

City of Brisbane

Zoning Administrator Agenda Report

TO: Zoning Administrator For the Meeting of 8/17/11

FROM: Tim Tune, Senior Planner

SUBJECT: 805 Humboldt Road; Variance V-4-11, Variance to Allow Rebuilt Enclosure at Northeast Corner of Lower Structure to Encroach into 5 Ft. East Side Setback; Joel Diaz/Dave Bostrom, applicant/owner; APN 007-441-150

Request: The subject property is occupied by a nonconforming dwelling group consisting of two detached dwellings, one on the upper portion of the slope, the other on the lower portion. The lower structure nonconformingly encroaches into the east side setback, with its southeast corner being less than 1.5 ft. from the side property line adjoining 811 Humboldt Road. At this corner of the structure, a small porch deck was enclosed by a previous owner circa 1999 without permits. A deck and stairway were then added to the rear of this enclosure. Subsequent code enforcement action resulted in the deck being reconfigured to provide the required 5 ft. side setback, but the enclosure was not addressed.

The current owner obtained a Building Permit to make numerous repairs to the structure. During the course of the work, dry rot was discovered in the area of the previously enclosed deck. The enclosure was demolished and substantially rebuilt when a Stop Work Notice was issued, because this work was beyond the scope of the Building Permit.

Because the deck had previously been enclosed in violation of the Zoning Ordinance's requirement for a 5 ft. setback for such construction, the enclosure does not qualify as part of a nonconforming structure that may be maintained and repaired per Brisbane Municipal Code Section 17.38.070. Instead, a Variance must be obtained to allow the enclosure to be rebuilt within the required setback.

Recommendation: Conditionally approve Variance V-4-11 per the attached findings and conditions of approval.

Environmental Determination: Additions to existing structures are categorically exempt from the provisions of the California Environmental Quality Act per Section 15301 of the State CEQA Guidelines. The exceptions to the use of this categorical exemption referenced in Section 15300.2 do not apply.

Applicable Code Sections: A 5 ft. minimum side setback is required per BMC Section 17.06.040.D. The findings required to grant a variance to the setback requirements are listed in BMC Section 17.46.010.

Analysis and Findings: In order to grant the Variance, the Zoning Administrator must find that, because of special circumstances applicable to the property, such as its size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance would deprive the property of privileges enjoyed by other properties in the vicinity and same zoning district. In addition, any approval must be subject to such conditions as necessary to assure that the variance will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and same zoning district.

Special Circumstances Applicable to Subject Property—The property is unusual in that it is located adjacent to the 10 ft. wide alley that runs through the center of the 1908 City of Visitation subdivision (the alley is located on the opposite side of the property from the subject setback encroachment). Due to a bust in the subdivision map, survey results can vary, depending upon from which side of Central Brisbane one measures. In this particular case, the discrepancy is evident in the difference between the 1908 map and the 2000 Record of Survey (Vol. 20, Page 94) prepared by Kavanagh Engineering for Lots 39 & 40, Block 33 (811 Humboldt Road). The 1908 map describes the property line between the subject property and that at 811 Humboldt Road as being 100 ft. long with a bearing of N 17°55'00" E, while the 2000 survey shows it to be 100.07 ft. long with a bearing of N 15°30'12" E.

While this discrepancy does not completely explain the existing encroachment of the lower structure, including its southeast corner, into the required side setback, it does give an indication of what difficulties must have been encountered in accurately locating property lines when building over 60 years ago. As evident in the attached photos, a substantial foundation was originally built under the location of the subject enclosure, apparently with the expectation that construction atop it would meet whatever building codes were in force at the time.

It should also be noted that the proposed +/-1.5 ft. east side setback would be balanced by a 25-32 ft. west side setback for the subject structure.

Privileges Enjoyed by Others in the Vicinity Deprived to Subject Property—The subject enclosure serves as a sheltered entryway to the lower structure, which is accessed from behind via an alleyway from Sierra Point Road below. It is not unusual to find covered entries or enclosed porches encroaching into required front setbacks (for example, Variance V-5-97 at 51 Mono Street, Variance V-2-05 at 20-38 Plumas Street, Variance V-3-05 at 15 Glen Parkway and 720 San Bruno Avenue). In one instance, though, the Planning Commission approved a Variance for covered entry deck on the side of a building with only a 1.5 ft. setback

The City Council, Planning Commission and Zoning Administrator have also granted a number of Variances to allow additions to continue existing nonconforming setbacks in the horizontal plane. These include Variances V-13-87 at 353 Alvarado Street, V-2-99 at 392 Klamath Street, V-5-06 at 361 Mendocino Street and V-5-07 at 580 Visitation Avenue. At least one Variance has also been granted to allow a building notch similar to the southeast corner of the subject structure to be enclosed, specifically the lightwell at 353 Alvarado Street (Variance V-18-88).

Without the Variance, the applicant would still be permitted to reconstruct the enclosed area as an open deck within its original nonconforming footprint per BMC Section 17.38.070. Thus, while it would be in alignment with the rest of the house, its east side would not align with the existing rear deck for which a 5 ft. setback was provided per its 2005 Building Permit.

Conditions Necessary to Prevent a Grant of Special Privilege—The current Building Code requires one-hour fire-rated construction with no openings where located less than 3 ft. from the side property line. To improve the existing situation in regards to the adjoining property, staff recommends that 1-hour fire-rated construction be required for the entire east wall of the structure (which is located 2 ft. or less from the property line), not just that portion subject to the Variance, assuming that there are no required emergency egress bedroom windows that need to be maintained.

Attachments:

- Draft Findings and Conditions of Approval
- Photos
- 2005 Building Permit Site Plan
- Topographic Survey for 805 Humboldt Rd. by Dominguez Associates (11/17/2004)
- Record of Survey (Detail) by Kavanagh Engineering (July 2000)

DRAFT
VARIANCE V-4-11

Findings:

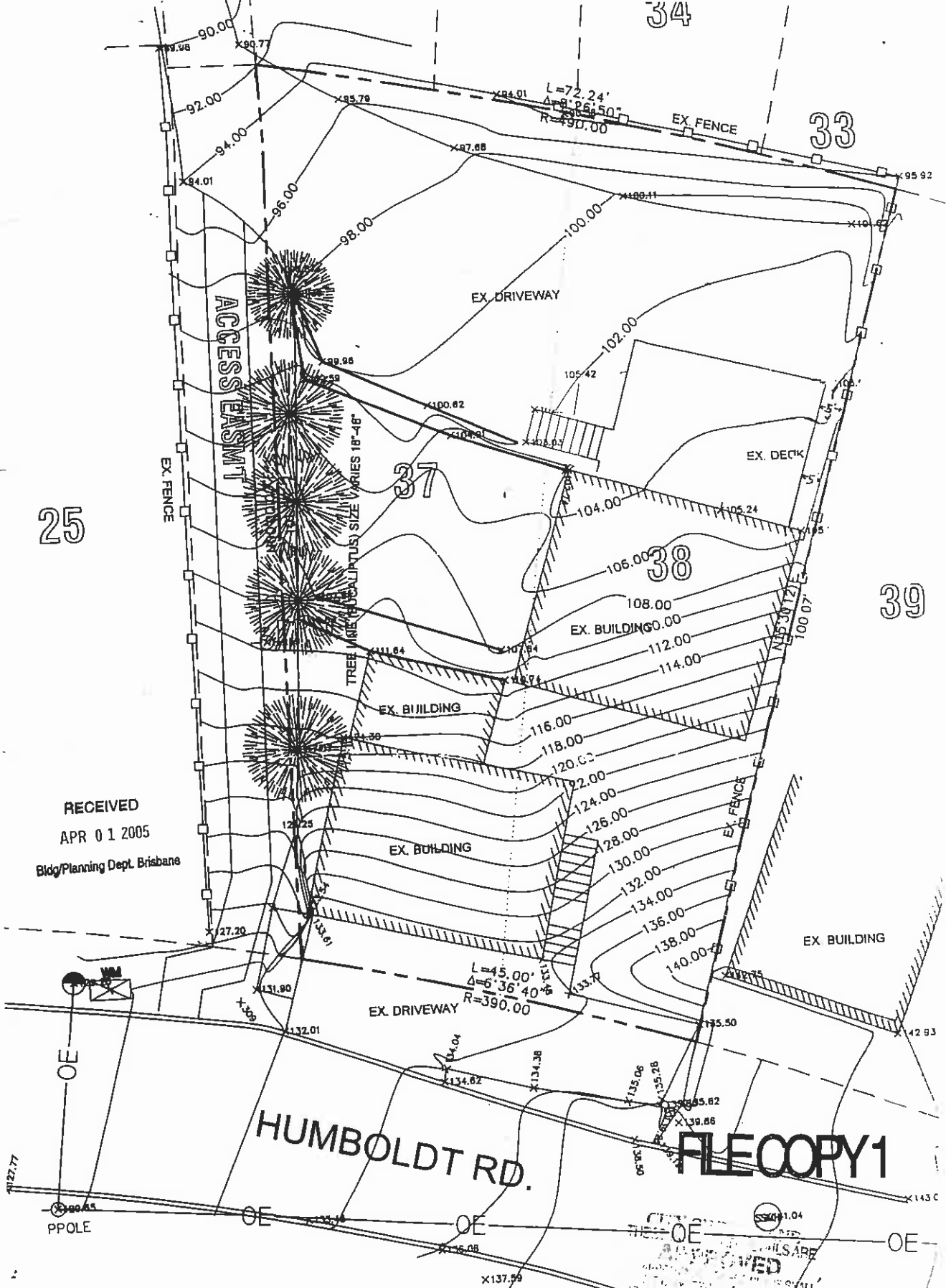
1. The variance shall be subject to such conditions as will assure that the adjustment hereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is located, in that 1-hour fire-rated construction will be required for the entire east wall of the structure, not just that portion subject to the Variance.
2. Because of special circumstances applicable to subject property, specifically its location along the centerline of the 1908 City of Visitation subdivision, in addition to the history of the property and the 25 to 32 ft. west side setback provided for the subject structure, offsetting its +/-1.5 to 2 ft. east side setback, 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, namely a sheltered entryway continuing the horizontal line of the east side of the building, similar to Variances V-9-86 at 747 Humboldt Road, V-13-87 at 353 Alvarado Street, V-2-99 at 392 Klamath Street, V-5-06 at 361 Mendocino Street and V-5-07 at 580 Visitation Avenue.

Conditions of Approval:

- A. A separate application for a Building Permit shall be required for the subject work. Floor plans for all buildings shall be submitted along with plans for the portions of the buildings that have been rebuilt beyond the scope of the current Building Permit. The plans shall include details for 1-hour fire-rated construction of the east wall of the lower building, to the extent that such construction would not conflict with the requirement for emergency egress windows for any bedrooms. All work shall be completed in compliance with 2010 California Building Code requirements. Inspections shall include verification of any affected foundations as required by the Building Official.
- B. The required parking spaces shall not be used or converted for any other use that would impair their basic use as storage for motor vehicles per Brisbane Municipal Code Section 17.34.020.A.
- C. The Variance shall expire 2 years from its effective date (at the end of the appeal period) if the Building Permit has not yet been revised to include the approved project.







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805 Humboldt Ro.
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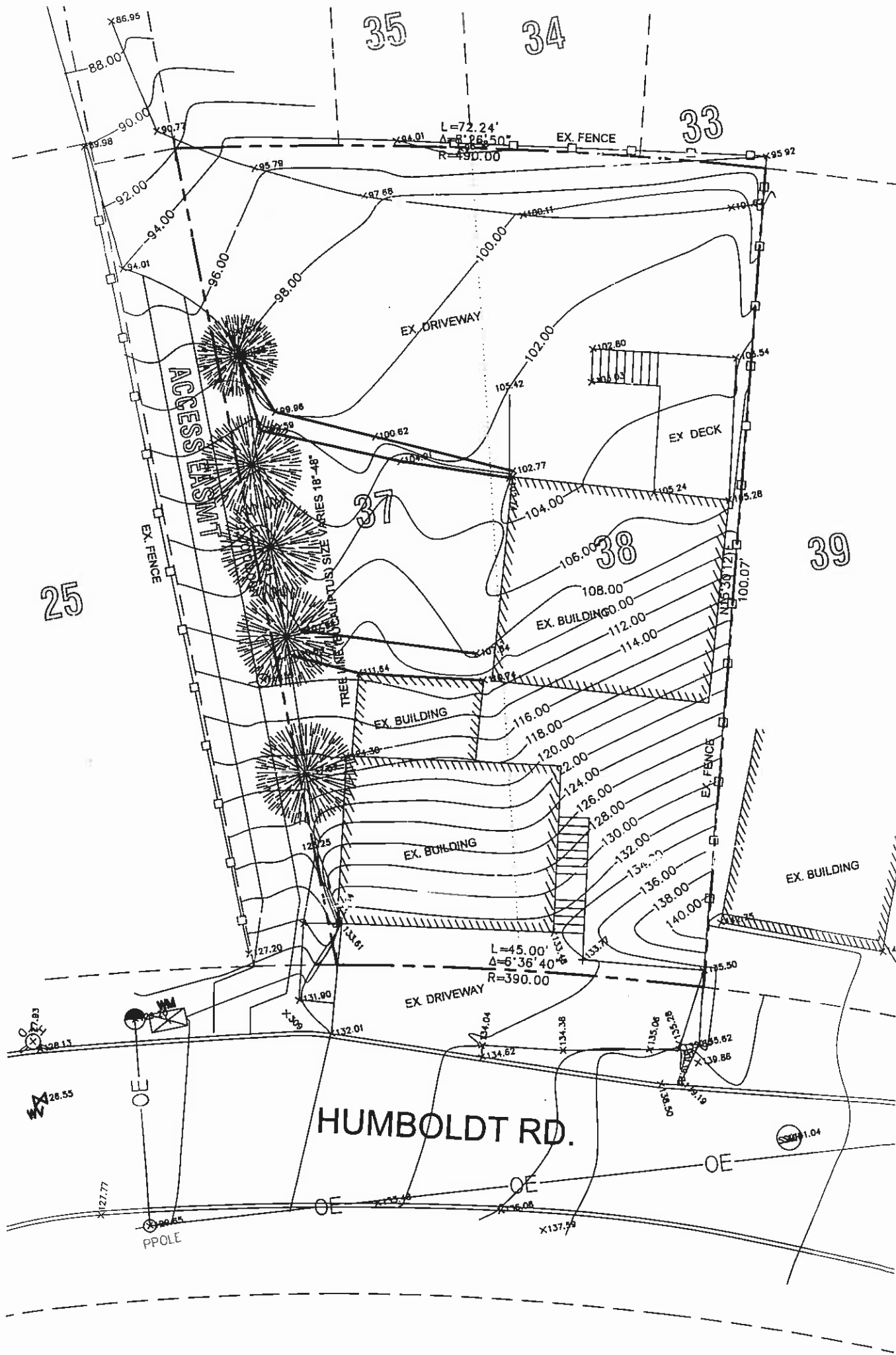
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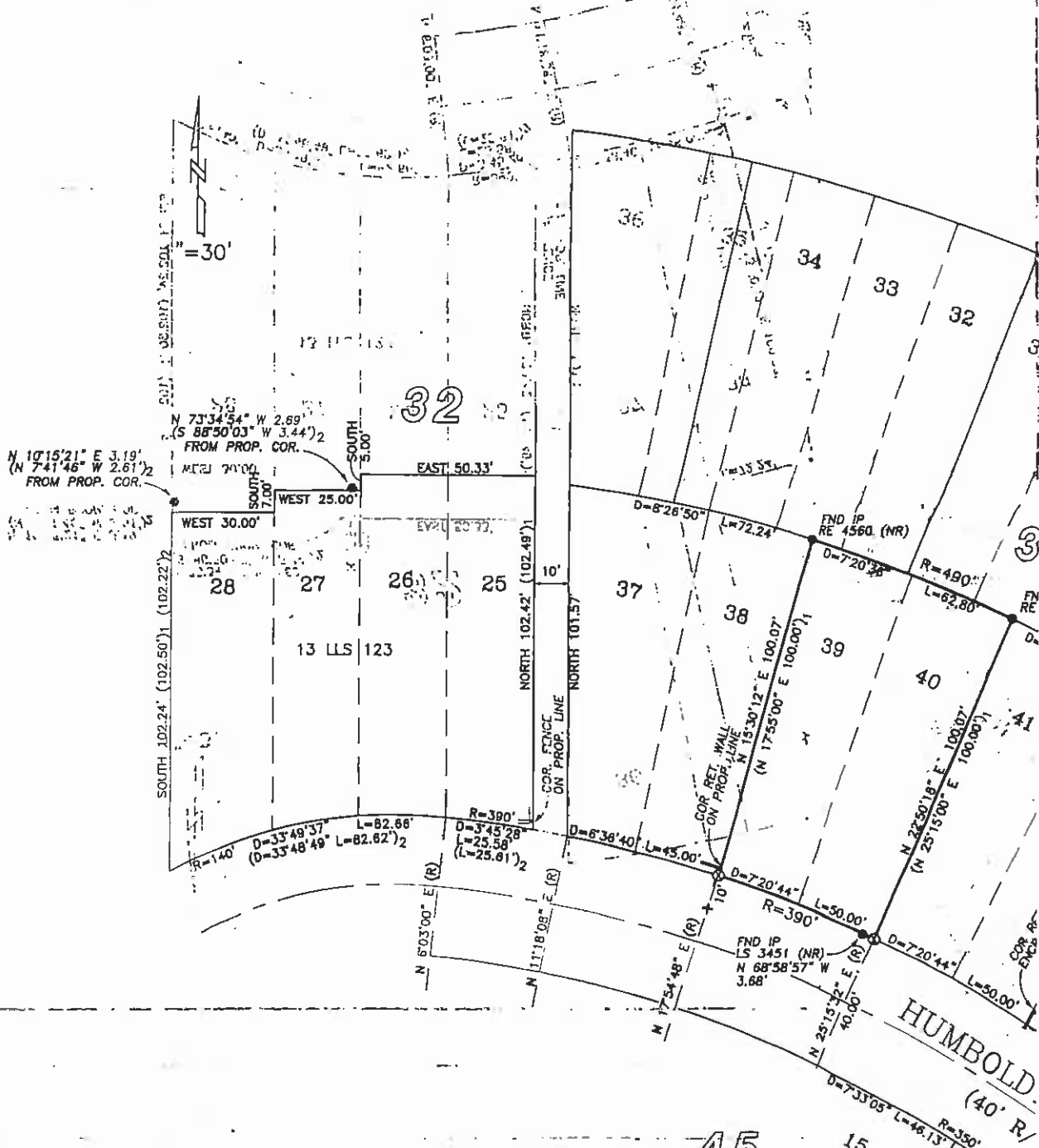
Replace existing Deck with 5' set Back

AS PER C.B.C. 2001 97 EDITION with Brisbane II

FILE COPY 1

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BASIS OF BEARINGS

NORTH, FOR THE WESTERLY LINE OF LOT 37 IN BLOCK 33 AS SHOWN ON "AMENDED MAP OF SUBDIVISIONS NOS. 1, 2 & 3, CITY OF VISITACION, CALIFORNIA", FILED IN VOLUME 6 OF MAPS AT PAGE 45, WAS USED AS THE BASIS OF BEARINGS FOR THIS MAP.

PARCEL I
37 PM 2

FND IF
LS 402
PER 3
(DIST)
N 25'
1.93'

LEGEND

- FOUND 3/4" IRON PIPE (IP), AS NOTED
- FOUND NAIL & TAG LS 5102, PER 13 LLS 123
- ⊗ SET NAIL AND BRASS TAG RCE 20858
- + SET CUT "X" ON CURB
- ()₁ RECORD PER 6" M 45 WHEN DIFFERENT FROM MEASURED
- ()₂ RECORD PER 13 LLS 123 WHEN DIFFERENT FROM MEASURED
- M MAPS
- PM PARCEL MAPS
- NR NO RECORD