

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 6-4-06 / 06-86/ John Ladue
2961 SW 111 Ter., generally located east of Hiatus Rd. and south of
SW 28 Ct.

AFFECTED DISTRICT: District 3

TITLE OF AGENDA ITEM: V 6-4-06 / 06-86 / John Ladue

REPORT IN BRIEF:

The petitioner who owns the property is proposing to build a solid (opaque) pvc fence to a maximum of 6 ft. height in the front property setback. Because of the location of the property being located along three (3) street frontages, under the Land Development Code there are three (3) "front setbacks," (often referred to as "streetside setbacks," to differentiate them from the one "front setback" for the parcel) these being property lines adjacent to Hiatus Rd. ("streetside setback"), SW 29 Ct. ("streetside setback"), and SW 111 Ter. ("front setback"). The homeowner has applied for a variance to allow him to build the fence in the front property setback to a maximum height of 6 ft.; to allow a six (6) foot height fence in the scenic corridor; to allow a fence which has greater than twenty percent (20 %) opacity; and to allow a fence to be placed at the front of a required landscape buffer.

The subject site is a 1.0 acre (approx. 43,587 square feet) parcel of land which is a rectangular-shaped segment with its narrow aspect fronting onto Hiatus Rd. to the west, SW 29 Ct. to the south, and onto SW 111 Ter. to the east. Each of these street frontages requires a "front setback" (or "streetside setback" as described previously) classification for application of pertinent portions of the Land Development Code. The land use for parcels adjacent to the north, east, south, and west of the subject site are all residential 1 dwelling unit per acre.

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. Ladue, he chose to erect a fence with a permit (03-4624) which, he claims, became effectively lower in height with improvements to the Hiatus Rd. right-of-way and GL Homes' scenic corridor and trail

improvements on the west side of Hiatus Rd. In review of the applicant's survey and residential site plan, it proposes a fence within the allowable criteria as shown in Ordinance R-2006-1 except for the applicant's request to exceed a maximum opacity of fifty percent (50 %) if a variance is granted. Staff concludes that this proposed fence could not be accommodated without the approval of a variance, and a waiver from Town Council for the fence being placed other than at the back of the required landscape buffer. The waiver request is necessary for the proposed location of the fence at the outside of a required scenic corridor landscape buffer. A waiver is granted by Town Council via a resolution. Eliminating the required scenic corridor landscape buffer from public view along the Hiatus Rd. right-of way by having it wholly contained inside of the applicant's opaque fence would be in opposition to the Scenic Corridor Overlay District intent. Having an opaque fence in the areas of the Town of Davie covered by the Rural Lifestyle Regulations is specifically *not* allowed by the R-2006-1 Ordinance.

PREVIOUS ACTIONS:

Planning & Zoning Board, October 11, 2006

V 6-4-06, Ladue, 2961 SW 111 Ter., (R-1 zoning)

John Ladue, the applicant, was present. Mr. Bachers summarized the planning report. Mr. Busey asked questions in order to have a clear understanding of the request and Code restrictions.

Vice-Chair McLaughlin disputed the term "front setback" noting that the property's back yard was what faced the Hiatus Road scenic corridor. Mr. Busey explained that the interpretation of street frontage meant any portion of property that fronted a street irregardless of the placement of the house. He agreed that this was a site constrained lot as it had the configuration of three street-side frontages.

Mr. Ladue provided an overview of the variance request and of how the rural lifestyle initiative, the improvements to Hiatus Road and Hurricane Wilma had impacted his situation. He spoke of the issues relative to his intention to achieve privacy and safety for his young children and their backyard pool. Mr. Ladue advised of his neighbors' street frontage situations and he provided 17 names and addresses of neighbors who supported the fence request.

Vice-Chair McLaughlin disclosed that he had spoken with Mr. Ladue approximately a month ago. He asked Mr. Ladue how flexible he was regarding moving the fence five (5) feet further in on his property to allow for landscaping on the west side of the fence. Mr. Ladue was not willing to move it five (5) feet; however, he stated that he could move it two (2) feet further to the east and plant a small low hedge or ground cover.

Chair Bender asked if anyone wished to speak for or against this item. As there were no speakers, the public hearing was closed

Chair Bender indicated that he had no problem with the type of fence. He stated that normally on a scenic corridor he would have had a problem; however, he was familiar with Hiatus Road and the fish bowl situation that has evolved for Mr. Ladue.

Although Mr. Busey agreed in part with Chair Bender's comments, he wanted to be certain that the line-of-site issues were satisfied for safety's sake. Mr. Ladue advised that he voluntarily had given up property on the southwest corner for a proper line-of-sight in order to safely observe southbound traffic on Hiatus Road.

Mr. Bachers explained the situation based on the Code from the Town's prospective. He suggested that Mr. Ladue make a compromise and have the fence moved at least half the required distance and buffer it with low-growing vegetation in order to at least meet the intent of the rural lifestyle initiative.

In viewing photographs provided by Mr. Ladue, Vice-Chair McLaughlin noted that along the east side of Hiatus Road, it was lined with heavy foliage and he could understand how the fencing would stand out. Mr. Ladue commented that if he moved the fence in twenty five (25) feet, it would be at the lowest elevation of his property and since the height of the road was raised so much, the fence top would only be three-feet above the road elevation.

Vice-Chair McLaughlin indicated that because of the unique configuration of the property, that if all sides gave a little, a fair compromise could be made with the condition that the "40-foot corner cord" be maintained for safety reasons.

Ms. Turin sympathized with the applicant's need for privacy; however, she agreed with Vice-Chair McLaughlin in that there was a "reasonableness" that was needed in this situation and she would like to see a little "give and take" on all sides.

Mr. Stevens had no problems with the height of the fence since standing at street level, it would be approximately three feet high because of the slope. He also had no problems with the opacity of the fence; however, he would like to see the landscape buffer and was not sure that five (5) feet would be enough.

Chair Bender asked for a motion for the variance Section 12-286 (B) (1).

Mr. Stevens made a motion, seconded by Vice-Chair McLaughlin, to approve subject to it complying with the 40-foot line-of-sight and as long as it did not encroach on the neighbor's property. In a roll call vote, the vote was as follows: Chair Bender – yes; Vice-Chair McLaughlin – yes; Mr. Busey – yes; Mr. Stevens – yes; Ms. Turin – yes. **(Motion carried 5-0)**

Chair Bender asked for a motion for variance Section 12-284 (D).

Mr. Stevens made a motion, seconded by Chair Bender, to approve subject to it complying with the 40-foot visual line-of-sight and that it is not encroaching on the neighbor's property. In a roll call vote, the vote was as follows: Chair Bender – yes; Vice-Chair McLaughlin – yes; Mr. Busey – yes; Mr. Stevens – yes; Ms. Turin – yes. **(Motion carried 5-0)**

Chair Bender asked for a motion for variance Section 12-284 (E).

Mr. Stevens made a motion, seconded by Mr. Busey, to approve. In a roll call vote, the vote was as follows: Chair Bender – yes; Vice-Chair McLaughlin – yes; Mr. Busey – yes; Mr. Stevens – yes; Ms. Turin – yes. **(Motion carried 5-0)**

Chair Bender asked for a motion for variance Section 12-107 (A) (5) (c).

Mr. Stevens made a motion, seconded by Vice-Chair McLaughlin, to deny. In a roll call vote, the vote was as follows: Chair Bender – no; Vice-Chair McLaughlin – yes; Mr. Busey – no; Mr. Stevens – yes; Ms. Turin – yes. **(Motion carried 3-2)**

Chair Bender asked for a motion for variance Section 12-282. **(waiver)**

Mr. Stevens made a motion, seconded by Vice-Chair McLaughlin, to deny. In a roll call vote, the vote was as follows: Chair Bender – no; Vice-Chair McLaughlin – yes; Mr. Busey – no; Mr. Stevens – yes; Ms. Turin – yes. **(Motion carried 3-2)**

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, letter from Davie Code Compliance

Application: V 6-4-06 Ladue
Exhibit "A"
29, 2006

Revisions: none
Original Report Date: September

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

Applicant Information

Owner / Petitioner:

Name: John Ladue
Address: 2961 SW 111 Ter.
City: Davie, Florida 33328
Phone: (954) 370-8959

Background Information

Date of Notification: September 29, 2006
16
Number of Notifications:

App. History: None

Application Request:

Variance FROM: Section 12-286 (B) (1) of the Land Development Code, which requires a maximum fence height of four (4) ft. in the front property setback or adjacent to a scenic corridor

TO: Allow a maximum of six (6) ft. fence height in the front property setback or adjacent to a scenic corridor

Variance FROM: Section 12-284 (D) which requires a maximum four (4) foot height in the scenic corridor

TO: Allow a six (6) foot height fence in the scenic corridor

Variance FROM: Section 12-284 (E) which allows a maximum twenty percent (20 %) opacity for a fence in the scenic corridor

TO: Allow a fence which has greater than twenty percent (20 %) opacity

Variance **FROM:** Section 12-107 (A) (5) (c) which requires a fence to be placed at the rear of the required landscape buffer
TO: Allow a fence to be placed at the front of a required landscape buffer.

Waiver **FROM:** Section 12-282 which requires parcels in individual ownership and under 5 acres in size to provide a scenic corridor buffer of 25 feet (a waiver requires a Town Council resolution)
TO: Not provide a scenic corridor buffer within the 25 feet adjoining the scenic corridor right-of-way

Address/Location: 2961 SW 111 Ter. / Generally located east of SW 112 Ave. (Hiatus Rd.) and north of SW 29 Ct.

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. 43,587 square feet)

Future Land

Surrounding Uses:

Map Designations:

North: Single-Family Residential
Acre
South: Single-Family Residential
Acre
East: Single-Family Residential
Acre
West: Single-Family Residential
Acre

Surrounding

Use Plan

Residential 1 DU /
Residential 1 DU /
Residential 1 DU /
Residential 1 DU /

Surrounding Zoning:

North: R-1, Estates Dwelling District
South: R-1, Estates Dwelling District
East: R-1, Estates Dwelling District
West: AG, Agricultural District

Zoning History

Related Zoning History: The zoning is R-1, residential, one (1) dwelling unit/ acre.

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.

§12-284 Fences, bus stops, mailboxes, and entranceway features

(D) Fences shall meet the design requirements of the Rural Lifestyle Regulations, as stated in section 12-286. Fence colors shall be limited to earth tones, natural, or white and shall be a maximum of four (4) feet in height.

(E) Fences located within a scenic corridor are intended to function as spatial locators and not be substantial in appearance. Such fences located in a scenic corridor buffer shall not exceed more than twenty (20) percent opacity.

§12-107 (A) Landscaping standards for lots and sites

(5) Single-family and two-family districts

(c) Required landscaping buffer and street trees for single-family and two-family districts adjacent to public rights-of-way

If a fence or wall is used in the buffer, then the fence or wall shall be placed at the rear of the landscape buffer. A continuous row of hedges and the required trees shall be placed on the right-of-way side of the fence or wall, and the trees shall be staggered. The town council may *waive* the requirement of this subsection, if it determines that the wall or fence is an architectural feature such that esthetics will be better served by leaving it unscreened.

§12-282 Waivers

The town council may grant relief from the provisions of section 12-282 upon a showing by the property owner that the regulations imposed upon the property by another governmental agency will cause there to be a hardship upon the property owner if that property owner is required to fully comply with section 12-282. The town council shall grant the minimum relief necessary to remedy the

demonstrated hardship. *All landscape requirements shall still be satisfied by the property owner.* A waiver requires a Town Council resolution.

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

Ordinance R-2006-1 allows fences in the Rural Lifestyle District within the front setback or adjacent to a scenic corridor to be a maximum of 6 ft. in height if approved by a variance.

§12-33 (A) (8) requires fences of a minimum five (5) feet in height to enclose a pool.

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 100.

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 petitioner who owns the property is proposing to build a solid (opaque) pvc fence to a maximum of 6 ft. height in the front property setback. Because of the location of the property being located along three (3) street frontages, under the Land Development Code there are three (3) "front setbacks," these being property lines adjacent to Hiatus Rd., SW 29 Ct., and SW 111 Ter. The homeowner has applied for a variance to allow him to build the fence in the front property setback to a maximum height of 6 ft.; to allow a six (6) foot height fence in the scenic corridor; to allow a fence which has greater than twenty percent (20 %) opacity; and to allow a fence to be placed at the front of a required landscape buffer.

The petitioner is 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 six (6) foot fence height in the front setback of the Rural Lifestyle (1 dwelling unit/acre) area; to allow a six (6) foot height fence in the scenic corridor; to allow a fence which has greater than the maximum twenty percent (20 %) opacity allowed under the Scenic Corridor Overlay District Regulations; and to allow a fence to be placed at the front of a required landscape buffer.

The subject site is a 1.0 acre (approx. 43,587 square feet) parcel of land which is a rectangular-shaped segment with its narrow aspect fronting onto Hiatus Rd. to the west, SW 29 Ct. to the south, and onto SW 111 Ter. to the east. Each of these street frontages requires a "front setback" classification for application of pertinent portions of the Land Development Code. The land use for parcels adjacent to the north, east, south, and west of the subject site are all residential 1 dwelling unit per acre.

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. 43,587 square feet) parcel can support a fence that does not require a variance. However, the homeowner erected a fence with a permit in 2003 which received final inspection approval.

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 R-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 three street-frontage lot, the

homeowner has chosen to locate the fence along the front property lines (two of the three street frontages) of the home, adjacent to the road rights-of-way.

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 in the required setbacks of the parcel, and the owner's choice of fence height and degree of opacity of the fence, and the owner's request to not place a fence at the back of a scenic corridor rlandscape buffer.

- (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. Ladue, he chose to erect a fence with a permit (03-4624) which, he claims, became effectively lower in height with improvements to the Hiatus Rd. right-of-way and GL Homes' scenic corridor and trail improvements on the west side of Hiatus Rd. In review of the applicant's survey and residential site plan, it proposes a fence within the allowable criteria as shown in Ordinance R-2006-1 except for the applicant's request to exceed a maximum opacity of fifty percent (50 %) if a variance is granted. Staff concludes that this proposed fence could not be accommodated without the approval of a variance, and a waiver from Town Council for the fence being placed other than at the back of the required landscape buffer. The waiver request is necessary for the proposed location of the fence at the outside of a required scenic corridor landscape buffer. A waiver is granted by Town Council via a resolution. Eliminating the required scenic corridor landscape buffer from public view along the Hiatus Rd. right-of way by having it wholly

contained inside of the applicant's opaque fence would be in opposition to the Scenic Corridor Overlay District intent. Having an opaque fence in the areas of the Town of Davie covered by the Rural Lifestyle Regulations is specifically *not* allowed by the R-2006-1 Ordinance.

Thus, the proposed fence height increase would only directly affect the the property line area of the house to the north. The proposed fence would encroach into the scenic corridor buffer for Hiatus Rd (it is proposed to be placed at other than the rear of the scenic corridor landscape buffer); and would violate the maximum permitted degree of opacity of twenty percent (20%) for a fence in the scenic corridor. It should be noted that the as-built survey dated November 11, 2004, and supplied by the applicant, shows a fence erected which violates the required forty (40) foot line-of-sight triangle at the intersection of Hiatus Rd. and SW 29 Ct., which should be corrected for Life Safety. It also shows the fence along the north property line is entirely encroaching on the parcel to the north, which is not owned by the applicant, and should be removed and located onto the applicant's parcel. The requirement for a pool (the applicant's) to have a minimum five (5) foot fence enclosure, §12-33 (A) (8) is not met with the fence on the neighbor's parcel.

Planning and Zoning Board Recommendation

On October 11, 2006 the matter will be heard by the P & Z Board.

Staff Recommendation

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

Exhibits

1. Justification
2. Survey
3. Future Land Use Plan Map
4. Subject Site, Zoning and Aerial Map
5. Letter from Davie Code Compliance

Prepared by: _____

Reviewed by: _____

Exhibit 1 (*Justification Letter*)

To Whom It May Concern:

This letter is to inform everyone on why this variance is needed. When I purchased this property the street was 33” lower than it is now. My fence was installed according to the recently changed town code (open life style agenda) (permit #0300004624). Then the town approved Hiatus Rd changes, which changed the height, location & drainage and added a walkway on top of a 7’berm.

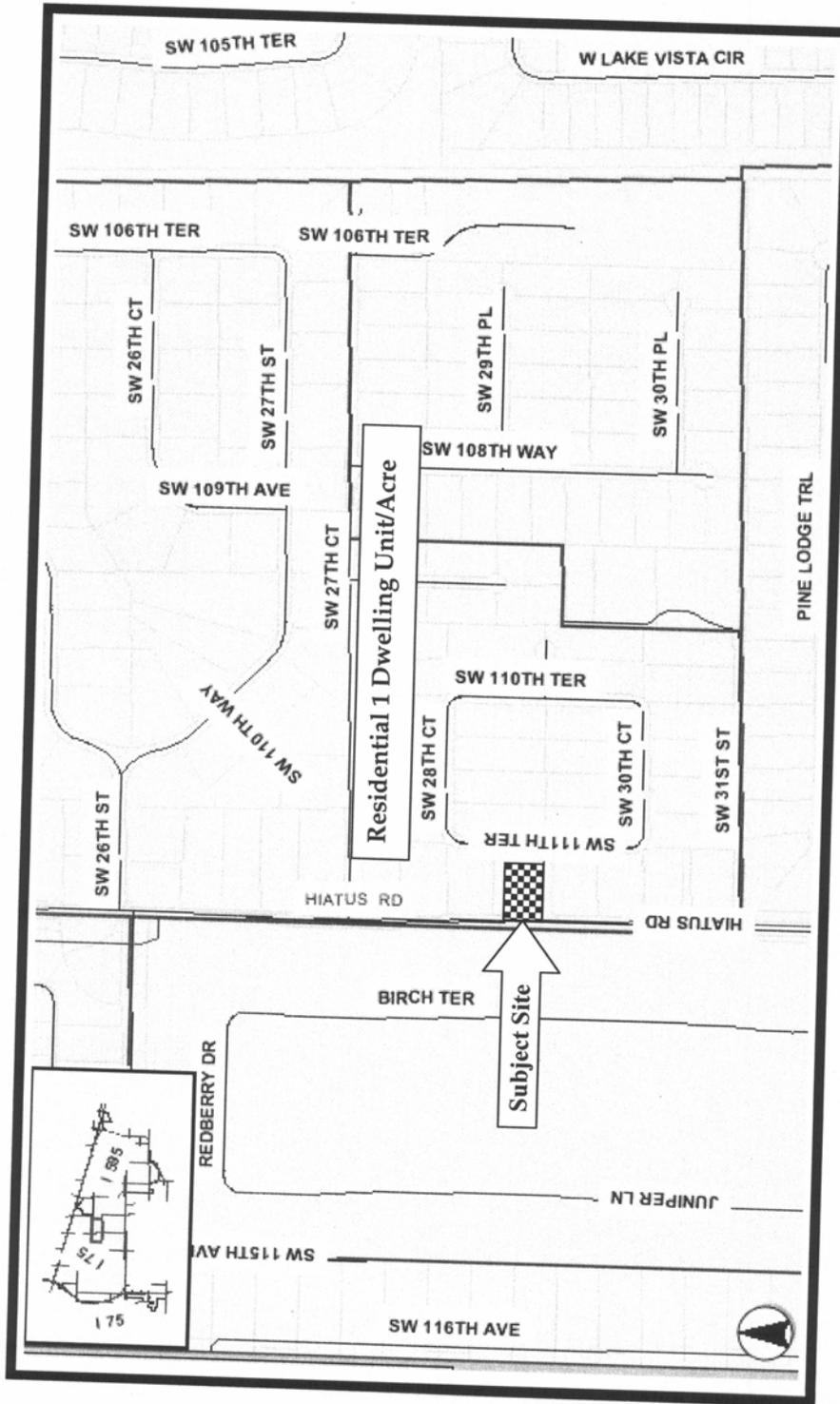
The change that I am asking for is to allow me to make the fence on my property (12-284E). Without the 20% of capacity.

The town of Davie is requiring me to move my fence to allow for line of sight improvement. Per Larry Peters, Dan Stol-one, Bruce Bernard, agreed “The Town” is to pay me \$750.00 for the move.

**Thank you,
John Ladue**

Exhibit 2 (*Survey*)

Exhibit 3 (Future Land Use Map)

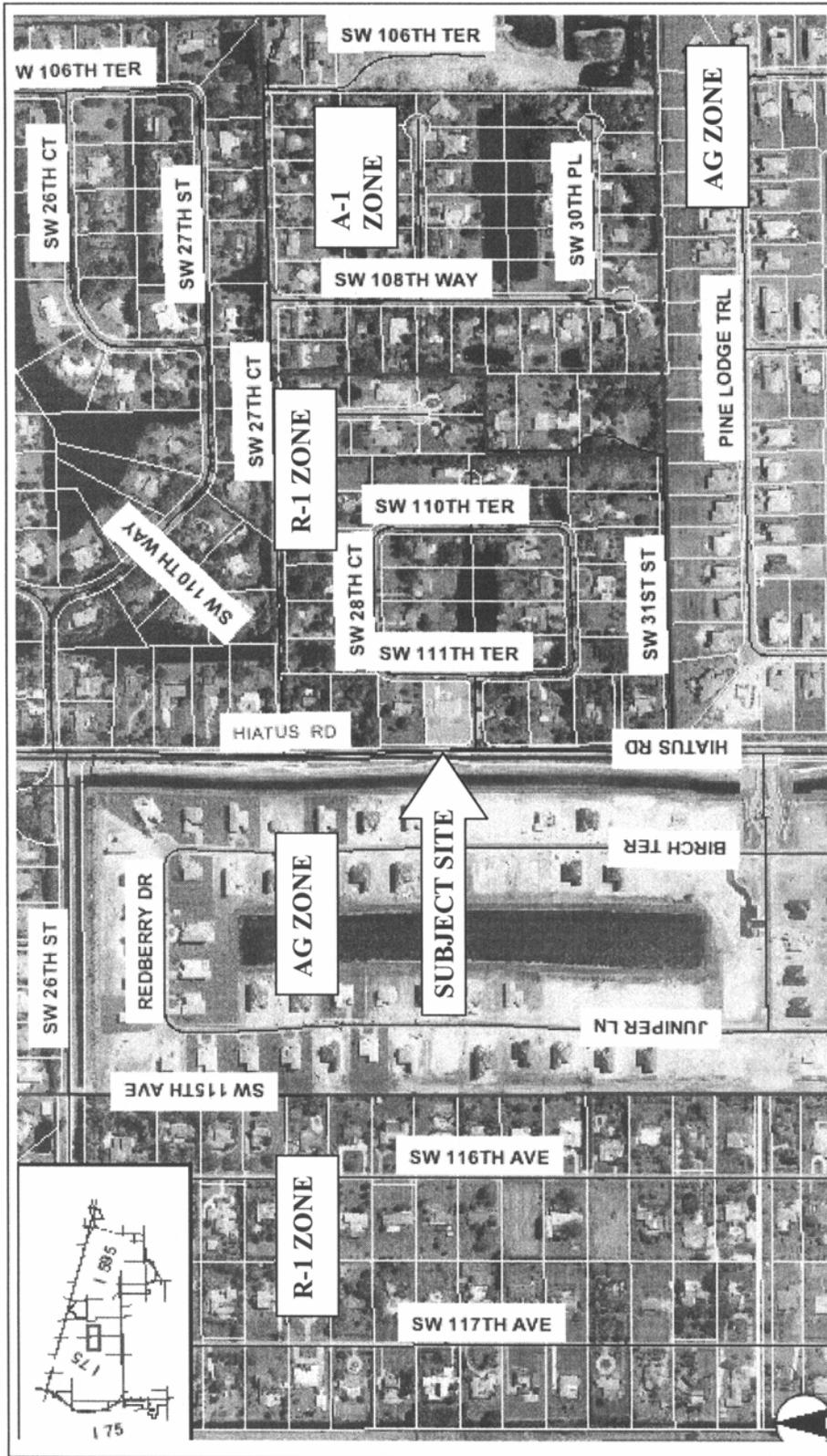


Variance Application V 6-4-06
Future Land Use Map
Ladue, 2961 SW 111 Ter.



The Town of Davie
Development Services Department
Planning and Zoning Division

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



Variance Application V 6-4-06
Aerial, Zoning and Subject Site Map
Ladue, 2961 SW 111 Ter.



The Town of Davie
Development Services Department
Planning and Zoning Division

Exhibit 5 (Code Compliance letter-Ladue)



DEVELOPMENT SERVICES DEPARTMENT
CODE COMPLIANCE DIVISION

6591 ORANGE DRIVE • DAVIE, FLORIDA 33314-3399
PHONE: 954.797.1121 • FAX: 954.797.1119 • WWW.DAVIE-FL.GOV

TO: Philip Bachers, Planner I
THRU: Mark Kutney, AICP, Development Services Director
FROM: Daniel J. Stallone, Esq., Code Compliance Official *DJ Stallone*
RE: V 6-4-06 / 06-39
DATE: August 10, 2006

Please be advised that upon my review of the variance packet presented to Code Compliance by your office, I have identified an inconsistency in the supporting documentation provided by Mr. John Ladue. Mr. Ladue has included a letter in the variance request which states that its purpose is "to inform everyone on why this variance is needed." Based on statements within the letter, I offer the following commentary.

Mr. Ladue recounts facts in this letter which are inconsistent with any agreement to which I was a direct participant. He attributes a payment amount of seven hundred and fifty dollars (\$750.00) that "The Town" agreed to provide to him "for the move" (of the fence) as per town staff members, including myself. Such a statement is inconsistent with staff and our respective positions and inherent jurisdiction, therefore I would like to insure that the proper facts be provided to the Town Council for their review of this variance request. If any such agreements are to be considered, the Town Council would be the appropriate body to make such a decision, therefore his allusion to any such agreement is inappropriate in the context to which he has stated the same and requires further confirmation or elaboration on his part.