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: Philip Bachers, Planner I

SUBJECT: Quasi Judicial Hearing: Variance, V 2-6-06 / 06-39 / Rick and Katy Novaro/ 3101 SW 144 Ter., generally located north of Camp Seminole B.S.A and west of Boy Scout Rd. (SW 142 Ave.)

AFFECTED DISTRICT: District 4

TITLE OF AGENDA ITEM: V 2-6-06 / 06-39 / Rick and Katy Novaro

REPORT IN BRIEF:
The petitioners are requesting a variance from §12-286 (B)(1) of the Land Development Code, which requires a maximum fence height of 4 ft. in the front property setback or adjacent to a road right-of-way. They propose to build a metal picket fence with a maximum of 6 ft. fence height in the front property setback.

The subject site is a 1.0 acre (approx. 43,568 square feet) triangular-shaped parcel of land approximately two hundred sixty-three (263) feet by three hundred nine (309) feet, located west of Boy Scout Rd. and north of camp Seminole B.S.A. The land use for parcels adjacent to the north, east, and west of the subject site are all residential 1 dwelling unit per acre. The land use for the parcel to the south is recreation/open space, has no permanent residents, and is owned by the Boy Scouts of America.

The petitioners are proposing to build a metal picket fence to a maximum of 6 ft. height in the front property setback. They had previously been issued in error a permit for a fence within the 50 ft. radius road right-of-way at the front of their home (05-4308). When the existence of the construction in the 50 ft. road right-of-way was discovered, the Davie Building Official withdrew the permit. The homeowners applied for a variance to allow them to build the fence in the front property setback to a maximum height of 6 ft.

The criteria for approval of a variance require that the petitioner's request show no evidence of self-created hardship. In the case of Mr. and Mrs. Novaro, they were given a permit to construct a fence in the right-of-way in front of their property; and when the encroachment was discovered, the permit was then withdrawn by the Building Official.

The Novaro's desire is to use the fence as part of their pool enclosure which requires a five foot height. This height is not allowed in the front property setback of the Rural Lifestyle District.

In review of the survey and residential site plan, it proposes a fence within the allowable criteria as described in Ordinance R-2006-1. Staff concludes that this proposed fence could not be accommodated without the approval of a variance.

PREVIOUS ACTIONS:
V 2-6-06, Novaro, 3101 SW 144 Ter. (R-1 zoning)

On August 9, 2006 the matter was heard by the P & Z Board. Mr. Stevens made a motion, seconded by Mr. Busey, to approve. Motion carried to approve the variance 4-1, with Bender, Busey, Stevens, and Turin voting in favor and McLaughlin voting against.

CONCURRENCES:
None

FISCAL IMPACT: None

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

Attachment(s): Planning Report, Justification, Survey, Future Land Use Plan Map, Subject Site, Zoning and Aerial Map

Application: V 2-6-06 / 06-39 Novaro **Revisions:** none
Exhibit "A" **Original Report Date:** August 3, 2006

TOWN OF DAVIE

Development Services Department
Planning and Zoning Division
Staff Report and Recommendation

Applicant Information

Owner / Petitioner:
Name: Rick and Katy Novaro
Address: 3101 SW 144 Ter.
City: Davie, Florida 33330
Phone: (954) 410-5708

Background Information

Date of Notification: July 19, 2006 **Number of Notifications:** 56

App. History: None

App. Request: Variance **FROM:** Section 12-286 (B)(1) of the Land Development Code, which requires a maximum fence height of 4 ft. in the front property setback or adjacent to a road right-of-way. **TO:** Allow a maximum of 6 ft. fence height in the front property setback.

Address/Location: 3101 SW 144 Ter. / Generally located west of Boy Scout Rd. (SW 142 Ave.) and north of Camp Seminole B.S.A.

Future Land Use Plan Map: Residential 1 DU / Acre

Existing Zoning: R-1, Estate Dwelling District

Existing Use: Single-Family Residential Dwelling Unit

Parcel Size: 1.0 acres (approx. 43,568 square feet)

	Surrounding Uses:	**Surrounding Future Land Use Plan MapDesignations:**
North:	Single-Family Residential	Residential 1 DU / Acre
South:	Recreational-Camp SeminoleB.S.A.	Recreation/ Open Space
East:	Single-Family Residential	Residential 1 DU / Acre
West:	Single-Family Residential	Residential 1 DU / Acre

Surrounding Zoning:

North: R-1, Estates Dwelling District
South: Commercial Recreation District
East: R-1, Estates Dwelling District
West: A-1, Agricultural District

Zoning History

Related Zoning History: Records indicate that the existing Future Land Use Plan Map designation and Zoning classification were in place at the time of annexation.

Applicable Codes and Ordinances

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

DIVISION 3. RURAL LIFESTYLE REGULATIONS
§12-286 Intent, applicability,and boundaries
(B) *Supplemental Restrictions.*
(1) *Fences.* Fences located within the front setback or adjacent to a scenic corridor shall be a maximum of four (4) feet in height. In all other locations, fences shall be a maximum of six (6) feet in height.

Town Council approved the Rural Lifestyle Initiative (RLI) Regulations on October 16, 2002.

Ordinance R-2006-1 allows fences in the Rural Lifestyle District to be a maximum of 6 ft. in height if approved by a variance.

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 2. This planning area 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.

Land Use Compatibility and Community Appearance, Policy 17-7: Adopted land development regulations shall continue to set forth setback or separation regulations landscaping requirements, and minimum open space criteria to enhance living and working environments.

Application Details

The petitioners are requesting a variance from Section 12-286 (B) of the Land Development Code, which requires a maximum 4 ft. fence height within a front setback. The petition is to allow a maximum 6 ft. fence height in the front setback of the Rural Lifestyle (1 dwelling unit/acre) area.

The subject site is a 1.0acre (approx. 43,568 square feet) parcel of land which is a pie-shaped segment with its narrow aspect fronting onto SW 144 Ter. The land use for parcels adjacent to the north,east, and west of the subject site are all residential 1 dwelling unit per acre. The parcel to the south has a land use of recreation/open space, has no permanent residents, and is owned by the Boy Scouts of America.

The petitioners are proposing to build a metal picket fence to a maximum of 6 ft. height in the front property setback. They had previously been issued in error a permit for a fence within the 50 ft. road right-of-way at the front of their home (05-4308). When the existence of the construction in the 50 ft. road right-of-way was discovered, the Davie Building Official withdrew the permit. The homeowners applied for a variance to allow them to build the fence in the front property setback to a maximum height of 6 ft.

Findings of Fact

Variances:
Section 12-309(B) (1):
The following findings of facts apply to the variance request:

(a) There are no special circumstances or conditions applying to the land or building for which the variance is sought;

The 1.0 acre (approx. 43,568 square feet) parcel can support a fence that does not require a variance. However, the homeowners attempted to legally apply for, and were granted, in error, a permit for a fence which they were prohibited from comstructing by the Building Official's withdrawal of the building permit.

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

The parcel can continue its development rights and can be used in accordance with the A-1 Agricultural District without a variance.

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;

The parcel can be reasonably used without a variance. The parcel can support a fence in other locations that would not require a variance. However, due to the existing residential layout, the most sensible place to locate the fence would be along the front property line of the home, adjacent to the road right-of-way. It also serves as part of the parcel's pool enclosure, and allows maximum use of the yard, while being enclosed for the safety of the small children who reside there.

and that alleged hardship is self-created by any person having an interest in the property.

The need for a variance is created by the owner's desire for the fence to be located on the eastern portion of the parcel, and the owner's choice of fence height. The neighbor to the north has a 5 ft. fence along SW 144 Ter.

(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 can achieve reasonable use of the land without a variance, and as such the variance is not the minimum needed.

(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. Allowing the fence to be built to a maximum height of 6 ft. should not be detrimental to the adjacent properties. No letters have been received in Planning & Zoning against this proposed variance.

Staff Analysis

The criteria for approval of a variance require that the petitioner's request show no evidence of self-created hardship. In the case of Mr. and Mrs. Novaro, they were originally issued a permit for fence construction they were subsequently required to not

finish, due to the encroachment in the right-of-way erroneously approved, and subsequently discovered by staff. In review of the survey and residential site plan, it proposes a fence within the allowable criteria as shown in Ordinance R-2006-1 if a variance is granted. Staff concludes that this proposed fence could not be accommodated without the approval of a variance.

Thus, the proposed fence height increase would only directly affect the the property line areas of the houses to the south and to the north, would not harm the existing open space, and would be consistent with the maximum design criteria allowed under Ordinance R-2006-1..

Planning and Zoning Board Recommendation

V 2-6-06, Novaro, 3101 SW 144 Ter. (A-1)

On August 9, 2006 the matter was heard by the P & Z Board. Mr. Stevens made a motion, seconded by Mr. Busey, to approve. Motion carried to approve the variance 4-1, with Bender, Busey, Stevens, and Turin voting in favor and McLaughlin voting against.

Staff Recommendation

Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

Exhibits

1. Justification letter
2. Survey
3. Future Land Use Plan Map
4. Subject Site, Zoning and Aerial Map

Prepared by: _____ Reviewed by: _____

Exhibit 1 ***(Justification Letter)***

February 9, 2006

Town of Davie

Dear Town Council and Planning and Zoning Board,

This letter serves as a justification letter for our variance request.

We are requesting a variance for the height of our front fence be raised from 4 feet high to 5 feet high with the arches on the gate being no higher than 6 foot. The type of fence we are installing is a black aluminum picket fence.

We currently have our permit allowing the fence to be installed at 4 feet high with arches on the gate to 5 feet.

A 5 foot fence is currently surrounding the entire property with no fence at this time in the front. We have small children and pets that we are trying to protect from traffic on the road, along with keeping people out, as we have had two burglaries last year.

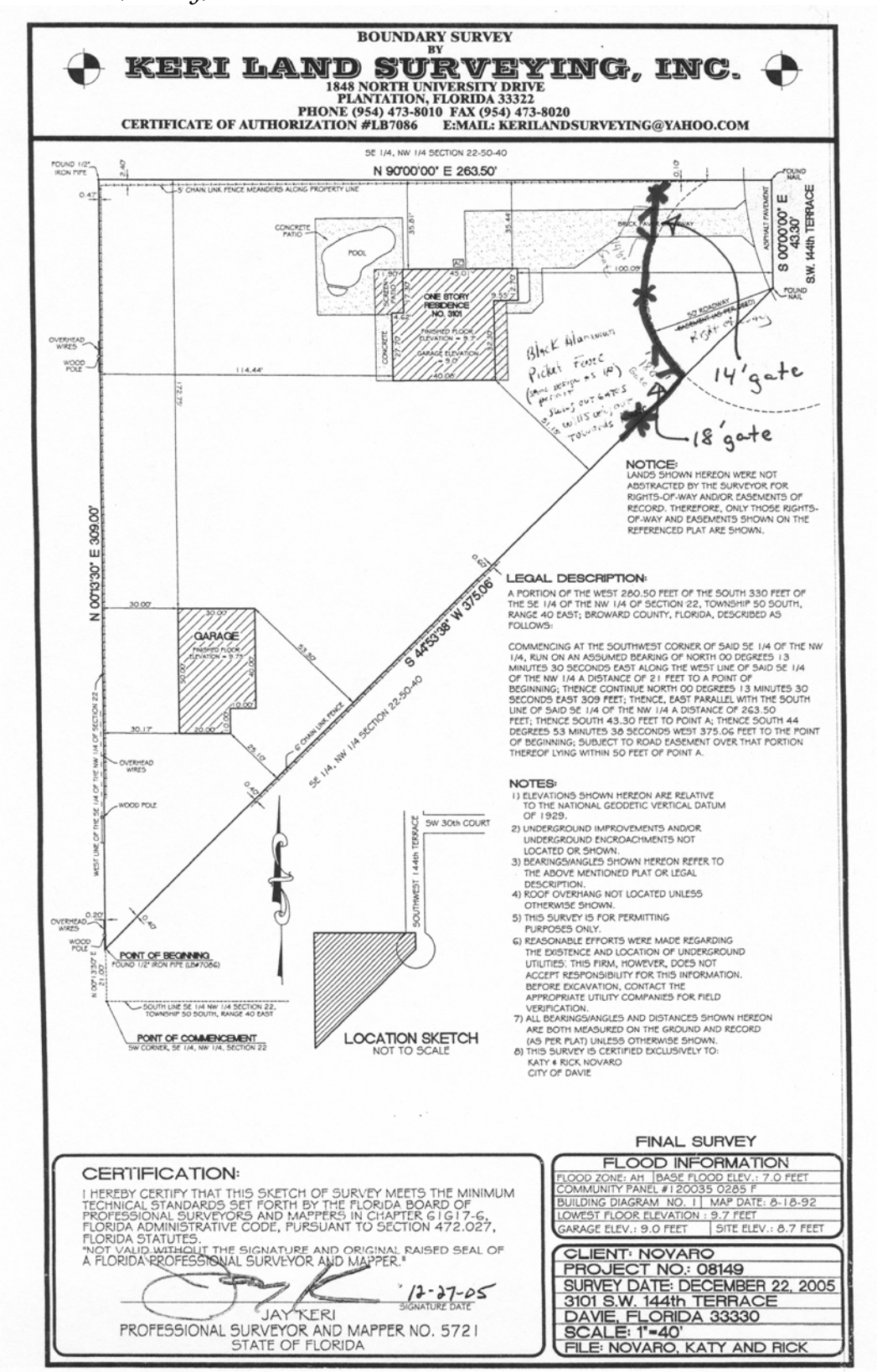
Also, as the Broward County law states, that with a pool on the property we need a barrier with at least a 5 foot high fence. By giving us this variance, we would not have to have an additional fence within our property and this would allow our property to be open and usable for our children and pets.

This variance will also keep us in the same height alinement with our neighbors, as they all have frontage fences of 5 feet and would look ascetically pleasing to continue the height the same as the other fences.

Your time and consideration of this variance is greatly appreciated.

Rick and Katy Novaro
3101 SW 144th Terrace
Davie, FL 33330

Exhibit 2 ***(survey)***



BOUNDARY SURVEY
BY
KERI LAND SURVEYING, INC.
1848 NORTH UNIVERSITY DRIVE
PLANTATION, FLORIDA 33322
PHONE (954) 473-8010 FAX (954) 473-8020
CERTIFICATE OF AUTHORIZATION #LB7086 E:MAIL: KERILANDSURVEYING@YAHOO.COM

SE 1/4, NW 1/4 SECTION 22-50-40

N 90°00'00" E 263.50'

S 00°00'00" E 43.30' S.W. 144th TERRACE

5' CHAIN LINK FENCE MEANDERS ALONG PROPERTY LINE

CONCRETE PATIO

POOL

ONE STORY RESIDENCE NO. 3101

FINISHED FLOOR ELEVATION = 9.7'
GARAGE ELEVATION = 9.0'

BRICK PAVERS

ASPHALT PAVEMENT

NO ROADWAY ENCROACHMENTS PERMITTED

Black Aluminum Picket Fence (same design as 14') with 2 gates 5'10" to 11'5" open out towards

14' gate

18' gate

OVERHEAD WIRES

WOOD POLE

114.44'

N 00°13'30" E 309.00'

GARAGE

6' CHAIN LINK FENCE

S 44°53'38" W 375.06'

SE 1/4, NW 1/4 SECTION 22-50-40

WEST LINE OF THE SE 1/4 OF THE NW 1/4 OF SECTION 22

SW 30th COURT

SOUTHWEST 144th TERRACE

POINT OF BEGINNING
FOUND 1/2" IRON PIPE (LB#7086)

SOUTH LINE SE 1/4 NW 1/4 SECTION 22, TOWNSHIP 50 SOUTH, RANGE 40 EAST

POINT OF COMMENCEMENT
SW CORNER, SE 1/4, NW 1/4, SECTION 22

LOCATION SKETCH
NOT TO SCALE

NOTICE:
LANDS SHOWN HEREON WERE NOT ABSTRACTED BY THE SURVEYOR FOR RIGHTS-OF-WAY AND/OR EASEMENTS OF RECORD. THEREFORE, ONLY THOSE RIGHTS-OF-WAY AND EASEMENTS SHOWN ON THE REFERENCED PLAT ARE SHOWN.

LEGAL DESCRIPTION:
A PORTION OF THE WEST 280.50 FEET OF THE SOUTH 330 FEET OF THE SE 1/4 OF THE NW 1/4 OF SECTION 22, TOWNSHIP 50 SOUTH, RANGE 40 EAST; BROWARD COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SE 1/4 OF THE NW 1/4, RUN ON AN ASSUMED BEARING OF NORTH 00 DEGREES 13 MINUTES 30 SECONDS EAST ALONG THE WEST LINE OF SAID SE 1/4 OF THE NW 1/4 A DISTANCE OF 21 FEET TO A POINT OF BEGINNING; THENCE CONTINUE NORTH 00 DEGREES 13 MINUTES 30 SECONDS EAST 309 FEET; THENCE, EAST PARALLEL WITH THE SOUTH LINE OF SAID SE 1/4 OF THE NW 1/4 A DISTANCE OF 263.50 FEET; THENCE SOUTH 43.30 FEET TO POINT A; THENCE SOUTH 44 DEGREES 53 MINUTES 38 SECONDS WEST 375.06 FEET TO THE POINT OF BEGINNING; SUBJECT TO ROAD EASEMENT OVER THAT PORTION THEREOF LYING WITHIN 50 FEET OF POINT A.

NOTES:
1) ELEVATIONS SHOWN HEREON ARE RELATIVE TO THE NATIONAL GEODETIC VERTICAL DATUM OF 1929.
2) UNDERGROUND IMPROVEMENTS AND/OR UNDERGROUND ENCROACHMENTS NOT LOCATED OR SHOWN.
3) BEARINGS/ANGLES SHOWN HEREON REFER TO THE ABOVE MENTIONED PLAT OR LEGAL DESCRIPTION.
4) ROOF OVERHANG NOT LOCATED UNLESS OTHERWISE SHOWN.
5) THIS SURVEY IS FOR PERMITTING PURPOSES ONLY.
6) REASONABLE EFFORTS WERE MADE REGARDING THE EXISTENCE AND LOCATION OF UNDERGROUND UTILITIES; THIS FIRM, HOWEVER, DOES NOT ACCEPT RESPONSIBILITY FOR THIS INFORMATION. BEFORE EXCAVATION, CONTACT THE APPROPRIATE UTILITY COMPANIES FOR FIELD VERIFICATION.
7) ALL BEARINGS/ANGLES AND DISTANCES SHOWN HEREON ARE BOTH MEASURED ON THE GROUND AND RECORD (AS PER PLAT) UNLESS OTHERWISE SHOWN.
8) THIS SURVEY IS CERTIFIED EXCLUSIVELY TO:
KATY & RICK NOVARO
CITY OF DAVIE

FINAL SURVEY

CERTIFICATION:
I HEREBY CERTIFY THAT THIS SKETCH OF SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.
"NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA PROFESSIONAL SURVEYOR AND MAPPER."

12-27-05
SIGNATURE DATE

JAY KERI
PROFESSIONAL SURVEYOR AND MAPPER NO. 5721
STATE OF FLORIDA

FLOOD INFORMATION	
FLOOD ZONE: AH	BASE FLOOD ELEV.: 7.0 FEET
COMMUNITY PANEL #120035 0285 F	
BUILDING DIAGRAM NO. 1	MAP DATE: 8-18-92
LOWEST FLOOR ELEVATION : 9.7 FEET	
GARAGE ELEV.: 9.0 FEET	SITE ELEV.: 8.7 FEET

CLIENT: NOVARO
PROJECT NO.: 08149
SURVEY DATE: DECEMBER 22, 2005
3101 S.W. 144th TERRACE
DAVIE, FLORIDA 33330
SCALE: 1"=40'
FILE: NOVARO, KATY AND RICK

Exhibit 3 ***(Future Land Use Map)***

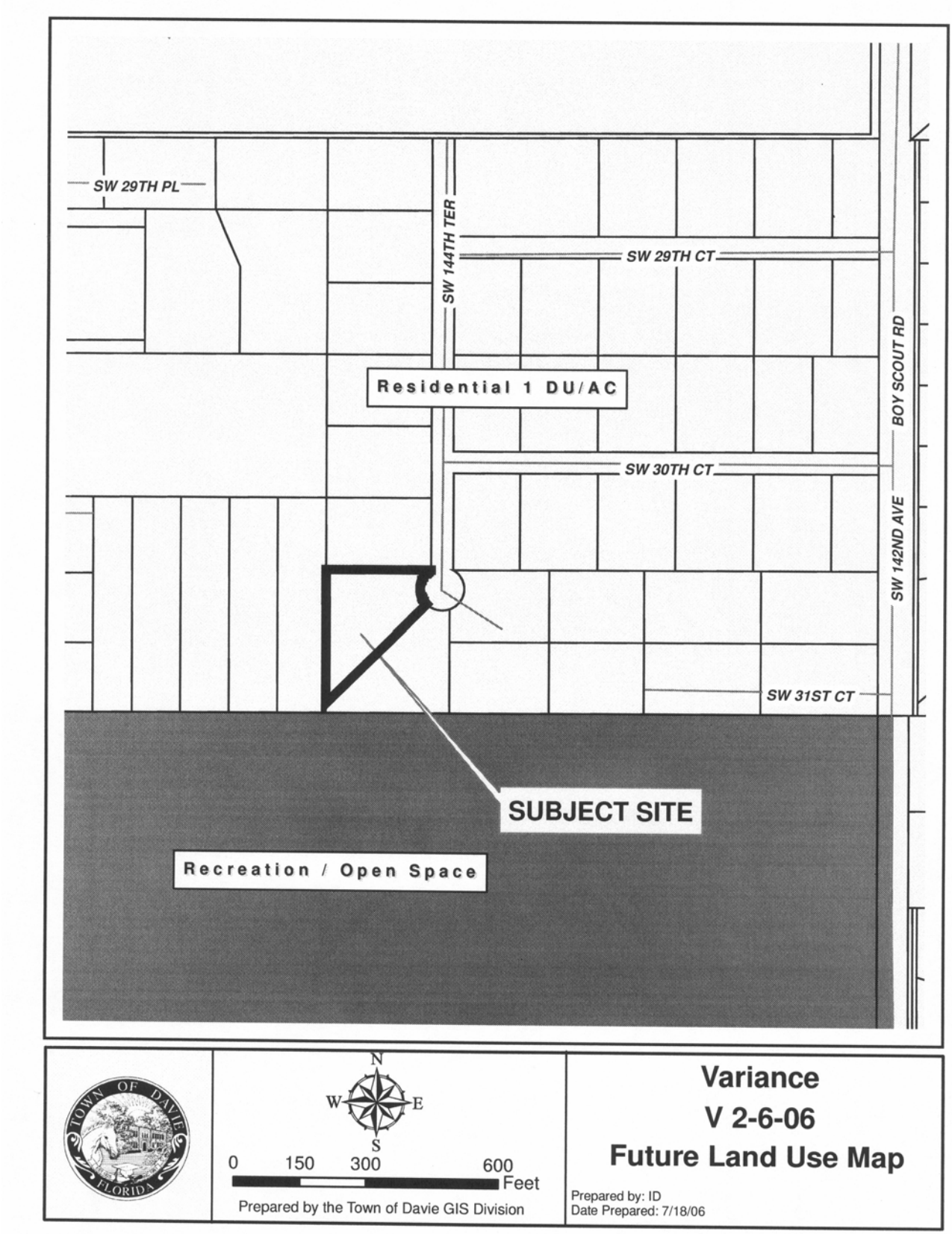
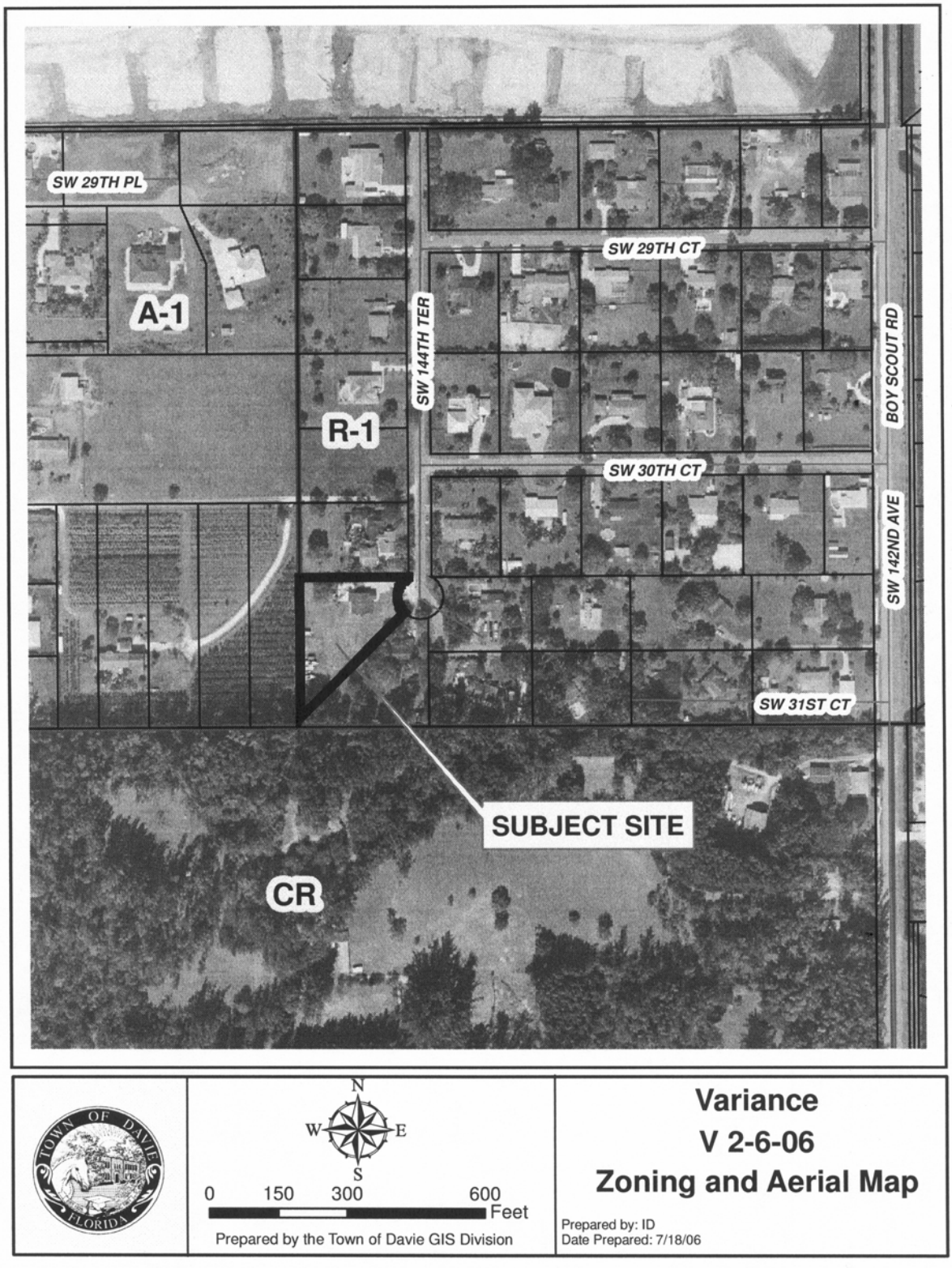


Exhibit 4 (*Aerial, Zoning, and Subject Site Map)*



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