

IN THE MATTER OF
LIME CREEK HOLDING CO.
Attn: Jesse Fuchs-Simon, P.A.

BEFORE THE CECIL COUNTY
BOARD OF APPEALS
CASE NO.: 3599

(Variance)

OPINION

Application of Lime Creek Holding Co., Attn: Jesse Fuchs-Simon, P.A. (hereinafter, "Lime Creek" or the "Applicant") twelve (12) foot rear yard setback variances for construction purposes for all twenty one (21) lots on Caribou Court, Elkton, Maryland 21921, which are designated as Parcel 884, Lots 215-235 on Tax Map 21, Fourth Election District, Cecil County, Maryland (collectively, the "Property"). The Property is presently zoned Business Intensive (BI), and is owned by Lime Creek.

Under the provisions of Article XVII, Part I, Section 306, Paragraph 1, variances, as defined in Article II, may be granted by the Board of Appeals. Paragraph 2 of Section 306 requires the Board to examine all facts of the case and render a decision based upon the following criteria:

A. The variance request is based upon a situation where, because of special circumstances, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance.

B. Special conditions and circumstances exist that are peculiar to the land, buildings or structures involved, and that are not applicable to other lands, buildings, or structures in the same zone, such conditions and circumstances not being the result of actions by the applicant.

C. The granting of the variance will not confer upon the applicant any special privileges that are denied by this Ordinance to other properties in the same zone.

D. The variance request does not arise from any condition to land or building use, either permitted or non-conforming, on any neighborhood property.

Applicant is the owner of the Property, which consists of twenty one (21) unimproved lots. Kenneth Simmons (hereinafter, "Simmons") appeared and testified for the Applicant, and stated that he is the owner of Lime Creek. According to Mr. Simmons, the Ordinance permits only a six (6) foot deck over the restriction line; the Applicant now requests a twelve (12) foot variance for each of the twenty one (21) lots in order to construct a deck on each lot that is twelve (12) feet out. Simmons further testified that, although all twenty one (21) lots do not necessarily require the requested variance, he wants to be sure that he can offer a twelve (12) foot by twelve (12) foot deck to customers who desire one. Simmons stated that the plat provides for three parking spaces and a garage for each lot, which has caused the units to be pushed back toward the rear property line. Simmons testified that other lots have been granted the requested relief, specifically, Persimmon Creek.

No one appeared in favor of, or in opposition to, the application.

From the evidence presented the Board is satisfied that the criteria set forth in Section 306 has been met, and makes the following findings:

1. The variance request is based upon a situation where, because of special circumstances, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance. The Board finds that rear decks are a common and desirable feature for homes in the zone. The Board further finds that, as a result of the configuration of the proposed units on the plat, and the provision for substantial dedicated parking for each lot, there is insufficient space between the rear of the proposed units and the property line in which to construct a 12' x 12'

deck without a variance. The Board finds that the relief requested here is similar to relief provided in other areas, particularly Persimmon Creek and, further, that but-for the variance requested here, the Applicant would be unable to construct the proposed decks.

2. Special conditions and circumstances exist that are peculiar to the subject land, buildings or structures involved, and that are not applicable to other lands, buildings, or structures in the same zone. As stated above, the subject lots are such that, because of substantial designated parking for each lot, and the resulting configuration of the proposed units on the plat, there is insufficient area between the rear of the proposed units and property line to construct a 12' x 12' deck without a variance.

3. The granting of the variance will not confer upon the applicant special privileges that are denied by this Ordinance to other properties in the same zone. As stated above, similar relief has been provided in Persimmon Creek. Further, and as stated above, the Board finds that decks such as those proposed here are both commonplace and desirable to potential purchasers of residential dwellings in the zone.

D. There is no evidence that the variance request arises from any condition to land or building use, either permitted or non-conforming, on any neighborhood property.

For the reasons stated, by unanimous vote, the Board is satisfied that the criteria set forth in Section 306 has been met, and the application for a twelve (12) foot rear setback variance on Parcel 884, Lots 215-235, Tax Map 21, Fourth Election District of Cecil County is, therefore,

APPROVED.

TRUE COPY

James L. Dempsey
6/27/12

David Willis, Jr.
David Willis, Chairperson

Date

6/26/2012

BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND

MEET. MONTH: May 2012
 FILE NO. 3599

THIS REQUEST IS FOR:

- SPECIAL EXCEPTION RENEWAL
 SPECIAL EXCEPTION
 VARIANCE
 APPEAL

DATE FILED: 4/11/12
 AMOUNT PD: \$ 200.00
 ACCEPTED BY: CTH

CK - Persimmon Creek 524

A. APPLICANT INFORMATION

Lime Creek Holding Company

APPLICANT NAME - PLEASE PRINT CLEARLY

220 Continental Drive, Ste. 410, Newark DE 19713
 ADDRESS CITY STATE ZIP CODE

By: Steve Fishburn, Arthur M. Lip 302-254-0100 ext 224
 APPLICANT SIGNATURE PHONE NUMBER

B. PROPERTY OWNER INFORMATION

Lime Creek Holding Company

PROPERTY OWNER NAME - PLEASE PRINT CLEARLY

220 Continental Drive, Ste. 410, Newark DE 19713
 ADDRESS CITY STATE ZIP CODE

By: Jay N. Simon, President 302-254-0100 ext 224
 PROPERTY OWNER SIGNATURE PHONE NUMBER

C. PROPERTY INFORMATION

All 21 Lots on Caribou Court, Persimmon Creek Section 5, Elkton, MD 4th 04-035119
 PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER

0021 18 884 215-235 2.71 PM BI
 TAX MAP # BLOCK PARCEL LOT # #ACRES ZONE

D. PURPOSE OF APPLICATION - Indicate reasons why this application should be granted. (attach separate sheet if necessary)

SEE ATTACHMENT 1
12' Rear yard setback for all lots for deck construction

E. On an attached sheet, PLEASE submit a sketch of the property indicating the proposed project. Show distances from the front, side and rear property lines and the dimensions of the project. SEE ATTACHMENT 2

F. LAND USE DESIGNINATION

- Is property in the Critical Area? _____ YES _____ X _____ NO
 If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: _____
 Is property in the 100 year Floodplain? _____ YES _____ X _____ NO
 Is property an Agricultural Preservation District? _____ YES _____ X _____ NO

If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

G. PROVISION OF ZONING ORDINANCE: Section 306

H. SPECIAL EXCEPTION RENEWAL - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: N/A

I. SPECIAL EXCEPTION FOR A MANUFACTURED HOME - Please fill out the following information:

- Will unit be visible from the road? N/A If yes, distance: _____
 Will unit be visible from adjoining properties? _____ If yes, distance: _____
 Distance to nearest manufactured home: _____ Size/Model/Year of Unit: _____
 Number of units on property at present time: _____

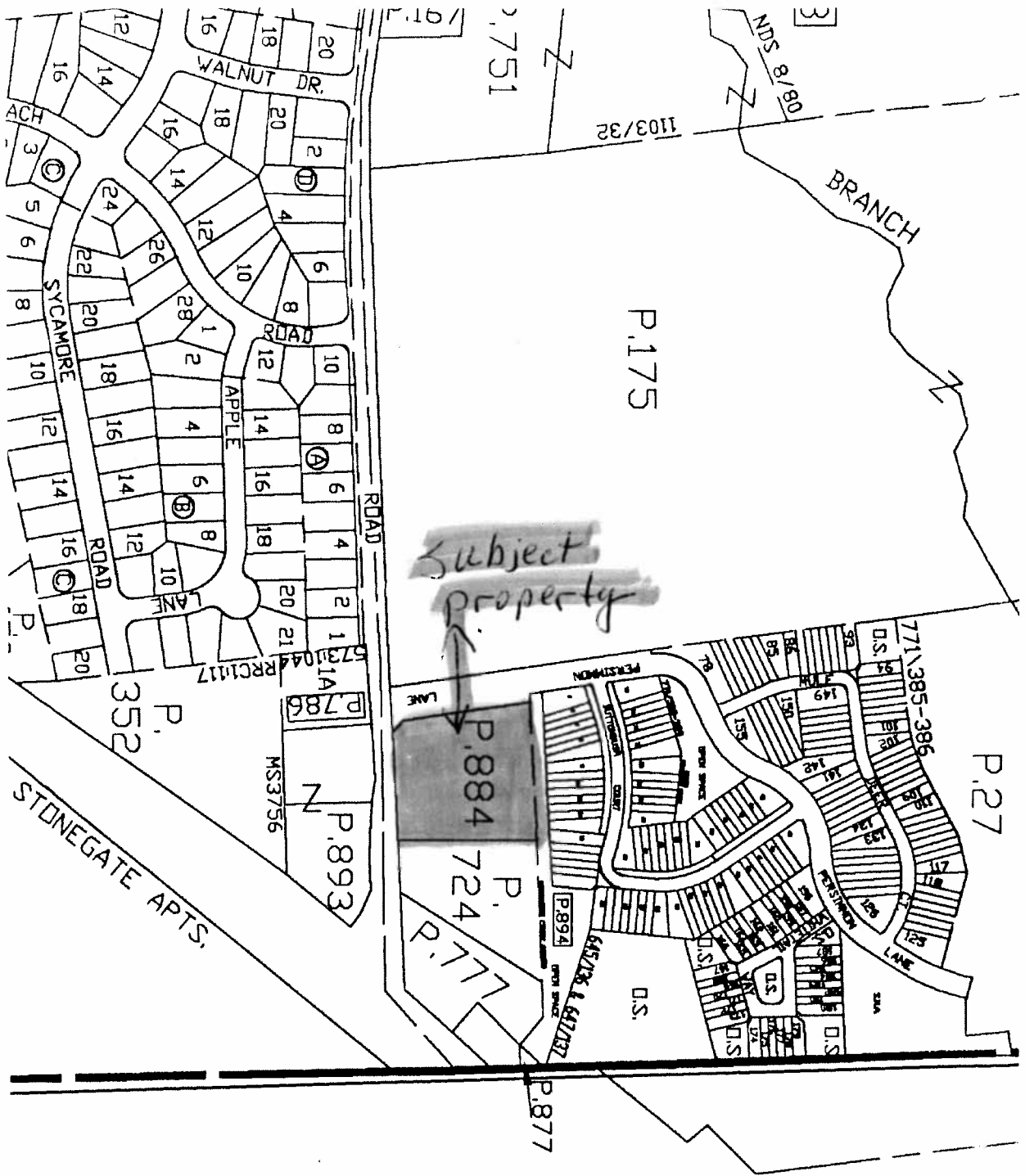
ATTACHMENT 1

BOARD OF APPEALS APPLICATION PERSIMMON CREEK SECTION 5, LOTS 215-235

PURPOSE OF APPLICATION

The owner seeks a variance from the restriction that prevents decks from being built more than 6 feet beyond the building restriction line. Owner requests a variance granting him permission to build rear decks on all 21 townhomes that extend an additional 6 feet beyond the building restriction line.

Based on the record plat for this subdivision ("Persimmon Creek Section 5, Lots 215-235") the owner has agreed to provide 3 parking spaces for each of the 21 townhomes. In order to provide 3 parking spaces per townhome, the townhomes must be built at the very back of the building restriction line, in order to allow for 2 stacked parking spaces in front of each house on the majority of the 21 lots. The owner would like to build rear decks on the 1st floor of approximately 10-12 feet deep on each unit. Nevertheless, it is not possible to do so and keep the decks within the 6 feet beyond the building restriction line requirement. Therefore, the owner requests that the County grant him a variance on all 21 lots to allow for decks to extend beyond the building restriction line by an additional 6 feet.



File # 3599

Lime Creek Holding Co.
map 21 / parcel 884

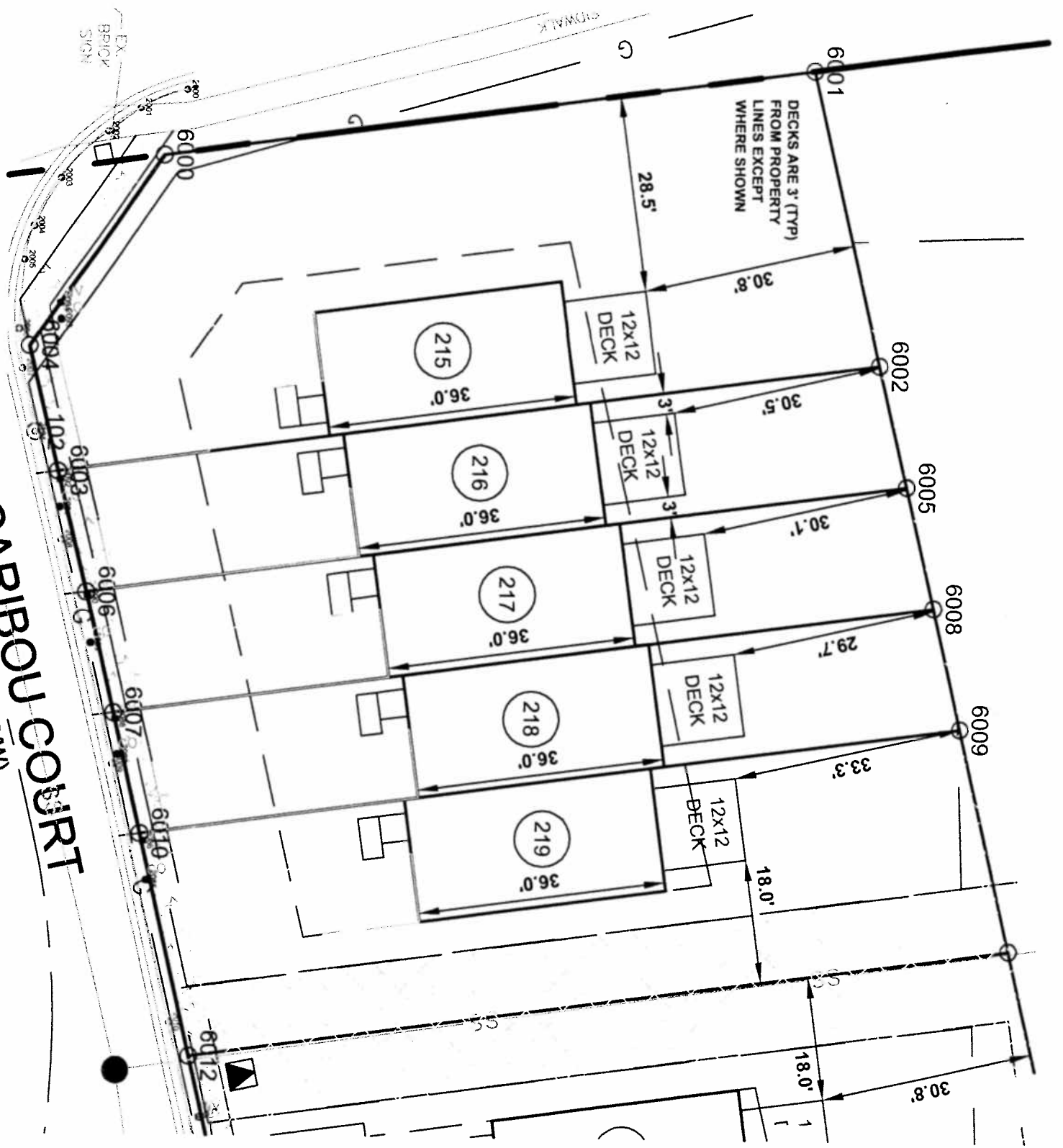
ATTACHMENT 2

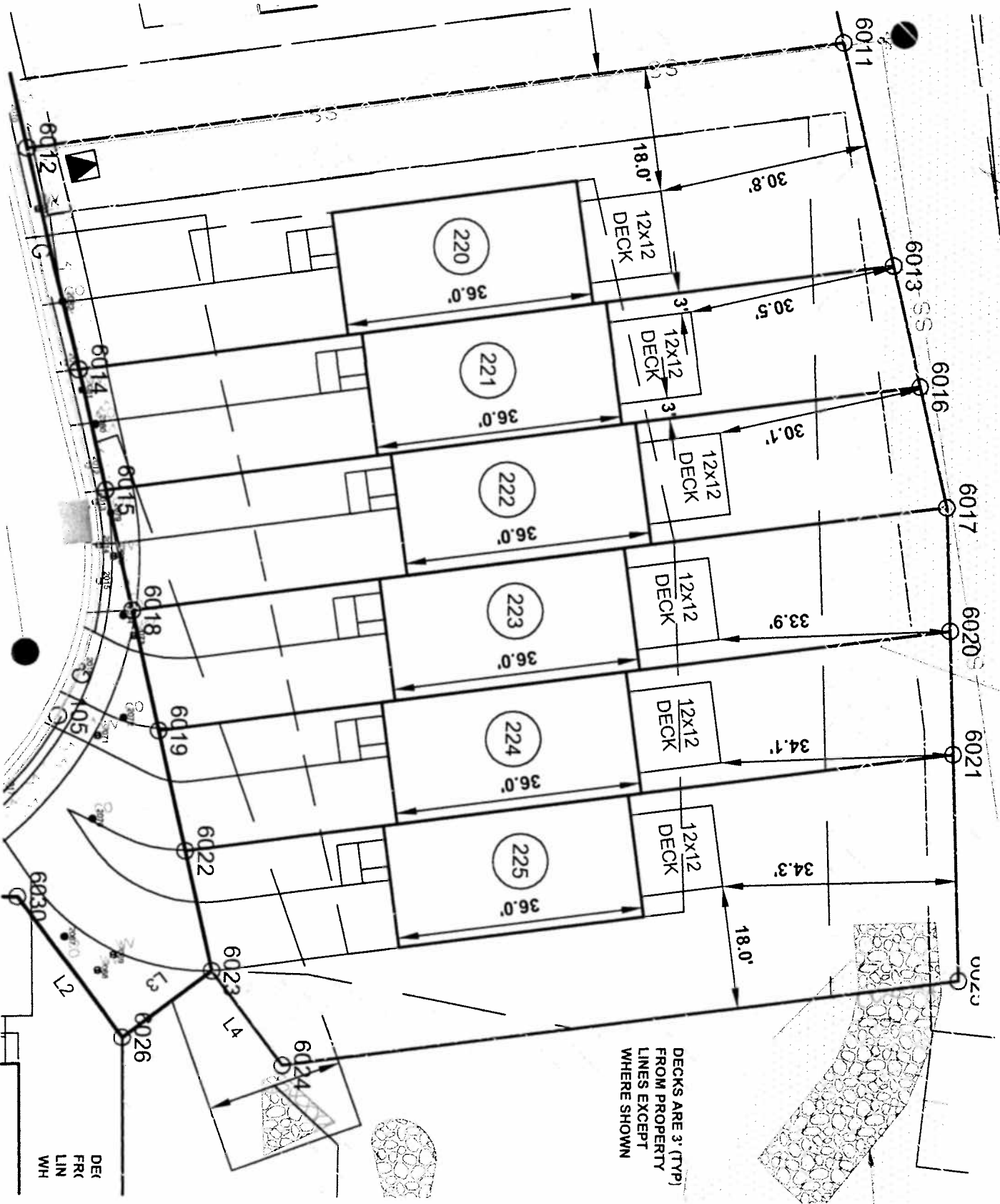
BOARD OF APPEALS APPLICATION
PERSIMMON CREEK SECTION 5, LOTS 215-235

SKETCH OF PROPOSED PROJECT

CARIBOU COURT

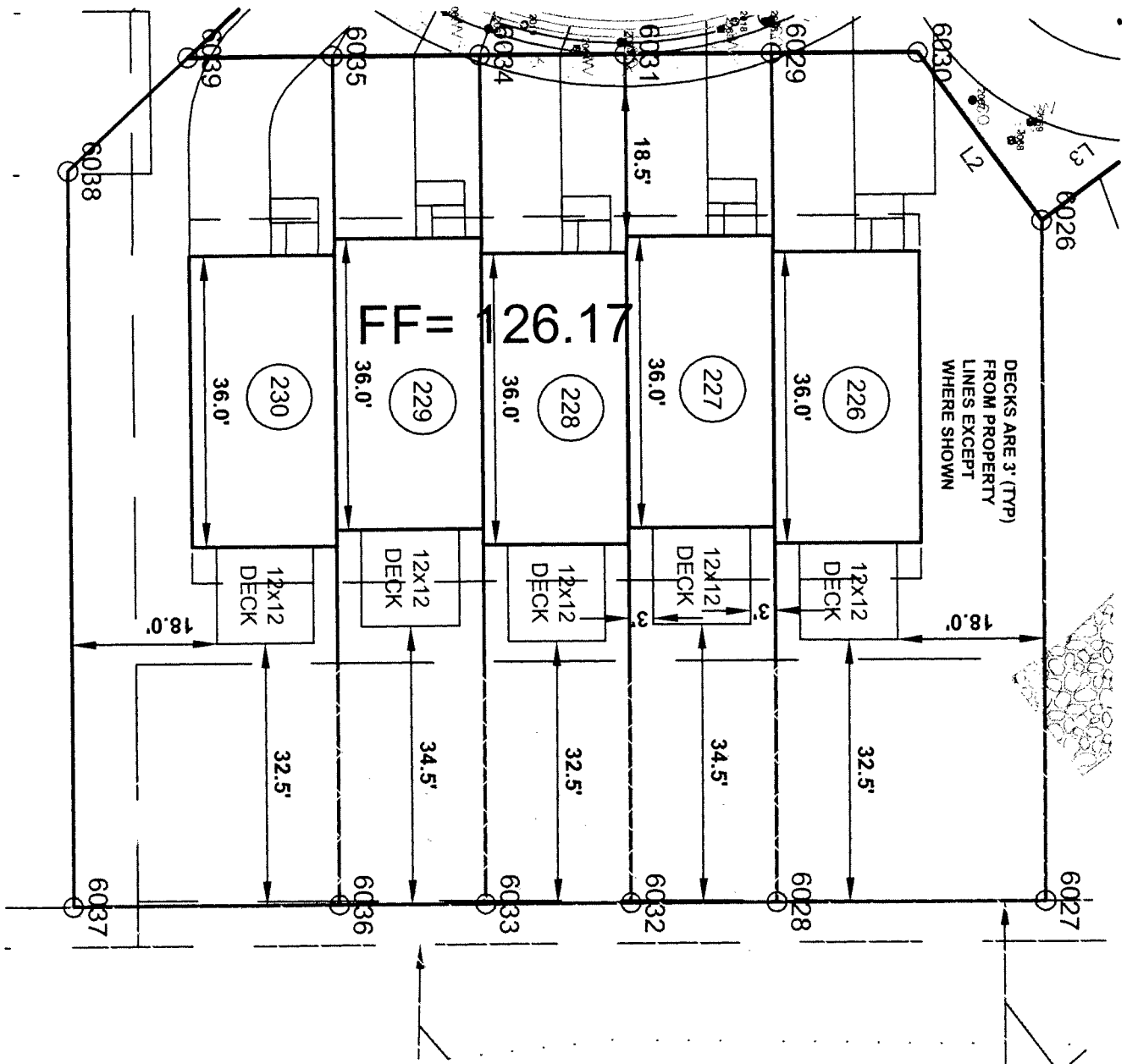
(SEE PLAN)

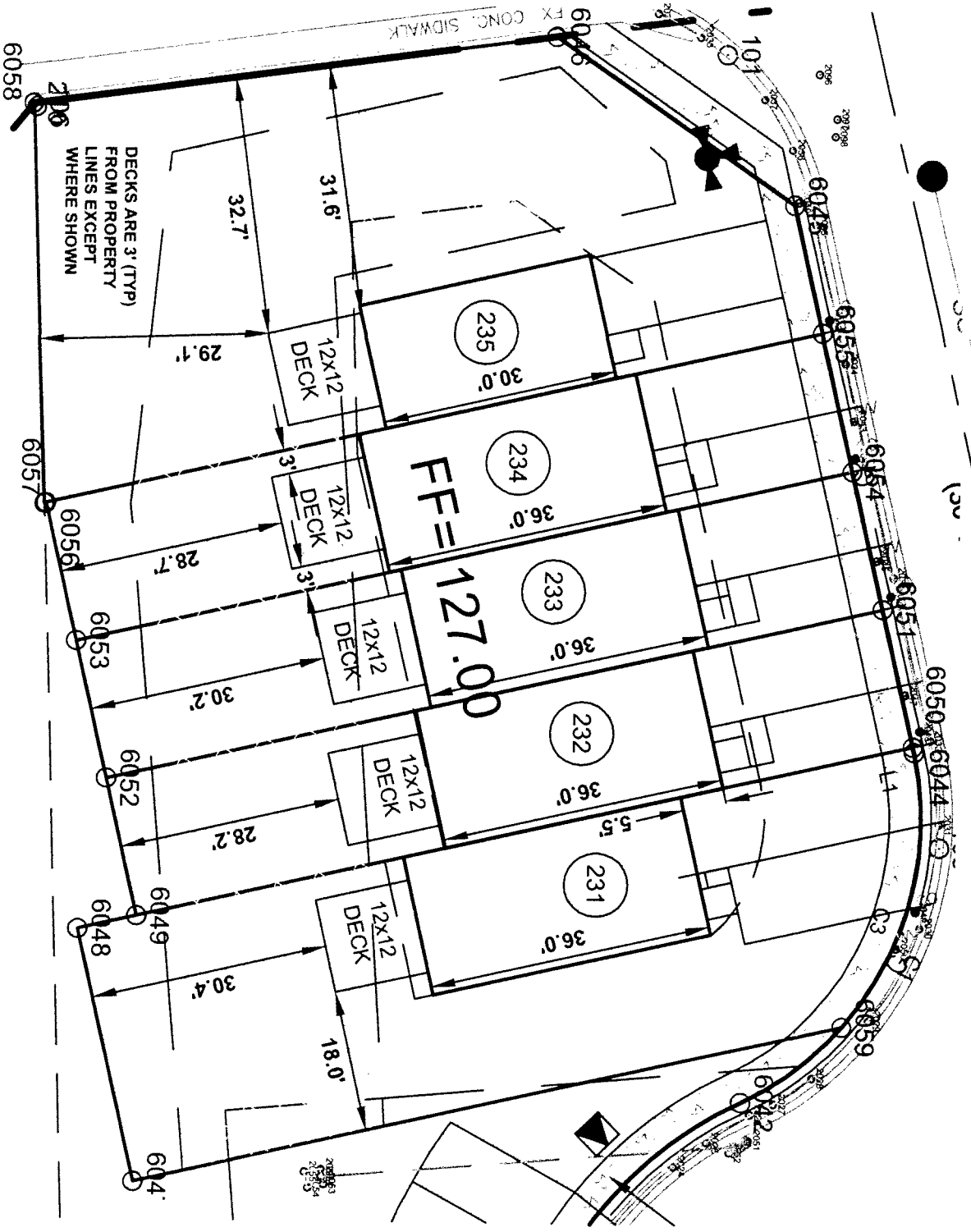




DECKS ARE 3' (TYP)
FROM PROPERTY
LINES EXCEPT
WHERE SHOWN

DEK
FRK
LIN
WH





DECKS ARE 3' (TYP)
FROM PROPERTY
LINES EXCEPT
WHERE SHOWN

FF=127.00

12x12
DECK

12x12
DECK

12x12
DECK

12x12
DECK

12x12
DECK

235
30.0'

234
36.0'

233
36.0'

232
36.0'

231
36.0'

32.7'

29.1'

28.7'

30.2'

28.2'

30.4'

31.6'

3'

3'

5.5'

18.0'

6058

210

6057

6056

6053

6052

6049

6048

604

6046

6043

6055

6054

6051

6050

6044

6059

6042

FX CONC. SIDEWALK

10.1'