



**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
Tuesday, May 14, 2019 8:00 AM
following the Planning Commission**

A G E N D A

- I. Meeting Call to Order
- II. Roll Call of BOA Members
- III. No minutes available for review.
- IV. Conflicts of Interest
- V. NEW BUSINESS:
 - A. Variance Request – 98 Fir Drive

MEMO

TO Board of Adjustment
FROM Mara Owen, Planner
THRU James Shockey, Community Development Director
DATE May 14, 2019
RE Setback Variance Request – 98 Fir Drive

Applicant: Professional Restoration

Description of Variance Request:

The applicant is requesting a 2.9 foot variance on the west elevation of the property, the front setback. Please see attached variance request letter for the full request.

Applicable Town Code:

7-4C-3: LOT AREA REQUIREMENTS:

D. Minimum Yard Requirements: Except as provided for in section 7-3-7 of this title, minimum yard requirements in the R-2-O district shall be:

- 1. There shall be a front yard setback of at least fifteen feet (15') from any street right of way for both principal and accessory structures.**
2. There shall be a rear yard setback of at least ten feet (10') for both principal and accessory structures.
3. There shall be a side yard setback of at least five feet (5') for both principal and accessory structures. The side yard on the street side of each corner lot shall not be less than fifteen feet (15').
4. Parking is permitted within the front setback. Driveways are permitted within five feet (5') of the side yard property line. (Ord. 317, Series of 2002)

Criteria to Grant Variance (Town Code § 7-8):

7-8-1B: No variance shall be granted unless the board of adjustment finds, based on evidence, that:

1. The property in question cannot yield a reasonable return in use or service if permitted to be used only under the conditions allowed by the regulations for the municipality.
2. The plight of the owner is due to unusual circumstances.
3. The variation, if granted, will not alter the essential character of the locality.

7-8-1C: For the purpose of implementing the above rules, the Board shall also, in making its determination whether there are practical difficulties or particular hardships, take into consideration the extent to which the following facts favorable to the applicant have been established by the evidence:

1. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to the other property within the same zoning classification.
3. The purpose of the variation is not based primarily upon a desire to make more money out of the property.
4. The alleged difficulty or hardship has not been created by any person presently having an interest in the property.
5. The granting of the variation would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
6. The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets or increase the danger of fire or endanger the public safety or substantially diminish or impair property values within the neighborhood.

Public Notification:

This variance request has had proper public notification pursuant to Section 7-8-3 of the Town Code. A Public Notice was published in the Sky-Hi Daily News on March 31, 2019 and April 11, 2019 providing notification of the meeting and requesting comments. Mailings were sent to property owners within 300 feet of the property and the property posted on March 15 and April 4, 2019. The double posting was due to an error in mailing labels that required a repeat of the notice.

Two comments have been received. Please see the two attached letters for the full comments.

Staff Comments:

The applicant is requesting a variance on the West elevation to encroach 2.9' into the required 15' front setback. As shown in the attached "98 Fir Drive Site Plans" sheet and further explained in the request letter, the need for this variance is due to the house foundation being slightly turned during construction to avoid existing mature trees.

To avoid situations such as these, the Improvement Location Certificate (ILC), a survey document showing where the foundation has been placed, is required by the Town prior to framing. This allows any errors with the foundation location to be rectified at that time and not after the structure is fully built and such adjustments become much more costly. In this case, the ILC was not submitted or requested until after the home was fully built.

98 Fir Drive was the site of a gas explosion over two years ago and this home is the result of that restoration project. The property has currently been issued a Temporary Certificate of Occupancy.

Staff Recommendation:

Staff does not provide a recommendation for variance requests. The Board of Adjustment must prove that a hardship is applicable and must establish findings of fact as related to the particular difficulties of the site. The hardship must be determined using one of the following criteria:

1. The property in question cannot yield a reasonable return in use or service if permitted to be used only under the conditions allowed by the regulations for the municipality.
2. The plight of the owner is due to unusual circumstances.
3. The variation, if granted, will not alter the essential character of the locality.



VARIANCE APPLICATION FORM

Date: 3, 8, 19

Applicant Name: Professional Restoration

Mailing Address: 2452 W 2nd Ave, Denver CO 80223

Phone Number: 303-522-7835 E-mail Address: rocky@prorestoration.com

Applicant is the: [] Property Owner [X] Other: General Contractor

Street address of property for which variance is requested: 98 Fir Drive

Legal description of property: Single Family Home

Detailed description of the variance requested and an explanation of why the applicant believes the variance should be granted (please attach additional sheets if necessary):

See Attached;

Indicate which conditions listed below relate to the property for which variance is requested.

Please note, the Board of Adjustment cannot grant a variance unless it finds, based on evidence, that ALL the following conditions exist.

- [X] The property in question cannot yield a reasonable return in use or service if permitted to be used only under the conditions allowed by the regulations for the municipality*
[X] The plight of the owner is due to unusual circumstances*
[X] The variation, if granted, will not alter the essential character of the locality*

*For each condition checked above, applicant must provide adequate supporting evidence with this application.

Please indicate which of the following facts favorable to your application apply to this request:

- [X] The particular physical surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out*
[X] The conditions upon which the petition for a variance is based would not be applicable, generally, to the other property within the same zoning classification*
[X] The purpose of the variation is not based primarily upon a desire to make more money out of the property*
[X] The alleged difficulty or hardship has not been created by any person presently having an interest in the property*
[X] The granting of the variation would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located*
[X] The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets or increase the danger of fire or endanger the public safety or substantially diminish or impair property values within the neighborhood*

*For each condition checked above, applicant must provide adequate supporting evidence with this application.

Applicant Signature: Proh Gallegos

Please submit all materials electronically to permits@wpgov.com

Date Received: \$250 Fee Received: Received By:



PROFESSIONAL RESTORATION

Board of Adjustment,

Pertaining to the address of 98 Fir Drive on the attached application, we would like to officially request a 2 ft variance on the west elevation of the property. Specifically, so that the home entry room exterior wall can be code compliant and sit behind the setback line. This request comes in after we received notification from the Planning and Zoning Department that the foundation on the west elevation has encroached the setback line by a couple of feet and a roughly 2x13 ft section of the entry room is now overlapping the setback line. And due to this setback encroachment and with good reasoning why, we were hoping to be granted a 2.5 ft variance on that west elevation of the home.

As of last week, on March 5th, all final inspections have passed expect for obtaining the building final sign off which will allow the home owners to move back in. After meeting with the inspector last week for finals he stated the home was “safe” and “inhabitable”, but he would not be able to sign off until they received a copy of the foundation survey or ILC. This is typically submitted before the framing starts but some reason this was skipped and not requested until the tail end of the job. And here is where the problem lies now, which is why we are requesting this variance. When the As-Built foundation plan was submitted it shows that when the foundation was poured it was slightly twisted clockwise causing the front entry room, or west elevation, to encroach the setback line by 2.5 ft. This deviation from the original approved foundation site plans was done as a field adjustment and in good faith. The reason that the As-Built foundation drawing does not exactly match the preapproved foundation layout plan is because when the concrete finishers began setting the foundation, they found that the staked lines for the perimeter of the foundation wall were too close to a tree in order to set exactly along that line. Specifically speaking, it was the tree on the northeast corner of the home. Looking at the attached pictures and drawings, note that the northeast tree is positioned very close to the exterior wall. In fact, the home sits within 4 trees on all four sides of the house. So, when the concrete finishers began setting the foundation, they found that the northeast staked foundation line was too close to the tree roots and would not be able to set along that line without having to disturb the northeast tree. In order to preserve that

FIRE AND WATER DAMAGE REPAIR | PRORESTORATION.COM

2452 W 2nd Avenue Denver, CO 80223 | OFFICE 303.922.4001 FAX 303.922.4556



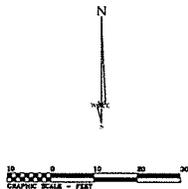
PROFESSIONAL RESTORATION

tree, instead and having to uproot it, it was decided to slightly twist the foundation clockwise as minimal as possible to pull it back far enough where it does not disturb the tree or tree roots when setting the foundation. We would have not been able to adjust the foundation in any other direction without having issues with other trees, the hill drop off on the east side, setback encroachment, or the sewer lines on the north side of the home. Due to the trees close positioning to the home we had to make a slight field adjustment which unfortunately now means a 2x13 foot section of the front entry room on the home now overlaps the west setback line. In making the field adjustment we were acting in good faith while trying to set the foundation correctly without compromising it as well as preserving the trees around the home.

We would greatly appreciate it if we could be considered for this variance request. We are truly sorry for this oversight and hope that our reasoning behind it shows that we had honest intentions.

This home restoration project was started from a gas explosion over 2 years ago. As the general contractor our goal over the last couple of years has been to get the home owners back into their home to pre-loss conditions and we would never purposely deviate from the plans or not follow code requirements. In no way is this 2.5 ft clearance variation an attempt to gain anything or any value to the project or the home. Without this variation request approval, it will cause much difficulty in terms of cost and delay the owners anticipated return to their home. This issue is due to unusual circumstances which unfortunately was not foreseen during the planning process. By granting this variance request, the home will not alter the essential character of the locality of the home, will not help anyone gain any value, will not affect the neighbors supply of light or air, and will not be detrimental to the public welfare or endanger public safety, and will not affect the public roads. This minor adjustment of slightly twisting the foundation clockwise has essentially no effect to the neighborhood nor the home. Due to the reasoning behind this discrepancy we feel that we are a good candidate for the variance request and would very much appreciate it if the Board could help grant the variance approval. Thank you for your time.

AS-BUILT PLAT
98 Fir Drive
Lot 3, Block 10
Winter Park Village
Part of HES 117, T2S R75W, 6TH PM
Town of Winter Park, Grand County, CO



CONTOUR INTERVAL: 1'

BASIS OF ELEVATION: Assumed 1030.80' of west rim of moraine. This is an assumed datum based on past local coordinate systems. The elevations shown can be used for this site only.

BASIS OF BEARING: Assumed N40°11'07"E from the southwest to the northeast corner of Lot 3, monumented as shown, based on a local coordinate system.

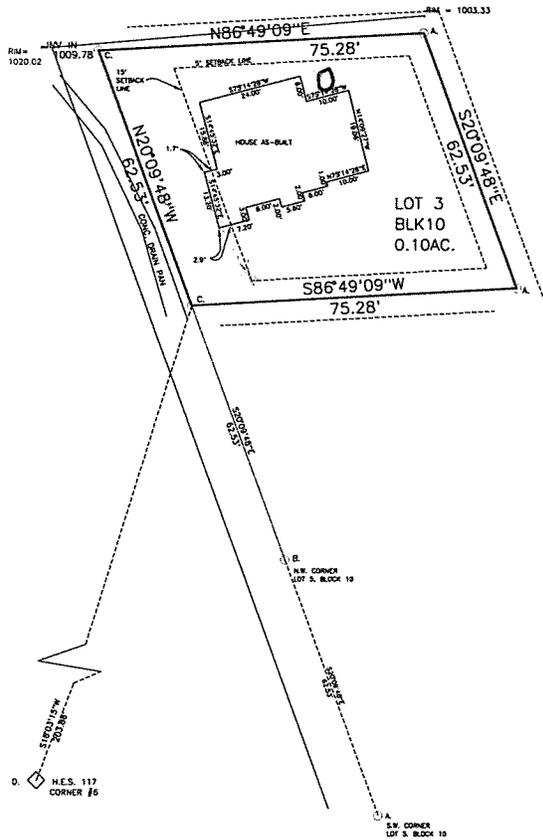
KEY:

A_o - FOUND ½" REBAR, APPARENT ORIGINAL MONUMENT.

B - -- FOUND ALUMINUM CAPPED ½" REBAR STAMPED PLS 25971.

C - -- SET ALUMINUM CAPPED ½" REBAR STAMPED PLS 25971.

D - -- EXTANT PLS CORNER NOTED. FOUND DUMMY BRASS CAP.



NOTICE:

1. For question of title, reference to a title insurance policy is recommended.
2. Buried utilities have not been located.
3. This document is certified as one, complete document. Any revision, alteration, addition or change to any part of this document, in any manner by any person, supersedes and invalidates all previous information and certifications.

This as-built plat was produced for Stephen Pastuszny, shows the result of a field survey done by me or under my responsible charge based on facts known to me, complies with applicable statutes, and is not a warranty or guarantee, either expressed or implied.

Warren D. Ward, Colorado PLS 25971.



Azimuth Survey Company P.O. Box 433 Fraser CO 80442 PHONE 970-331-1100 FAX 970-725-2174 www.azimuthsurvey.com	
AS-BUILT PLAT 98 Fir Drive Lot 3, Block 10 Winter Park Village Part of HES 117, T2S R75W, 6TH PM Town of Winter Park, Grand County, CO	



Town of Winter Park, Fraser & Granby
Building Department

FOUNDATION SETBACK AND ELEVATION CERTIFICATION

DATE: 3-1-19

Town of Winter Park, Fraser & Granby
50 Vasquez Road
Winter Park, Colorado 80482

RE: Foundation Setback and Elevation Certification for LOT 3, BLOCK 10
9838 FIR DRIVE, WINTER PARK VILLAGE SUBDIVISION ADDRESS
PERMIT # _____

To Whom It May Concern:

On, 2-25-19 a field crew from this office measured the foundation setbacks and elevations for the above-referenced lot and found them to be in compliance with the Drainage, Final Grading and Development Plan approved by the Town(s) of Winter Park, Fraser & Granby. This determination was based on the location of the footing(s) or foundation(s) wall form(s).

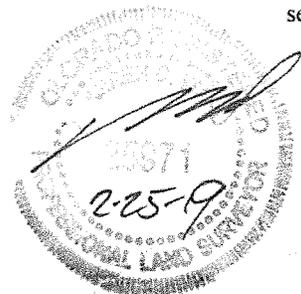
Approval of the elevation is required by the Planning Department prior to framing of structure.

NOTE: HEIGHT OF BUILDING IS 33.5', BEFORE FINAL LANDSCAPING

2. THIS BUILDING IS A FIRE REBUILD. A 2.5' x 13' PART OF FRONT ANTEROOM OVERLAPS 15' SETBACK.

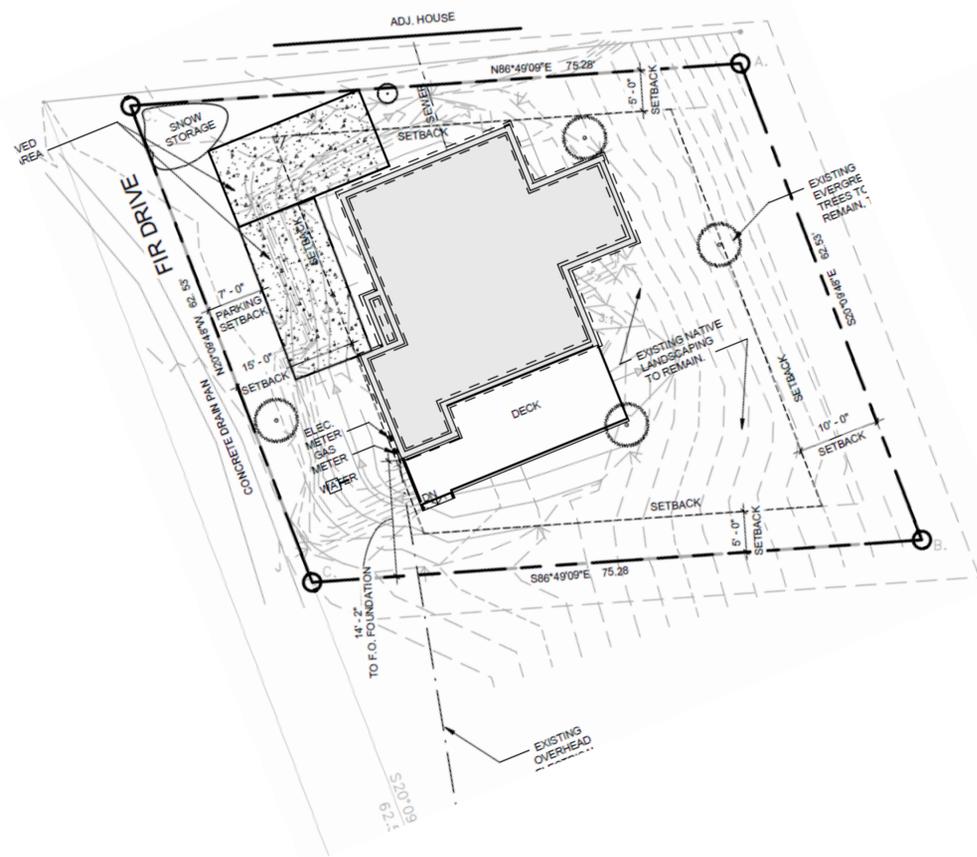
BY: [Signature] 25971
Signature (Colorado Licensed Engineer or Land Surveyor)

WARREN D. WARD
Printed name

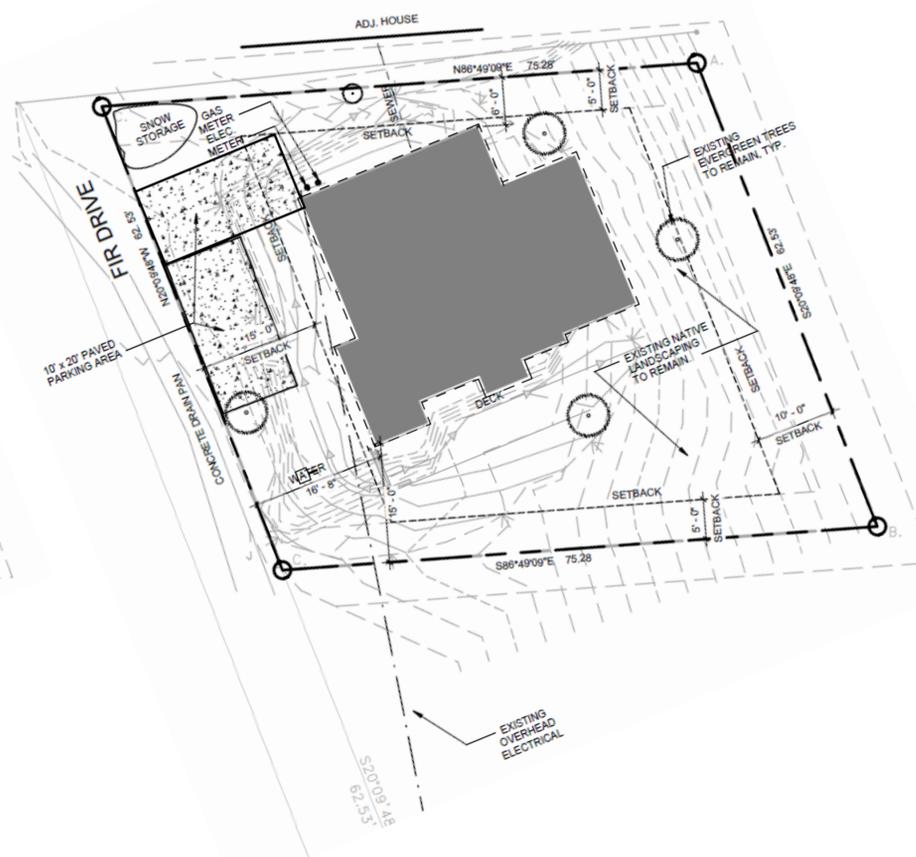


98 Fir Drive Site Plans

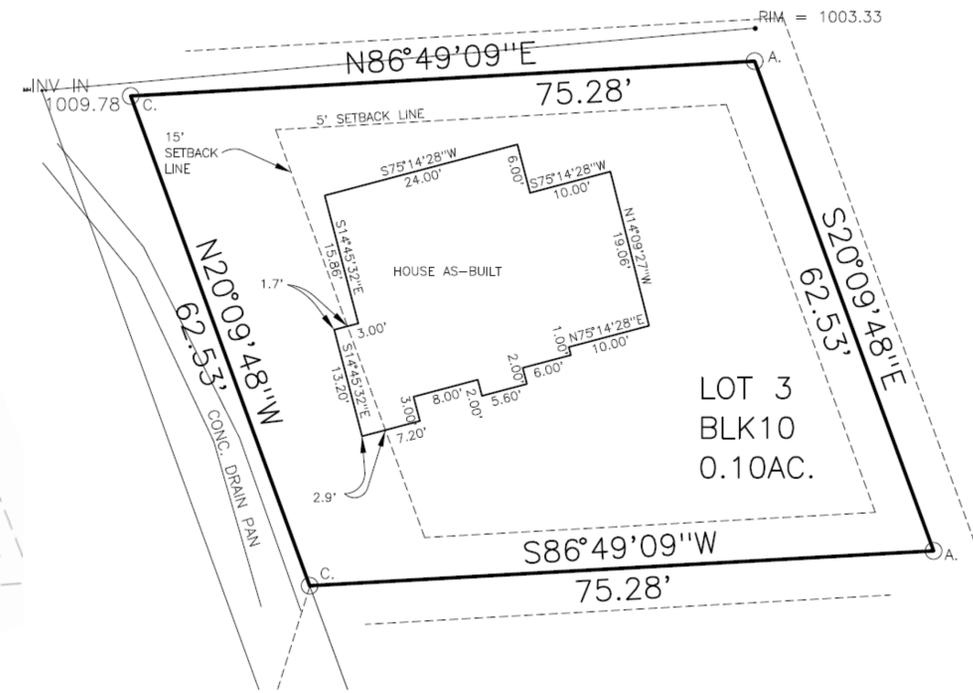
Original Approved Site Plan
11/14/17



Revised Site Plan
06/01/18



As Built Site Plan
03/11/19



From: [NMO Email](#)
To: [Tom Hawkinson](#); [Mara Owen](#)
Subject: Board of Adjustment - 98 Fir Dr Setback Variance
Date: Saturday, May 04, 2019 9:34:31 PM

Thank you for mailing a notice of the setback variance request for 98 Fir Dr allowing us an opportunity to comment.

We support approval of the variance - primarily to put a stop to the endless parade of construction vehicles and heavy equipment, parking all over the place, trash and mud, trucks and trailers driving over my property (from both construction projects - this one and 122 Fir Dr).
The lack of oversight and professionalism is shocking. It would be nice to have one project done. Kudos to the homeowners for trying to preserve as many mature trees as possible and designing a home that fits into the neighborhood.

Moving on to next steps: clean up of surrounding area. Contractors for 98 Fir removed much of the snow and construction debris earlier this year from the front of the house. Some of the wood scrap, "stone", dirt fill and garbage was plowed across the street onto the bus barn property, creating an unsightly mess which will suppress grass, tree and wildflower growth. I'd like to see this area restored to it's previous condition. Picture attached of one portion.

Nancy & Ric Olson - 24 Fir Drive

From: [James Shockey](#)
To: [Doug Hunt](#); [REDACTED]
Cc: [Tom Hawkinson](#); [Mara Owen](#)
Subject: RE: 98 fir drive, old town
Date: Tuesday, May 07, 2019 10:01:53 AM

Mr. Hunt,

Thank you for the email. We have reached out to the contractor and the owner of the property to have the site cleaned up. The trash and discarded lumber is not acceptable and will need to be cleaned up immediately.

As for the variance, would you like to have this email entered into the public record so the Board of Adjustment can review it ahead of the variance hearing?

Thanks,

James Shockey
Director | Community Development



From: Doug Hunt [REDACTED]
Sent: Saturday, May 04, 2019 10:03 AM
To: James Shockey [REDACTED]
[REDACTED]
Subject: 98 fir drive, old town

Mr. Shockey,

I emailed Mr. Hawkinson last week and it seems to have fallen on deaf ears. My concern is the new replacement house across the street from me. This is the house asking for a setback variance. The site is despicable. The snow has melted and trash is everywhere including across the street. They never used a roll off and waste was thrown everywhere including the adjacent lot. There are big rocks in that same lot. Why can't the city make the contractor clean up this mess? Also, the ground slopes toward the house including under the new deck. How is that allowed? I am a builder myself and this would never have been approved in other municipalities along with common practices.

Regarding the variance, I am unable to attend but I don't understand how this happened. Why wasn't a location certificate required before the foundation was poured? Again, this is required in other jurisdictions. I don't know how this issue can be resolved without cutting off a piece of the house. One thing that should absolutely be required is that the front stairs should be removed and then adding a code required 3' landing and turning the stairs to the left to not go out further into the setback. I feel really sorry for the homeowner. They were dependent on the experts to do their jobs. The contractor was inept.

Seems to me the city did not do their part to inspect this construction as well.

Doug Hunt, 105 Fir Drive