

# **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 9-1-06 Fuentes, 5501 SW 38 Street, Generally located on the northwest corner of SW 55 Avenue and SW 38 Street.

**AFFECTED DISTRICT:** District 1

**TITLE OF AGENDA ITEM:** V 9-1-06 Fuentes, 5501 SW 38 Street, (R-5)

**REPORT IN BRIEF:** The petitioner's request is to reduce the required street side setback of the R-5, Low Medium Dwelling District, from 25' to 10' in order to accommodate an addition to the existing one story residence. Section 12-81 (A) of the Land Development Code requires a minimum 25' street side setback from the property line in the R-5 Low Medium Dwelling district.

The petitioner has submitted a site plan which proposes the construction of an 868 square foot addition to include three (3) bedrooms and three (3) baths. The minimum lot area required by the R-5, Low Medium Dwelling District, is 7,000 square feet. The subject property is a legal nonconforming lot with a minimum lot size of approximately 6,701.9 square feet. In addition, the subject property does not meet the 25 foot street side setback along the southeast corner, thus creating a nonconforming structure.

**PREVIOUS ACTIONS:** None

**CONCURRENCES:** At the December 13<sup>th</sup>, 2006 Planning and Zoning Board meeting, Mr. Busey made a motion, seconded by Chair Bender, to approve. (Motion denied 2-3).  
Note: Vice-Chair McLaughlin indicated that if the request was to resume to the old code setbacks which applied when the house was built, it probably would have been approved; however, this request was for a smaller setback then the old code allowed.

**FISCAL IMPACT:** not applicable

Has request been budgeted? n/a

If yes, expected cost: \$

Account Name:

If no, amount needed: \$

What account will funds be appropriated from:

Additional Comments:

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

1. **Attachment(s):** Justification letter, Survey, Site Plan, Floor Plan, Letters from adjacent property owners, Approval letter from the Department of Health, Future Land Use Plan Map, Zoning and Aerial Map



## Zoning History

**Plat History:** The Plat, “Playland Village Sec. 3”, was approved by the Board of Commissioners of Broward County on November 10, 1959 prior to incorporation into the Town.

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### Application Details

The petitioner is requesting a variance from Section 12-81 (A) of the Land Development Code, which requires a minimum 25’ street side setback from the property line in the R-5 Low Medium Dwelling District, to reduce the minimum to a 10’ street side setback so that an 868 square foot addition may be constructed. The petitioner has submitted both a site plan and floor plan for the one-story addition to the existing residence.

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### Applicable Codes and Ordinances

#### DIVISION 2. GENERAL REGULATIONS

*Land Development Code* §12-309 of the Land Development Code, review for variances.

*Land Development Code* § 12-24 (I)(4) Low Medium Density Dwelling (R-4, R-5 and RM-5) Districts: The R-4, R-5 and RM-5 Districts are intended to implement the five (5) dwelling units per acre residential classification of the Town of Davie Future Land Use Plan and the residential classification of the Town of Davie Comprehensive Plan by providing for a low-medium density single-family dwelling district.

*Land Development Code* §12-81 (A) Conventional Single Family Development Standards, R-5, Low Medium Dwelling District, requires the following minimums: lot area of 7,000 square feet, 75’ frontage, 25’ front setback, 10’ side setbacks, 15’ rear setback, 35’ maximum building height, and 40 percent maximum building coverage.

#### DIVISION 5. NONCONFORMING USES AND STRUCTURES

*Land Development Code* Sec. 12-39 Nonconforming buildings and structures. The lawful existence of a structure or building at the effective date of adoption of these regulations, although such structure or building does not conform to the property development regulations of these regulations for minimum lot area and dimension, minimum yard setback requirements, maximum building height, total floor area, lot coverage and minimum floor area requirements or other characteristics of the structure, or its location on the lot, may be continued so long as it remains otherwise lawful, subject to the following provisions:

(1) No such building or structure shall be enlarged upon or altered in any way that increases its nonconformity. Such building or structure or portion thereof may be altered to decrease its nonconformity except as may be hereafter provided. Such nonconforming buildings or structures shall not be used as a basis for adding other structures or uses prohibited elsewhere in the same district.

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### Comprehensive Plan Considerations

**Planning Area:** The subject property falls within Planning Area 8. This Planning Area is the heart of Davie and is the most diverse, characterized by older, small-scale commercial development, older single-family residential neighborhoods, and newer, large-scale multi-family residential developments that serve the rapidly growing South Florida Education Center (SFEC). It is bounded on the north by Nova Drive, south by Orange Drive, east by Florida’s Turnpike, and west by University Drive. The planning area encompasses the downtown Davie Business District, where

western theme architecture is required, the Davie Town Hall and Rodeo Arena, two large mobile home communities, and industrial land. Planning Area 8 contains one of three CBDG redevelopment target areas within the Town. The planning area issues include roadway congestion in and around the SFEC and the University Drive/I-595 intersection, Town-SFEC relations as the universities expand, expansion and redevelopment of Davie's original business district, and neighborhood redevelopment.

**Broward County Land Use Plan:** The subject site falls within Flexibility Zone 98.

**Applicable Goals, Objectives & Policies:** *Future Land Use Element, 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.

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### **Staff Analysis**

The petitioner's request is to reduce the required street side setback of the R-5, Low Medium Dwelling District, from 25' to 10' in order to accommodate an 868 square foot addition to the existing one story residence. The proposed 868 square foot addition consists of three (3) bedrooms and three (3) baths. The existing living area of 954 square feet and the proposed addition of 868 square feet brings the total amount of building coverage to 1,822 square feet which is below the maximum building coverage of forty (40) percent or 2,680.76 square feet of building permitted on this site. The petitioner did receive CBWCD approval with the proposed site plan on October 24, 2006 with the condition that no water is to drain on to adjacent properties. In addition, the petitioner has submitted approval from the Department of Health regarding tank and drainfield installation (see Exhibit 6).

The lot size, at approximately 6,701.9 square feet, does not meet the minimum lot area of 7,000 square feet for the R-5 Low Medium Dwelling district and is therefore considered a legal nonconforming lot. Currently, the street side setback does not meet the 25 foot requirement along the southeast corner, thus creating a nonconforming structure. According to the Broward County Zoning Code, applicable at the time the lot was recorded, the street side setback was 15 feet. It is the petitioner's intent to obtain a variance in compliance with the Town's Land Development Code, Section 12-309 (A). In addition, the petitioner has submitted letters of approval from adjacent property owners to the immediate south and east (see Exhibit #5).

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### **Staff 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 6,701.9 square foot parcel and existing home is a legal nonconforming lot. Although the addition is a logical expansion to the existing layout of the house, the parcel does not meet the minimum lot area of 7,000 square feet that is required for the R-5, Low Medium Dwelling district. The proposed addition with the desired amenities cannot be constructed at the required 25' street side setback, however the home could possibly support a smaller addition located solely in the rear yard and still maintain the rear yard setback of 15 feet.*

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 required 25' street side setback for single-family development in the R-5, Low Medium Dwelling District applies equally to properties within this zoning district.*

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;

*The parcel, as a legal nonconforming lot, is being reasonably used now without a variance. An addition cannot be constructed at the required 25' street side setback, however the home could possibly support a smaller addition (than the one proposed) located solely in the rear yard and still maintain the rear yard setback of 15 feet.*

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

*The need for the variance is created by the owner's desire for an addition to the existing home.*

- (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.

*Currently, the parcel is being reasonably used. The variance request is the minimum needed to accomplish the proposed addition to the existing home.*

- (c) Granting of the requested variance 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 street side setback to be reduced from 25' to 10' to construct the proposed addition may not be detrimental to the adjacent property being that the street side setback is adjacent to a roadway (SW 55<sup>th</sup> Avenue) rather than a residential home. The petitioner has submitted letters of approval from adjacent property owners to the immediate south and east (see Exhibit #5). In addition, the petitioner has received CBWCD approval of the proposed site plan with the condition that no water is to drain on to adjacent properties.*

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### **Staff Recommendation**

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

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### **Planning and Zoning Board Recommendation**

At the December 13<sup>th</sup>, 2006 Planning and Zoning Board meeting, Mr. Busey made a motion, seconded by Chair Bender, to approve. (Motion denied 2-3).

Note: Vice-Chair McLaughlin indicated that if the request was to resume to the old code setbacks which applied when the house was built, it probably would have been approved; however, this request was for a smaller setback than the old code allowed.

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## Town Council Action

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### Exhibits

1. Justification letter
2. Survey
3. Site Plan
4. Floor Plan
5. Letters from adjacent property owners
6. Approval letter from the Department of Health
7. Future Land Use Plan Map
8. Zoning and Aerial Map

Prepared by: \_\_\_\_\_

Reviewed by: \_\_\_\_\_

■ graham a gerald's ■ architect

2849 ravenwood road, fort lauderdale, florida 33312 (954) 581-6922

fax (954) 581-6975

August 21, 2006

Town of Davie  
Planning & Zoning Division  
6591 Orange Drive  
Davie, FL 33314

Ref: Addition for Fuentes  
5501 SW 38<sup>th</sup> Street  
Davie, FL 33314  
Permit #06-6509

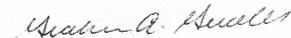
Dear Zoning Official:

Please be advised of the following justification letter for the above referenced address.

1.
  - A. The setback conditions for this corner residential property are so strict that the owner can only use 31 % of property instead of 44 % on a typical residential lot.
  - B. This variance is necessary for the reasonable use of this residential lot. In that this minimum variance can allow the owner to expand his residence for his expanding family as other residents in the neighborhood are allowed to do.
  - C. The granting of this variance is in harmony with neighborhood and general purpose and intent of the code. Allowing the owner to expand his residence further toward the side street is not injurious to the neighborhood.

If you have any further questions regarding this matter, please feel free to contact me at my office at 954-581-6922.

Sincerely,



Graham A. Gerald's  
Architect, PA



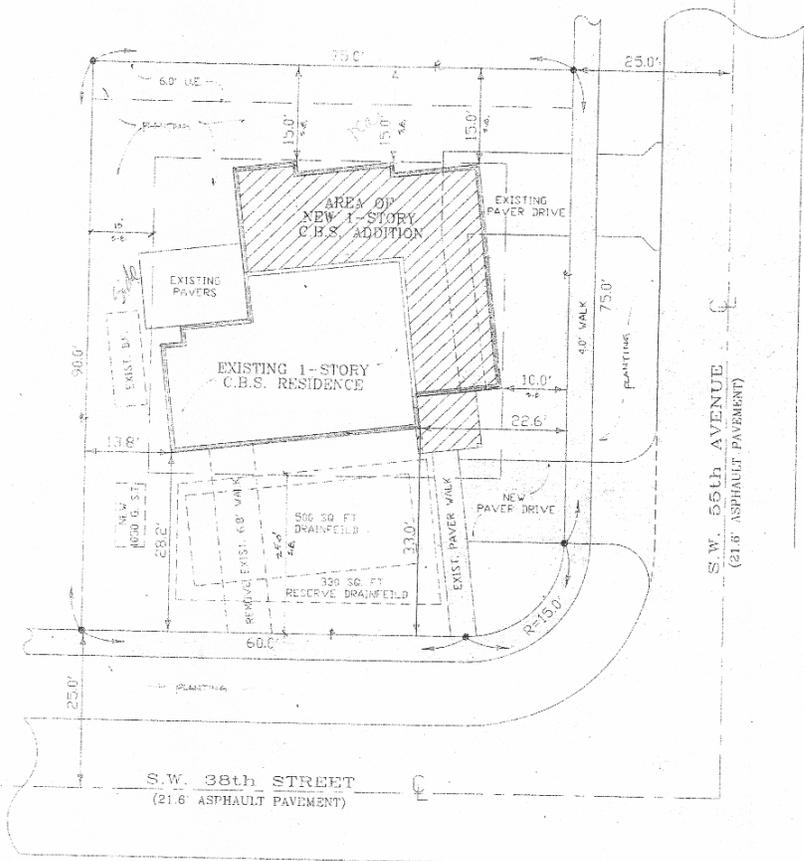


LEGAL DESCRIPTION

LOT 273, "PLAYLAND VILLAGE SECT. 3"  
ACCORDING TO THE PLAT THEREOF, AS RECORDED  
IN PLAT BOOK 56, PAGE 11 OF THE PUBLIC  
RECORDS OF BROWARD COUNTY, FLORIDA

**RECEIVED**  
SEP - 7 2006  
Town of Davie  
Planning & Zoning

DATE	12-18-05
REVISED	
B - 2.5 - 0.0	



SITE PLAN 1" = 10'

**graham a gerald's architect**  
2849 ravenswood road, fort lauderdale florida 33312 (954) 581-6922

*[Signature]*

NEW ADDITION FOR CLIENTS.  
5501 S.W. 25th STREET  
DAVIE, FLORIDA.

sheet  
1 of 7



November 9, 2006

City of Davie

Re: Billy Fuentes  
5501 SW 38<sup>th</sup> St.  
Davie, Florida 33314

To Whom It May Concern:

Please be advised that I am in agreement with the variance requested by Mr. Fuentes. I do not have any problem with the construction of the addition to his home at the above location.

My property is located on the East Side of 38<sup>th</sup> Street and 55<sup>th</sup> Ave. (East and Across the Street of Mr. Fuentes property.)

My name is CHES SHERWOOD

Address 3760 SW 55 AVE

Thank you.



November 9, 2006

City of Davie

Re: Billy Fuentes  
5501 SW 38<sup>th</sup> St.  
Davie, Florida 33314

To Whom It May Concern:

Please be advised that I am in agreement with the variance requested by Mr. Fuentes. I do not have any problem with the construction of the addition to his home at the above location.

My property is located on the South Side of 38<sup>th</sup> Street and 55<sup>th</sup> Ave. (Across from Mr. Fuentes property.)

My name is Lynn Macha

Address 5500 SW 61 AVE  
Davie, Fl 33314

Thank you.





STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
Broward County Health Department  
ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEM

OSTDS Permit # : ST-06-00024  
Centrax PIN # : 06-SE-58887  
Bldg Permit # :  
Bldg Department: Davie  
Sq Mile : 325  
Reg # : CFC057357  
Author # :  
Agent Phone # : 954 427-9433

**CONSTRUCTION INSPECTION AND FINAL APPROVAL**

CLIENT: Fuentes, Billy and Sarmiento, Ledy. AGENT: DRAIN MASTER OF SOUTH FLORIDA, INC.

PROPERTY STREET ADDRESS: 5501 SW 38 St, Davie, FL

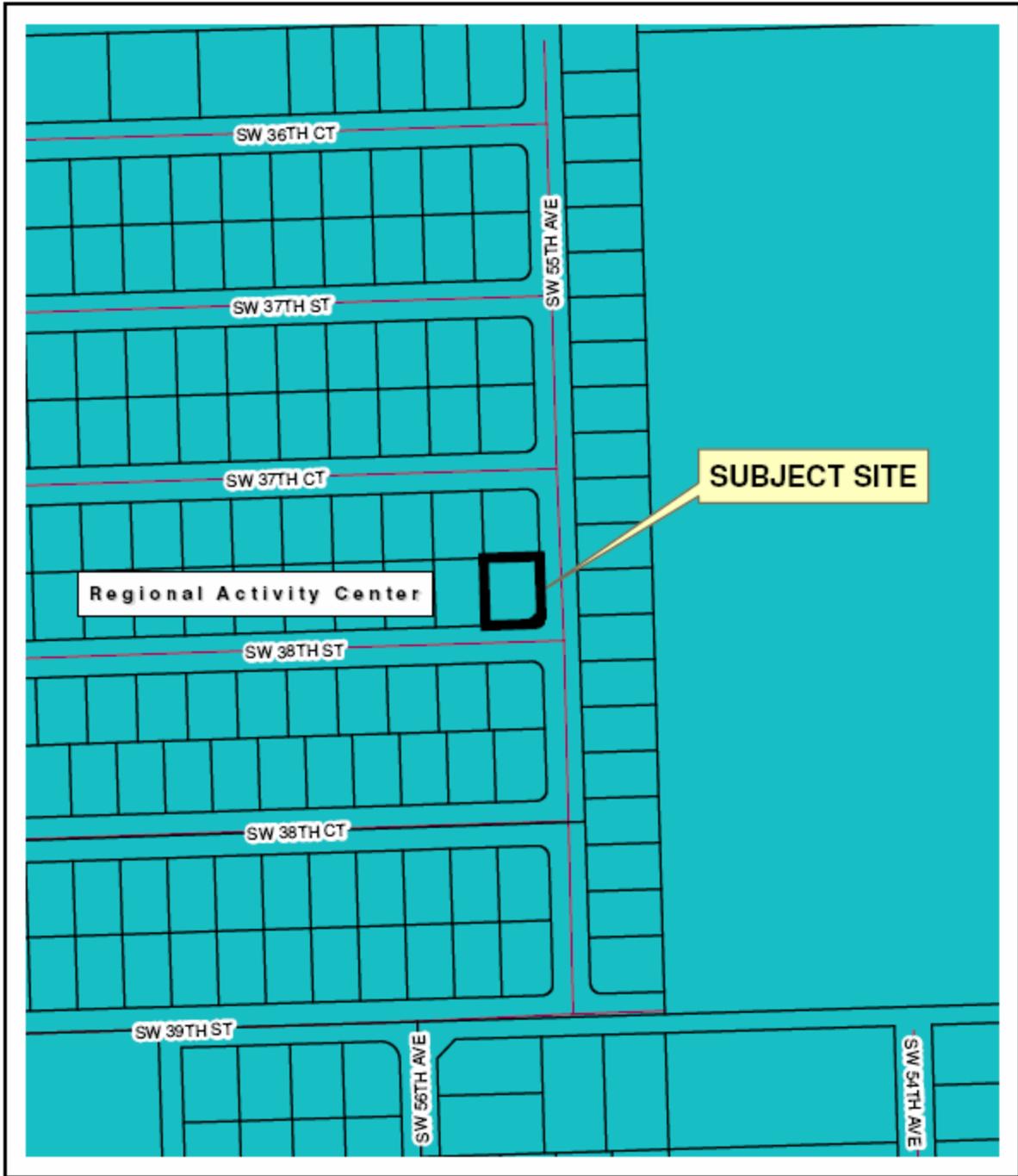
BLOCK: \_\_\_\_\_ SUBDIVISION: Playland Village Sec 3  
[Section/Township/Range/Parcel No.]  
PROPERTY ID #: 26-50S-41E- [OR TAX ID NUMBER]

REMOVED [X] ITEMS ARE NOT IN COMPLIANCE WITH CHAPTER 64E-6, FLORIDA ADMINISTRATIVE CODE.

- |                                       |  |                          |                                      |
|---------------------------------------|--|--------------------------|--------------------------------------|
| TANK INSTALLATION                     |  | SETBACKS                 |                                      |
| <input type="checkbox"/>              | [01] TANK SIZE [1] <u>1060</u> [2] _____     | <input type="checkbox"/> | [27] SURFACE WATER <u>N/A</u>        |
| <input type="checkbox"/>              | [02] TANK MATERIAL <u>Polyethylene</u>       | <input type="checkbox"/> | [28] DITCHES <u>N/A</u>              |
| <input type="checkbox"/>              | [03] OUTLET DEVICE <u>Baffle &amp; ZABEL</u> | <input type="checkbox"/> | [29] PRIVATE WELLS <u>N/A</u>        |
| <input type="checkbox"/>              | [04] MULTI-CHAMBERS <u>FILTER</u>            | <input type="checkbox"/> | [30] PUBLIC WELLS <u>N/A</u>         |
| <input type="checkbox"/>              | [05] LEGEND <u>FRA Ld 70-117-100-C4</u>      | <input type="checkbox"/> | [31] IRRIGATION WELLS <u>N/A</u>     |
| <input type="checkbox"/>              | [06] WATERTIGHT _____                        | <input type="checkbox"/> | [32] POTABLE WATER LINES <u>3 FT</u> |
| <input type="checkbox"/>              | [07] LEVEL _____                             | <input type="checkbox"/> | [33] BUILDING FOUNDATION <u>5 FT</u> |
| <input type="checkbox"/>              | [08] DEPTH OF LID _____                      | <input type="checkbox"/> | [34] PROPERTY LINES <u>5 FT</u>      |
| <input type="checkbox"/>              | [09] DATE TANK PUMPED <u>N/A</u>             | <input type="checkbox"/> | [35] OTHER _____                     |
| <b>ADS BTO #3 TRENCH. 18 CHAMBERS</b> |  |                          |                                      |
| DRAINFIELD INSTALLATION               |  |                          |                                      |
| <input type="checkbox"/>              | [09] AREA [1] <u>389</u> [2] _____ SQFT      | <input type="checkbox"/> | FILLED/MOUND SYSTEM                  |
| <input type="checkbox"/>              | [10] DISTRIBUTION BOX HEADER _____           | <input type="checkbox"/> | [36] DRAINFIELD COVER                |
| <input type="checkbox"/>              | [11] NUMBER OF DRAINLINES <u>4</u>           | <input type="checkbox"/> | [37] SHOULDERS <u>N/A</u>            |
| <input type="checkbox"/>              | [12] DRAINLINE SEPARATION _____              | <input type="checkbox"/> | [38] SLOPES                          |
| <input type="checkbox"/>              | [13] DRAINLINE SLOPE <u>OK</u>               | <input type="checkbox"/> | [39] STABILIZATION MATERIAL _____    |
| <input type="checkbox"/>              | [14] DEPTH OF COVER _____                    | <input type="checkbox"/> | ADDITIONAL INFORMATION               |
| <input type="checkbox"/>              | [15] SYSTEM ELEVATION <u>3.96' BELOW BM</u>  | <input type="checkbox"/> | [40] UNOBSTRUCTED AREA               |
| <input type="checkbox"/>              | [16] SYSTEM LOCATION _____                   | <input type="checkbox"/> | [41] STORMWATER RUNOFF               |
| <input type="checkbox"/>              | [17] DOSING PUMPS <u>N/A</u>                 | <input type="checkbox"/> | [42] ALARMS                          |
| <input type="checkbox"/>              | [18] AGGREGATE SIZE _____                    | <input type="checkbox"/> | [43] MAINTENANCE AGREEMENT <u>OK</u> |
| <input type="checkbox"/>              | [19] AGGREGATE SOURCE _____                  | <input type="checkbox"/> | [44] BUILDING AREA                   |
| <input type="checkbox"/>              | [20] AGGREGATE WASHED <u>N/A</u>             | <input type="checkbox"/> | [45] PLUMBING FIXTURES               |
| <input type="checkbox"/>              | [21] AGGREGATE DEPTH _____                   | <input type="checkbox"/> | [46] FINAL SITE GRADING              |
| FILL/EXCAVATION MATERIAL              |  | <input type="checkbox"/> | [47] CONTRACTOR <u>DRAIN MASTER</u>  |
| <input type="checkbox"/>              | [22] FILL AMOUNT _____                       | <input type="checkbox"/> | [48] OTHER <u>LEFT TO GO</u>         |
| <input type="checkbox"/>              | [23] FILL TEXTURE _____                      | ABANDONMENT              |                                      |
| <input type="checkbox"/>              | [24] EXCAVATION DEPTH <u>OK</u>              | <input type="checkbox"/> | [49] TANK PUMPED _____               |
| <input type="checkbox"/>              | [25] EXCAVATION AREA _____                   | <input type="checkbox"/> | [50] TANK CRUSHED AND FILLED _____   |
| <input type="checkbox"/>              | [26] REPLACEMENT MATERIAL _____              | GPS COORDINATES          |                                      |

DESCRIPTION OF VIOLATIONS: \_\_\_\_\_ LAT: \_\_\_\_\_ LONG: \_\_\_\_\_  
03-27-06 MEETS REQUIREMENTS. FINAL APPROVAL PENDING  
OLD SEPTIC TANKS ABANDONMENT & WELL ABANDONMENT. DO  
1/31/06 Well abandonment verified - cement poured into pipe & pipe has been cut off below grade. Tank  
abandonment certification request from contractor. Reinspection fee \$50 - (10/17) AD

CONSTRUCTION  DISAPPROVED  APPROVED R. Jones Broward CHD Date: 03-27-06  
 SYSTEM  DISAPPROVED  APPROVED J. Morgan Broward CHD Date: 4/3/06

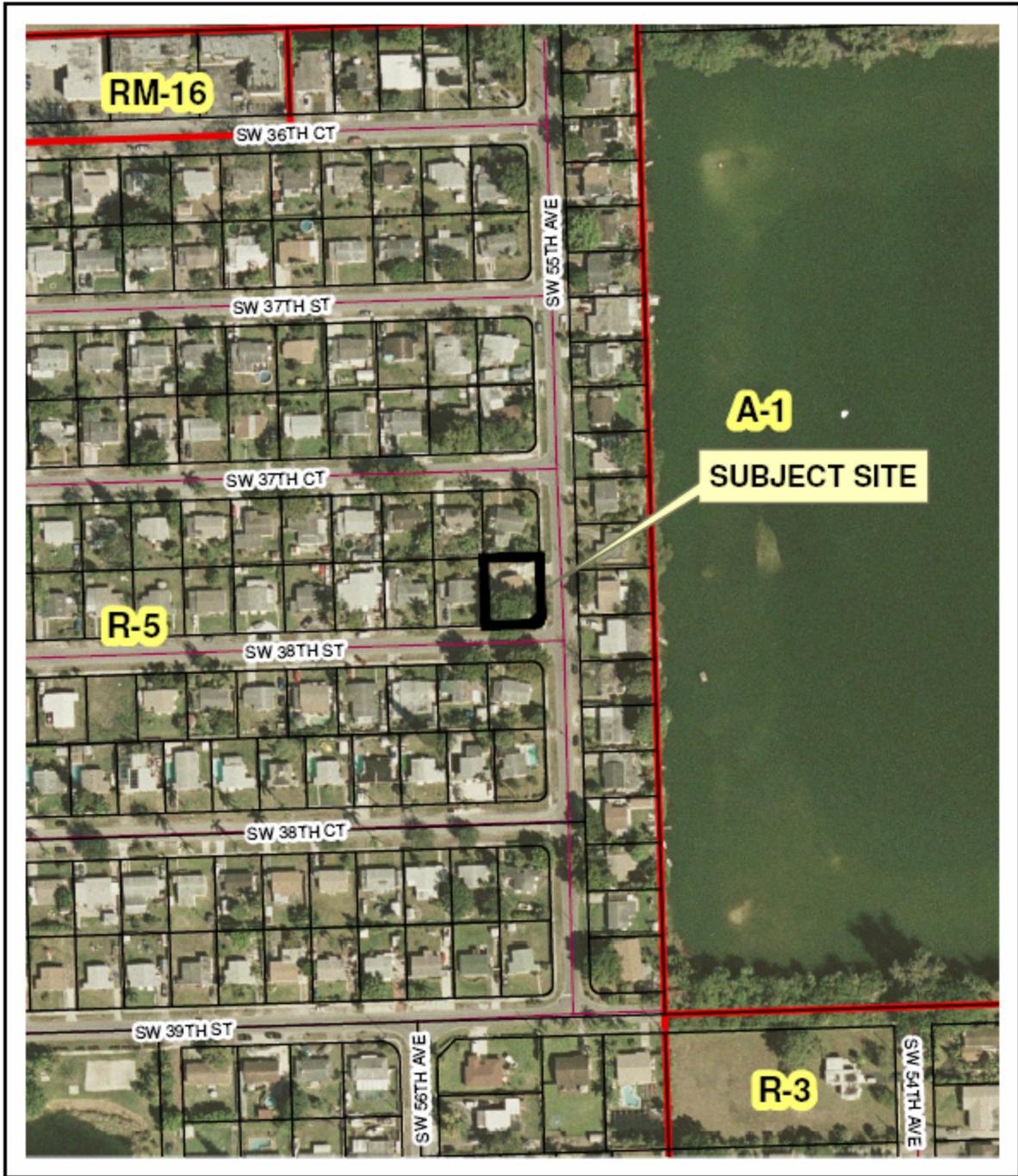


0 100 200 400 Feet

Prepared by the Town of Davie GIS Division

**Variance  
V 9-1-06  
Future Land Use Map**

Prepared by: ID  
Date Prepared: 9/21/08



Date Flown:  
12/2004



0 100 200 400 Feet

Prepared by the Town of Davie GIS Division

**Variance  
V 9-1-06  
Zoning and Aerial Map**

Prepared by: ID  
Date Prepared: 9/21/08