

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 4/24/14

FROM: Ken Johnson, Senior Planner, via John A. Swiecki, Community Development Director

SUBJECT: **685 Sierra Point Road;** Variance V-1-14; Variance to allow for a lot line adjustment between 685 and 691 Sierra Point Road, to reduce the lot width of 685 Sierra Point Road to approximately 44.5 feet, where 50 feet would otherwise be required. This would be to eliminate the existing encroachment of a portion of the home at 691 Sierra Point Road onto 685 Sierra Point Road; Linda Parker, applicant; James P. Dunleavy Trust & Yue Zhen Li Dunleavy Trust, owners; APN 007-451-260.

REQUEST: The applicant requests a variance to the lot width standard to allow for a lot line adjustment between 685 and 691 Sierra Point Road, to reduce the lot width of 685 Sierra Point Road to approximately 44.5 feet, where 50 feet would otherwise be required. The purpose is to eliminate the existing encroachment of a portion of the home at 691 Sierra Point Road onto the lot at 685 Sierra Point Road. The lot line adjustment would be done in a way that neither lot would be reduced in size since both lots are currently non-conforming in terms of the size, being less than 5,000 sq. ft. It would also not otherwise result new non-conforming conditions, or increase non-conforming conditions.

RECOMMENDATION: Approve Variance V-1-14 per the staff memorandum, via adoption of Resolution V-1-14 with Exhibit A containing the findings and conditions of approval.

ENVIRONMENTAL DETERMINATION: Minor lot line adjustments and variances not resulting in the creation of any new parcel are categorically exempt from the provisions of the California Environmental Quality Act per Section 15305(a) of the State CEQA Guidelines. The exceptions to these categorical exemptions referenced in Section 15300.2 do not apply.

APPLICABLE CODE SECTIONS: Brisbane Municipal Code (BMC) Section 17.46.010 and 17.46.040 allows for the Planning Commission to grant variances when the certain findings (or circumstances) apply as detailed in BMC Section 17.46.010. These findings are provided in the analysis and findings section below. If the Planning Commission grants the variance request, it would later be perfected through a lot line adjustment, per BMC Chapter 16.32 and in accordance with California Government Code Section 66412(d), subject to approval by the Planning Director.

BMC Sections 17.06.040.A & C set the minimum lot area of 5,000 sq. ft. and width of 50 ft.

BMC Section 17.38.030 provides that a single family home on a lot of record in the R-1 district having less than the minimum area prescribed shall constitute a conforming use and may be enlarged or expanded subject to the applicable district development standards. The lot areas are 3,480 sq. ft. and 3,991 sq. ft. for 685 and 691 Sierra Point Road, respectively, so both lots are lots of record with less than the currently required 5,000 sq. ft. area.

BACKGROUND

The following provides a brief background of the subject site, 685 Sierra Point Road and the adjacent site 691 Sierra Point Road, both of which would be subject to the lot line adjustment, which would be required following approval of the requested variance:

- The house at 691 Sierra Point Road, was built in 1939, and was to be on Lot 52, Block 34 of the 1908 City of Visitation Subdivision. However, the house was built partly over the lot line onto Lot 51 (685 Sierra Point Road) and it is not clear from the file record why this occurred.
- Mr. James Dunleavy purchased the house at 691 Sierra Point Road in 1970. He purchased the then vacant land of 685 Sierra Point Road in 1974. The two properties currently remain in the ownership of the family trust.
- A building permit was issued in 1975 for “alteration and addition” to the existing house at 691 Sierra Point Road and the City did not require a formal merger. So the implied intent was to continue to recognize two separate building sites.
- A building permit was issued by the City for construction of a new home at 685 Sierra Point and constructed was completed in 2006. Tied with this building permit was a requirement for demolition of the encroaching portion of the 691 Sierra Point Road house; however instead of completing that demolition an application was then submitted for a variance, to allow for a lot line adjustment. The Planning Commission conducted public hearings and considered Variance V-1-06 in 2007.
- The previous lot line adjustment, as proposed by the applicant through the variance application, would have resulted in not only a non-conforming width, but would have resulted in a reduction of the size of the lot such that the lot coverage would have also been exceeded for 685 Sierra Point Road. Through the Planning Commission hearing process, the variance was effectively withdrawn in lieu of Planning Commission acceptance of a Declaration of Easement for Encroachment (see attached), which allowed for the lot line to remain unchanged and the structure to also remain over the lot line, but with restrictions on the any future additions or remodels to the structure at 691 Sierra Point Road.

While the Declaration of Easement allowed for the lot line and the structure to remain in their pre-existing configuration, the condition imposed has resulted in some difficulties as discussed below.

ANALYSIS AND FINDINGS:

The evolution of the two properties has resulted in unusual circumstances, with an existing home at 691 Sierra Point, built in 1939, being constructed over the lot line and encroaching on the property of the 685 Sierra Point Road. It is apparent from the Planning Commission's approval of a Declaration of Easement in 2007, that there was a desire to find a compromise without forcing the applicant to remove the encroaching portion of the home. However, the conditions of the easement set up a difficult situation. First, the easement does not allow for the full enjoyment of the yard space at 685 Sierra Point Road, since approximately 150 sq. ft. is encroached upon by the 691 Sierra Point Road structure.

With regards to impacts to 691 Sierra Point Road, the easement limits work on the entire structure (not just the encroaching portion) to only maintenance and repair of existing conditions until such time as the structure is torn down and the easement is no longer applicable. This easement condition may result in either an extended period of limited improvements which could inadvertently result in health and safety risks, due to owners' lack of ability to modernize. If that encroaching portion of the structure is to be removed due to the easement, the result would be a significant undertaking and use of resources for removal of a structure that the County had once permitted.

If the Planning Commission approves this current Variance, it would nullify the Declaration of Easement and the conditions imposed through the Variance, the subsequent Lot Line Adjustment and Building Permit would then prevail. A requirement for a Building Permit would be imposed as a condition of approval to address state building codes for fire rated construction within the setback of 691 Sierra Point Road.

The findings, or circumstances that may be found to apply, per BMC Section 17.46.010, are as follows:

- A. *“That any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is located”*

The application meets this finding. There is no special privilege that would result with the granting of this application. It would result in a lot line being adjusted, such that 685 Sierra Point Road would be less than the current 50 ft. lot width requirement. At the time of the originally subdivision, and at the time the 691 Sierra Point Road home was built, the lot widths were allowed to be 25 ft. wide. Although the City would not allow establishment of new lots to be less than the current standard 50 by 100 ft., these lots were already recognized as individual home sites and the approval of the requested variance would not provide for any increased housing density on these existing sites, nor would it allow for building on either site to be of a greater size than any other home on a lot of like size within this R-1 zoning district. It would

simply recognize an existing structure that the County originally permitted, prior to the City's incorporation and allow for a solution with the lowest potential impact on both the owner(s) as well as the neighborhood through un-necessary construction to removal the structure.

B. "That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification."

The variance application meets this finding. There are special circumstances that arose through the previous permitting of the structure at 691 Sierra Point Road to encroach onto the 685 Sierra Point Road property, combined with the lack of available lot width to allow this previous permitted portion of the structure to remain without reducing the lot width of 685 Sierra Point Road to less than the current standard. Specifically, 685 Sierra Point Road property being deprived of the full enjoyment of their property due to the encroachment the neighboring home into its yard space.

The other established alternative of an easement does not address the loss of the yard space from 685 Sierra Point Road.

Although not directly an impact on the 685 Sierra Point Road property, the easement has also resulted in the 691 Sierra Point Road property being deprived of opportunity for interior remodeling and may encourage this property to enter a state of disrepair.

Due to the limited space of approximately 9 ft. between the exterior walls of 685 and 691 Sierra Point Road and approximately 7.5 ft. as measured from the 685 chimney bump out, it is not possible to completely remove the non-conformities from the home at 691 Sierra Point Road. However, the variance and lot line adjustment would reduce the level of non-conformity (see the attached project summary for further details). Also, while the width of the lot at 685 Sierra Point Road would be less than the current standard, at approximately 44.5 ft. vs. 50 ft., this is not unusual for Brisbane. Given the original subdivision pattern, as discussed above, many lots throughout Brisbane are as narrow as 25 ft. There would be no other non-conformities which would result from the lot line adjustment. However, although the home at 691 Sierra Point would be entirely within its redefined property extents, the setback of the building to the lot line would remain non-conforming, at approximately 3 ft. versus 5 ft.

The required setback for 685 Sierra Point would be required to remain conforming. It would be approximately 6 ft. from the main part of the house or approximately 4.5 ft. from the main part of the house. A setback of 10% of the lot width would be the minimum, or approximately 4.5 ft. from the main part of the house. The ultimate configuration would be based on a survey, but the conditions of approval outline the parameters for the lot line adjustment to maintain conformance with the development standards. The lot coverage and floor area ratio would remain unchanged, since there would be no net change in the lot sizes as required in the conditions of approval.

In summary, the overall result of the variance and lot line adjustment would be a reduction in the non-conforming situation between these two sites and allowing for full enjoyment of the rear yard area at 685 Sierra Point Road.

This application was routed to the Fire, Public Works and Building Depts. No concerns were raised by the Fire or Public Works Depts. As indicated above, the Building Dept. will require improvements to 691 Sierra Point Road to make the portions of the structure within 3 ft. of the property line to be fire rated, per state Building Code. Conditions of approval are included which address this as well as minimum Planning Dept. requirements to be imposed through the lot line adjustment and building permit.

Attachments:

- Draft Resolution with Findings and Conditions of Approval
- Project Summary
- Site Location Map
- Staff's Annotated Site Plan and Photographs
- Applicant's Statement, Proposed Site Plan and Lot Widths
- Declaration of Encroachment Easement

RESOLUTION V-1-14

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
CONDITIONALLY APPROVING VARIANCE V-1-14
TO ALLOW FOR A LOT LINE ADJUSTMENT
FOR THE LOT WIDTH TO BE LESS THAN 50 FEET
AT 685 SIERRA POINT ROAD

WHEREAS, Linda Parker, the applicant, applied to the City of Brisbane for approval of a variance to allow for a lot line adjustment between 685 and 691 Sierra Point Road, to reduce the lot width of 685 Sierra Point Road to approximately 44.4 feet, where 50 feet would otherwise be required. This would be to eliminate the existing encroachment of a portion of the home at 691 Sierra Point Road onto 685 Sierra Point Road; and

WHEREAS, on April 24, 2014, the Planning Commission conducted a hearing of the application, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the staff memorandum relating to said application, the plans and photographs, the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings, attached herein as Exhibit A, in connection with the Variance.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of April 24th, 2014, did resolve as follows:

Variance V-1-14 is approved per the findings and conditions attached herein as Exhibit A.

ADOPTED this twenty fourth day of April, 2014, by the following vote:

AYES:
NOES:
ABSENT:

Karen Cunningham
Chairperson

ATTEST:

JOHN A. SWIECKI, Community Development Director

EXHIBIT A

Action Taken: Conditionally approved Variance V-1-14 per the staff memorandum with attachments, via adoption of Resolution V-1-14.

Findings:

1. The variance is subject to such conditions as will assure that the adjustment hereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is located.
2. That because of special circumstances applicable to the subject property, specifically the surroundings including a home at 691 Sierra Point Road being previously constructed over the lot line and onto the same parcel as 685 Sierra Point Road, the strict application of this title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

Conditions of Approval:

- A. Prior to recording a lot line adjustment, the owner of 691 Sierra Point Road shall obtain a Building Permit and complete the following, at a minimum, per State Building Code requirements and subject to Building Dept. review:
 - i. The walls of the first and second levels will be required to be 1 hour fire rated at 3 ft. from the property line, with maximum openings of 25%. Where less than 3 ft. no openings will be allowed.
 - ii. The third level guard-rail will be solid and 42 inches high.
- B. The owner(s) of the properties shall apply for and obtain a lot line adjustment to perfect the variance. The lot line adjustment shall comply with the following:
 - i. It shall not result in a reduction of the gross lot area of either 685 or 691 Sierra Point Road (i.e.: The equivalent area given to 691 Sierra Point Road around the encroaching structure shall be taken from the 691 Sierra Point Road rear yard area, with the final configuration subject to Planning Director approval.)
 - ii. Aside from the width of the lot to be approximately 44.5 ft. for 685 Sierra Point Road, it shall not result in new non-conformities for either home.
 - iii. The location of the lot line shall maintain the minimum side setback (10% of the lot width) from the existing home at 685 Sierra Point Road.
 - iv. The lot line shall be located to maintain at least a 5 ft. distance on the north side of 691 Sierra Point in front of the rear doorway, or as required per Building Code.

- v. The lot line shall not extend into the 685 Sierra Point Road side yard stairway or guard rail.
 - vi. The application for a lot line adjustment shall meet all of the applicable requirements set forth by the City, including that the final configurations of the lots shall be established by a licensed surveyor, subject Planning Director approval, and to be recorded with the County.
- C. Minor modifications may be approved by the Planning Director in conformance with all requirements of the Municipal Code.
- D. This Variance shall expire two years from its effective date (at the end of the appeal period) if a Lot Line Adjustment has not been issued for the approved project.

Project Description

Zoning	R-1 Residential District					
	685 Sierra Point Road			691 Sierra Point Road		
	Required	Existing	Proposed	Existing	Proposed	
Lot Size						
Area	5,000 sq. ft.	3,480 sq. ft.	NC	3,991 sq. ft.	NC	
Width	50 ft.	54.5 ft. +/-	44.5 ft. +/-	55 ft. +/-	65 ft. +/-	
Lot Coverage						
	40% max.	39.6%	NC	19.3%	NC	
Floor Area/ FAR						
	0.72 max.	2,325 sq. ft./ 0.67	NC	2,196 sq. ft./ 0.55	NC	
Setbacks						
Front House	10 ft.	11+ ft.	NC	7.5+ ft.	NC	
Garage	0 ft.	2+ ft.	NC	NA	NA	
Rear	10 ft.	10+ ft.	NC	29.9 ft.	NC	
West Side	10% lot width*	5 ft.	NC	<0 **	3 ft. +/-	
East Side	10% lot width*	16 ft. +/-	6 ft. +/- ***	29.9 ft.	NC	

Notes:

NC = No change to existing.

*Per BMC Section 17.06.040.D..2, side setbacks are, "Five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater."

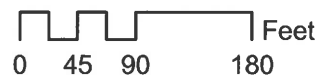
**691 Sierra Point Road extends approximately 6 ft. 10 in. onto 685 Sierra Point Road property.

*** A setback of approximately 6 ft. is proposed from the house and approximately 4.5 ft. proposed from the chimney bump-out. The chimney is not included in the setback calculation as it is considered an overhanging architectural feature, per BMC 17.32.070.A.1.a . for further information, see the conditions of approval.

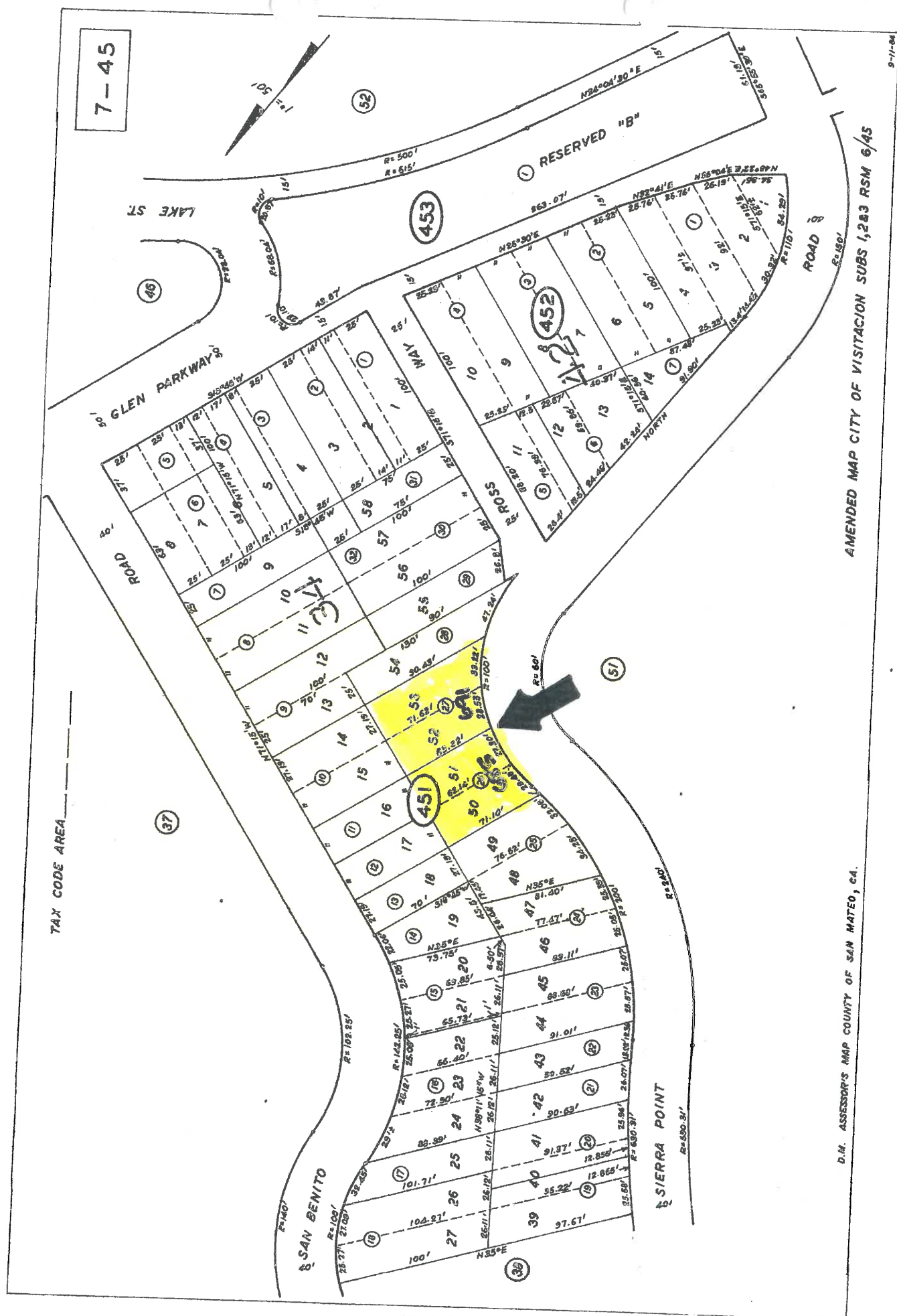
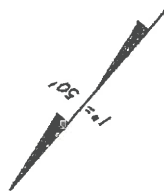


**685 Sierra Point Road
Site Location Map**

F.1.10.



7-45



TAX CODE AREA

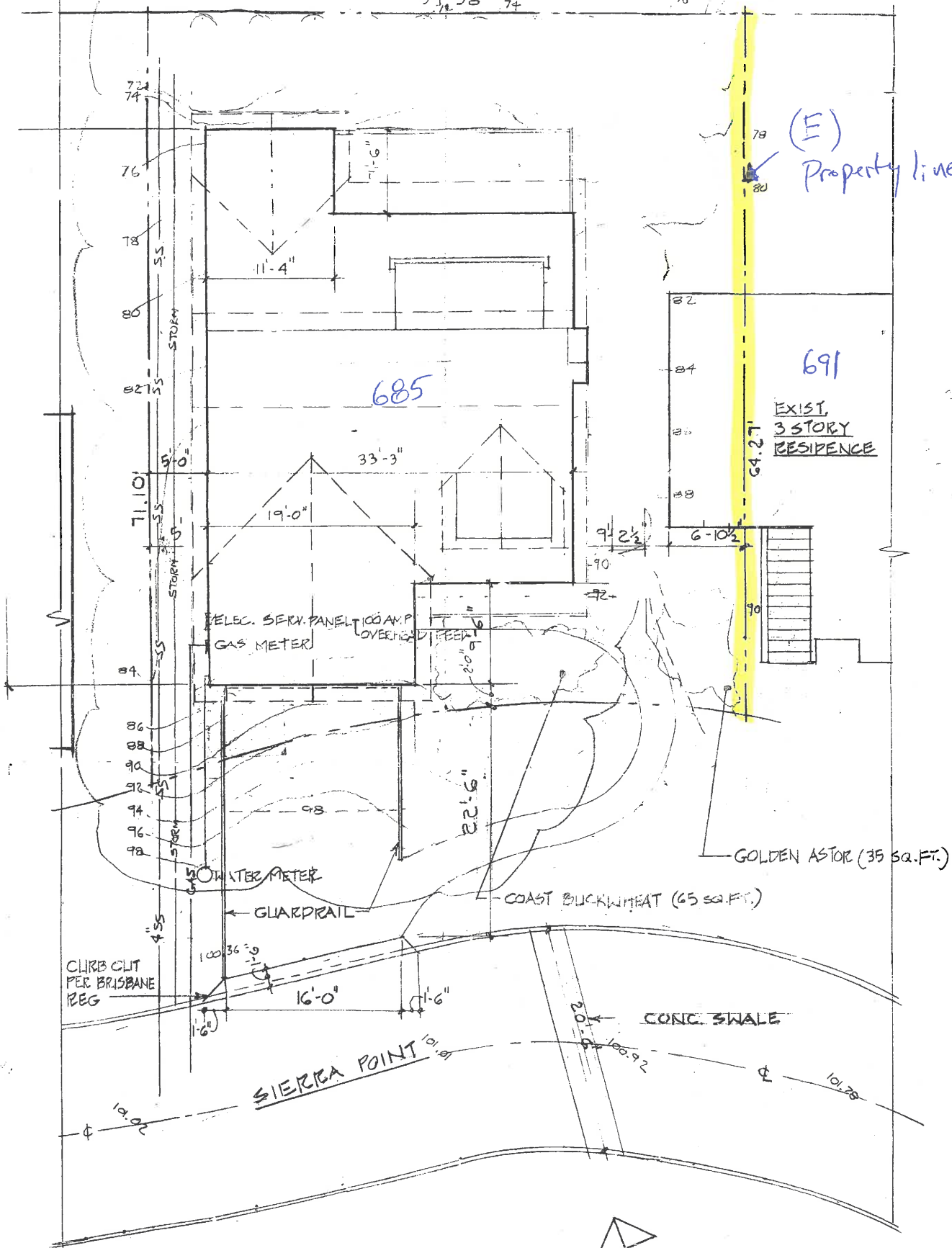
AMENDED MAP CITY OF VISITACION SUBS 1,2&3 RSM 6/45

D.M. ASSESSOR'S MAP COUNTY OF SAN MATEO, CA.

9-11-84

F.111

BAMBOO "BAMBUSA BEECHAYANA" 35'-0"
54 38 74 76



(E)
Property line

685

691

EXIST.
3 STORY
RESIDENCE

GOLDEN ASTOR (35 sq. ft.)

COAST BUCKWHEAT (65 sq. ft.)

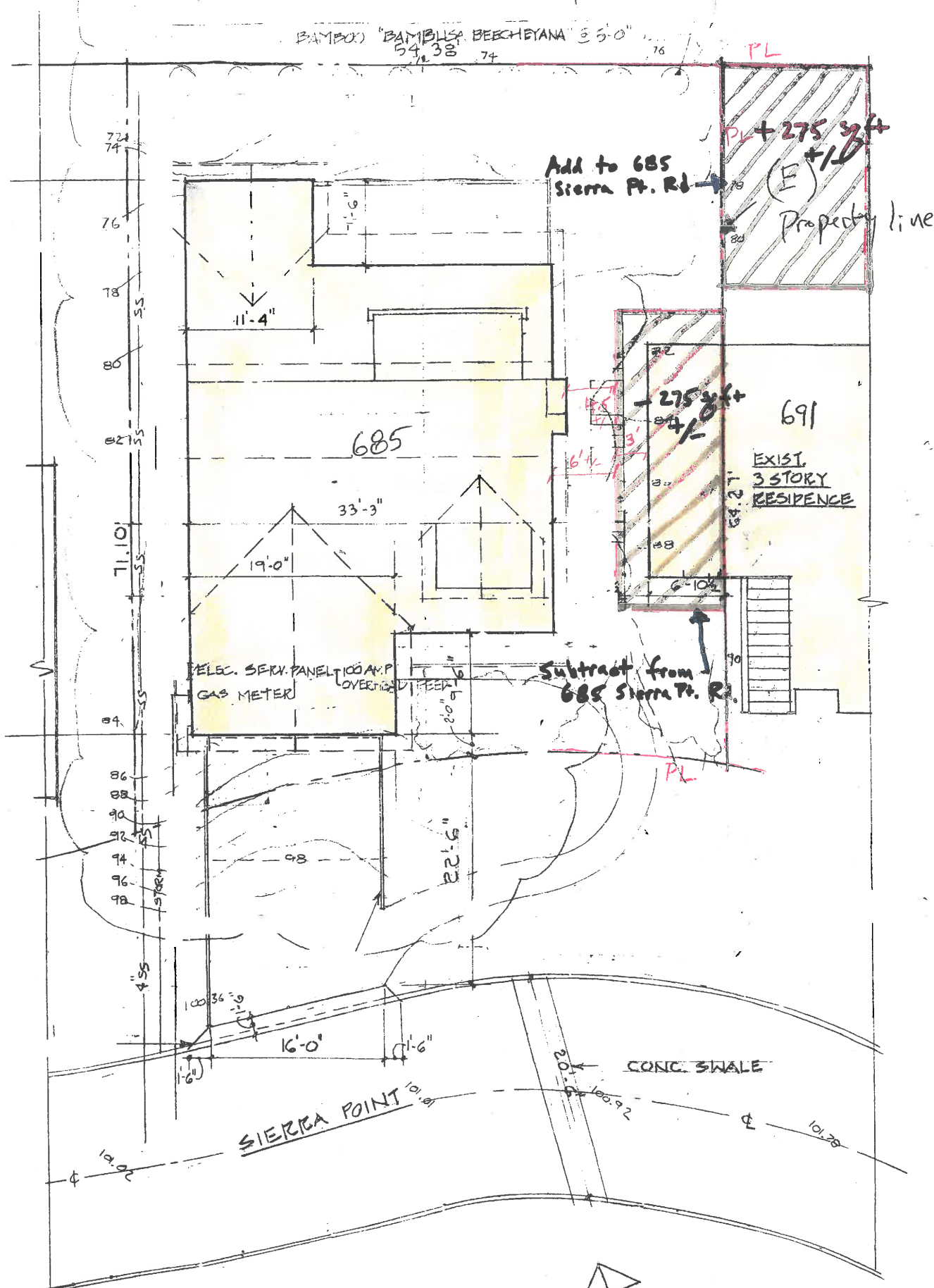
CONC. SWALE

SIERRA POINT

SITE PLAN

1/8" = 1'-0"





SITE PLAN

1/8" = 1'-0"

Annotated by
Stuff

F.1.13.





F.1.14.





691

689

Lot Line
Adjustment
Area

F.1.16.

What special circumstances, such as size, shape or topography of the property, or its location or surroundings, apply to your site?

These 2 building sites are legal building sites which are considered substandard by today's Zoning Code. Like many other sites in town, they originated as "essentially" 25 wide lots.

Typical recurring lots on Sierra Point Rd., and throughout Brisbane, are 2500 square feet. This particular stretch of Sierra Point Rd is also comprised of sites which are predominantly less than the required standard lot size.

Our 2 sites are approximately 4000 square feet each and have less lot building density than most of the lots on the street.

The majority of lots on Sierra Point are less than standard width, where ours are more than 54 feet wide.

Topography of the 2 sites is steeply down sloped and difficult to access. This makes it difficult to design access and efficiently utilize the site.

How do these special circumstances impact your site when the Zoning Ordinance is applied to the site?

The Zoning Ordinance requires 50' width even though many of the lots on the street are significantly less wide. By requiring as strict adherence to the 50' width standard, the home at 691 Sierra Point then becomes a non-conforming structure- which overlaps or encroaches onto 685 Sierra Point. As a result, the Zoning ordinance requires the encroaching portion of the home to be demolished. A more financially reasonable alternative should have been pursued early in the process, because it is unreasonable and irrational to destroy a perfectly good and usable home without applying first for a variance or exhausting all possible alternatives.

A simple lot line adjustment would allow the home to remain intact while still maintaining a lot width of 42' for 685 Sierra Point and more than 64' for 691 Sierra Point - far greater than the recurring substandard width for the street. Of the 30 homes on Sierra Point between Ross Way and San Benito Rd, 19 have a

property width less than the standard as measured from a midpoint. In other words, our proposal would be consistent with 63% of the existing homes.

Both sites will still have 54' lot widths at the front of the lots; giving the feeling of greater lot width.

What privileges enjoyed by other properties in the vicinity and same zoning district would you be deprived of when the Zoning Ordinance is applied to your site, given its special circumstances?

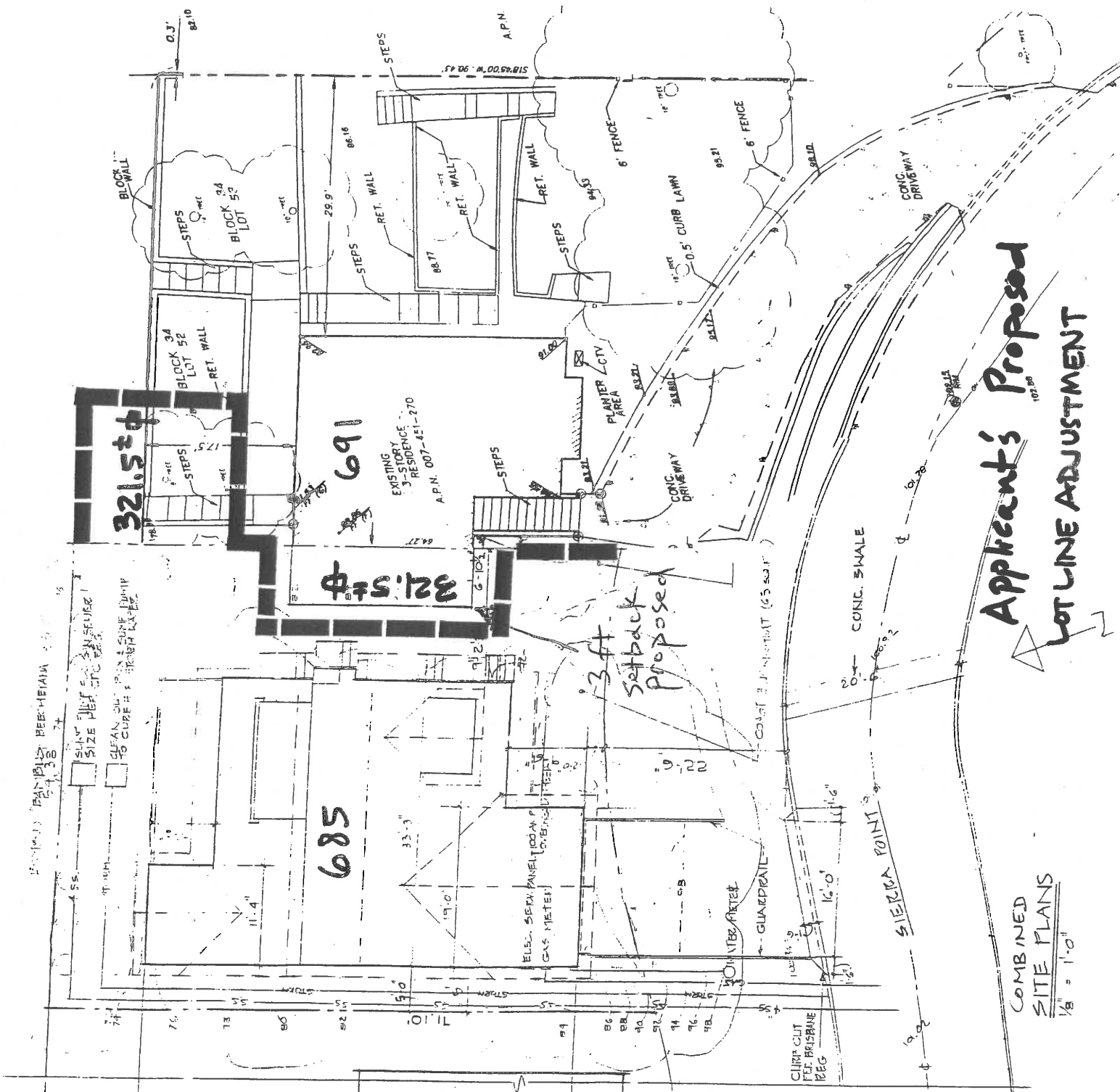
The homes in question already exist comfortably and do not present a negative impact to the immediate neighborhood.

Allowing a lot line adjustment would allow us to enjoy the privilege of having single family homes on lots with a width of less than 50' as enjoyed by a majority of the neighboring properties.

What conditions of approval could be attached to the variance to assure that you comply with the intent of the Zoning Ordinance and other applicable regulations?

The homes already exist and are in use today. Reconfiguring the property lines would not change the appearance of the property. Were the variance to be granted, the existing structures would pose no extra imposition on the general public.

The home at 691 Sierra Point would also be fixed up, which would be a more aesthetically pleasing state for the neighborhood. More importantly, the home will be updated to meet current construction health and safety codes, which will make it a much safer asset for the community.

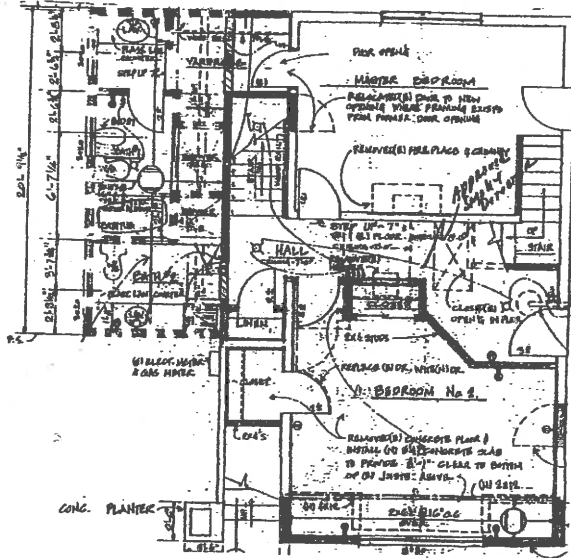


**Applicant's Proposed
LOT LINE ADJUSTMENT**

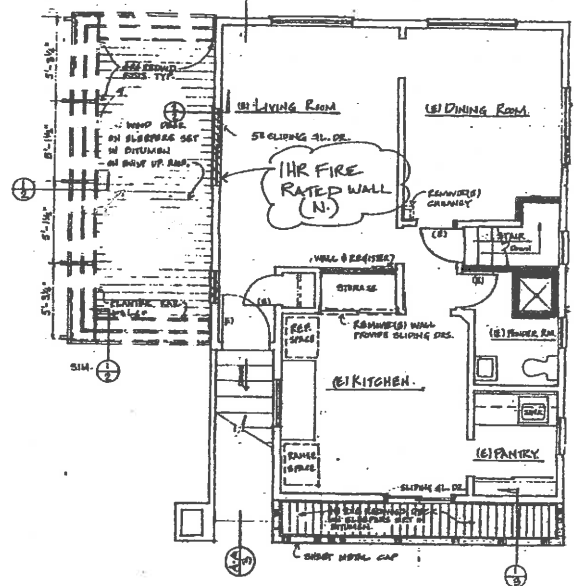
COMBINED
SITE PLANS
1/8" = 1'-0"

Taken from V-1-06 file
staff Alt.

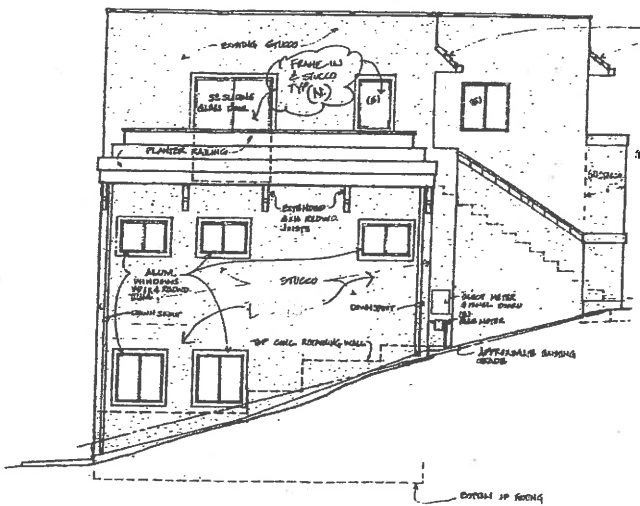
F.119.



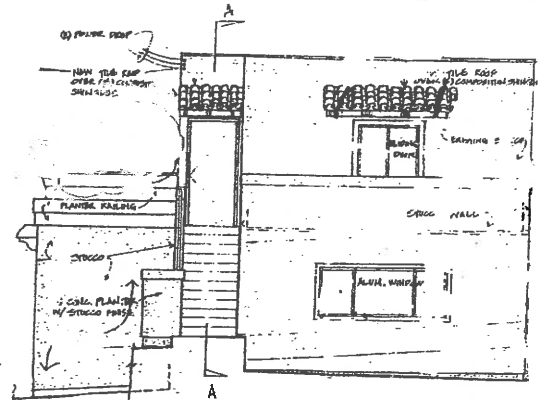
SECOND FLOOR
1/8" = 1'-0"



THIRD LEVEL
1/8" = 1'-0"



WEST ELEVATION
1/8" = 1'-0"



FRONT ELEVATION
1/8" = 1'-0"

↑
Current lot line location

As Provided by the Applicant
Lot widths for the Block:

Address	Lot Width +/-
691 Sierra Point	54'
693 Sierra Point	37'
685	54'
681	55'
675	50'
671	50'
669	26'
665	26'
661	39'
653	38'
649	50'
641	30'
639	60'
688	25'
684	<50'
682	<50'
680	51'
676	50'
670	50'

668	25'
666	41'
660	40'
654	40'
644	40'
636	40'
626	40'
624	40'
538	80'
524	42'

RECORDING REQUESTED BY:

WHEN RECORDED, MAIL TO:
James P. Dunleavy
685 Sierra Pt. Rd.
Brisbane CA 94005

2007-106541
02:01pm 07/13/07 ES Fee: 25.00
Count of pages 7
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder



Excerpt only

DECLARATION OF EASEMENT FOR ENCROACHMENT

THIS DECLARATION OF EASEMENT FOR ENCROACHMENT (“Declaration”) is made and entered into as of February 12, 2007 by James Dunleavy (“Declarant”).

RECITALS

A. Declarant is the Owner of that certain real properties situated in the City of Brisbane, County of San Mateo, State of California, more particularly described as 691 Sierra Point Road, Assessor’s Parcel No. 007-451-270 (as described in attached Exhibit A), and 685 Sierra Point Road, Assessor’s Parcel No. 007-451-260 (as described in Attached Exhibit B), Brisbane CA 94005, collectively referred to herein as the Parcels.

B. Declarant desires to impose an easement for an existing encroachment on 685 Sierra Point Road for the benefit of 691 Sierra Point Road as depicted on Exhibit C hereto (the “Encroachment”).

AGREEMENTS

1. **Grant of Easement.** Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares that 685 Sierra Point Road shall be burdened by the following easement, which is hereby imposed upon the Parcels and all present and future Owners and Permittees of the Parcels:

(a.) An easement to maintain the existing encroachment depicted in Exhibit C hereto, and for reasonable access, ingress upon, and egress on and over 685 Sierra Point Road for reasonable maintenance of the encroachment for the benefit of 691 Sierra Point Road.

2. **Indemnification.** The Owner of 691 Sierra Point Road shall protect, defend, indemnify and hold the Owner, Occupier and Permittee(s) of 685 Sierra Point Road harmless from and against all claims, liabilities and expenses (including reasonable attorneys’ fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of such Owner, its contractors, employees, agents, invitees or others acting on behalf of such Owner with respect to any matter arising out of the Encroachment.

3. **Insurance.** Throughout the term of this Declaration, each Owner shall procure and maintain comprehensive general liability and property damage insurance against claims for personal injury, death, or property damage occurring upon such Owner's Parcel, with single limit coverage of not less than an aggregate of One Million Dollars (\$1,000,000) including umbrella coverage, if any, and naming each other Owner as additional insureds.

4. **Taxes and Assessments.** Each Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental or agency with respect to its Parcel.

5. **No Rights In Public; No Implied Easements.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of a Parcel.

6. **Term.** The Easement contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the San Mateo County Recorder's office and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners of the Parcels or until such time as any of the following take place:

(a.) The encroachment is destroyed or demolished, or the existing building at 691 Sierra Point Road is destroyed or demolished; or

(b.) Any additions or alterations are made to 691 Sierra Point Road, except to allow maintenance and repair of the building at 691 Sierra Point Road so as to protect the health and safety of occupants and to preserve the useful life of the building, as is provided by Brisbane Municipal Code Section 17.38.070; or

(c.) The total lot coverage of all buildings at 691 Sierra Point Road, plus the total lot coverage of the Encroachment exceed the total maximum allowed 40% lot coverage for 691 Sierra Point Road.

At such time, this Easement shall be extinguished and be of no further force and effect, with the exception of a reasonable amount of time, not to exceed 180 days, granted to the Owner of 691 Sierra Point Road to remove the Encroachment in its entirety.

7. **Miscellaneous.**

7.1 **Attorneys' Fees.** In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, including appeals, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

7.2 **No Waiver.** No waiver of any default of any obligation by any Owner or other party bound hereunder shall be implied from any omission by the other Owner(s,) or other party with rights hereunder to take any action with respect to such default.