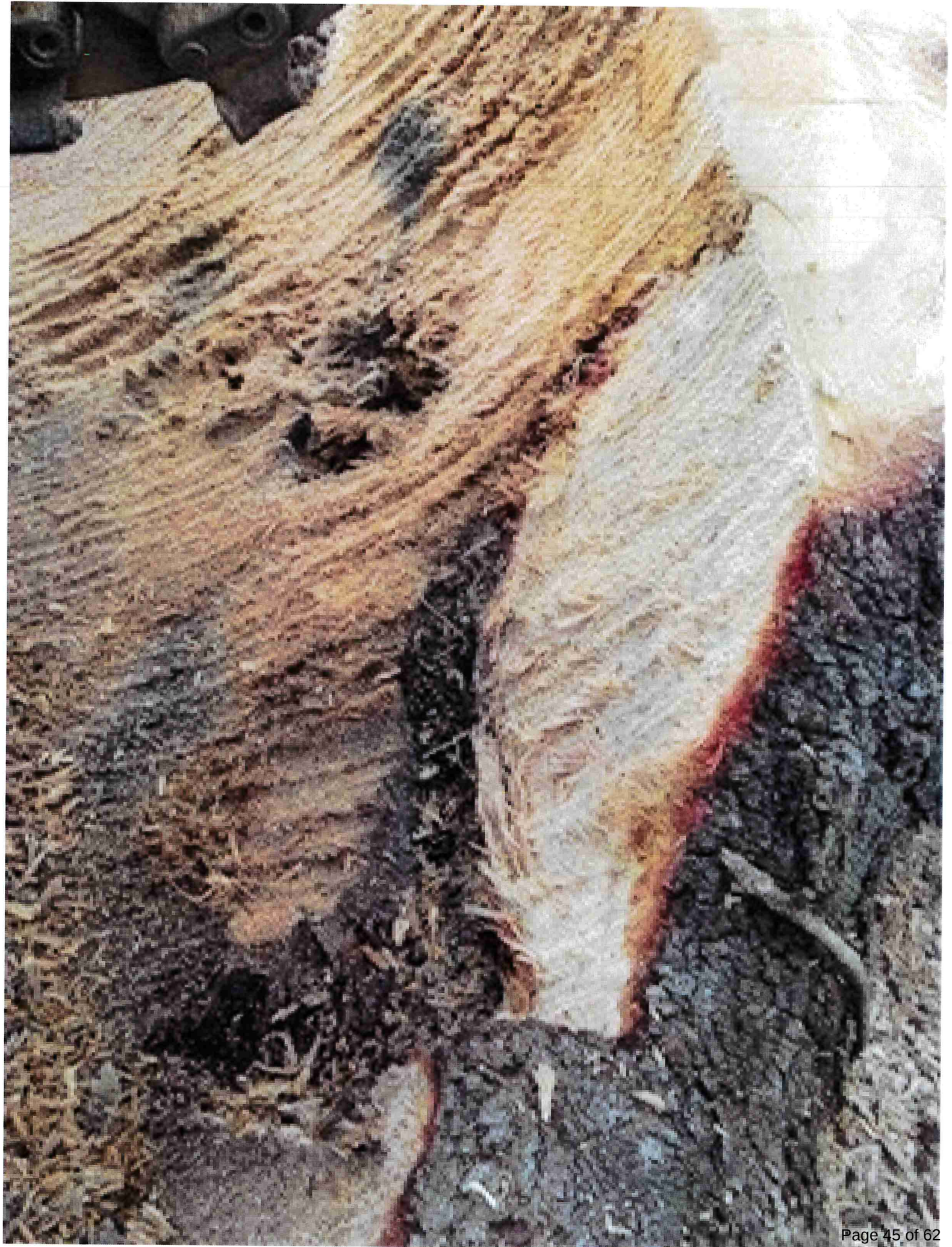












Amy Hargett

From: Marie Hobbs
Sent: Tuesday, February 13, 2024 10:48 AM
To: Amy Hargett
Subject: RE: Certified Receipt for Notice of City Violation

Hi, Amy. Unfortunately, the resident didn't date the form when he signed for the letter.

I tracked the package on USPS.com, and this is what it shows.

Tracking Number:

70203160000112994988

 Copy  Add to Informed Delivery

Latest Update

Your item was picked up at the post office at 9:24 am on December 20, 2023 in PENSACOLA, FL 32504.

 **Delivered**

Delivered, Individual Picked Up

PENSACOLA, FL 32504

December 20, 2023, 9:24 am

[See All Tracking History](#)

Get More Out of USPS Tracking:

 USPS Tracking Plus®

What Do USPS Tracking Statuses Mean?

Marie Hobbs

Engineering and Construction Services

City of Pensacola

222 West Main Street

Pensacola, FL 32502

Office: 850.435-1685

mhobbs@cityofpensacola.com



FLORIDA'S FIRST & FUTURE

Visit us at <http://cityofpensacola.com>

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr Charles Petrice
6541 Joy Street
Pensacola FL 32504



9590 9402 8160 3030 9955 49

2. Article Number (Transfer from service label)

7020 3160 0001 1299 4988

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

Registered Mail

Registered Mail Restricted Delivery

(over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation

☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

ENGINEERING and CONSTRUCTION SERVICES

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE OF CITY CODE VIOLATIONS

November 7, 2023

Mr. Charles Petrice
6541 Joy Street
Pensacola, FL 32504

Re: 6541 Joy Street – Code Violations

Mr. Petrice:

The property you own at **6541 Joy Street St.**, Pensacola, Florida and recorded on the Escambia County tax assessment roll as account number 032250000 is in violation of City Code. One (1) healthy heritage tree, 53-inch Caliper, Live oak, *Quercus virginiana*, has been removed without obtaining the required approval and/or permit. You must obtain the necessary permit(s) and pay any and all fines incurred within ten (10) days from the date you receive this notice. Your case may be presented at a hearing before the Special Magistrate for appropriate enforcement action. The Special Magistrate has the power to levy fines of up to \$250 a day, or \$500 a day in the event of a repeat violation.

VIOLATIONS

The conditions at 6541 Joy Street are a violation of the Code of the City of Pensacola:

Sec. 12-6-2.Applicability

(d) Heritage trees. A protected tree identified by species in Appendix A of this chapter which is four times the minimum diameter breast height (DBH) or greater. Heritage trees are protected in all the zoning districts listed in this section 12-6-2, for all land uses and are considered natural resources. A permit will be required for removal or pruning of a heritage tree in all zoning districts listed in this section 12-6-2, for all land uses, including single-family or duplex homes, as set out in section 12-6-7.

Sec. 12-6-10. Enforcement.

(b) — Penalty. The fine for violating this chapter shall be based on the size of limb(s) or the tree(s) removed without a permit. The measurement to establish said fine shall be based on the remaining tree material left intact on the site. If a tree is removed, the trunk caliper shall be measured at DBH and at the point of removal for a limb or each limb. If, in the opinion of the city's designated arborist, the tree has been substantially damaged so that its normal growth character will never return, i.e., a tree is topped and will never recover the original character, then the fine may be based upon the caliper of the tree trunk or each limb removed, whichever is the greater. Each day a violation of a stop work order continues shall constitute a separate offense (see subsection 7-10-6(b), penalty fees, of this Code). Each protected tree removed without a permit or in violation of a permit shall constitute a separate offence. Any person may seek an injunction against any violation of this chapter and recover such damages as he may suffer. In addition to the fines and prohibitions contained herein, the provisions of section 1-1-8 of the Code shall apply to willful violations of this chapter.

Sec. 12-6-11. Appeal.

Any person directly and adversely affected by any decision made in the interpretation or enforcement of the provisions of this chapter may appeal such decision to the zoning board of adjustment. Such appeal shall be submitted, in writing, to the planning administrator within 30 days of the rendering of the subject order, requirement, decision, or determination.

Sincerely,



Kristopher J. Stultz
City of Pensacola Arborist
ISA, BCMA FL-0979BT
ASCA, RCA#671
ISA, TRAQ
FC ISA PPQ

Sec. 12-6-6. - Protected trees.

Protected trees are those trees identified by species and size in Appendix "A" of this chapter if living and viable. Where protected trees are identified on a site proposed for lot clearing within the applicable zoning districts identified in section 12-6-2, the number of protected trees to be preserved on the site shall be determined based upon the final approved location of proposed structures, driveways, parking areas, and other improvements to be constructed or installed.

(1) *Preservation incentives.*

- a. *Parking space reduction.* A reduction of required parking spaces may be allowed when the reduction would result in the preservation of a protected tree with a trunk of 12 inches DBH or greater. Such reduction shall be required when the reduction would preserve a heritage tree. The following reduction schedule shall apply:

REDUCTION SCHEDULE

Number of Required Parking Spaces	Reduction of Required Parking Spaces Allowable
1—4	0
5—9	1
10—19	2
20 or above	10 percent of total number of spaces (total reduction regardless of number of trees preserved).

- b. *Consideration of park and open space requirement.* A reduction or waiver of the required park and open space (or payment in lieu of land dedication) for new residential subdivisions specified in section 12-7-6 may be approved by the mayor or their designee when it is determined that said waiver will result in the preservation of five or more protected trees with a trunk of 12 inches DBH or greater.
- c. *Sidewalks.* Modifications to sidewalks, their required location, and width and curb requirements, may be allowed as necessary to facilitate the preservation of any protected tree.

- d. *Credit for additional landscaping.* The city's designated arborist may authorize up to one-half of the total calculated mitigation cost (as determined according to subsections (2)d. and e. of this section) to be used by the applicant for additional landscaping, which is defined as landscaping that is not required by this chapter or any other law. Additional landscaping shall meet the following minimum standards:
1. A minimum of 75 percent of all required plant material shall consist of evergreen species.
 2. All landscape material shall be placed so as to maximize its screening and/or coverage potential at maturity.
 3. All shrub material shall be a minimum height of 30 inches and have a minimum crown width of 24 inches when planted and shall be a species capable of achieving a minimum height of eight feet at maturity.
- e. *Setback reductions.* Deviations to setbacks may be authorized by the mayor, or their designee for preservation of heritage trees. Such deviation shall be the minimum amount necessary for the preservation of the tree(s). *Notice.* If a setback reduction request is sought for one or more heritage trees within any property in any zoning district identified in section 12-6-2, a sign shall be posted no further back than four feet from the property line nearest each respective roadway adjacent to the property. One sign shall be posted for every 100 feet of roadway frontage. Each sign shall contain two horizontal lines of legible and easily discernible type. The top line shall state: "Heritage Tree Setback Reduction Request Applied For." The bottom line shall state: "For Further Information Contact the City of Pensacola at 311" (or other number as designated by the mayor). The top line shall be in legible type no smaller than six inches in height. The bottom line shall be in legible type no smaller than three inches in height. There shall be a margin of at least three inches between all lettering and the edge of the sign. The signs shall be posted by the applicant at their expense, and shall remain continuously posted for two weeks prior to the requisite building, site work, or permit is issued. The city's designated arborist will notify the councilperson representing the district in which the permit has been requested upon receipt of the request.

(2) *Retention, relocation, removal, replacement, and mitigation of protected trees.*

- a. *Retention of protected trees.* Every effort must be made to protect and retain existing protected trees on proposed development sites. A minimum of ten percent of the total combined trunk diameter of protected trees on a proposed development site not located within jurisdictional wetlands shall be retained in place or relocated on site.
- 1.

Credit for retention of protected trees above minimum requirements. For each inch of trunk diameter above the minimum ten percent requirement that is protected in place or relocated on site, an equivalent trunk diameter inch credit shall be given against replacement and mitigation requirements as provided in subsections (2)d. and e. of this section.

2. *Barrier zones.* All protected trees not designated for removal shall be protected by barrier zones erected prior to construction of any structures, road, utility service or other improvements. Barriers shall be placed at the outside of the dripline for all heritage trees and at a minimum two-thirds of the area of the dripline for all other protected trees. Barricades must be at least three feet tall and must be constructed of either wooden corner posts at least two inches by four (2 × 4) inches with at least two courses of wooden side slats at least one inch by four (1 × 4) inches with colored flagging or colored mesh attached, or constructed of one-inch angle iron corner posts with brightly colored mesh construction fencing attached.

b. *Removal of protected trees.* Subject to the requirements of (2)a. of this section, protected trees may be approved for removal if one or more of the following conditions are present:

1. *Visibility hazard.* Necessity to remove trees which will pose a safety hazard to pedestrians or vehicular traffic upon completion of the development.
2. *Safety hazard.* Necessity to remove trees which will threaten to cause disruption of public services or which will pose a safety hazard to persons or buildings or adjacent property or structures.
3. *Construction of improvements.* Necessity to remove trees in order to construct proposed improvements as a result of the location of driveways, if the location of a driveway or ingress/egress is specified and required by DOT or other regulations, buildings, utilities, stormwater/drainage facilities, or other permanent improvements. The architect, civil engineer, or landscape architect shall make every reasonable effort to locate such improvements so as to preserve any existing tree.
4. *Site conditions.* Necessity to remove trees as a result of characteristics of the site such as site dimensions, topographic conditions and grading requirements necessary to implement standard engineering and architectural practices. Grading shall be as limited as possible. In order to justify the removal of protected trees on the ground of site conditions, the request must be reviewed by the appropriate city staff and must be approved by the mayor or his or her designee. Appeals from the decision of the city's designated arborist shall be to the zoning board of adjustment.

5. *Diseased or weakened trees.* Necessity to remove diseased trees or trees weakened by age, storm, fire or other injury;

6.

Compliance with other ordinances or codes. Necessity for compliance with other city codes such as building, zoning, subdivision regulations, health provisions, and other environmental ordinances.

- c. *Relocation of protected trees.* Where feasible, when conditions necessitate removal of protected trees, said trees shall be relocated on the site in the required perimeter or interior landscaped areas. Should the relocated tree expire within a specified period of time, the appropriate mitigation (planting of replacement trees or payment to the tree planting trust fund) shall be required. For each protected tree that cannot feasibly be relocated (or all of them), a written statement from a qualified professional shall be provided stating for each tree (or all of them) that relocation is not feasible and briefly explaining why relocation is not feasible, subject to the review of the city's designated arborist.
- d. *Replacement of protected trees.* When a protected tree is approved for removal, it shall be replaced with a like species of the tree removed. The city's designated arborist may allow a deviation to this within the same species type category in the protected tree list in Appendix "A" of this chapter in order to promote ecological diversity on the site. The prescribed number of trees shall be planted for each tree removed. The minimum diameter of a replacement tree shall be three (3) inches DBH. The replacement formula is:
 - 1. A trunk diameter of four inches to 11 inches = Two three-inch DBH trees planted for each one removed.
 - 2. A trunk diameter of 12 inches to 19 inches = Three three-inch DBH trees planted for each one removed.
 - 3. A trunk diameter of 20 inches to 29 inches = Five three-inch DBH trees planted for each one removed.
 - 4. A trunk diameter of 30 inches to 35 inches = Eight three-inch DBH trees planted for each one removed.
 - 5. A trunk diameter of 36 inches to 43 inches = Ten three-inch DBH trees planted for each one removed.
 - 6. A trunk diameter of 44 inches or greater = 11 three-inch DBH trees planted for each one removed.
- e. *Mitigation of protected trees.* Any replacement trees that cannot be planted on site because of lack of space, once agreed to by the city, shall be valued at \$400.00 each and the owner shall pay that total to the tree planting trust fund. Trees identified as dead and verified as such in writing by the city's designated arborist shall not be required to be replaced or mitigated.

New planting of protected trees. On sites proposed for development or redevelopment where no existing protected trees are identified, the owner or his agent shall be required to plant one new tree species identified in the protected tree list (Appendix "A") or the tree replant list (Appendix "B"), a minimum of three inches DBH, for each 1,000 square feet of impervious surface area. New trees or replacement trees shall be planted during the year as indicated in subsection 12-6-3(2)a.1. of this chapter.

- (4) *New residential subdivisions.* In new residential subdivisions the private property owner of each lot shall plant one tree in the front yard within ten feet of the right-of-way, provided there is no existing tree in the front yard. The tree shall be planted prior to a certificate of occupancy being issued for the dwelling. If the existing tree is not within ten feet of the right-of-way, then one additional tree shall be required (sized as noted in subsection (4)a. of this section). The tree shall be a species from Appendix "A" or "B," and where feasible, shade trees are encouraged.
- a. Where a protected or replant tree species is required to be replanted, such tree shall be a minimum of three inches DBH.
 - b. The location of an existing protected tree on the lot or the proposed location of a new protected or replant species, where required in this subsection, shall be identified on the plot plan submitted as part of the information submitted for a building permit.
- (5) *Road right-of-way tree protection.* No person or agency shall cut, prune, remove, or in any way damage any protected tree in any street right-of-way or create any condition injurious to any such tree without first obtaining a permit to do so from the city's designated arborist as specified in section 12-6-7.
- a. The city's designated arborist may issue an annual permit to public utility companies exempting them from the provisions of this subsection concerning tree preservation. In the event of flagrant or repeated disregard for the intent and purpose of this chapter, the department may revoke said permit. The reasons for revoking such a permit shall be provided in writing to the offender.
 - b. Prior to entering a targeted area for pruning by the utility, the utility representative shall submit for approval to the city a clearly marked plan of the area, showing location of trees and noting what is being requested by the utility company. The city's designated arborist shall approve the plan and an additional permit fee of seventy-five dollars (\$75.00) shall be paid to the City of Pensacola for the specific area noted on the plan submitted (see chapter 7-10 of this Code).
 - c. All public utilities, governmental agencies and their subcontractors shall comply with the American National Standards Institute, ANSI A300-1995, Tree, Shrub and Other Woody Plant Maintenance—Standard Practices, when pruning trees on public or private property. Notice shall be provided to landowners at least one week in advance of pruning and/or

removing landowners' trees on private property. Emergency removal requiring immediate action to protect the health and safety of the public is not subject to this chapter. In no case shall the utility company be permitted to prune more than 30 percent of the existing tree canopy.

- (6) *Tree protection.* Removing, pruning, or cutting tree growth away from a permanent nonaccessory sign (billboard) on public or private property shall be permitted only if a permit is obtained from the city's designated arborist. All agencies and their subcontractors shall comply with the American National Standards Institute, ANSI A300-1995, Tree, Shrub and Other Woody Plant Maintenance—Standard Practices, when pruning trees.
- (7) *Canopy road tree protection zone.* All lands within ten feet of the outer boundary of the right-of-way of the below described roads are hereby declared to be canopy tree protection zones:
- a. Blount Street from "A" Street to Bayview Park.
 - b. Lakeview Avenue from 9th Avenue to 20th Avenue.
 - c. Garden Street from Alcaniz Street to Jefferson Street and from "J" Street to "N" Street.
 - d. 17th Avenue from Gregory Street to Texar Drive.
 - e. 12th Avenue from Barcia Drive to Fairfield Drive.
 - f. Baylen Street from LaRua Street to Jordan Street.
 - g. Spring Street from LaRua Street to Jordan Street.
 - h. Bayou Boulevard from Lee Street to Strong Street.
 - i. Cervantes Street/Scenic Highway from the eastern side of Bayou Texar to the city limits.

No person or agency shall cut, remove, prune or in any way damage any protected tree in any canopy road tree protection zone or create any condition injurious to any such tree without first obtaining a permit to do so from the city's designated arborist as specified in section 12-6-7. The exemption for utility companies noted in subsection (5), above shall also apply to the canopy road tree protection zone.

- (8) *Heritage trees, including their driplines.* No person or agency shall cut, remove, prune or in any way damage any heritage tree in any zoning district without first obtaining approval of a landscape and tree protection plan per section 12-6-4 for new development sites or a permit from the city's designated arborist as specified in section 12-6-7 for developed property; provided, however, that currently occupied residential property may qualify for removal or pruning of a heritage tree without incurring the cost of a permit so long as documentation of danger to person or property has been submitted to the city's designated arborist in advance of removal. For purposes of this provision, "documentation" means a completed two-page Tree Risk Assessment Form, which should be completed according to the standards found within Best Management Practices: Tree Risk Assessment, Second Edition, by E. Thomas Smiley, Nelda Matheny, and Sharon Lilly, and distributed by the International Society of

Arboriculture Society; further, consistent with ISA standards and tree risk assessment, a tree or tree part is a "danger" when two conditions exist: 1) the failure of the tree part or of the tree is imminent or impact is likely, and 2) the consequences of that failure are high or extreme. In the case of lot splits for single family and duplex uses, the land shall be evaluated to determine whether the lot split will have a negative effect on any heritage tree(s), including their driplines. A tree survey shall be provided to the Planning Services department along with the lot split application, and the size of proposed lots shall be evaluated for the purpose of ensuring that a lot split will not require the removal of any heritage tree or damage the tree's dripline as a result of that lot split.

(Code 1986, § 12-6-6; Ord. No. 31-09, § 1, 9-10-2009; Ord. No. 16-10, § 217, 218, 9-9-2010; Ord. No. 04-21, § 5, 2-25-2021; Ord. No. 14-21, § 1, 7-15-2021; Ord. No. 08-22, § 1, 4-14-2022)

PROPOSED
ORDINANCE NO. 26-23

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE CREATING CHAPTER 7-13 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA, RELATED TO THE REGULATION OF BUSINESSES ENGAGED IN PRUNING AND REMOVING TREES; ADOPTING APPROPRIATE INDUSTRY STANDARDS; PROVIDING FOR PENALTIES FOR DEVIATION FROM INDUSTRY STANDARDS; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Pensacola seeks to preserve healthy trees within the city limits by establishing penalties for failure to follow industry standards for pruning and for removal of trees; and

WHEREAS the City of Pensacola's permit process promotes public safety by incorporating industry standards on pruning and removal of trees; and

WHEREAS, the City of Pensacola has identified public safety hazards resulting from the failure of businesses to follow industry standards concerning tree pruning and removal; and

WHEREAS, the City of Pensacola recognizes that the public interest is harmed by the higher risk of injury and economic impact of removing tree hazards caused by business operators, inadvertently or knowingly, proceeding to prune or remove trees without permits or in disregard of industry standards; and

WHEREAS, the City Council of the City of Pensacola finds that the following ordinance provides standards and requirements that will promote public safety;

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 7-13-1 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

*This PASSED
after
Mr. Petrice
Tree Company
already
cut
tree*

Sec. 7-13-1 – Definitions.

Arborist means an International Society of Arboriculture-Certified Arborist who is qualified to perform prescription pruning;

Business tax receipt has the meaning found in Chapter 7-2, Code of Ordinances for the City of Pensacola;

Commercial tree trimming or removal company means a business entity or individual engaged in the pruning or removal of trees for compensation.

SECTION 2.

Sec. 7-13-2 – Pruning or removing trees – authority

- (a) A commercial tree trimming or removal company is authorized to engage in pruning, trimming, or removal of trees within the city limits only if it possesses a valid business tax receipt pursuant to Chapter 7-2, Code of Ordinances of the City of Pensacola.
- (b) A commercial tree trimming or removal company, before engaging in pruning, trimming, or removal of trees within the city limits, shall verify whether a permit is required and, if required, obtain the permit on behalf of the property owner, and further satisfy all permitting requirements established by the city's designated arborist prior to performing the work.

SECTION 3.

Sec. 7-13-3 – Industry Standards Applicable to Tree Pruning and Removal

All contractors performing tree care within the City of Pensacola be required to follow arboricultural industry standards, both the ANSI A300 & ANSI Z133 Work and Safety Standards, and all subsequently updates to applicable standards as identified by the International Society of Arboriculture, including but not limited to the following:

- (a) the requirement that an arborist perform the pruning and removal in according with a pruning prescription and
- (b) the requirement that an onsite assessment be performed in accordance with the tree risk assessment procedures outlined in Best Management Practices - Tree Risk Assessment, Second Edition (2017) by an arborist certified by the International Society of Arboriculture (ISA).

SECTION 4.

Sec. 7-13-4 – Enforcement

Stop work order. Whenever the city's designated arborist determines that a violation of this chapter has occurred, the following actions shall be initiated:

- (a) Written notice. Immediately issue written notice by personal delivery or certified mail to the commercial tree trimming and removal company as defined herein, with a copy to the property owner, of the nature and location of the violation, specifying what remedial steps are necessary to bring the project into compliance. The recipient of the notice shall immediately, conditions permitting, commence the recommended remedial action and shall have ten working days after receipt of said notice, or such longer time as may be allowed by the city's designated arborist, to complete the remedial action set forth in said notice.
- (b) Remedial work and stop work orders. If a subsequent violation occurs during the ten working days referred to in subsection (a)(1) above, or if remedial work specified in the notice of violation is not completed within the time allowed, or if clearing and development of land is occurring without a permit, then the city's designated arborist shall issue a stop work order immediately. Said stop work order shall contain the grounds for its issuance and shall set forth the nature of the violation. The stop work order shall be directed not only to the person owning the land upon which the clearing and development is occurring, but also a separate stop work order shall be directed to the person or firm actually performing the physical labors of the development activity or the person responsible for the development activity, directing him or her forthwith to cease and desist all or any portion of the work upon all or any geographical portion of the project, except such remedial work as is deemed necessary to bring the project into compliance. If such person fails to complete the recommended remedial action within the time allowed, or fails to take the recommended action after the issuance of such stop work order, then the city's designated arborist may issue a stop work order on all or any portion of the entire project.
- (c) Notice of compliance. Upon completion of remedial steps required by notice the city's designated arborist shall issue a notice of compliance and cancellation of said notice or stop work order.

SECTION 5.

Sec. 7-13-5 – Penalties.

(a) The fine for violating this chapter shall be based on the size of limb(s) or the tree(s) removed without a permit. The measurement to establish said fine shall be based on the remaining tree material left intact on the site. If a tree is removed, the trunk caliper shall be measured at DBH and at the point of removal for a limb or each limb. If, in the opinion of the city's designated arborist, the tree has been substantially damaged so that its normal growth character will never return, i.e., a tree is topped and will never recover the original character, then the fine may be based upon the caliper of the tree trunk or each limb removed, whichever is the greater. Each day a violation of a stop work order continues shall constitute a separate offense (see subsection 7-10-6(b), penalty fees, of this Code). Each protected tree removed without a permit or in violation of a permit shall constitute a separate offense. Any person may seek an injunction against any violation of this chapter and recover such damages as he or she may suffer.

(b) Fines for violating this chapter, when paid, shall be deposited into the tree planting trust fund established pursuant to section 12-6-6.

(c) The city's designated arborist, upon a finding of a willful violation of this chapter by a commercial tree trimming or removal company, shall send a notice to the offending party that its business tax receipt is void. The notice shall provide information on how to appeal the determination. A second violation of this chapter by a commercial tree trimming or removal company shall establish a rebuttable presumption that the violation was willful. A third violation of this chapter by a commercial tree trimming or removal company is clear and convincing evidence of a willful violation.

(d) A commercial tree trimming or removal company may appeal the voiding of its business tax receipt or satisfy the remedial requirements set forth by the city's designated arborist to have its business tax receipt restored.

SECTION 6. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 8. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

CURRENT ITEM
31. PROPOSED ORDINANCE 26-23 CREATING CHAPTER 7-13 OF THE CODE OF THE CITY OF PENSACOLA - REGULATION OF BUSINESSES ENGAGED IN PRUNING AND REMOVING TREES
MOTION
Passed on first reading

VOTE RESULTS

YES	Casey Jones	YES	Jennifer Brahier
YES	Jared Moore	YES	Teniade Broughton
YES	Allison Patton		
YES	Charles Bare		
YES	Delarian Wiggins		

Passed 7-0-0

Bookmarks

Jump to a specific point in the meeting

FLORIDA STATUTES

PROPOSED
ORDINANCE NO 24-23 -
CREATING SECTION 11-
4-4, SECTION 11-4-5
AND SECTION 11-4-6 OF 02:16:25
THE CODE OF THE CITY
OF PENSACOLA -
DANGEROUS USE OF
PUBLIC RIGHTS OF WAY

PROPOSED
ORDINANCE 26-23
CREATING CHAPTER 7-
13 OF THE CODE OF
THE CITY OF
PENSACOLA -
REGULATION OF
BUSINESSES ENGAGED
IN PRUNING AND
REMOVING TREES

COUNCIL EXECUTIVE'S
REPORT 02:25:57

MAYOR'S
COMMUNICATION 02:26:55

COUNCIL
COMMUNICATIONS &
PRIVACY 02:28:34