

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark A. Kutney, AICP, Development Services Director/ (954) 797-1101

PREPARED BY: Christopher M. Gratz, Planner II

SUBJECT: Quasi Judicial Hearing: Variance, V 6-1-05 John Phillips, 3601 SW 141 Avenue/Generally located at the northeast corner of SW 142 Avenue (Boy Scout Road) and SW 37 Court

AFFECTED DISTRICT: District 4

TITLE OF AGENDA ITEM: V 6-1-05, Phillips 3601 SW 141 Avenue (R-1)

REPORT IN BRIEF: This is a variance request from the Land Development Code's minimum required side setbacks. In the R-1, Estate Dwelling District 25' and 30' side setbacks are required on this parcel because it is a corner lot, and the request is to reduce the side setbacks to 17' and 22'. The parcel has right-of-way on three (3) sides with the fourth having a canal, and then another right-of-way. The front of the lot is on SW 37 Court, rear is SW 36 Court, the east side is SW 141 Terrace, and the west side is a canal then Boy Scout Road.

The subject site consists of two (2) parcels that were created by an unrecorded plat that were recorded in the official records of Broward County. The parcels are legal lots of record that total more than one (1) gross acre, and a single family home can be constructed without having to plat. The Land Development Code states that a parcel of land shall meet the minimum property development regulations, except minimum lot size requirements, that are generally applicable in the district except as may be provided through the granting of a variance. When the required minimum setbacks are applied to these parcels, the buildable area is 30' by 328'. The requested variance would increase the buildable area to 46' by 328'. There are two (2) homes to the east of the site and approval of the request would result in a 95' separation between a structure on this lot and the closest neighbor's home.

The lots were originally 120' by 438', which was inclusive of an existing canal and road easement as was customary at the time, and due to right-of-way and canal easement dedications the lots are now 85' by 388'. At some point the northern boundary was reduced 25' for a right-of-way dedication for SW 36 Court which has never been constructed on the parcel, the southern boundary was reduced 25' for a right-of-way dedication for SW 37 Court, the eastern boundary was reduced 25' by a right-of-way dedication, and the western boundary was reduced by 10' for a dedication of a canal easement.

PREVIOUS ACTIONS: None.

CONCURRENCES: At the July 27, 2005, Planning and Zoning Board meeting, Ms. Lee made a motion, seconded by Ms. Turin, to approve. (Motion carried 3-1, with Mr. Stevens absent and Vice-Chair McLaughlin being opposed. He was opposed because the lot was buildable without a variance.)

FISCAL IMPACT: None

RECOMMENDATION(S): Staff finds the application complete and suitable for transmittal to Town Council for consideration.

Attachment(s): Planning Report

TOWN OF DAVIE
Development Services Department
Planning and Zoning Division
Staff Report and Recommendation



Applicant Information

Owner/Petitioner:

Name: John Phillips
Address: 11243 NW 43 Court
City: Coral Springs, FL 33065
Phone: (954) 448-1678

Background Information

Date of Notification: July 20, 2005 Number of Notices: 48

Application History: No deferrals have been requested.

Application Request: Variance **FROM:** §12-81(A) R-1, Estate Dwelling District, which requires 25' and 30' side setbacks on the subject property because the parcel is a corner lot; **TO:** reduce the side setbacks to 17' and 22'.

Address/Location: 3601 SW 141 Avenue/Generally located at the northeast corner of SW 142 Avenue (Boy Scout Road) and SW 37 Court.

Future Land Use

Plan Map Designation: Residential (1 DU/AC)

Zoning: R-1, Estate Dwelling District

Existing Use: Vacant (heavily overgrown with invasive exotics)

Existing/Proposed Use: Single family dwelling

Gross Parcel Size: 1.13 (49,246.6 square feet)

Net Parcel Size: 0.765 acres (33,313.6 square feet)

	<u>Surrounding Uses:</u>	<u>Surrounding Land</u>
North:	Single family dwelling	<u>Use Plan Designation:</u> Residential (1 DU/AC)
South:	Seminole Health Club (access drive)	Residential (1 DU/AC)
East:	Single family dwellings	Residential (1 DU/AC)
West:	Vista View Park	Recreation/ Open Space
	<u>Surrounding Zoning:</u>	
North:	R-1, Estate Dwelling District	
South:	R-1, Estate Dwelling District	
East:	R-1, Estate Dwelling District	
West:	RS, Recreation/Open Space	

Zoning History

Annexation: This parcel was annexed into the Town of Davie by referendum on October 1, 1974, as part of the Imagination Farms Annexation Referendum.

Plat: The property was subdivided as Lots 35 and 102 by the unrecorded plat known as “Sunny Lane Farms” on May 12, 1958, and is shown on a warranty deed that was recorded in the official records of Broward County on April 19, 1979.

Related Variance: The variance, V 1-3-04, Woodlief, 13800 SW 37 Court (R-1), was approved on March 17, 2004.

Applicable Codes and Ordinances

§12-24 (I) (2) Estate Dwelling (R-1) District: The R-1 District is intended to implement the one (1) dwelling unit per acre residential classification of the Town of Davie Comprehensive Plan and to provide estate residential areas with most of the noncommercial agricultural uses permitted providing a transition from agricultural land to residential dwelling units.

§12-81 (A) Conventional Single Family Development Standards, R-1, Estate Dwelling District, requires the following minimums: lot area of 35,000 square feet, 125’ frontage, 30’-40’ staggered front setback, 25’ side setbacks, 30’ rear setback, 35’ maximum building height, 2,400 square foot dwelling unit floor area, 35’ maximum building height, and 25 percent maximum building coverage.

§12-33 (I) Corner Lot Yard Regulations:

(1) Corner lots shall provide the minimum front yard requirements for the respective zone for both intersecting streets.

(2) When the rear yard of a corner lot adjoins the front yard of a lot to its rear, no accessory buildings on such corner lot shall be located nearer to the street line than a distance equal to the depth of the front yard requirement for that lot to the rear of the corner lot.

§12-33(N) Existing Lots of Record. In all residential districts where a lot of record existed at the time the ordinance from which this section was derived was adopted, and such lot of record is occupied by a single-family dwelling, duplex dwelling or mobile home that adhered to all existing requirements of the zoning district classification in effect at the time of construction, such lot shall enjoy a vested right in and to permitted setbacks existing under zoning district classification regulations at the time of construction. Where such conditions exist in present platted and recorded or unrecorded areas that strict conformance with plot width, depth, area or yard requirements causes unnecessary difficulty in the practical utilization of a corner or interior plot, the town council may make such alterations or deviations in the application of these requirements as is allowed by Article X, Division 2.

§12-360 (B) Platting requirement:

(1) The town may not grant an application for a building permit for the construction of a principal building on a parcel of land unless a plat including the parcel or parcels of land has been approved by the Broward County Commission and recorded in the official records of Broward County subsequent to June 4, 1953. This section will not apply to an application for a building permit which meets any of the following criteria:

- (a) Construction of one (1) single-family dwelling unit or duplex unit on a lot or parcel, which lot or parcel was of record as such in the official records of Broward County as of March 1, 1989; or
- (b) Construction on any multifamily or nonresidential lot or parcel which is less than five (5) acres in size and specifically delineated on a plat recorded on or before June 4, 1953;

§12-38 Nonconforming lots. A principal building and customary accessory buildings may be erected on a single lot, tract or parcel of land, notwithstanding limitations imposed by other provisions of these regulations, if:

- (1) The erection of such building(s) was permissible prior to the adoption of these regulations; and
- (2) The single lot, tract or parcel of land was shown on a recorded map, plat, drawing or survey prior to the adoption of these regulations; or
- (3) The single lot, tract or parcel of land was shown on a plat, drawing or survey, which was registered with the Department of Business Regulation, Division of Florida Land Sales, prior to the effective date of the adoption of these regulations; and
- (4) The single lot, tract or parcel of land shall meet the minimum property development regulations, except minimum lot size requirements, that are generally applicable in the district, except as may be provided through the granting of a variance pursuant to Article X.

§12-503 Definitions.

Lot, corner. A lot abutting two (2) or more streets at their intersection where the interior angle of the intersection does not exceed one hundred and thirty-five (135) degrees.

Lot line, front. In the case of a lot abutting only one (1) street, it is the property line or street right-of-way line separating such lot from such street. In the case of a double frontage lot, each

property line or street right-of-way line separating such lot from a street shall be considered to be the front lot line, except where the rear yard requirement is greater than the front yard requirement, in which case one (1) of two (2) opposing yards shall be a rear yard.

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 2. Planning Area 2 includes the westernmost section of the Town north of Orange Drive and south of SW 14 Street, and bound on the west by Interstate 75 and on the east by SW 100 Avenue. The predominant existing and planned land use is single family residential at a density of one dwelling per acre

Broward County Land Use Plan: The subject site falls within Flexibility Zone 113.

Applicable Goals, Objectives & Policies: *Future Land Use Plan, Objective 17: Land Use Compatibility and Community Appearance, Policy 17-3:* Each development proposal shall be reviewed with respect to its compatibility with adjacent existing and planned uses.

Application Details

This is a variance request from the Land Development Code's minimum required side setbacks. In the R-1, Estate Dwelling District 25' and 30' side setbacks are required on this parcel because it is a corner lot, and the request is to reduce the side setbacks to 17' and 22'. The parcel has right-of-way on three (3) sides with the fourth having a canal, and then another right-of-way. The front of the lot is on SW 37 Court, rear is SW 36 Court, the east side is SW 141 Terrace, and the west side is a canal then Boy Scout Road.

The lots were originally 120' by 438', which was inclusive of an existing canal and road easement as was customary at the time, and due to right-of-way and canal easement dedications the lots are now 85' by 388'. At some point the northern boundary was reduced 25' for a right-of-way dedication for SW 36 Court which has never been constructed on the parcel, the southern boundary was reduced 25' for a right-of-way dedication for SW 37 Court, the eastern boundary was reduced 25' by a right-of-way dedication, and the western boundary was reduced by 10' for a dedication of a canal easement.

Staff Analysis

The subject site consists of two (2) parcels that were created by an unrecorded plat that were recorded in the official records of Broward County. The parcels are legal lots of record that total more than one (1) gross acre, and a single family home can be constructed without having to plat. The Land Development Code states that a parcel of land shall meet the minimum property development regulations, except minimum lot size requirements, that are generally applicable in the district except as may be provided through the granting of a variance. When the required minimum setbacks are applied to these parcels, the buildable area is 30' by 328'. The requested variance would increase the buildable area to 46' by 328'. There are two (2)

homes to the east of the site and approval of the request would result in a 95' separation between a structure on this lot and the closest neighbor's home.

Findings of Fact

Variances:

Section 12-309(B) (1):

The following findings of facts apply to the variance request:

- (a) There are special circumstances or conditions applying to the land or building for which the variance is sought;

The property is narrow and rectangular in shape due to right-of-way and canal easement dedications, and is now located adjacent to three (3) rights-of-way with the fourth side being adjacent to a canal then another right-of-way.

which circumstances or conditions are peculiar to such land or building and do not apply generally to land or buildings in the same district;

There is one (1) other parcel in this unrecorded subdivision with the same dimensions, however the home was built in 1977 with 15' side setbacks.

and that said circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the application of the reasonable use of such land or building for which the variances are sought;

Without an increased buildable area the owner will have great difficulty designing a home that will blend in with the neighboring properties.

and that alleged hardship is not self-created by any person having an interest in the property.

The hardship is created by the dimensions of the existing lot and the required setbacks of the R-1, Estate Dwelling District.

- (b) The granting of the variance is necessary for the reasonable use of the land or building and that the variance as requested is the minimum variance that will accomplish this purpose.

This parcel can be used without a variance, however in order to design a home that is compatible with the neighborhood the buildable area needs to be increased.

- (c) Granting of the requested variances will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The intent of the Land Development Code is to allow an interpretation to be made where there is a just balance between the rights of the landowner and all others who will be affected by that person's proposal. The granting of a variance to allow the buildable area of this parcel to be increased will not be detrimental to the adjacent lots as the home will be at least 95' from any of the neighbor's homes.

Staff Recommendation

Staff finds the subject application complete and suitable for transmittal to the Planning and Zoning Board and Town Council for consideration.

Planning and Zoning Board Recommendation

At the July 27, 2005, Planning and Zoning Board meeting, Ms. Lee made a motion, seconded by Ms. Turin, to approve. (Motion carried 3-1, with Mr. Stevens absent and Vice-Chair McLaughlin being opposed. He was opposed because the lot was buildable without a variance.)

Town Council Action

Exhibits

1. Justification
2. Survey
3. Unrecorded Plat
4. Future Land Use Plan Map
5. Zoning and Aerial Map

Prepared by: _____

Reviewed by: _____

**Town of Davie
Variance Application
Justification Letter**

June 24, 2005

Petitioner: John Phillips
Property Folio: 504022020350 / 504022021020

Please consider this request of relief from code section 12-81 A, 12-33 (I)1 and 12-282. The property listed in this application originally had lot dimensions of 120' x 438'. Additional right-of-way was granted to the Town of Davie and Broward County for roadways and canal easement, thereby reducing the width of the property to 85' x 388'. The dedication of the additional right-of-way and canal easement has created a hardship by reducing the build able lot width of the property to 30'. Slightly increasing the build able lot width will allow for architectural enhancements to exterior walls and rooflines. These enhancements will increase the overall appearance and architectural beauty of the house, further enforcing the fabric of the neighborhood.

Zoning: R1

Setback	Required	Requested
<i>Front</i>	30'	30'
<i>Side</i>	25' / 30'	17' / 22'
<i>Rear</i>	30'	30'

As discussed below, the granting of the proposed variance and waiver will adhere to the variance and waiver review criteria as set forth in code section 12-309, as applicant will demonstrate: (1) That special circumstances and peculiar conditions warrant the requested variances and waiver and that the alleged hardship is not self created. (2) That the variance requested is the minimum variance that will accomplish applicants stated purpose and to proceed otherwise would deny applicant reasonable use of the property. (3) That all other codes and regulations will be satisfied including all landscape requirements as set forth in code section 12-285.

(4) That allowing the requested variance and waiver will be in harmony with the general purpose and intent of the code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

A) Unique and special circumstances and conditions exist that are not shared by other properties in the same zoning district and the conditions are not self created.

Special circumstances exist in the present case that warrants the granting of the requested variances. The variances at issue are simply the direct result of granting additional road right-of-way and canal easement to Broward County and the Town of Davie. In addition the odd shaped lot design has contributed to the need to reduce the setbacks. Clearly then, these circumstances are not self created.

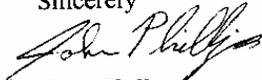
B) Variances requested are the minimum variances required to accomplish reasonable use of the property and strict application of the code would deprive applicant of reasonable use of the property.

This request is the minimum variance that will accomplish the stated purpose. All other codes and regulations will be satisfied including but not limited to 12-285 landscaping.

C) Granting of the variances will be in harmony with the intent of the code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Approval of the requested variances and waiver is in harmony with the intent of the code and purpose of the code. Indeed, the code speaks to the Town's desire to implement policies that are effective and equitable with respect for the rights of property owners and consideration of the interests of Town of Davie citizens. The variances requested is entirely consistent with the codes general intent and purpose, as it will preserve the overall appearance of the neighborhood and allow architectural integrity of the applicant's home.

Sincerely


John Phillips

2-16

"SUNNYLANE FARMS"

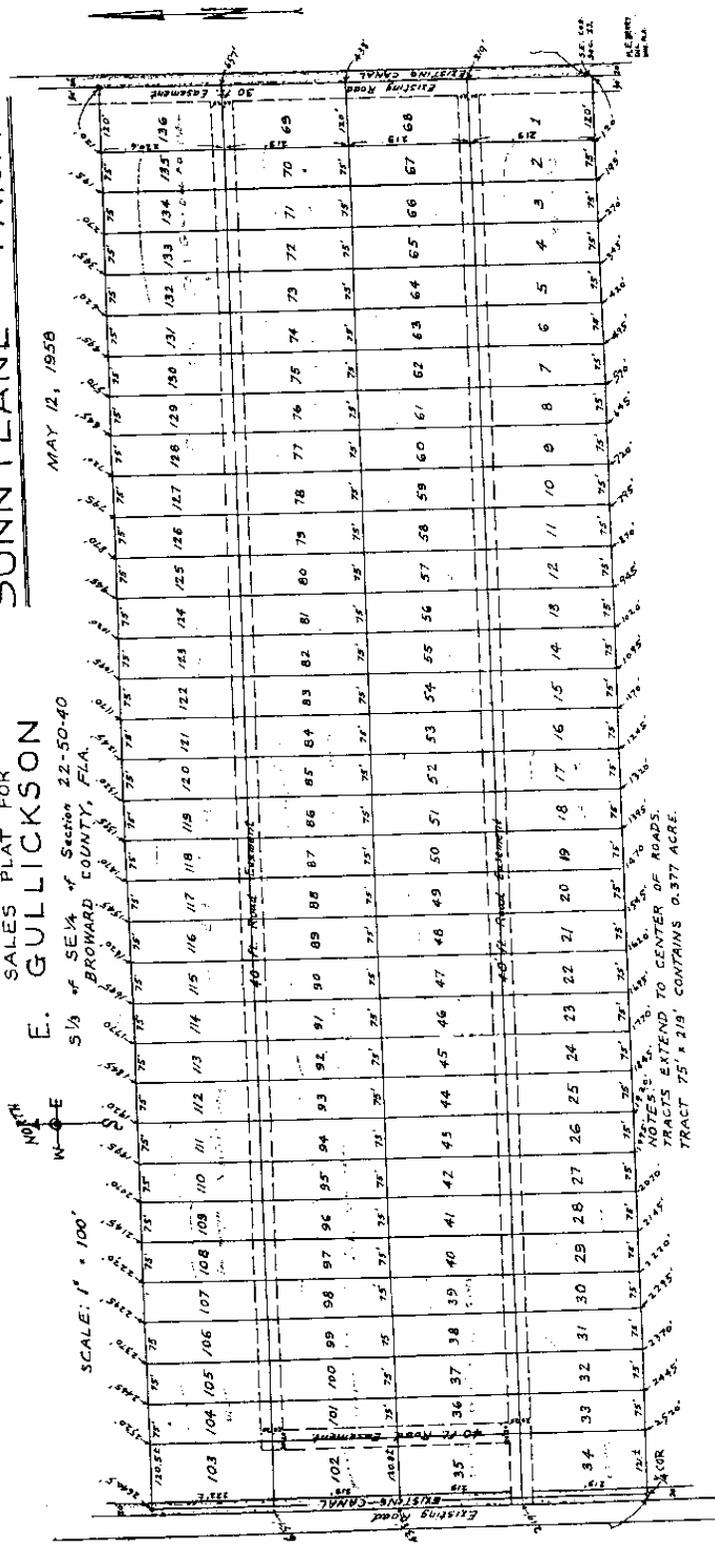
SALES PLAT FOR E. GULLICKSON

5 1/2 of SE 1/4 of Section 22-50-40
BROWARD COUNTY, FLA.

MAY 12, 1958



SCALE: 1" = 100'





The Town of Davie
 Development Services Department
 Planning and Zoning Division

Scale: N.T.S.



Variance Application
V 6-1-05 Phillips
Future Land Use Plan Map

Prepared By: C.M.G.
 Date Prepared: 7/11/05



The Town of Davie
Development Services Department
Planning and Zoning Division

Scale: N.T.S.



Variance Application
V 6-1-05 Phillips
Zoning and Aerial Map

Prepared By: C.M.G.
Date Prepared: 7/11/05