

FILE COPY

Agenda Item #

Conservation & Development

Contra Costa County

BOARD OF APPEALS
COUNTY PLANNING COMMISSION
TUESDAY, AUGUST 26, 2008

I. INTRODUCTION

JOHN & JERILYN HORNYAK (Owner & Appellant), County File #VR08-1008: This is an appeal of the Zoning Administrator's denial of a variance request for a 1-foot side yard setback (5-foot minimum required), and an 11-foot total side yard aggregate (15-foot minimum required), for an existing deck. The subject property is located at 4202 Foster Lane, in the El Sobrante area. (R-6) (ZM:H-6) (CT:3630.00) (Parcel #425-130-026).

II. RECOMMENDATION

Staff recommends that the Board of Appeals deny the appeal and sustain the Zoning Administrator's denial of County File #VR08-1008.

III. GENERAL INFORMATION

- A. General Plan: The general plan designation for the site is Single Family-High Density (SH).
- B. Zoning: The site is zoned R-6 Single-Family Residential District, (R-6).
- C. Previous Applications/Files: No previous applications.

IV. SITE AND AREA DESCRIPTION

The subject property is located within a semi-rural setting consisting of rolling hillsides in the El Sobrante area. One single family residence has been established on the 9,100 sq.ft. lot since 1960. An unpermitted 19 ft. high, 658 sq.ft. deck is located along the west and southern edges of the residence. The topography is steep and slopes downward from the property's frontage (Foster Lane) to the southern portion of the parcel. Appian Creek is located along the southern property line of the site where a portion of the lot is in flood zone A. The area surrounding the property is developed as a single family high density residential area. The city of Richmond Boundary Line and cemetery lands are located further west of the subject property.

1770 2 17

V. BACKGROUND

This variance application is for a 658 sq.ft., 19 ft. tall deck built without permits within the required side yard setback. This application was filed in January of 2008, due to a Code Enforcement case (RF05-00918), which was opened in May of 2005. A "Notice of Intent" letter was sent to Mr. Hornyak on April 3, 2008, informing him of staff's intent to recommend denial of his variance application. On April 14, 2008, staff submitted the file and a recommendation to deny the application to the Zoning Administrator for a decision. The Zoning Administrator administratively denied the variance request on April 23, 2008, after determining the project did not meet all three necessary findings for the granting of a variance (County Code Section 26-2.2006).

VI. PROPOSED PROJECT

The variance request is for a 1-foot existing side yard setback (5-foot minimum required) and an 11-foot total side yard aggregate (15-foot minimum required) for the purposes of legalizing a deck built without permits. The deck spans 42'7" along the western edge of the property and 43'9" on the southern edge. The height of the deck is approximately 19' with a total area of 658 sq.ft. A 5 ft. high glass panel wraps around the southern portion of the deck with an 8'6" fence spanning the western edge for approximately 20 ft.

VII. REVIEW OF APPEAL/ VARIANCE FINDINGS

In the appeal letter dated May 4, 2008, Mr. Hornyak responds to each variance finding required by County Code 26-2.2006. Below are the required variance findings, Mr. Hornyak's response, staff's discussion of each argument and each required project finding:

1. **Required Variance Finding:** That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located,

Applicant's Response: "Reference to "grant special privilege" there has been a variance issued to the property referred to as APN 425-130-024 and 425-130-021".

Staff's Discussion: Variance application #VR83-1057 was approved for a 3-foot side yard setback for the addition of a covered deck to a single family residence located at 4172 Foster Lane (APN: 425-130-021). The covered deck structure was added to the western side of the property and is approximately 120 sq.ft. in area. The deck overlooks an area designated as

open space which is vacant due to steep topography and rough terrain. The elevation of the finished floor is roughly 3 ft. above grade.

No variance applications were filed with the Department of Conservation and Development on APN: 425-130-24

Project Finding: County zoning ordinance 84-4.802, states: "There shall be an aggregate side yard width of at least fifteen feet. No side yard shall be less than five feet wide. These minima may be reduced to three feet for an accessory building or structure if it is set back at least fifty feet from the front property line". The approval of a variance for a one-foot side yard and eleven-foot total side yard aggregate would be a special privilege since no other properties in the immediate vicinity have approved variances that are comparable to this request.

2. **Required Variance Finding:** That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.

Applicant's Response:

- A) *"The special circumstances applicable to this residence applies because the house was not laid out on the property to allow side yard access to the deck from the main level of the house".*

Staff's Discussion: Access to the deck can easily be accomplished by installation of a stairway at the rear of the property. This alternative will provide increased access to the rear yard and deck from the western side of the property where there is currently none. In addition, access currently exists to the deck from the interior of the residence.

- B) *If property was level from front to back of the house, the deck and back yard could be accessible through the garage door. We shouldn't have to go through the kid's bedroom to access the deck,*

Staff's Discussion: Access to the rear yard is limited due to the western portion of the deck being constructed within the required setbacks. By removing this portion of the deck, Mr. Hornyak would increase his accessibility to his rear yard and deck while complying with the side yard setback requirements.

Project Finding: *The subject lot is typical for the area. There are no special circumstances regarding its size or shape to grant the variance. The property is quite steep; however, the topography is similar to the surrounding properties. Granting the variance to legalize a 19' tall, 658 sq.ft. deck within*

the required side yard setback would be a grant of special privilege inconsistent with the R-6 regulations.

3. **Required Variance Finding:** That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located,

Applicant's Response: The land use is a single-family residence not a commercial development,

Staff's Discussion: Staff is in agreement with Mr. Hornyak. Each land use district has an established set of zoning regulations which regulates development.

Project Finding: The current one-foot side yard setback (five-foot minimum required) of the deck does not substantially meet the intent of the R-6 zoning standards. Approval of the structure would be a grant of special privilege inconsistent with the R-6 regulations.

VIII. ADDITIONAL CONSIDERATIONS

2007 California Building Code

Mr. Hornyak will eventually be required to comply with the new Building Code. Consequently, the 2007 California Building Code, states a 1-hour fire rated wall with no openings would be required to be built or heavy timber construction. This provision will require the entire western edge of the deck (42'7") to be removed and rebuilt. Additionally, for decks, the firewall will be required to be constructed up to the walking surface of the deck (10ft. tall). The firewall will undoubtedly aggravate the variance request given the current 1 ft. setback of the deck. The firewall could possibly encroach onto the neighbor's (4192 Foster Lane) property.

County Ordinance, 82-14.002, Obstructions in yard areas

County Ordinance, 82-14.002, (Obstructions in yard areas) states, "Every part of a required yard area shall be open and unobstructed to the sky, except that fire escapes, open stairways, chimneys, and the ordinary projections of sills, belt-courses, eaves, and ornamental features which do not obstruct the light and ventilation on any adjoining parcel of land shall not constitute obstruction nor violate required yard regulations". The existing deck clearly violates the purpose of this ordinance.

IX. Summary Of Staff Analysis

Mr. Hornyak's appeal has very little merit as the unpermitted deck does not meet the required variance findings. The request would grant Mr. Hornyak a "special privilege" as no other comparable variances have been granted in the immediate El

Sobrante area. A special circumstance does not exist that warrants the approval of such an encroachment into the required side yard setback. If the deck were reduced in size, Mr. Hornyak would gain additional access to the rear of his property. The property is zoned R-6 Single Family Residential District, which has clearly defined yard requirements that can only be reduced after all three necessary variance findings have been satisfied.

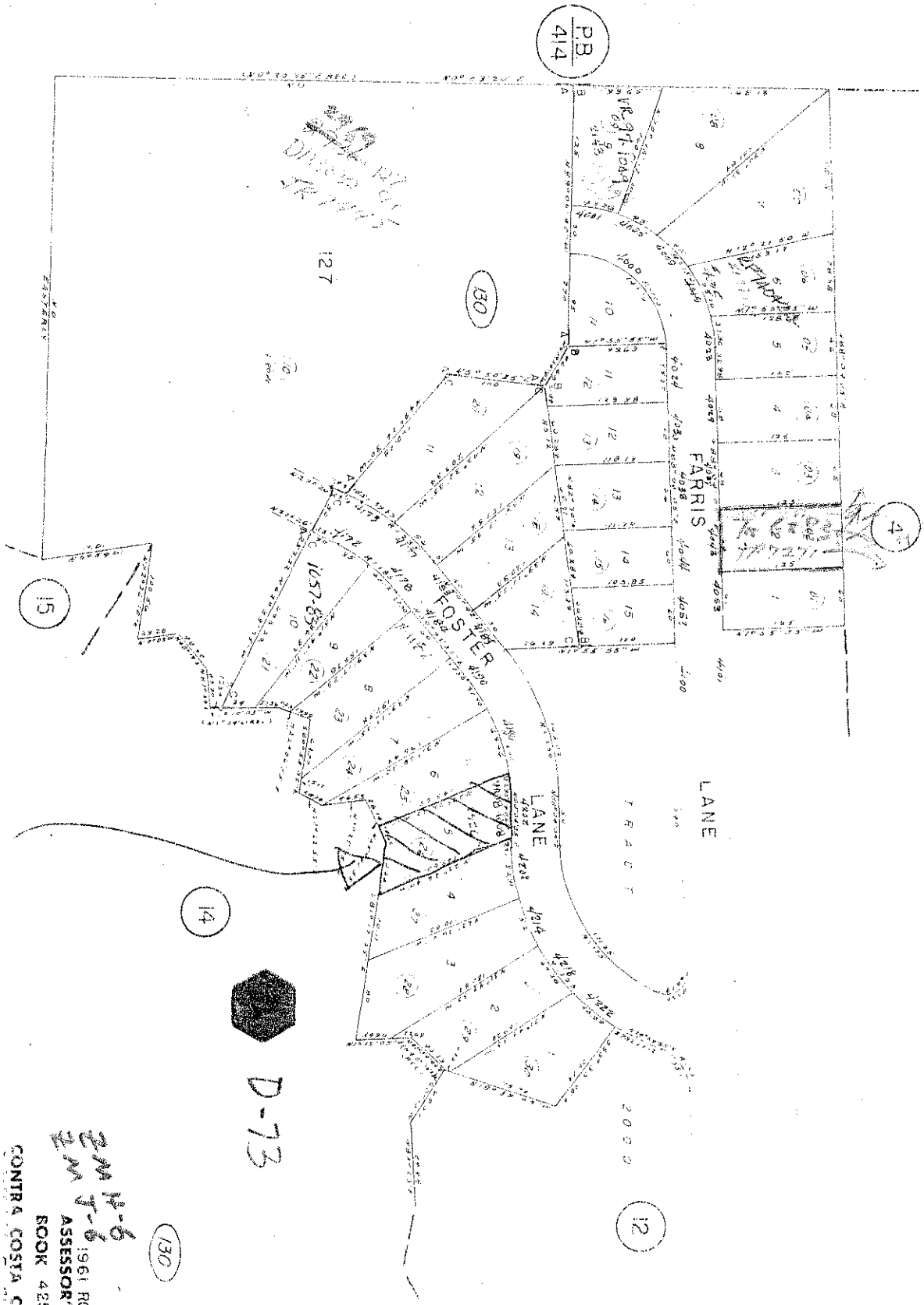
X. CONCLUSION

Staff recommends that the County Planning Commission deny the appeal and uphold the Zoning Administrators denial of County File #VR08-1008.

A-POR SAN PABLO RANCHO
 9-TRACT 2362 M.B. 68-41
 1960 ROLL-C-TRACT 2596 M.B. 74-3

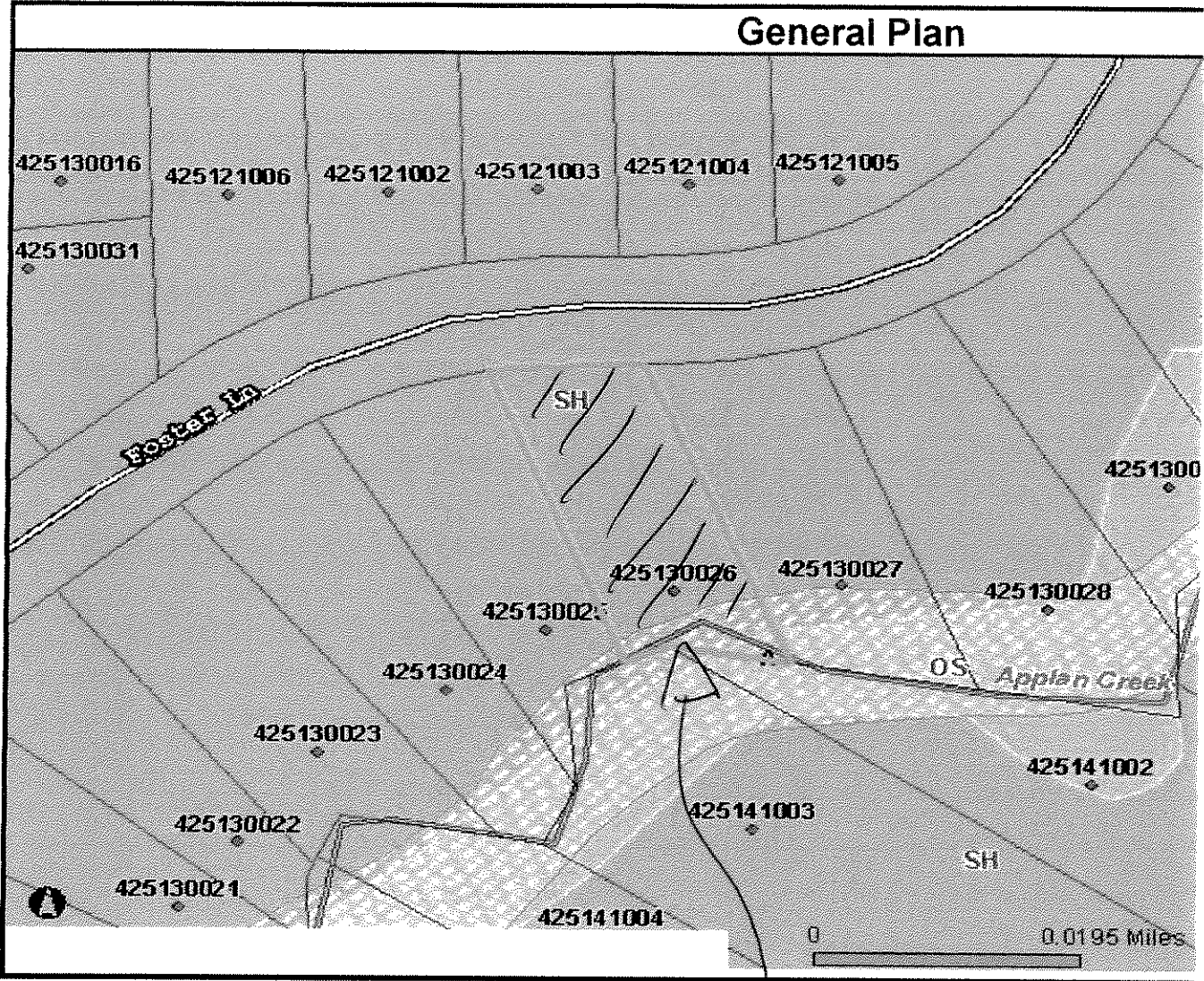
TAX CODE AREA

41-3630



2M 11-6
 2M 1-6
 1961 ROLL
 ASSESSOR'S MAP
 BOOK 425 PAGE 13
 CONTRA COSTA COUNTY, CAL

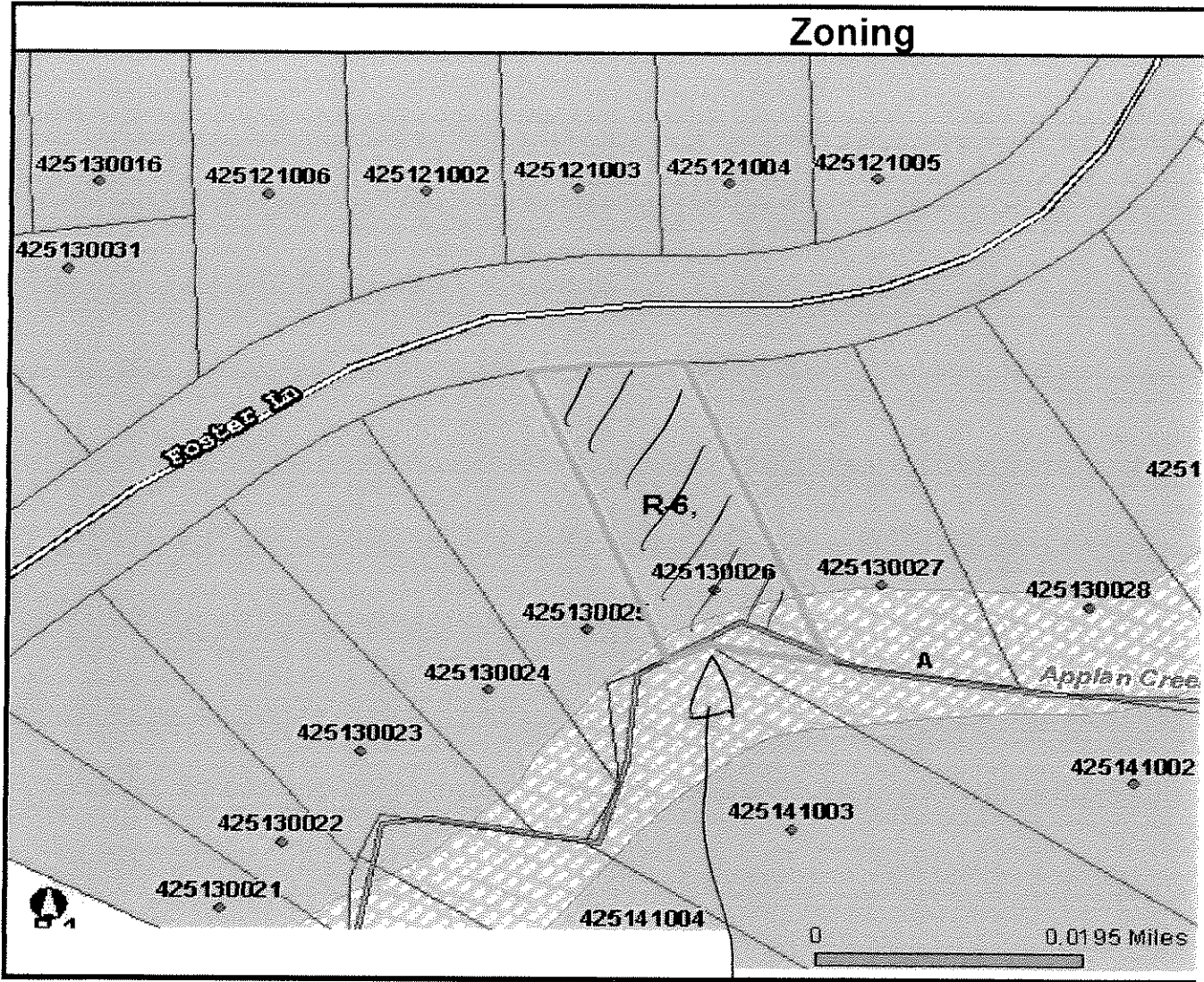
General Plan



SITE

SH - General Plan

Zoning



SITE

R-6, Zoning

Color Ortho



SITE

Aerial view
Flood Zone A/C

PLANNING INQUIRY -- ENTER PARCEL NBR 425 - 130 - 026

PCL NO 425-130-026-7 SITE 4202 FOSTER LN ELSOB
USE CODE 11 100.0% J
OWNER HORNYAK JOHN C & JERILYN NOTF 4202 FOSTER LN 94803
EL SOBRANTE CA -2218

***** PLANNING *****

PLAN AREA TO ***** TRA 85004 *****
SPEC/RED PLAN FROM 000-001-138-7 CONSOLIDATED FIRE
PARK DED LAND- 124,210 CO SERV AREA L-100
ZONING IMPR- 97,037 EMS - 1 ZONE B
CENSUS TRACT 3630.00 TOTL- 221,247 CO SERV AREA P-6
SEISMIC ZN SERV AREA LIB 2
GENRL PLAN FLD HZD ZN EL CC RES CONSV
SCHOOL FEE DRNGE FEE 2567 MOSQUITO ABATE 1
SUP DIST 1 ACREAGE WEST CO WASTEWATER
DESC TRACT 2596 5 EAST BAY MUD

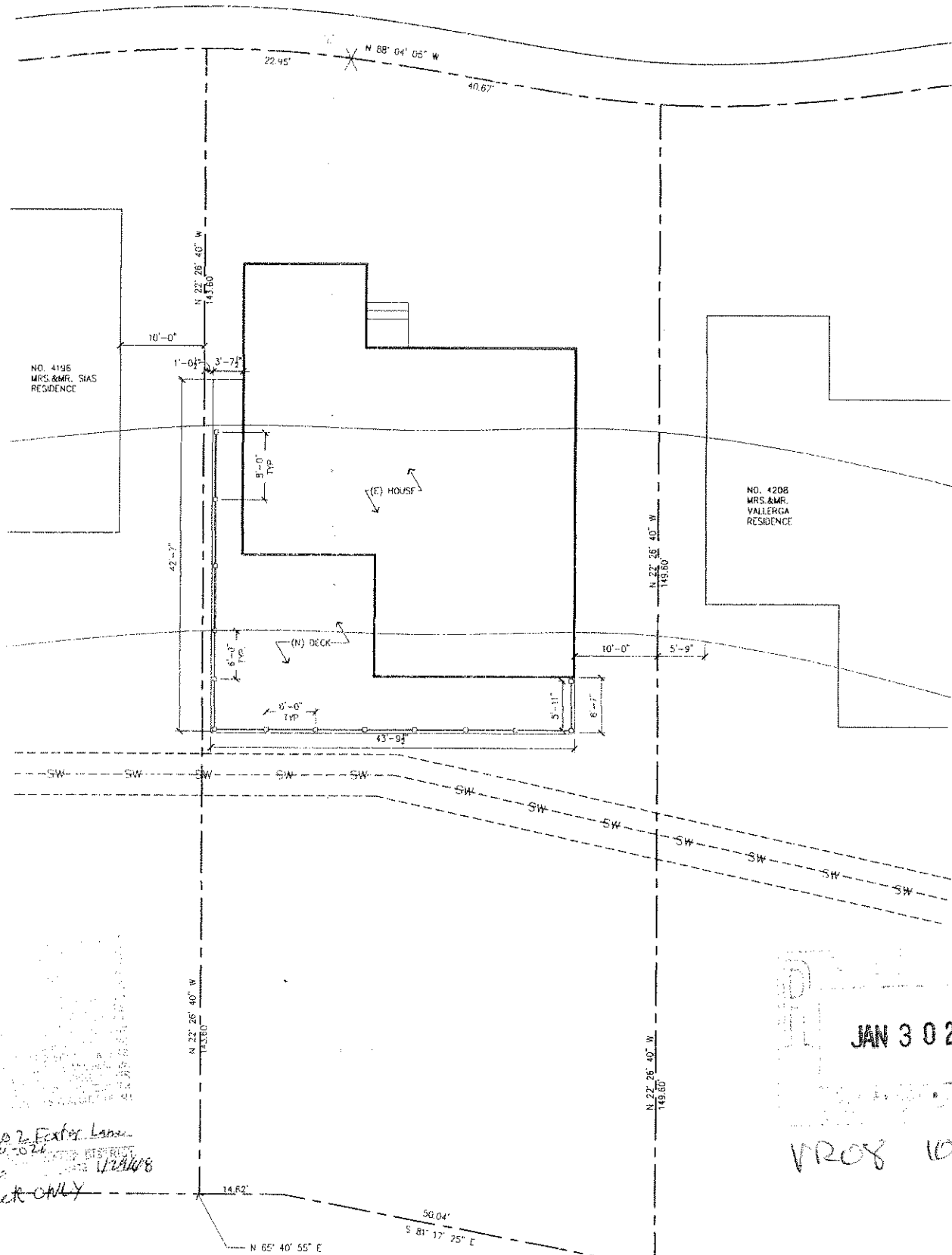
APPLICATIONS

AG DP PL NO. CD DESC LOT C APP RCVD HRNG/FNL ST
EAST BAY REGNL PK
EAST BAY REG PK BD
WEST CC UNIFIED
WCC UNIF BOND 2000
WCCUSD 2002 BOND

01/30/2008 LFP2763 HIT PA1 FOR OVERFLOW

LFP2763

FOSTER LANE STREET



PROJECT DATA

JURISDICTION:
CONTRA COSTA COUNTY

ZONE:
R-6

CODE:
2001 C.B.C.: CONTRA COSTA COUNTY ORDINANCE CODE

SQUARE FOOTAGE:
DECK AREA = 658 SF.

GENERAL NOTES

- THESE DRAWINGS INDICATE THE GENERAL SCOPE OF THE PROJECT IN TERMS OF ARCHITECTURAL DESIGN CONCEPT, THE DIMENSIONS OF THE BUILDING, THE MAJOR ARCHITECTURAL ELEMENTS AND THE TYPE OF STRUCTURAL SYSTEM.
- ALL CONSTRUCTION AND MATERIALS SHALL BE AS SPECIFIED AND AS REQUIRED BY THE CURRENT EDITION OF THE U.C., LOCAL CODES AND AUTHORITIES.
- THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND SITE CONDITIONS BEFORE STARTING WORK. STATED DIMENSIONS ALWAYS TAKE PRECEDENT OVER SCALED DIMENSIONS.
- DIMENSIONS SURFACES:
 - ALL DIMENSIONS SHALL HAVE PREFERENCE OVER SCALE.
 - GRID DIMENSIONS ARE TO THE COLUMN CENTER LINE UNLESS OTHERWISE NOTED.
- CUT AND PATCH EXISTING WALLS, FLOORS AND CEILINGS AS NOTED OR REQUIRED FOR NEW MECHANICAL AND ELECTRICAL INSTALLATIONS. PATCH TO MATCH EXISTING FINISHES.

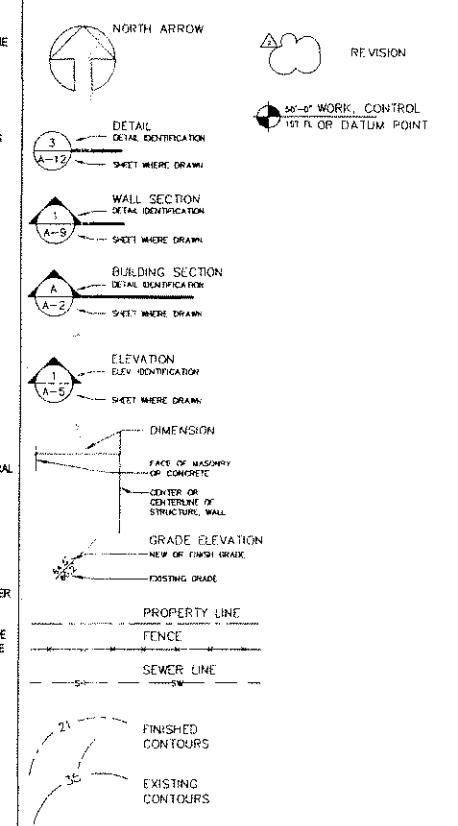
DRAWING INDEX

- A-1 TITLE SHEET AND SITE PLAN
- A-2 FLOORING, FOUNDATION PLANS, AND DETAILS

ABBREVIATIONS

ACOUS.	ACOUSTICAL	PTIL	PARTITION
ADJ.	ADJUSTABLE, ADJACENT	PERP.	PERPENDICULAR
AFF.	ABOVE FINISH FLOOR	PL.	PLATE, PROPERTY LINE
AFS.	ABOVE FINISH SURFACE	PLASLAM.	PLASTIC LAMINATE
ALUM.	ALUMINUM	PLYWD.	PLYWOOD
ANOD.	ANODIZED	PLBS.	PLUMBING
APPROX.	APPROXIMATE	PNL.	PANEL, PANELING
B.	BRIE	PR.	PAIR
BO.	BOARD	PROJ.	PROJECT
BLDG.	BUILDING	PRV.	PRESSURE REDUCING VALVE
BLK.	BLOCK	PT.	POINT
BLKG.	BLOCKING	O.T.	QUARRY TILE
BOT.	BOTTOM	OTR.	QUARTER
BTW.	BETWEEN	R.	RADIUS
CB.	CATCH-BASIN	R.D.	ROOF DRAIN
C.I.	CAST IRON	R.L.	RAIN LEADER
C.I.P.	CAST IN PLACE	RECD.	RECEDED
CL.	CENTER LINE/CLEAR	REF.	REFRIGERATOR
CLG.	CEILING	REINF.	REINFORCING
CMU.	CONCRETE MASONRY UNIT	RECD.	REQUIRED
COL.	COLUMN	R.O.	ROUGH OPENING
CONC.	CONCRETE	SCHED.	SCHEDULE
CONT.	CONTINUOUS	S.C.	SOLID CORE
CONSTR.	CONSTRUCTION	SHT.	SHEET
CONTR.	CONTRACTOR	SM.	SIMILAR
C.T.	CERAMIC TILE	SPEC'D.	SPECIFIED
DBL.	DOUBLE	SQ.	SQUARE
DTL.	DETAIL	S.S.	SANITARY SEWER
D.F.	DRAINING FOUNTAIN	SST.	STAINLESS STEEL
D.S.	DOWNSPOUT	STD.	STANDARD
DRAWG.	DRAWING	STL.	STEEL
EA.	EACH	STRLCT.	STRUCTURE, STRUCTURAL
E.F.S.	EXTERIOR FINISH SYSTEM	SUSP.	SUSPENDED
E.I.F.S.	EXTERIOR INSULATION & FINISH SYSTEM	SYS.	SYSTEM
ELEV.	ELEVATION, ELEVATOR	T.	TREAD, TOP
ELEC.	ELECTRICAL	T&B.	TOP & BOTTOM
ENCL.	ENCLOSURE	TEL.	TELEPHONE
EQ.	EQUAL	TEMP.	TEMPERED
EXH.	EXHAUST	T&G.	TONGUE & GROOVE
EXIST.	EXISTING	T.G.	TEMPERED GLASS
EXP.	EXPANSION	T.P.	TOILET PAPER DISPENSER
EXT.	EXTERIOR	TYP.	TYPICAL
F.D.	FLOOR DRAIN	UTL.	UTILITY
F.F.	FOUNDATION	U.B.C.	UNIFORM BUILDING CODE
FHS.	FLAT HEAD SCREW	V.C.T.	VINYL COMPOSITION TILE
FL.	FLOOR	VERT.	VERTICAL
F.I.O.	FURNISHED & INSTALLED BY OWNER	W.	WITH
F.R.P.P.	FIBER REINFORCED PLASTIC	W/O.	WITHOUT
FTG.	FOOTING	WDW.	WINDOW
GA.	GALVE	W.H.	WATER HEATER
GALV.	GALVANIZED	W.P.	WATERPROOF
GL.	GALVANIZED IRON	W.S.	WATER SOFTENER
GLP.	GYPSONUM LATH & PLASTER	WR.	WATER RESISTANT
GWB.	GYPSONUM WALLBOARD, GYPSONUM BOARD	WT.	WEIGHT
H.B.	HOSE BIB	W.W.M.	WELDED WIRE MESH
H.C.	HANDICAPPED	W.W.F.	WELDED WIRE FABRIC
H.M.	HOLLOW METAL	Y.D.	YARD DRAIN
HORIZ.	HORIZONTAL		
HT.	HEIGHT		
HTR.	HEATING		
INSUL.	INSULATION		
JT./JTS.	JOINT/JOINTS		
L.	LONG, LENGTH		
LAM.	LAMINATE, LAMINATED		
L.F.	LINEAR FOOT, LINEAL FOOT		
LQ.	LIQUID		
LT.WT.	LIGHT WEIGHT		
MAS.	MASONRY		
MAX.	MAXIMUM		
M.B.S.	METAL BUILDING SUPPLIER		
MECH.	MECHANICAL		
MEZZ.	MEZZANINE		
MTL.	METAL		
MFG.	MANUFACTURING		
MFR.	MANUFACTURER		
M.H.	MANHOLE		
MNL.	MISCELLANEOUS		
MISC.	MISCELLANEOUS		
M.O.	MASONRY OPENING		
M.R.	MOISTURE RESISTANT		
MULL.	MULLION		
MTD.	MOUNTED		
MTS.	MOUNTING		
N.C.	NOT IN CONTRACT		
N.L.C.	NOT IN CONTRACT		
NOM.	NOMINAL		
N.T.S.	NOT TO SCALE		
O.A.	OVERALL		
O.C.	ON CENTER		
O.D.S.	OVERFLOW DOWN SPOUT		
O.H.	OVERHEAD		
OPG.	OPENING		
OPP.	OPPOSITE		

LEGEND OF SYMBOLS



Revisions

No.	Revisions	By	Date	Appr.

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EL SOBRANTE, CA 94803-2218
(APN: 425-130-026)

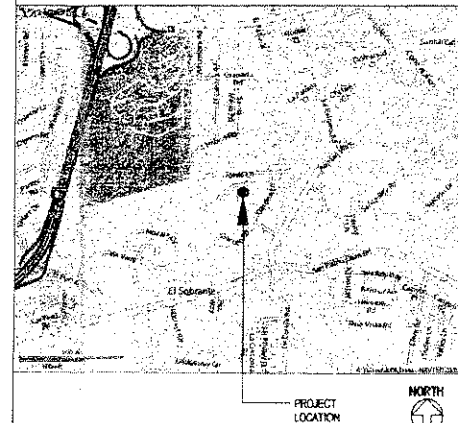
PROJECT:

DECK DESIGN FOR
JOHN AND JERILYN HORNYAK

SHEET TITLE:

TITLE SHEET AND SITE PLAN

VICINITY MAP

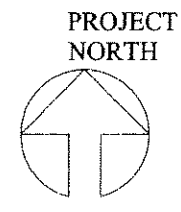


Scale: N.T.S.
 Dwn By: ELG
 Chkd By:
 Issue Date: 1/25/08
 Sheet

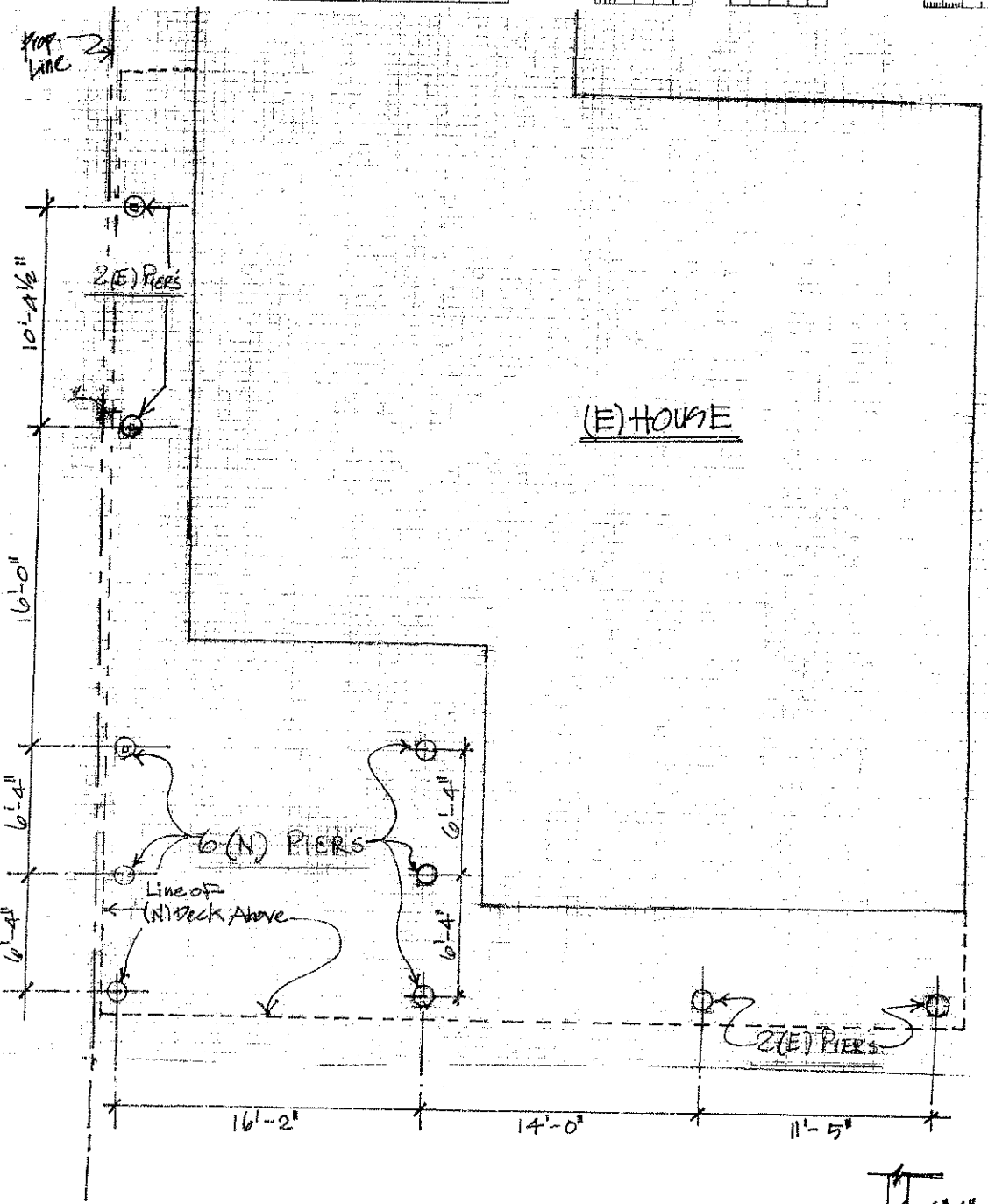
A-1

1 Of 2 Sheets

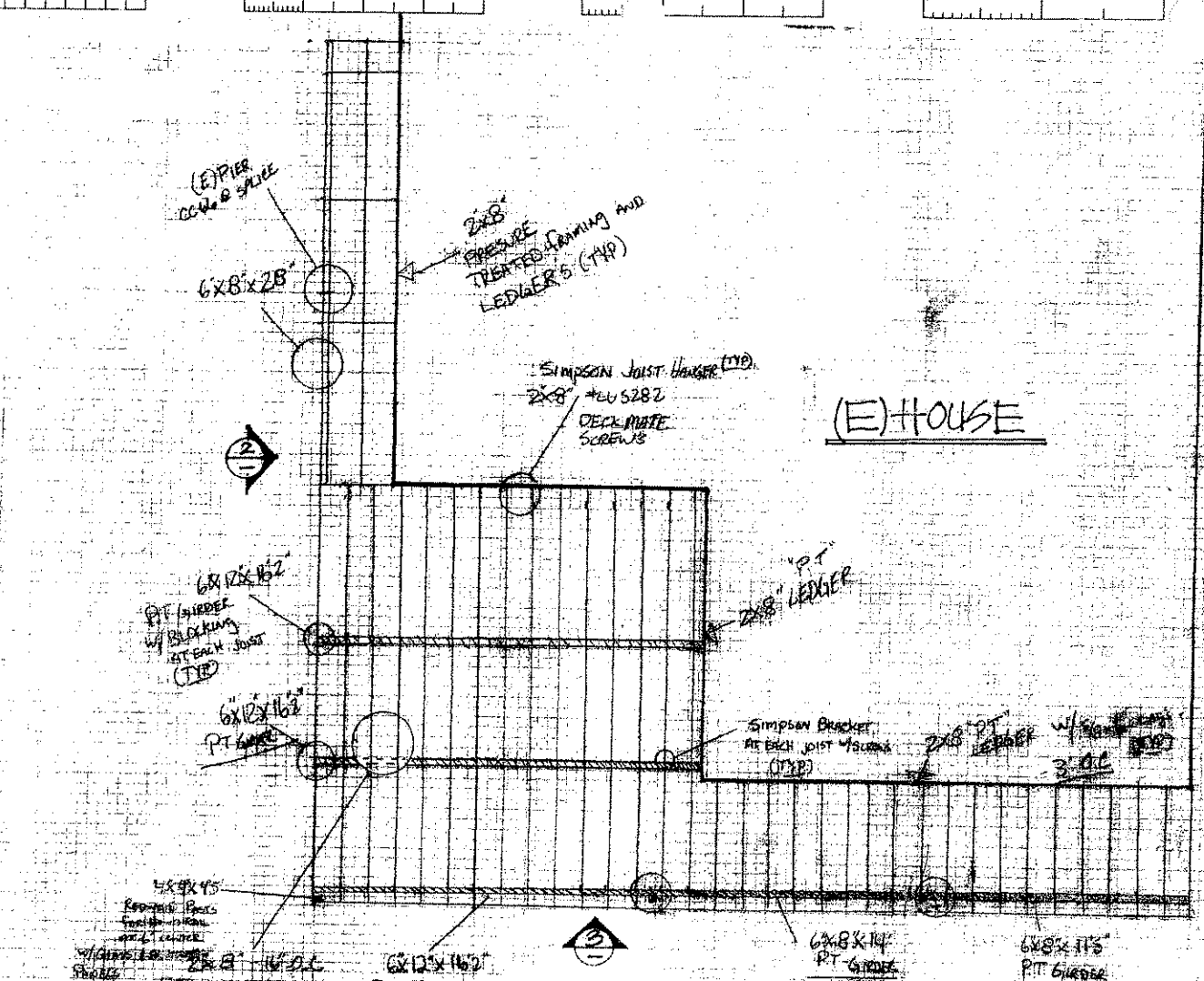
JAN 30 2008
VRO8 1008



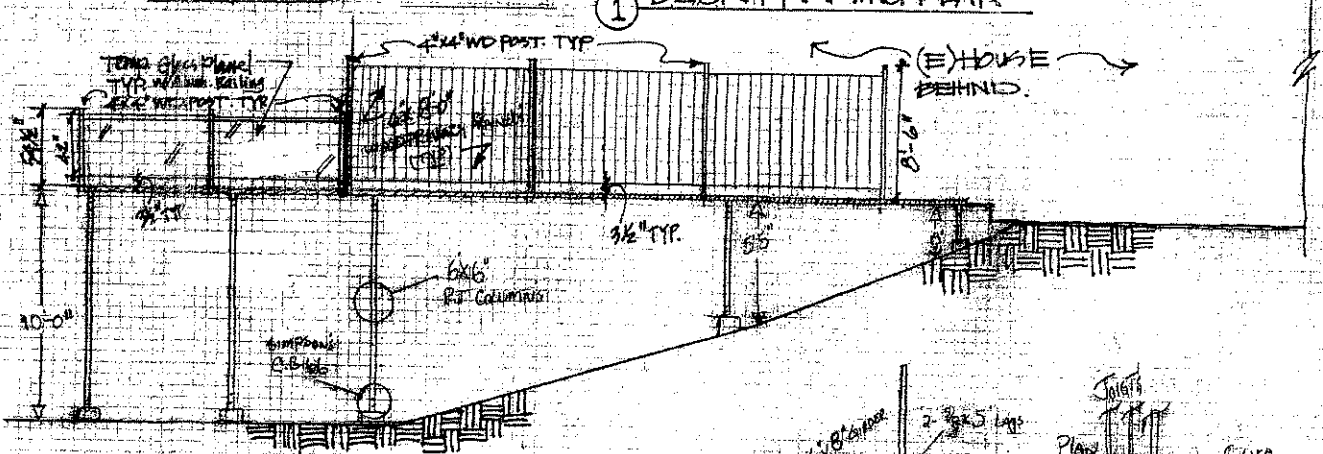
4202 Foster Lane
425-130-026
Deck ONLY



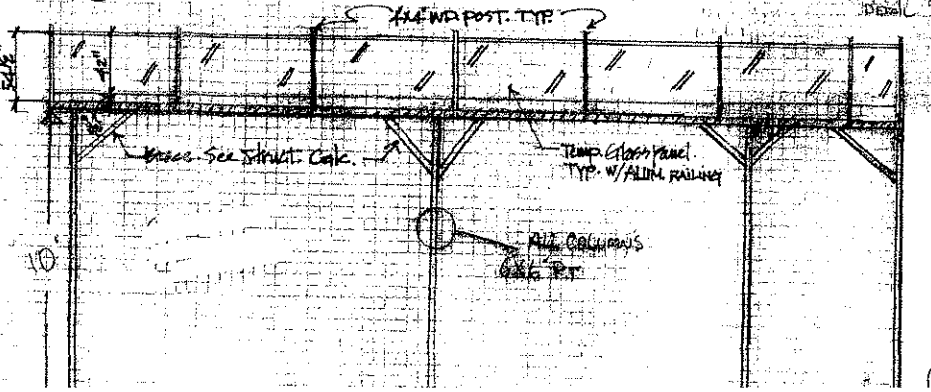
4 FOUNDATION PLAN



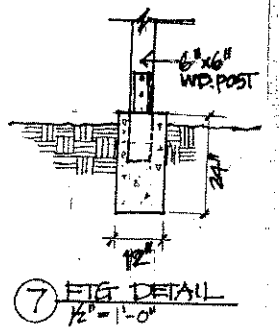
1 DECK FRAMING PLAN



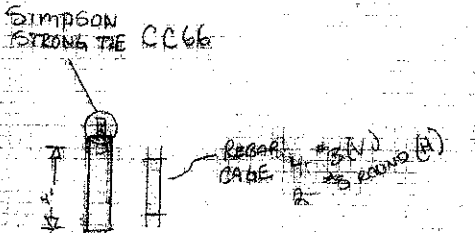
2 WEST ELEVATION



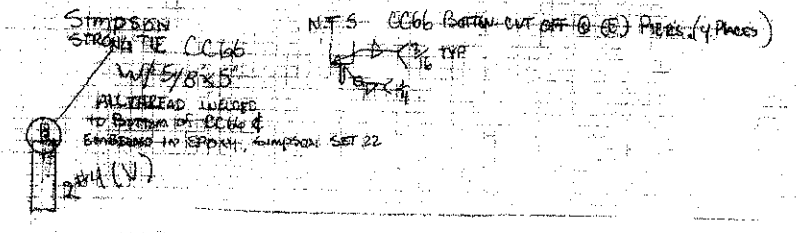
3 SOUTH ELEVATION



7 FIG. DETAIL



5 (N) PIER DETAIL



6 (E) PIER

If this sheet is not 24" x 36" it is a reduced print
3" = 1'-0"

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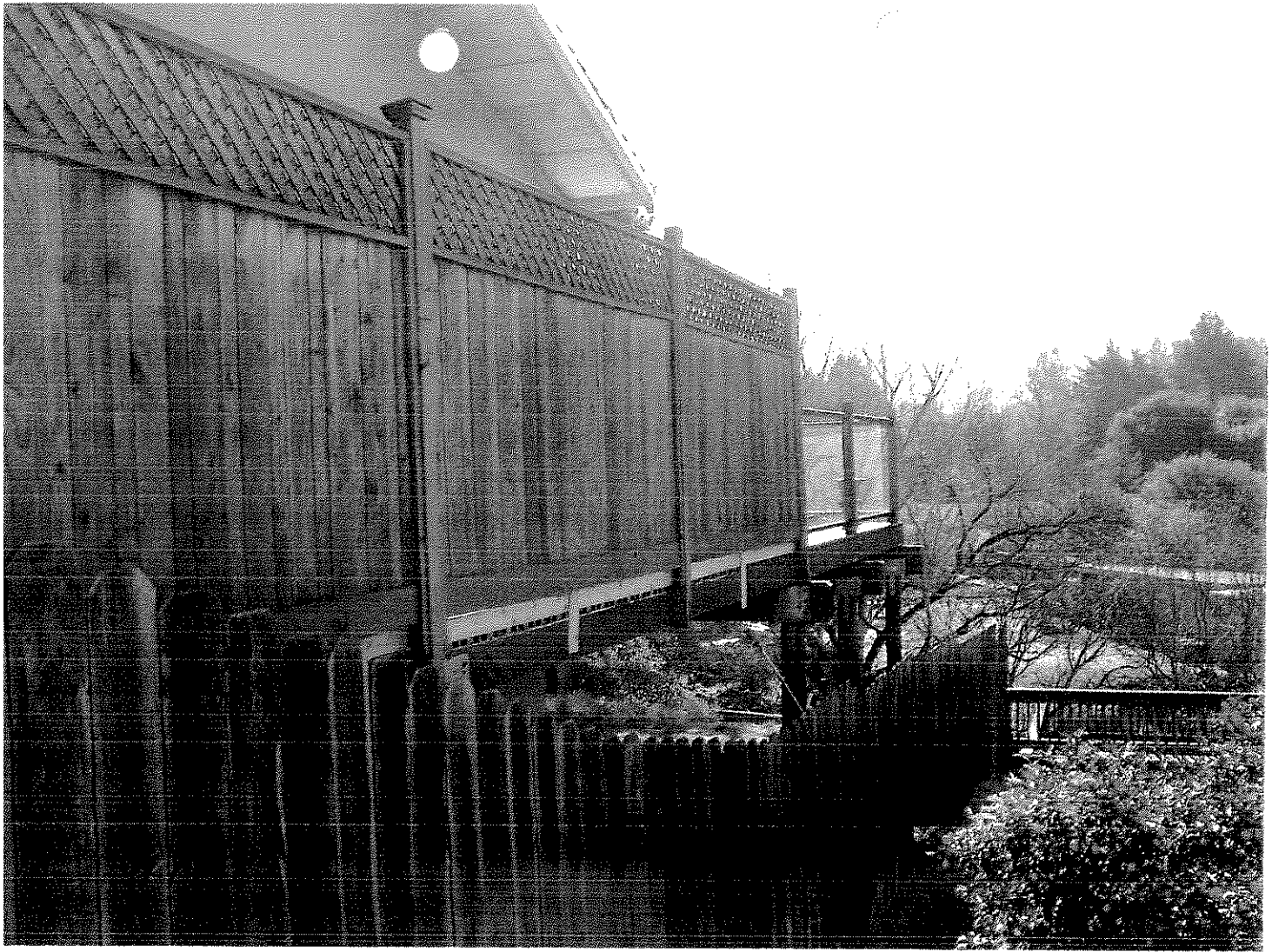
PROJECT:
DECK DESIGN FOR
JOHN AND JERILYN HORNYAK

SHEET TITLE:
FRAMING, FOUNDATION PLANS
AND DETAILS.

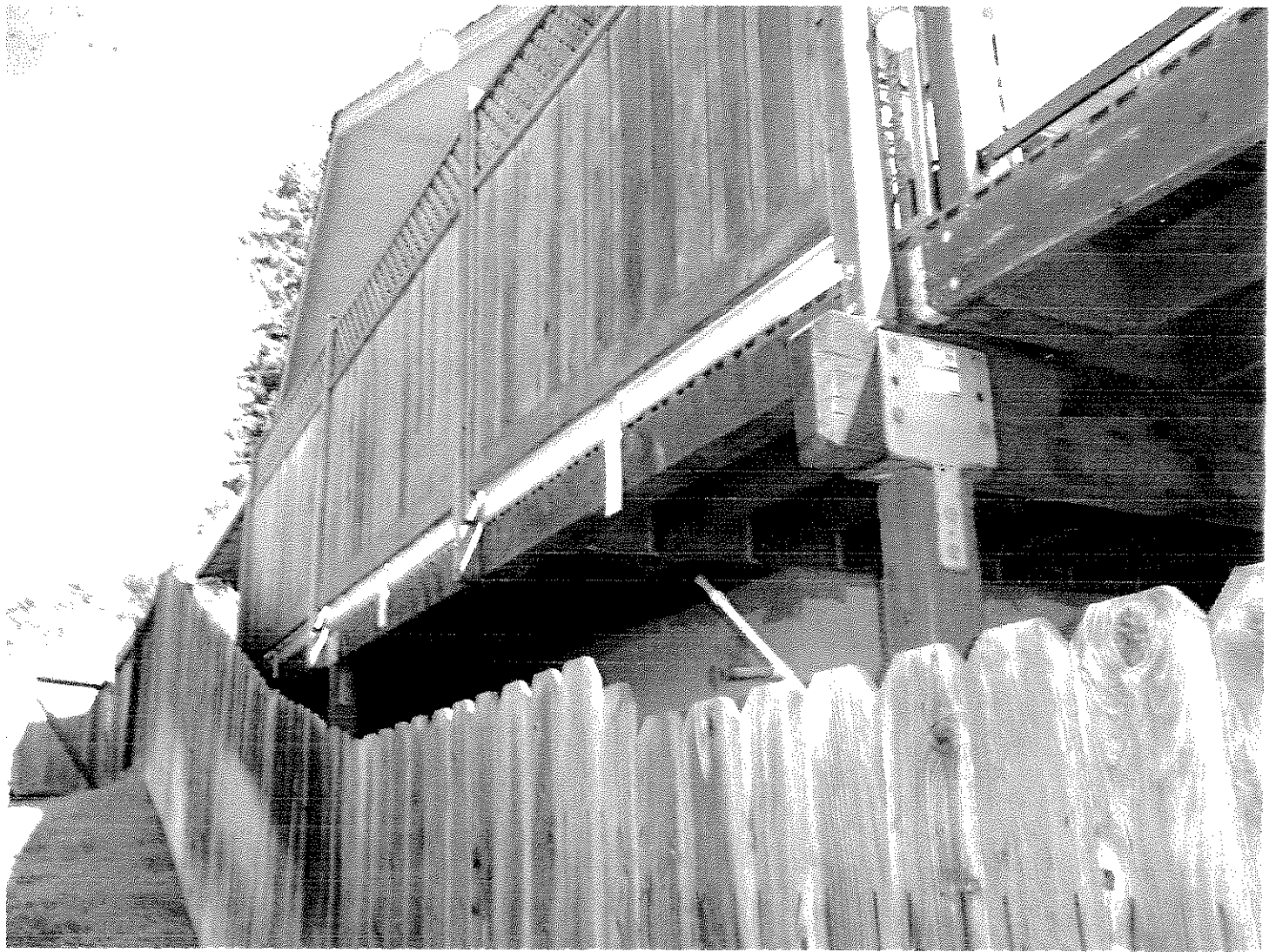
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Issue Date 1/25/08
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West elevation of subject deck, as seen from the rear of 4196 Foster Lane.



West elevation of subject deck, as seen from the front of 4196 Foster Lane.



West elevation of subject deck, as seen from the Western Property Line of 4202 Foster Lane.



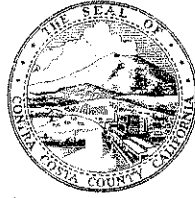
North elevation of deck, as seen from the front of 4202 Foster Lane.

Community Development Department

County Administration Building
651 Pine Street
Fourth Floor, North Wing
Martinez, California 94553-1229

Phone: (925) 335-1210

Contra Costa County



Dennis M. Barry, AICP
Community Development Director

April 23, 2008

John & Jerilyn Hornyak
4202 Foster Lane
El Sobrante, CA 94803

Dear Mr. & Mrs. Hornyak,

Re: **NOTICE OF DECISION FOR VARIANCE COUNTY FILE # VR08-1008**
Subject site: 4202 Foster Lane, El Sobrante, CA 94803

Pursuant to County Code Section 26-2.2102 (1) of the Contra Costa County Code, this Notice of Decision is provided in reference to your request for a variance to allow a one foot side yard where five feet minimum is required and a eleven foot total side yard aggregate where fifteen feet minimum is required for a deck built without permits, County File VR08-1008.

After reviewing your variance application for the above mentioned site, including a site visit, we are unable to find sufficient evidence to make the required ordinance findings (County Code Section 26-2.2006) for your application.

Furthermore, as mentioned to you in a letter dated February 20, 2008, staff could not proceed without the required variance findings. The Community Development Department appreciates your time and effort in preparing your response to that letter dated March 10, 2008. Your response was followed-up with phone conversations and an additional letter on April 3, 2008 informing you of staff's intent to recommend denial.

Because of the inability to make all the required findings, this is to advise you that your request for a variance is hereby **DENIED**.

Opportunity to Appeal Denial

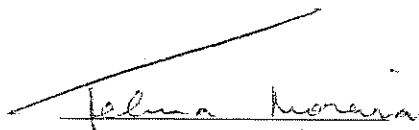
You may appeal this decision by letter of appeal to the County Planning Commission accompanied by \$125.00 for appeal fee and \$1,000.00 filing fee together with the complete site and elevation plans. The appeal period expires at 5:00 pm on Monday, May 5, 2008 at which time in the absence of an appeal, this matter will be considered final.

Because the subject structure was developed in violation of zoning and building ordinance codes, if the project is considered final and denied, the matter will be referred back to the Building Inspection Department, Property Conservation Division, with a recommendation to take appropriate code

enforcement action in order to establish code compliance. Such action may require the removal, relocation or reduction in size of the structure at the owner's expense.

Should you have any question, please contact Francisco Avila at 925-335-1266.

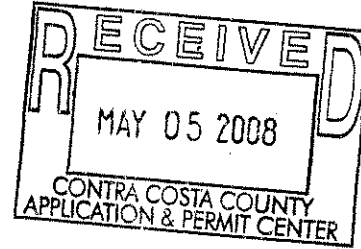
Cordially,

A handwritten signature in cursive script that reads "Telma Moreira". The signature is written in black ink and is positioned above a horizontal line.

Telma Moreira
Deputy Zoning Administrator

Cc: Code Enforcement
County File # VR08-1008

Community Development Department
County Administration Building
651 Pine Street
Fourth Floor, North Wing
Martinez, CA 94553-1229



Attn: County Planning Commission

May 4, 2008

Re: Notice of Decision for Variance County File # VR08-1008
Subject Site: 4202 Foster Lane, El Sobrante, CA 94803

This letter is being submitted to object to the denial of our application for variance, referenced above.

According to Contra Costa Co Planning Agency & Code Chapter 26 – Section 2.2006, we feel the following justifies the issuance of a variance.

1 – Reference to “grant special privilege” there has been a variance issued to the property referred to as APN 425-130-024 and 425-130-021.

2 a) The special circumstances applicable to this residence applies because the house was not laid out on the property to allow side yard access to the deck from the main level of the house.

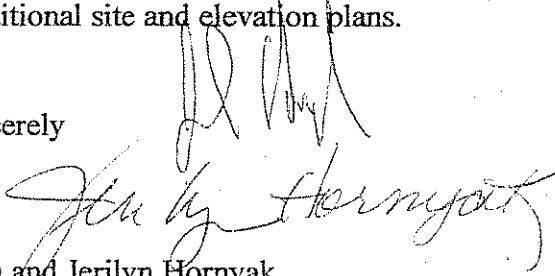
b) If property was level from front to back of the house, the deck and back yard could be accessible through the garage door. We shouldn't have to go through the kid's bedroom to access the deck.

3 – The land use is a single-family residence not a commercial development.

Along with this letter of appeal, we have enclosed the following:

\$125.00 appeal fee
\$1,000.00 filing fee
Additional site and elevation plans.

Sincerely



John and Jerilyn Hornyak