

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: Ingrid Allen, Planner II

SUBJECT: Quasi Judicial Hearing: Variance, V 2-4-06 Dr. Linda D. Clarke, 14450 SW 23 Street/Generally located on the south side of SW 23 Street approximately 140 feet east of SW 145 Avenue.

AFFECTED DISTRICT: District 4

TITLE OF AGENDA ITEM: V 2-4-06 Clarke, 14450 SW 23 Street (R-1)

REPORT IN BRIEF: The applicant's request is for two (2) after-the-fact variances from Section 12-287 (B) of the Land Development Code, which requires a minimum 25' side setback from the property line in the R-1, Estate Dwelling District.

Variance #1 is a request to reduce the required side setback of the R-1, Estate Dwelling District, from 25' on the west side of the property to 0' so that an existing detached carport may remain.

Variance #2 is a request to reduce the required side setback of the R-1, Estate Dwelling District, from 25' on the east side of the property to 19.96' so that an existing attached screened porch addition may remain.

The justification by the applicant for these two (2) variances is that the previous owner built these structures without the proper permits and did not disclose this information to the applicant upon her purchase of the property. Upon review of the building permit history for this property, staff found no record of a permit being granted for either structure.

The required 50' separation between all new structures in the R-1 Estate dwelling district is to ensure, among other things, that proper drainage can take place without impacting adjacent homes. The reduction of the west side setback to 0' raises concern over this issue.

PREVIOUS ACTIONS: None

CONCURRENCES: Variance #1: At the April 26, 2006, Planning and Zoning Board meeting, Mr. Stevens made a motion, seconded by Vice-Chair McLaughlin, to deny. (Motion carried 4-0). The concern among the board was that granting a 0' variance would set a precedent for future side setback variances. Variance #2: At the April 26, 2006, Planning and Zoning Board meeting, Mr. Stevens made a motion, seconded by Ms. Stenzel-Nowicki, to approve. (Motion carried 3-1 with Vice-Chair McLaughlin being opposed).

FISCAL IMPACT: None

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

Attachment(s): Planning Report, Justification letter, Photos of existing carport and screened patio, Survey, Future Land Use Plan Map, Zoning and Aerial Map

Application: V 2-4-06 Clarke
Exhibit "A"

Revisions:
Original Report Date: 3/31/06

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

Applicant Information

Owner/Petitioner:

Name: Dr. Linda D. Clarke
Address: 14450 SW 23 Street
City: Davie, FL 33325
Phone: (954) 577-0809

Background Information

Date of Notification: April 19, 2006 **Number of Notifications:** 105

Application History: No deferrals have been requested.

Application Request: Variance #1 FROM: Section 12-287(B) of the Land Development Code, which requires a minimum 25' side setback from the property line in the R-1, Estate Dwelling District; **TO:** reduce the side setback on the west side of the property to 0' so that an existing carport addition may remain.

Variance #2 FROM: Section 12-287(B) of the Land Development Code, which requires a minimum 25' side setback from the property line in the R-1, Estate Dwelling District; **TO:** reduce the side setback on the east side of the property to 19.96' so that an existing screened patio addition may remain.

Address/Location: 14450 SW 23 Street/Generally located on the south side of SW 23rd Street approximately 140 feet east of SW 145th Avenue.

Future Land Use

Plan Map Designation: Residential (1 DU/AC)

Zoning: R-1, Estate Dwelling District

Existing Use: Single-family residential dwelling unit

Proposed Use: Single-family residential dwelling unit

Parcel Size: Approximately 37,014 square feet

	<u>Surrounding Future Land Use Plan Map Designations:</u>
North:	Residential (1 DU/AC)
South:	Residential (1 DU/AC)
East:	Residential (1 DU/AC)
West:	Residential (1 DU/AC)

Surrounding Zoning:

North, South, East, & West: R-1, Estate Dwelling District

Zoning History

Previous Request on Same Property: Building permit #6330-B was issued for a utility building slab on April 4, 1977.

Application Details

Variance #1: The applicant has requested a variance from Section 12-287(B) of the Land Development Code, which requires a minimum 25' side setback from the property line, to reduce the side setback on the west side of the property to 0' so that an existing carport addition may remain.

Variance #2: The applicant has requested a variance from Section 12-287(B) of the Land Development Code, which requires a minimum 25' side setback from the property line, to reduce the side setback on the east side of the property to 19.96' so that an existing screened porch addition may remain.

The applicant is proposing to demolish a wood shed and slab that is indicated on the attached survey and therefore an additional variance is not required. The applicant is proposing to build a new shed on an existing utility building slab (permit # 6330-B). A shed permit (#06-4648) was submitted to the building department on March 10, 2006.

Applicable Codes and Ordinances

§12-309(B)(1) of the Land Development Code, review for variances.

DIVISION 2. GENERAL REGULATIONS

§12-33 (A) (6) of the Land Development Code, indicates that in all residential districts, screen enclosed patios shall not be placed in a required front, side or street side yard.

DIVISION 3. RURAL LIFESTYLE DEVELOPMENT REGULATIONS

§12-287 (A) and (B) of the Land Development Code, for the R-1 zoning district, indicates that the minimum lot area shall be 35,000 square feet, the minimum lot frontage is 125', and maximum building coverage is 25%. The building setbacks shall be as follows for the R-1 zoning district: front 30'-40', side 25', rear 30', and 35' maximum height.

Article IX. Rural Lifestyle Regulations, Ordinance No. 2002-35, adopted on October 16, 2002.

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.

Staff Analysis

The required side setback for the R-1 zoning district has remained at 25' both prior to and after the adoption of the Rural Lifestyle Development regulations. The required 50' separation between all new structures in the R-1 Estate dwelling district is to ensure that proper drainage can take place without impacting adjacent homes. The reduction of the west side setback to 0' raises concern over this issue.

The existing wood carport addition at 333 square feet (18' x 18.5') and the existing screened patio at 228 square feet (12' x 19') brings the total building coverage of the lot to approximately 5,313 square feet well below the maximum lot coverage of 25% or 9,254 square feet.

The justification by the applicant for these two (2) variances is that the previous owner built these structures without the proper permits and did not disclose this to the applicant upon her purchase of the property. Upon a review of the building permit history for this property, there is no record of a permit being granted for either structure.

Findings of Fact

Variances:

Section 12-309(B) (1):

The following findings of facts apply to the variance request:

- (a) There are not special circumstances or conditions applying to the land or building for which the variance is sought;

There are not special circumstances since the lot meets the minimum lot standards indicated in Sec. 12-287 (A) of the Land Development Code. However, the request is for two (2) after-the-fact variances that apply to two existing structures: Variance #1 a wood carport that is not attached to the existing home and; Variance #2 a screen patio that is attached to the existing home. According to the applicant, these structures were constructed prior to the applicant's purchase of the property. The 37,014 square foot parcel and existing home could support both a newly constructed wood carport and screen patio (at existing dimensions) that would not require a variance.

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

The required 25' side setbacks or 50' separation between all new structures in the R-1, Estate Dwelling District applies equally to properties within this zoning district and that legally permitted structures unless granted a variance have had to comply with the 25' side setback.

and that said circumstances or conditions are not such that the strict application of the provisions of this chapter would not deprive the application of the reasonable use of such land or building for which the variances are sought;

Both variances apply to existing structures that lie within the 25' required side setback. Upon a review of the building permit history for this property, there is no record of a permit being granted for either structure. The applicant could remove the carport and the screened patio and maintain reasonable use of this property.

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

According to the applicant, both structures were constructed prior to the applicant's purchase of the property. Upon review of the building permit history for this property, there is no record of any permits being granted for either a wood carport or screened patio, both currently located within the 25' side setbacks.

- (b) The granting of the variance is not 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.

The applicant is currently not in compliance with Section 12-287(B) of the Land Development Code which requires a 25' side setback. The applicant could remove the carport and the screened patio and maintain reasonable use of this property.

- (c) Granting of the requested variance #1 will not be in harmony with the general purpose and intent of this chapter and will be injurious to the neighborhood or otherwise detrimental to the public welfare.

Granting of the requested variance #2 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. Variance #1: Allowing the west side setback to be reduced from 25' to 0' in order to maintain the existing wood carport is impacting the parcel to the west being that no side setback exists between properties. Variance #2: Allowing the east side setback to be reduced from 25' to 19.96' is not detrimental to the adjacent property being that it is a relatively minor reduction.

Staff Recommendation

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

1. Shed and slab located in the southeast corner be removed.
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Planning and Zoning Board Recommendation

Variance #1: At the April 26, 2006 Planning and Zoning Board meeting, Mr. Stevens made a motion, seconded by Vice Chair McLaughlin, to deny. **(Motion carried 4-0).**

Variance #2: At the April 26, 2006 Planning and Zoning Board meeting, Mr. Stevens made a motion, seconded by Ms. Stenzel-Nowicki, to approve. **(Motion carried 3-1 with Vice Chair McLaughlin being opposed).**

Town Council Action

Exhibits

1. Justification letter
2. Photos of existing carport and screened patio
3. Survey
4. Future Land Use Plan Map
5. Zoning and Aerial Map

Prepared by: _____

Reviewed by: _____

**Linda D. Clarke
14450 SW 23 Street
Davie, FL 33325**

This letter is to request a variance for two existing structures on my property located at 14450 SW 23 Street in Davie. The reason the variances are needed is because the previous owner of the property, Mr. James Russell, committed fraud in the real estate transaction when he sold me this property a couple of years ago. Mr. Russell lied on the seller's disclosure and said that all structures on this property were built by him with the proper building permits and were in compliance with all applicable building codes. I had the property inspected and title insurance was obtained, and none of the agents or attorneys involved in the process of closing on the sale ever informed me that anything to do with this property was not in compliance. I performed all of my responsibilities regarding the matter in good faith, therefore it is important to understand that this matter is NOT A SELF-MADE HARDSHIP.

The two structures for which I am requesting variances are as follows:

1. The detached open 2-car garage (Carport) on the west side of the house in the front yard. This building is structurally sound, attractive, and was built with high quality materials, including a roof and trusses to match the house. It has stood on this site for almost 30 years and withstood every hurricane, and there has never been a problem with its being here from the time the original owners built it. The variance is needed, however, because the structure was built in the side set-back. The neighbor on that side at 14490 SW 23 has no problem with it being there. Therefore I request a variance be granted to allow it to remain, and to be used as a carport for 2 cars, so that I may sell or rent the property as soon as possible.
2. The screened porch on the east side of the house. This screened porch is atop a slab that is part of the slab of the house, and the screen room is attached to the house. This was a permitted slab, and all the original owners did was enclose it with a screen room with an insulated roof. It is a very attractive outdoor dining area which adds value and beauty to the house. The reason for the variance is that it is very slightly, about 2 feet into the side setback of the property, however, the slab it is on was properly permitted. I am requesting that a variance be granted for this structure to remain as it is, so that I may sell or rent the property as soon as possible.

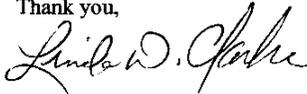
My request for these two variances is necessary because although I bought this property in good faith, having executed all due diligence with regard to such compliance matters when I purchased the property, I was the victim of fraud by the seller. The seller has agreed to an out of court settlement in this matter, and has admitted in testimony to a special magistrate in a Town of Davie hearing (Oct. 11, 2005) that he constructed these structures without the proper permits. However, it should be noted that when these

structures were built almost 30 years ago, the requirements for this area were much less stringent in terms of permits, etc. required for agricultural land that a single home was being built on. The buildings are of high quality, structural integrity and attractiveness and add value to the property and the neighborhood generally.

Therefore, under provisions a, b, & c of Chapter 12 Section 309 of the Town of Davie Land Development Code, I request these variances be granted because there are special circumstances applying to the land/buildings for which the variances are sought, and these circumstances are such that the strict application of the provisions of the Chapter would deprive me of the reasonable use of such land/buildings for which the variances are sought, and the hardship is not self-created.

As such, it is necessary for the reasonable use of the land/buildings and the variances as requested are the minimum variance that will accomplish this purpose. Further, the granting of the variances will be in harmony with the general purpose and intent of Chapter 12 and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Thank you,

A handwritten signature in cursive script that reads "Linda D. Clarke". The signature is written in black ink and is positioned above the printed name.

Linda D. Clarke



Town of Davie
Code Compliance Division
6591 Orange Drive, Davie, FL 33314
Office 954-797-1174 FAX 954-797-1119

November 09th, 2005



14450 SW 23 Street. (CARPORT)


Photos by Errol Laughton Code Compliance Inspector.



Town of Davie
Code Compliance Division
6591 Orange Drive, Davie, FL 33314
Office 954-797-1174 FAX 954-797-1119

July 27th, 2005



14450 SW 23 Street. (CARPORT)

Photos by  Errol Laughton Code Compliance Inspector.



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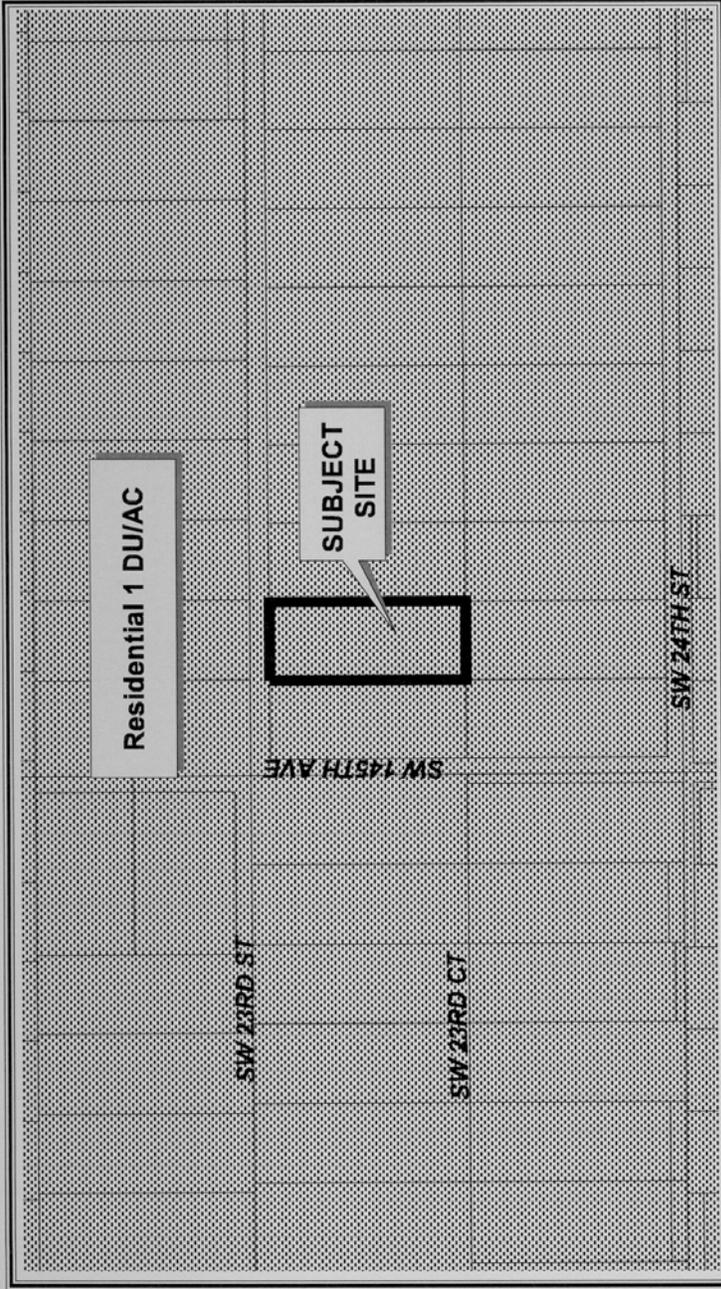
July 27th, 2005



14450 SW 23 Street. (screened patio)

A handwritten signature in black ink, appearing to be "Errol Laughton".

Photos by Errol Laughton Code Compliance Inspector.



**VARIANCE
V 2-4-06**

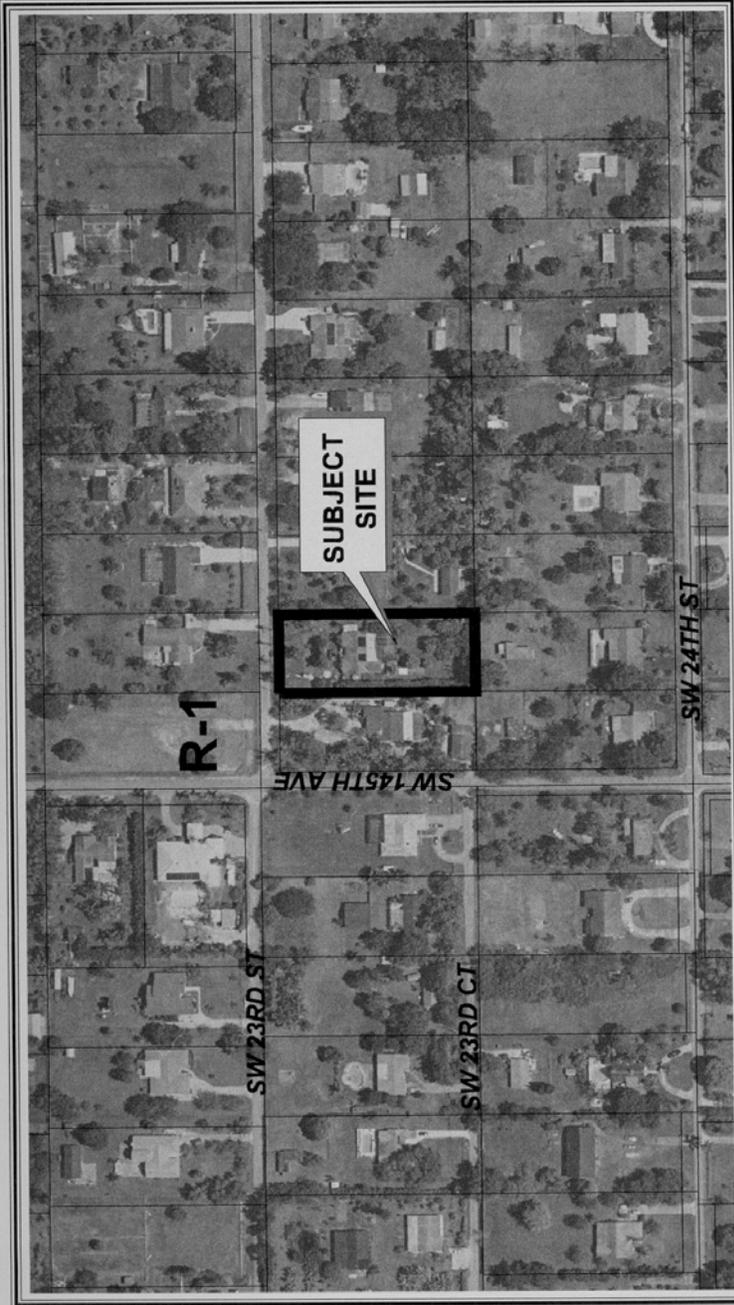
Future Land Use Map

Prepared By: ID
Date Prepared: 3/17/06



200 0 200 400 Feet

Prepared by the Town of Davie GIS Division



Date Flown:
12/31/04



200 0 200 400 Feet



Prepared by the Town of Davie GIS Division



**VARIANCE
V 2-4-06
Zoning and Aerial Map**

Prepared By: ID
Date Prepared: 3/17/06

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