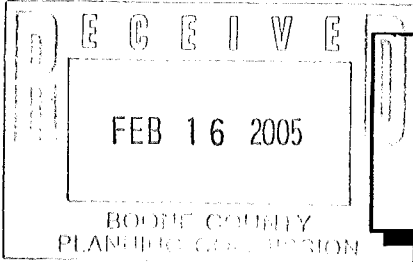


05-BC60A-003-A

APPLICATION FORM



BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

See Boone County Zoning Regulations SECTION A (To be completed by applicant)

- 1. (Check One) Boone [checked] Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_
2. (Check One) Conditional Use Permit [checked] Variance \_\_\_\_\_ Appeal \_\_\_\_\_
Change in Non-Conforming Use \_\_\_\_\_
3. Applicant's Name SMI New Home Solutions, LLC
Phone Number 859-655-2220 Fax No. 859-655-2223
Applicant's Address P.O. Box 139
Union KY 41091
City State Zip
4. Description of Request: Rear yard variance to min. 30' Rear need 5' for deck - 25' rear
5. Name of Development Carspens Creek
6. Location of Development Gunpowder Rd + Mt. Zion
7. Acreage Under Review .1848 (8050 ft)
8. Lot Number and Name of Subdivision (if part of a subdivision) Lot # 21 Carspens Creek
9. Owner of Property SMI New Home Solutions, LLC
Phone Number of Owner same as above (#3)
10. Address of Property Owner same as above (#3)
City State Zip
11. Proposed Use(s) on Site Deck
12. Total Square Footage of Existing and/or Proposed Buildings 1741 ft
13. Current Zoning on Property SR-1
14. Deed Book 869 Page No. 485 Group No. 2057
15. Is the site subject to a zone change? No
If yes, give date of approval
16. Have you submitted a Site Plan with this request? Yes
17. Have you submitted a list of adjoining property owners with this request? [checked]
18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

Applicant's Signature: Don Simon, Jr. (Don Simon, Jr.)

Property Owner's Signature: [Signature]

**BOARD OF ADJUSTMENT AND  
ZONING APPEALS ACTION  
APPLICATION  
PAGE 2**

**SECTION B (To be completed by the Boone County Planning Commission Staff)**

- 1. Date Received 2-14-05 Fee Received \$487.00 RA# 41475
- 2. Is application complete?  Yes  No
- 3. Staff Reviewer \_\_\_\_\_
- 4. Scheduled Board Action Date \_\_\_\_\_
- 5. Board Action:
  - Approved
  - 3/9/05 Approved with Conditions (See #6)
  - Denial (See #7).
- 6. Conditions of Approval: SEE 3-9-05  
BCBOA MEETING MINUTES
- 7. Reasons for Denial: \_\_\_\_\_

**Boone County Planning Commission  
2995 Washington Street  
Burlington, Kentucky 41005  
(859) 334-2196 - Phone  
(859) 334-2264 - Fax  
plancom@boonecountyky.org - E-mail  
www.boonecountyky.org - Web Page**

**NOTE:** See Boone County Planning Commission Fee Schedule for Board of Adjustment Fees.

Site Plan Review is not granted by the appropriate Board of Adjustment.

An application consists of all fees paid in full, submitted drawings and a completed application form.

## STAFF REPORT

APPLICANT: SMI New Home Solutions, LLC  
LOCATION: Lot 21, Carspens Creek Subdivision, Boone County, Kentucky  
ZONING: Suburban Residential One (SR-1)  
DATE: March 9, 2005

### Proposal

The Applicant has requested a Variance to allow an existing deck to encroach five (5) feet into the thirty (30) foot minimum rear yard setback (see attachments). The subject house and deck have been constructed on lot 21 of Carspens Creek Subdivision (11066 Gatewood Court, Boone County, Kentucky).

### Site History

- 10/07/04 – The Boone County Planning Commission approved a Zoning Permit to allow the construction of a single-family home. The Zoning Permit does not show that a deck was going to be constructed on the rear of the house (see attachments).
- 01/21/05 – The Boone County Planning Commission received a Zoning Permit application to allow the construction of 14' x 12' deck onto the rear of the house. The Zoning Enforcement Officer informed the Applicant that the permit could not be approved unless a Variance was granted by the Boone County Board of Adjustment (see attachments).

### Applicable Regulations

Article 31, Section 3123 of the Boone County Zoning Regulations states that open structures such as porches, canopies, balconies, platforms, carports, covered patios, and similar architectural projections which occupy space three (3) or more feet above the general ground level of the yard shall be considered parts of the building to which attached and shall not project into the required minimum front, side or rear yard.

Article 2, Section 250 of the Boone County Zoning Regulations states that the Board of Adjustment and Zoning Appeals shall have the power to hear and decide on applications for variances. A variance is defined as a departure from the dimensional terms of the zoning regulation pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 to 100.247.

The Board should evaluate the applicant's request as it relates to the criteria necessary for granting a variance as stated in Section 251 of the Boone County Zoning Regulations:

1. Before any variance is granted, the Board must find that the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public, and will not allow an unreasonable circumvention of the requirements contained in the zoning regulations.
  - A. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
  - B. The strict application of the provisions contained in the regulations would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant;
  - C. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
2. The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

#### Site Characteristics

The subject property fronts on Gatewood Court and is approximately 0.18 acres in area. The lot adjoins single-family residential lots in Carspens Creek and Horseshoe Trails Subdivisions (see attached Final Plat).

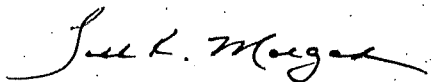
#### Staff Comments

1. The Applicant has provided a letter which explains why the deck was built prior to zoning or building permits being issued.
2. The Board needs to analyze if the requests are in accord with Section 251 of the zoning regulations. Specifically, the Board must find that the request will not alter the essential character of the general vicinity and that it did not result from a willful violation.
3. If the Board approves the requests, Staff recommends a condition which requires two (2) small trees from Plant List C (see Article 37 of the Boone County Zoning Regulations) to be installed between the deck and rear property line.

Conclusion

KRS 100.241 and Section 250 of the Boone County Zoning Regulations gives the Boone County Board of Adjustment and Zoning Appeals the authority to grant the Applicant's request.

Respectfully submitted,

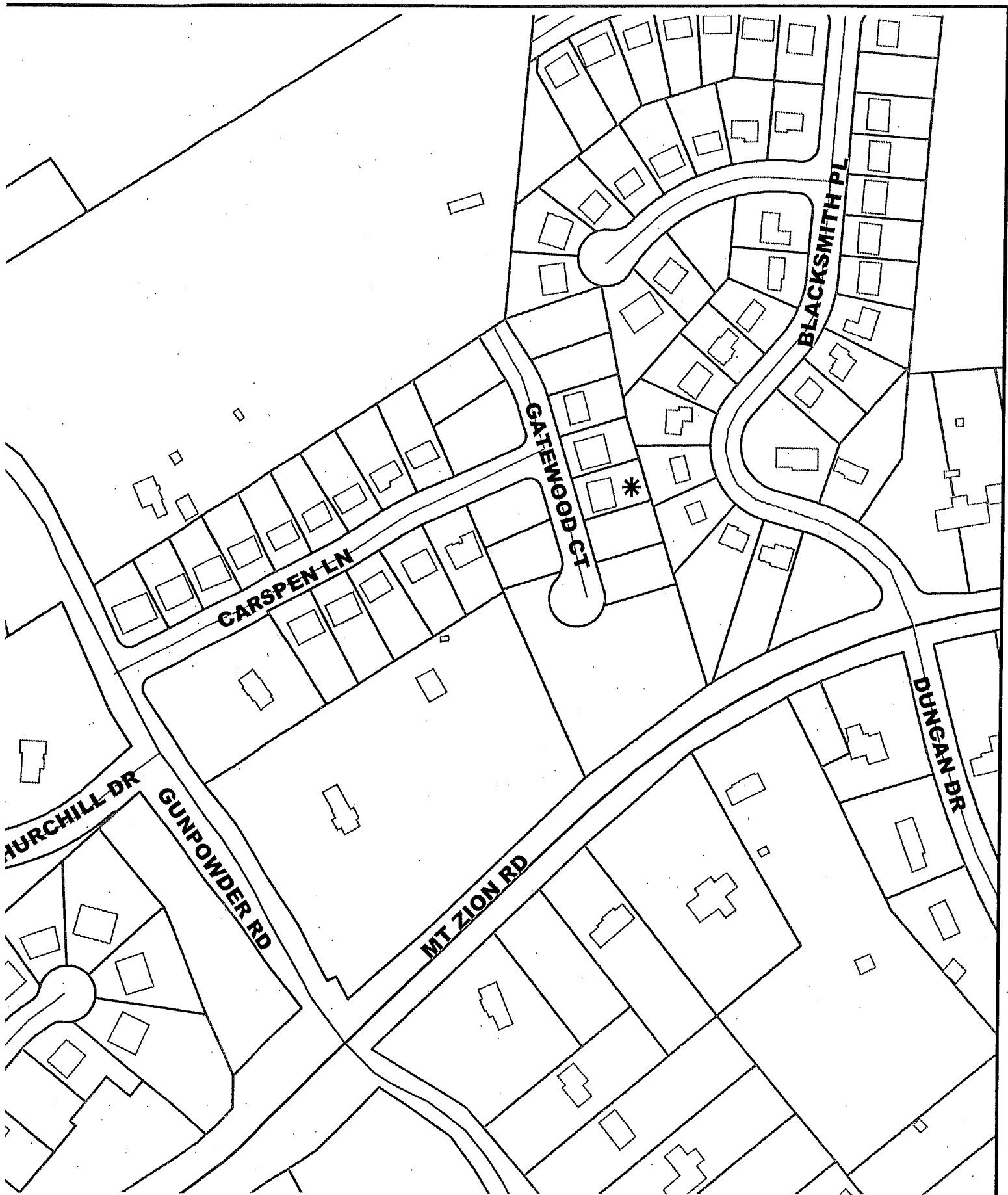


Todd K. Morgan, AICP  
Planner, Zoning Services

TKM/pr

Attachments

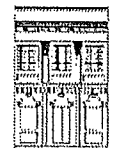
- Exhibit A – Site Vicinity Map
- Exhibit B – Concept Plan
- Exhibit C – Letter From Applicant
- Exhibit D – 10/07/04 Approved Zoning Permit
- Exhibit E – 01/21/05 Zoning Permit Application
- Exhibit F – Section 2, Carspens Creek, Final Plat
- Exhibit G – Zoning Map
- Exhibit H – Application



# Lot 21, Carspens Creek Site Vicinity Map



1 inch equals 200 feet  
 Produced by the  
 Boone County Planning Commission  
 GIS Services Division  
 February 22, 2005







P.O. BOX 139  
 UNION, KENTUCKY 41091  
 OFFICE: (859) 689-7701  
 FAX: (859) 689-7852

SMI New Home Solutions, LLC

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DATE:	REVISION:	
SUBDIVISION CARSPENS CREEK, SECTION TWO		
SCALE 1"=30'		
JOB ADDRESS: GATEWOOD COURT		
CONTRACT BY: SMI	CUSTOMER: MARKET	SHEET NO.
PHONE NO.: 859-689-7701	JOB #:	P.1
CONTRACT DATE: N/A	21CC	



*Raising The Bar<sup>SM</sup>  
for your new home.*

Attn: Todd Morgan

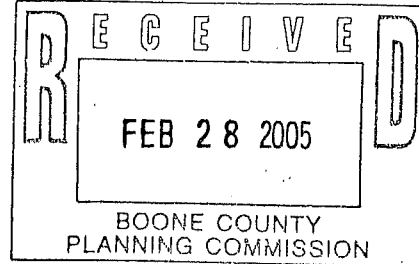
Re: Lot 21 Carspens Creek Variance to rear yard minimum

The lot under consideration had some circumstances arise that were unforeseen at the time of submission for building permit. As originally turned in to the building department, the rear door was to have a concrete patio. After the house was set and foundation poured, it was realized that the rear grade of the lot would not allow for a concrete patio. The only means to the rear yard would have to be a deck. In the anxiousness to keep his schedule, the superintendent scheduled the deck to be constructed to fill a void in the deck contractors' schedule. Unfortunately, this was started and built without the proper paperwork from the city. After the deck was drawn on the plot plan and resubmitted to the Boone County Planning Commission, Rudy notified me of the rear yard encroachment. He informed me that I would have to submit for a variance. It turns out that the now existing deck encroaches the rear yard by approximately 5'. Your understanding and consideration in this matter would be greatly appreciated.

Best Regards,

Don Simon

Vice President: Product Development



BUILDING ADDRESS OR LOCATION: Lot # 21 Carspens Creek

**NOTICE**

I certify that what is submitted is true and accurate and I or we understand and agree that all construction work will be performed in accordance with this Zoning Permit Application, the Boone County Zoning Regulations and the Boone County Subdivision Regulations.

NAME AND ADDRESS OF APPLICANT (PLEASE PRINT): SMI New Home Solutions, LLC  
P.O. Box 139 Union, KY 41091

APPLICANT'S SIGNATURE: [Signature] As  
 Authorized by Property Owner

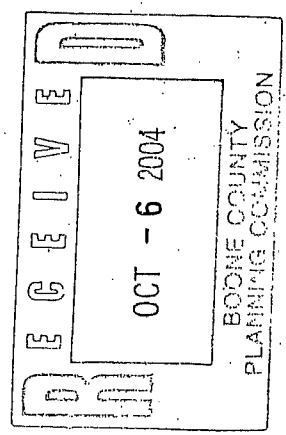
DATE 10/6/04 PHONE NUMBER: 859-655-2220  
2D permit w/ final plat rec

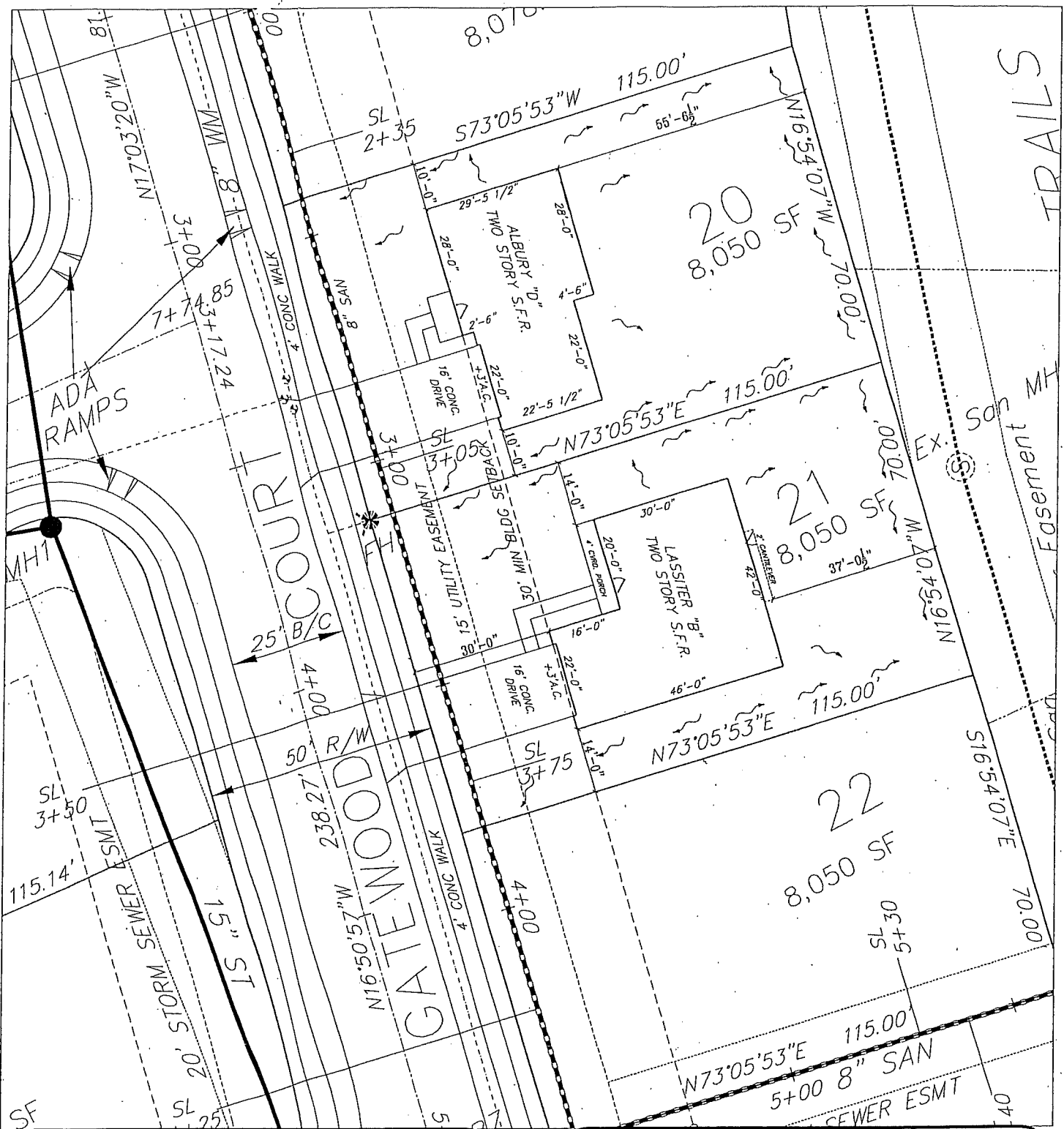
This Portion of the Application to be Completed  
 the Boone County Planning Commission

Zoning District	<u>SR1</u>	Date	<u>10/7/04</u>	Fee	<u>\$50.00</u>	Farm Exempt	
Approved	<input checked="" type="checkbox"/>	Denied	<input type="checkbox"/>		<u>\$20.00</u>	(No Fee)	
Staff Reviewer	<u>RNOY/Conrad</u>		Address/Location	<u>11066 GATEWOOD CT</u>			
Subdivision	<u>CARSPENS CREEK</u>						
Lot #	<u>21</u>	Section #	<u>2</u>	Block/Phase #	<u>---</u>		

R#  
40438

Type of Improvement	
<input checked="" type="checkbox"/> Single Family Residence	<input type="checkbox"/> Detached Garage
<input type="checkbox"/> Duplex	<input type="checkbox"/> Garage Addition
<input type="checkbox"/> Three Family	<input checked="" type="checkbox"/> Porch or Deck
<input type="checkbox"/> Apartment (# units _____)	<input type="checkbox"/> Barn or Shed
<input type="checkbox"/> Townhouse (# units _____)	<input type="checkbox"/> Swimming Pool
<input type="checkbox"/> Mobile Home	<input type="checkbox"/> Tenant Finish
<input type="checkbox"/> Residential Addition	<input type="checkbox"/> Other:
Jurisdiction	
<input checked="" type="checkbox"/> Boone County	<input type="checkbox"/> Florence
<input type="checkbox"/> Walton	<input type="checkbox"/> Union
Post Office	
<input type="checkbox"/> Burlington	<input checked="" type="checkbox"/> Florence
<input type="checkbox"/> Walton	<input type="checkbox"/> Union
<input type="checkbox"/> Hebron	<input type="checkbox"/> Verona
<input type="checkbox"/> Petersburg	<input type="checkbox"/> Erlanger
<input type="checkbox"/> Crittenden	
Group # <u>2057</u>	Census Tract # <u>703.08</u>





P.O. BOX 139  
 UNION, KENTUCKY 41091  
 OFFICE: (859) 689-7701  
 FAX: (859) 689-7852

### SMI New Home Solutions, LLC

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DATE:	REVISION:			
10/06/04	ADDED DRAINAGE ARROWS			
SUBDIVISION	CARSPENS CREEK, SECTION TWO			
SCALE	1"=30'			
JOB ADDRESS: GATEWOOD COURT				
CONTRACT BY:	SMI	CUSTOMER:	MARKET	SHEET NO.
PHONE NO.:	859-689-7701	JOB #:	20CC	P.1
CONTRACT DATE:	09/28/04			

BUILDING ADDRESS OR LOCATION: 11066 Gatewood Ct.

**NOTICE**

I certify that what is submitted is true and accurate and I or we understand and agree that all construction work will be performed in accordance with this Zoning Permit Application, the Boone County Zoning Regulations and the Boone County Subdivision Regulations.

NAME AND ADDRESS OF APPLICANT (PLEASE PRINT): Smi New Home Solutions  
P.O. Box 139 Union KY 41091

APPLICANT'S SIGNATURE: Don Simon (Don Simon) As  
 Authorized by Property Owner

DATE 1/20/05 PHONE NUMBER: 859-655-2220

\*\*\*\*\*

This Portion of the Application to be Completed  
 the Boone County Planning Commission

Zoning District	<u>SRI</u>	Date	Fee	<input checked="" type="checkbox"/>	\$50.00	Farm Exempt
Approved		Denied	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	\$20.00	(No Fee)
Staff Reviewer	<u>Ruby Corbell</u>	Address/Location <u>11066 Gatewood Ct.</u>				
Subdivision	<u>Carspods Creek</u>					
Lot #	Section #	Block/Phase #				

Type of Improvement	
<input type="checkbox"/> Single Family Residence	<input type="checkbox"/> Detached Garage
<input type="checkbox"/> Duplex	<input type="checkbox"/> Garage Addition
<input type="checkbox"/> Three Family	<input checked="" type="checkbox"/> Porch or Deck
<input type="checkbox"/> Apartment (# units _____)	<input type="checkbox"/> Barn or Shed
<input type="checkbox"/> Townhouse (# units _____)	<input type="checkbox"/> Swimming Pool
<input type="checkbox"/> Mobile Home	<input type="checkbox"/> Tenant Finish
<input type="checkbox"/> Residential Addition	<input type="checkbox"/> Other:
Jurisdiction	
<input checked="" type="checkbox"/> Boone County	<input type="checkbox"/> Florence
<input type="checkbox"/> Walton	<input type="checkbox"/> Union
Post Office	
<input type="checkbox"/> Burlington	<input checked="" type="checkbox"/> Florence
<input type="checkbox"/> Walton	<input type="checkbox"/> Union
<input type="checkbox"/> Hebron	<input type="checkbox"/> Verona
<input type="checkbox"/> Petersburg	<input type="checkbox"/> Erlanger
<input type="checkbox"/> Crittenden	
Group # <u>2057</u>	Census Tract # <u>703.08</u>

#41270  
 RECEIVE  
 JAN 21 2005  
 BOONE COUNTY  
 PLANNING COMMISSION



**SMI**  
NEW HOME SOLUTIONS

P.O. BOX 139  
UNION, KENTUCKY 41091  
OFFICE: (859) 689-7701  
FAX: (859) 689-7852

**SMI New Home Solutions, LLC**

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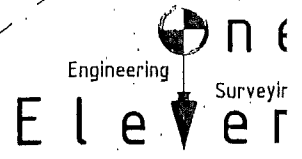
DATE:	REVISION:
01/20/05	ADDED 14' X 12' DECK
SUBDIVISION	CARSPENS CREEK, SECTION TWO
SCALE	1"=30'
JOB ADDRESS: GATEWOOD COURT	
CONTRACT BY: SMI	CUSTOMER: MARKET
PHONE NO.: 859-689-7701	JOB #: 21CC
CONTRACT DATE: N/A	
SHEET NO. <b>P. 1</b>	

RECORD PLAT  
 CARSPENS CREEK SUBDIVISION  
 SECTION TWO

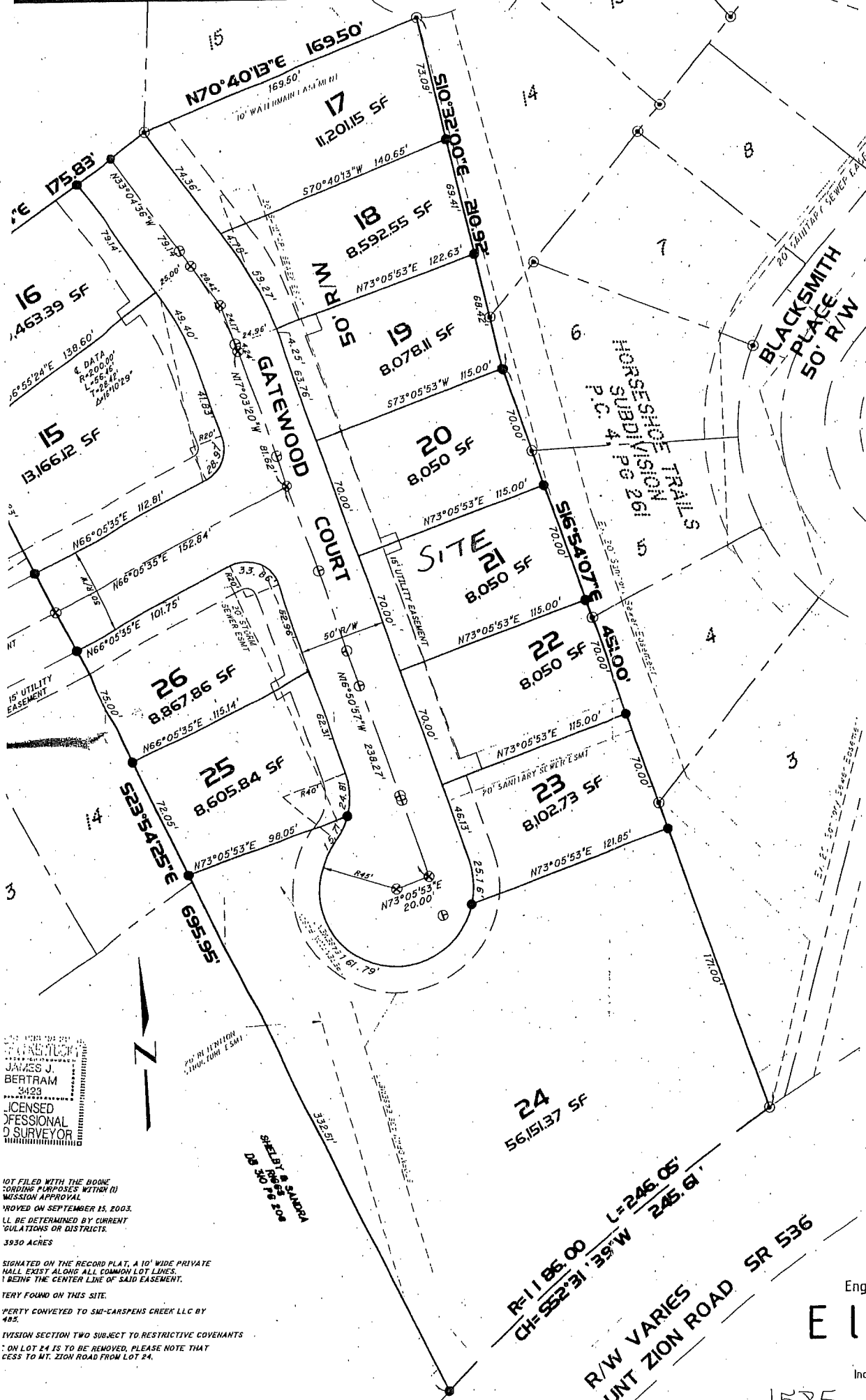
DRAWN BY	CHUCK
PROJECT NO	1
SCALE	DATE
1"=50'	07/1
DRAWING NO	
<b>PLAT</b>	
SHEET	1

© COPYRIGHT 2004, ONE ENGINEERING & SURVEYING

OWNER/DEVELOPER  
 SMI-CARSPENS LLC  
 P.O. BOX 139  
 UNION, KY 41091  
 859.689.7701



5294 Madison Pike  
 Independence, KY 41051  
 859 363-9025  
 Fax: 859 363-9125



JAMES J. BERTRAM  
 3423  
 LICENSED PROFESSIONAL SURVEYOR

NOT FILED WITH THE BOONE RECORDING PURPOSES WITHIN (1) MONTH APPROVAL  
 APPROVED ON SEPTEMBER 15, 2003.  
 ALL BE DETERMINED BY CURRENT REGULATIONS OR DISTRICTS.  
 3930 ACRES

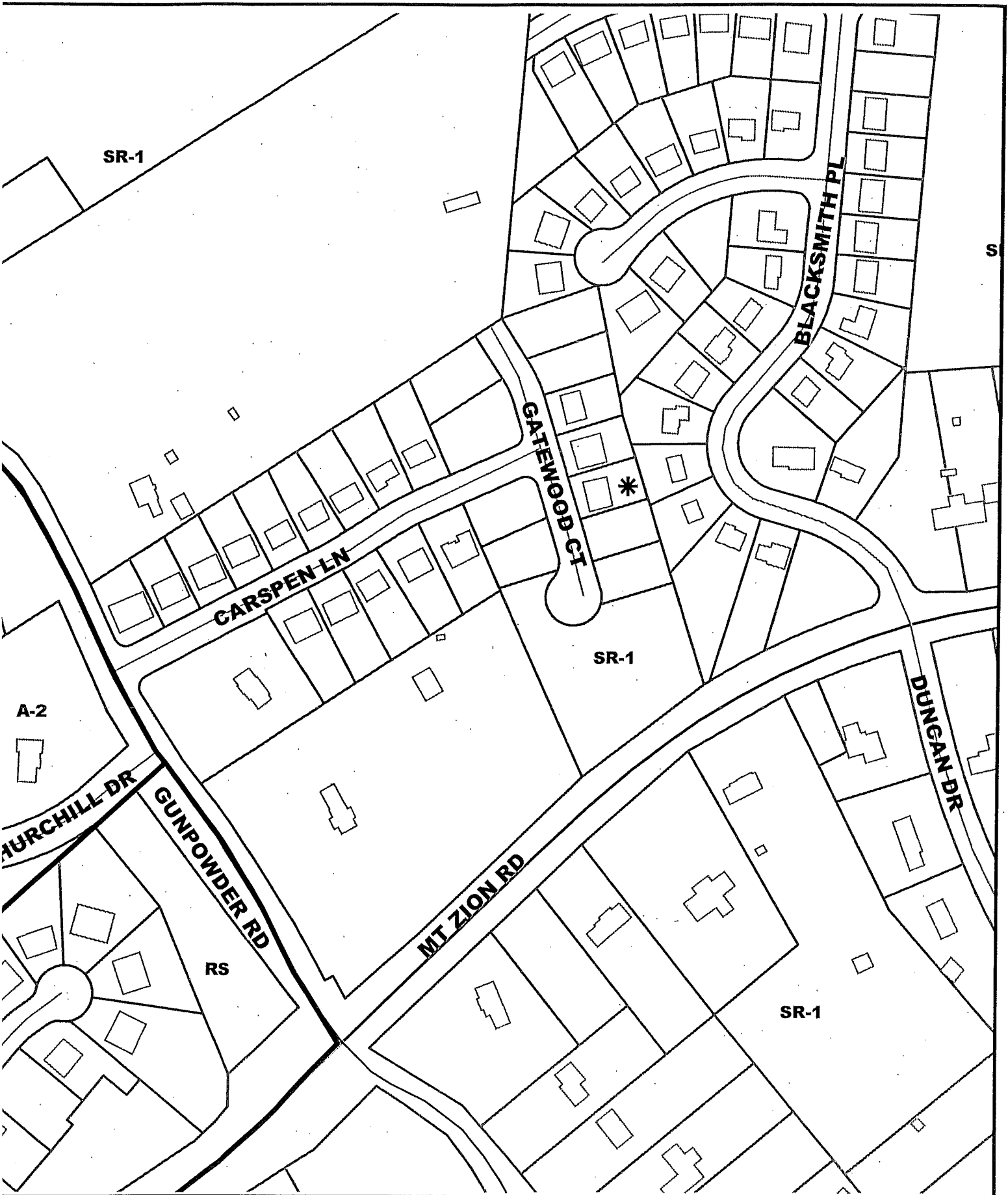
SIGNATURE ON THE RECORD PLAT, A 10' WIDE PRIVATE WALL EXIST ALONG ALL COMMON LOT LINES, BEING THE CENTER LINE OF SAID EASEMENT.

PROPERTY FOUND ON THIS SITE.  
 PROPERTY CONVEYED TO SMI-CARSPENS CREEK LLC BY 485.

DIVISION SECTION TWO SUBJECT TO RESTRICTIVE COVENANTS  
 ON LOT 24 IS TO BE REMOVED, PLEASE NOTE THAT ACCESS TO MT. ZION ROAD FROM LOT 24.

R=1186.00 L=246.05'  
 CH=552.31 W=135.71 W=245.6'  
 R/W VARIES  
 MOUNT ZION ROAD SR 536

P & Z Code No. 1585



# Lot 21, Carspens Creek Zoning Map

200 0 200 Feet

1 inch equals 200 feet  
 Produced by the  
 Boone County Planning Commission  
 GIS Services Division  
 February 22, 2005





COPY

CLUR #05-BCBOA-003-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)

SMI New Home Solutions, LLC  
P.O. Box 139  
Union, KY 41091

2. ADDRESS OF PROPERTY

\_\_\_\_\_  
\_\_\_\_\_

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)

Carspens Creek, Lot 21

4. DEED BOOK 869

PAGE NO. 485

GROUP NO. 2057

5. TYPE OF RESTRICTION(S) (Check all that apply)

\_\_\_ Zoning Map Amendment:  
From \_\_\_ To

\_\_\_ Conditional Use Permit

\_\_\_ Development Plan

\_\_\_ Conditional Zoning

\_\_\_ Subdivision Plat  
(Not Recorded)

\_\_\_ Other:

X Variance

6. NAME AND ADDRESS OF PLANNING COMMISSION, BOARD OF ADJUSTMENT, LEGISLATIVE BODY OR FISCAL COURT WHICH MAINTAINS THE ORIGINAL RECORDS CONTAINING THE RESTRICTION

BOONE COUNTY PLANNING COMMISSION  
2995 WASHINGTON STREET  
BURLINGTON, KENTUCKY 41005

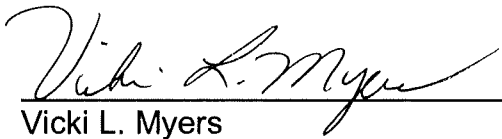
*Todd K. Morgan*  
SIGNATURE OF COMPLETING OFFICIAL

Todd K. Morgan, Planner, Zoning Services  
Name and Title of Completing Official

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

Subscribed, sworn to, and acknowledged before me by Todd K. Morgan on behalf of the  
Boone County Planning Commission this 15<sup>th</sup> day of March, 2005.



Vicki L. Myers  
NOTARY PUBLIC, State at Large

My commission Expires:  
April 17, 2007

This instrument was prepared for recording purposes only by:



Debbie A. Warning  
Boone County Planning Commission  
2995 Washington Street  
Burlington, Kentucky 41005

NO TITLE EXAMINATION

(Legal Description and source of Title and Group Number furnished by the applicant.)

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Variance approved by the Boone County Board of Adjustments and in accordance with the current zoning in effect as of March 9, 2005 Certificate of Land Use Restriction (#05-BCBOA-003-A), for SMI New Home Solutions, LLC, Property Owner(s).

The following conditions will apply:

- 1) Two small trees from Plant List C are to be installed between the deck and rear property line.

The approved Variance as well as the preceding conditions apply to the property described in:

DEED BOOK 869

PAGE NO. 485

GROUP NO. 2057