

**Board of Adjustment**  
Tuesday, December 14, 2021 -- 4:00 p.m.

*Continuation from January 7, 2021 Public Hearing*

**Property owner Steve Nicolais whose address is 750/770 6<sup>th</sup> Street, Del Norte, Co 81132**

The legal description of property service address is 750/760 6<sup>th</sup> Street,  
West 50 Feet Lots 10-11-12 Block 39 in the Town of Del Norte, Colorado

The variance application request is approval to allow a re-plat of two adjacent properties. The proposed change would reduce the area of one of the properties to approximately 6100 ft. This would remove the interdependence of the properties with respect to shared driveway; solve problems and conflicts of driveway ownership. And allow each property as stand-alone entities that could be sold separately.

**Continuation is to follow up on property separation of utility services to each residential parcel.**

Those present Marty Asplin, Glynnis Williams and Joe Archuleta  
Bernadette Martinez, Town Administrator  
Kevin Larimore, Public Works  
Eugene Farish, Town Attorney

On January 12, 2021, the Board of Adjustment (Findings of Facts) granted the approval of the variance on the condition that the applicant Steve Nicolais have the lines separated and proof submitted, by December 31, 2021.

**Steve Nicolais** was present and stated that he has completed the separation of utilities to each of the parcels. He submitted his invoices to the vendors that separated the water and sewer lines.

**Kevin Larimore, Public Works** confirmed that each parcel is completely separated with each, its own water and sewer taps.

**Nothing further the continuation of public hearing was adjourned.**

Town of Del Norte, Colorado 140 Spruce Street Del Norte, CO 81132	
Board of Adjustment for the Town of Del Norte  <b>Stephen M. Nicolais,</b> <i>Application for variance of requirements of the Del Norte Town Code regarding minimum lot size.</i>	Hearing Officer for the Town:  Eugene L. Farish Town Attorney
EUGENE L. FARISH, P. C. Eugene L. Farish, #2557 P. O. Box 430 Monte Vista, CO 81144 719-852-5101 719-852-4833 (f) gene@farishlaw.com	
<p style="text-align: center;"><b>FINDINGS OF FACT AND DECISION OF THE BOARD OF ADJUSTMENT, TOWN OF DEL NORTE</b></p>	

This matter came on this 7<sup>th</sup> day of January 2021, for the continuation of a hearing commenced on October 26, 2020, concerning the application for a variance at 750 and 770 6<sup>th</sup> Street, Del Norte from the provisions of the Del Norte Municipal Code requiring a minimum lot size of 7500 sq ft.

The Town attorney, Eugene L. Farish, was asked to continue acting as hearing officer and convened the hearing at approximately 2:05 p.m. on January 7, 2021 with all three members of the Board of Adjustment present.

The applicant, Stephen M. Nicolais, desires to adjust the boundary line between the two addresses so that they can accommodate the same existing shared driveway, define driveway ownership, and allow access to garages in such a manner that each property will be a separate unencumbered "standalone" lot allowing different ownerships which can be separately sold.

In its October 26, 2020 session the Board discovered that the applicant had sewer and water lines interconnected when he purchased the properties, and the Public Works Supervisor and Town Administrator addressed the necessity of having these lines separated rather than connected when the lots were being made available for separate sale. The applicant was given time to present an acceptable plan for the lines and the hearing was continued to January 7, 2021.

The applicant was present at the January 7, 2021 hearing continuation and presented an acceptable plan for connection of 750 6<sup>th</sup> Street and for connection of 770 6<sup>th</sup> Street to the Town water and sewer systems. A copy of the applicant's plan is appended to this decision as EX A and incorporated herein by reference.

The Board notes that the applicant has made a separate request to the Town Board of Trustees for a fence along the west part of the 750 6<sup>th</sup> Street property which would extend approximately 8" into the Town right-of-way and which was approved by the Town Board conditioned upon his obtaining a variance by the Board of Adjustment and which was an integral part of his plan for development of the two properties.

The Board of Adjustment specifically finds that the applicant has satisfied the criteria under §16-3-120 (Policy Determination) of the Del Norte Municipal Code regarding the exceptional conditions peculiar to the affected properties, that the


hardship has not been created by the applicant and that the variance, if granted, will not alter the essential character of the neighborhood.

The Board of Adjustment therefore grants the application for variance upon the condition that applicant construct and "hook up" the proposed water lines (plotted in blue) and sewer lines (plotted in brown) on EX A to tract 1 (750 6<sup>th</sup> Street) and tract 2 (760 6<sup>th</sup> Street) not later than December 31, 2021 as a condition precedent to the validity of this approval, and present evidence of such approved connection to the Town Public Works Director by such date.

**The Board of Adjustment therefore conditionally grants the variance as requested by the applicant.**

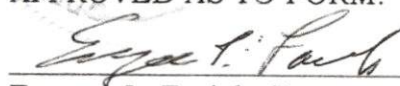
**DONE and SIGNED** this 12 day of January, 2021., *nunc pro tunc* to January 7, 2021.

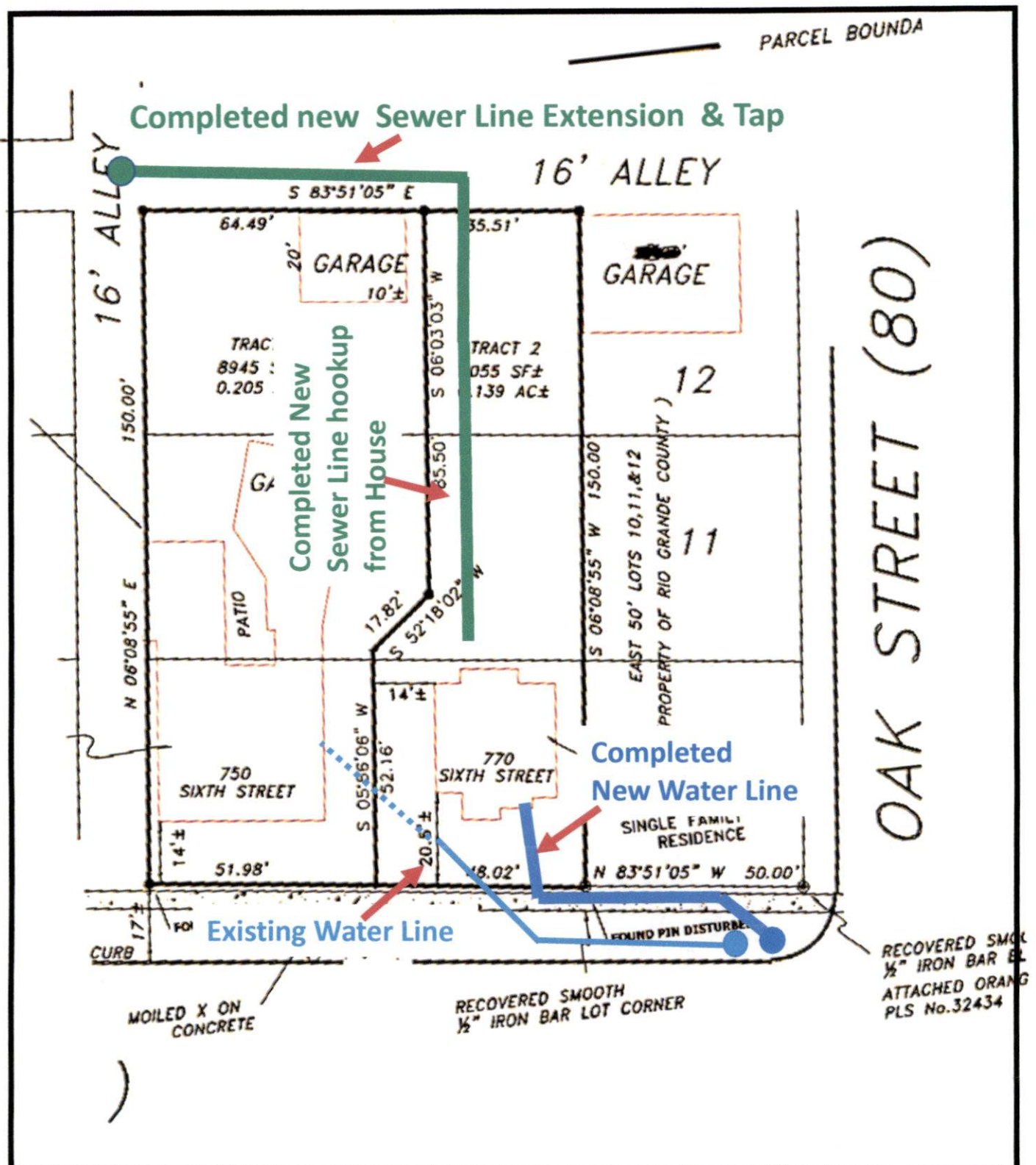
Attest:

  
Bernadette Martinez, Town Clerk

  
Marty Asplin,  
Chairman, Board of Adjustment

APPROVED AS TO FORM:

  
Eugene L. Farish, Town Attorney



Updated (10/19/21) Diagram showing location new sewer line,tap and the new separate water line and tap to 770 6<sup>th</sup> Street as required for approval of the pending property line revision (shown in black) between 750 and 770 6<sup>th</sup> Street properties.

RESOLUTION NO. 12-2020

A RESOLUTION OF THE TOWN BOARD OF TRUSTEES OF THE TOWN  
OF DEL NORTE GRANTING AN ENCROACHMENT  
EASEMENT FOR A FENCE

WHEREAS, Stephan M. Nicolais and Judith A. Nicolais (Applicants) have filed an application for a land use variance with the Town of Del Norte requesting an adjustment to the boundary line between 750 6<sup>th</sup> Street and 770 6<sup>th</sup> Street, both of which properties are currently owned by applicants and for the purpose of separation and sale of one of the properties - which is inherent with a request to build a fence along the west front of the 750 6<sup>th</sup> Street residence, and which would extend eight inches into the Town alley on the west; and

WHEREAS, the request for variance is currently pending before the Town Board of Adjustment which is studying the water/sewer issues involved in such request and is within the jurisdiction of the Board of Adjustment to grant or deny; and

WHEREAS, the issue of granting or denying an encroachment is within the jurisdiction of the Town Board of Trustees; and

WHEREAS, the Town Board of Trustees has determined that a limited encroachment for a fence would not be a detriment to the needs and interest of the Town.

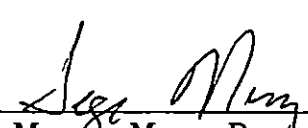
NOW THEREFORE be it hereby resolved by the Board of Trustees of the Town of Del Norte that, assuming that the Board of Adjustment grants the applicants' request for variance:

1. The applicants are hereby granted an easement to build a six-foot cedar privacy fence along the alleyway west of 750 6<sup>th</sup> Street which will extend no more than eight (8) inches into the alleyway with the following conditions:
  - a. This easement may be used by the applicants until and unless the Town of Del Norte determines that its use is not compatible with the needs of the Town for the use of the extra width of the platted alleyway in which case the applicants will be given notice to remove such fence within fifteen (15) days with which applicants agree to comply.
  - b. The easement is subject to a reservation of Town utilities – whether owned by the Town or a private utility company, as may be deemed necessary for installation, construction, or maintenance of said utilities in said easement and to which applicants agree.

**DONE and SIGNED** this 11th day of November, 2020.

Asset:

  
Bernadette Martinez,  
Town Administrator/Clerk

By:   
George Muncy, Mayor Pro Tem



GATEWAY TO ALL SEASON FUN

TOWN OF DEL NORTE

140 SPRUCE STREET  
P.O. BOX 249  
DEL NORTE, CO. 81132



PHONE NO. (719) 057-2708  
FAX NO. (719) 657-0025

## LAND VARIANCE AND APPEALS APPLICATION FORM

### INCOMPLETE APPLICATION MAY RESULT IN DENIAL OF REQUEST

The Board of Adjustments may only grant a variance if the Board finds that all of the following 7 standards are satisfied. Each standard must have a response in as much detail as it takes to explain how your property condition satisfies the standards. The burden of proof rests within you. Use additional paper if needed. A nonrefundable processing fee of two hundred dollars must be submitted with this application.

**Petitioner:**

Name: Stephen M. Nicolais

**Mailing Address**

Del Norte, Colorado, 81132

Phone: 214-724-0150

Email: snicolais.ret@gmail.com

**Property Information:**

Site St. Address: 750 6<sup>th</sup> Street, Del Norte

Legal Description:

W 50ft lots 10-11-12, Block 39

Zoning: Residential, single family      Lot size; 50 ft. x 150 ft

I hereby certify that (I am) I have been authorized to act for) the owners of the property described above and that I am petitioning for a variance in conformance with of the Town of Del Norte, Code of Ordinance. I understand that payment of the application fee is non-refundable and is to cover the costs associated with this processing this application, and that it does not assure approval of the variance. I understand that the burden of evidence to show compliance with the administrative variance standards rest with me, the applicant. I also understand that assigned hearing dates are tentative and may have to be postponed by Board of Adjustments for administrative reasons.

Date: 5/3/2018

Signature: *Stephen M. Nicolais*

4. The variance, if granted, will not adversely affect the use of the adjacent property as permitted under this code: Explain:

The variance will not adversely affect to use of nearby or adjacent properties. It will not give me any special privileges. It will, however provide necessary access and is expected to add value and improve the appearance of the house and surrounding neighborhood.

It will not: increase traffic, change neighborhood character, negatively impact adjacent property owners, violate the spirit of zoning rules, nor place public health, safety or welfare at risk.

The encroachment will be marginally evident, there have been no registered complaints, and no code enforcement actions have occurred.

5. The variance, if granted, is in keeping with the intent of this code, will not change the character of the zoning district in which the property is located, and will not permit a use that is not otherwise permitted in the district in which the property lies:

Explain:

There will be no changes in land use. Only normal residential land use will occur, and land use will not change as a result of a variance being granted.

6. The variance if granted, does not adversely affect the health, safety, and welfare of the people of the municipality of the Town of Del Norte: Explain:

If granted the variance will not in any way negatively impact the health, safety, or welfare of the people or Municipality of the town of Del Norte.

7. The variance granted is the minimum variance that will make possible a reasonable use of the land: Explain:

The variance, if granted, will make possible a reasonable and normal use of the land, provide me and family a useful, safe and direct access to my home as well as enhance its value, appearance and give me the standard expectations of all home owners with respect to access and use of their property. I believe the attached plan (Figures 5,6) for the new porch and stairs is the best solution to correct the current situation and will be part of a renovation of the house's exterior as seen in the attached plan, which will include widened and repaired/replaced driveway, new flower beds etc.

NOTICE: This application will be received during regular business hours at the Del Norte Town Hall, 140 Spruce Street, Mon-Thru, 8:00 AM to 4:30 PM excluding holidays.

#### Board of Adjustments

The Board of Adjustments shall, within forty-five days of application, unless a longer time is necessary for consideration of the application for reasons specifically stated by the Board of Adjustments, either: (1) recommended approval the application in whole or in part, with or without modifications and conditions. If a hearing needs to be called the applicant will be notified and they will have to furnish the Town with list of property owners with 300 feet of proposed property.

DATE FILED:

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Clerk/Deputy Clerk:

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## Code Citations:

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### Existing Situations and Conditions:

Steps and landing at entrance (see Figures 1,2,3,4) consist of ugly, old, badly cracked concrete and partial cast iron railing, located just 12 ft. from the property line. The side entry stairs together with the railing crowd the access to the front door, which critically impedes and makes unsafe the entrance and especially the moving of large items such as appliances and furniture through the only 36-inch door to the house.

### Effects of Granting the Variance:

Granting the variance would allow the building of the porch and a wide, aesthetic, safe and direct front access stairs to the main house front entrance as shown in attached Figures 5 & 6. These will add character and value to the house and neighborhood. The proposed porch will provide a friendly and safe place for family to gather and enjoy the sunny, warm, southern exposure.

### VARIANCE STANDARDS

1. There exist exceptional or extraordinary physical circumstances of the subject property such as, but not limited to, streams, wetlands, or slopes, and such physical circumstances are not applicable to other land in the same area of zone: Explain:  
House access porch/steps appear to have been built prior to current zoning rules as the setback distance from the lot line to the outside edge of the of the stair landing is only 12 ft. Although the house foundation is in conformance with current rules there is not enough room to install porch / steps within the current code to provide proper direct, straight-on access to the front door..
2. Because of these physical circumstances, the strict application of this code would create an exceptional or undue hardship upon the property owner, and would deprive the applicants of rights commonly enjoyed by other properties in the same zone under the terms of the zoning ordinance: Explain:  
The strict application of the 14 ft. setback would prevent the building of a proper, safe and aesthetic access to the front house entrance and would create an exceptional hardship to me and my family and will deprive us of the access and use rights of the front of the house as is normally expected and enjoyed by the many homes in the surrounding neighborhood and throughout Del Norte.
3. The hardship is not self-imposed, and special conditions and circumstances do not result from the actions of the applicant and such conditions and circumstances do not merely constitute inconvenience: Explain:  
The hardship present is not self-imposed but was present at the time of purchasing the house. It is caused by the proximity of the house front to the lot line and the elevation of the entrance above ground level. I presume the house already has non-conforming rights and access was built under different or non-existent zoning rules.. Removing the current encroachment would render the front entrance unusable.





Figure 2

750



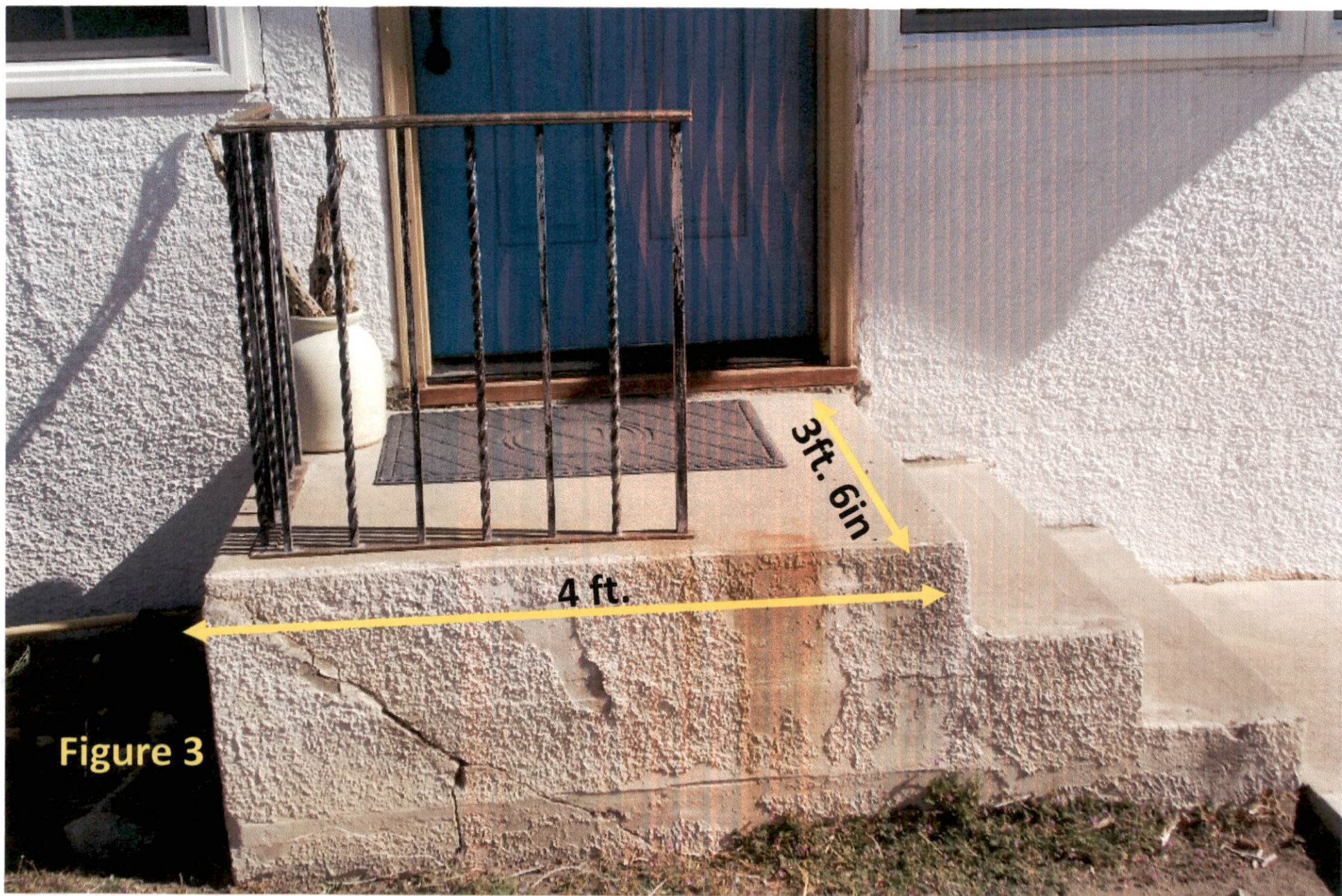


Figure 5

10'-8" new setback







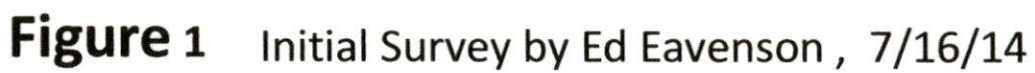
**Figure 3**



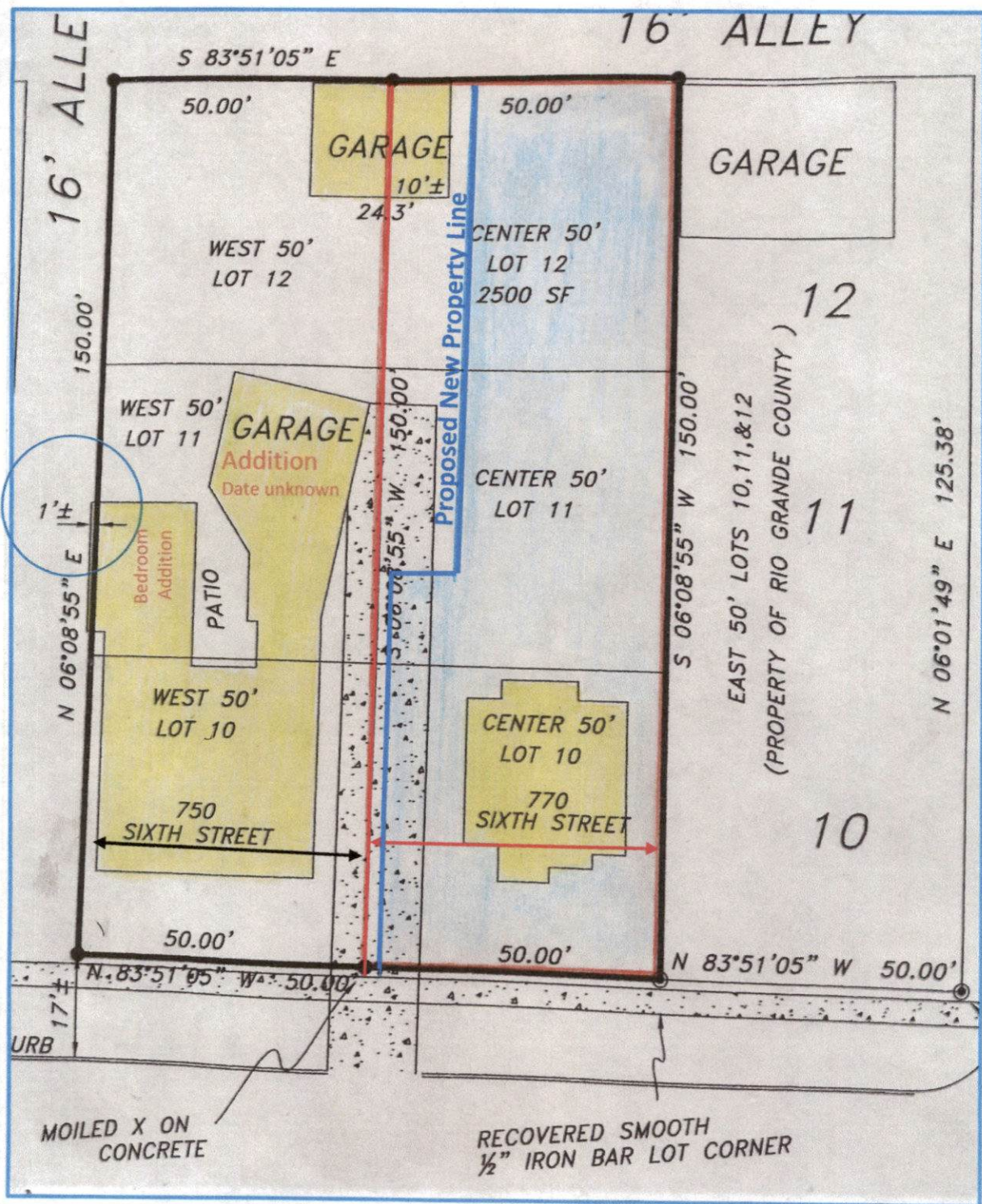


**Figure 4**









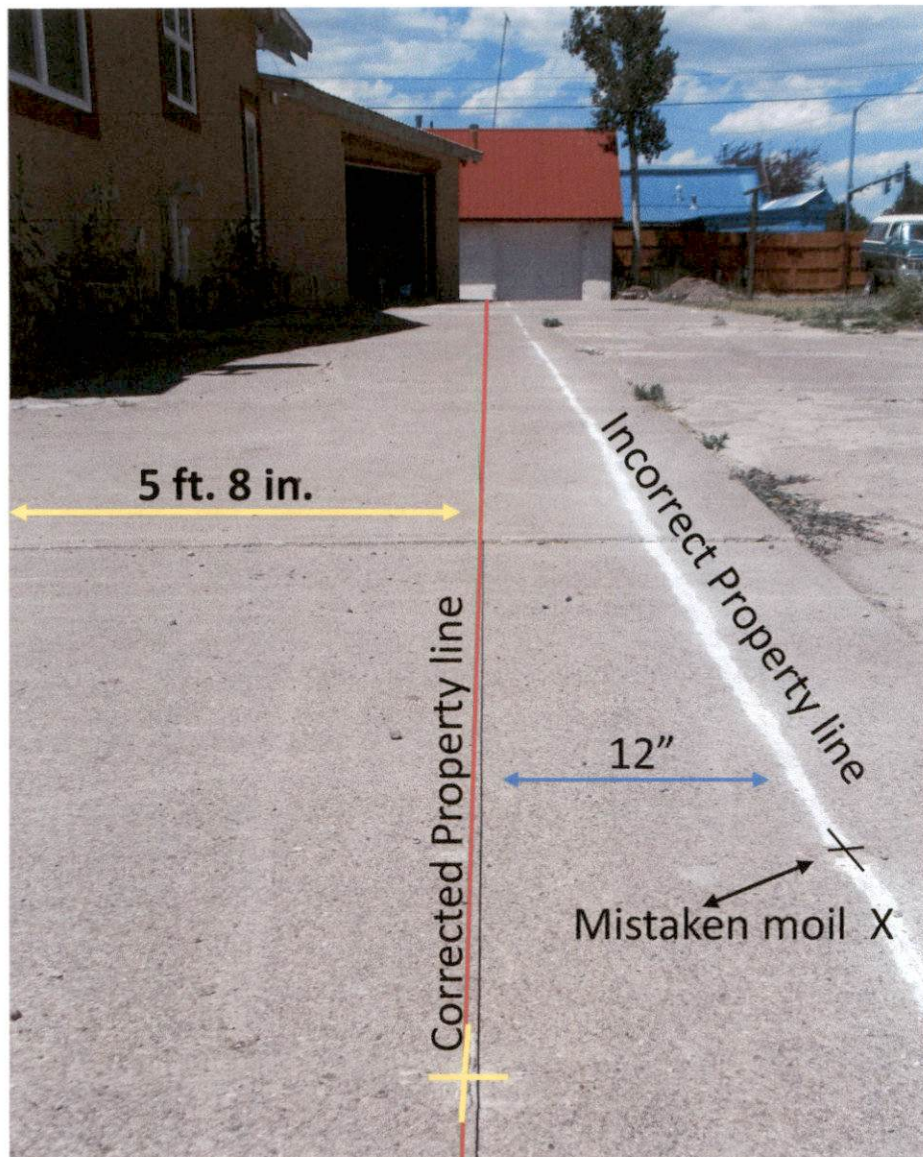
**Figure 2.** Diagram of Proposed New Property Line in Blue. Lot size is reduced to approximately 6140 ft<sup>2</sup>. Minimum, logical change to reduce all conflicts.





**Figure 3.** Google Earth Photo, 9/8/2016 of both properties, showing proposed revision of lot sizes and shapes and planned new driveway in yellow.



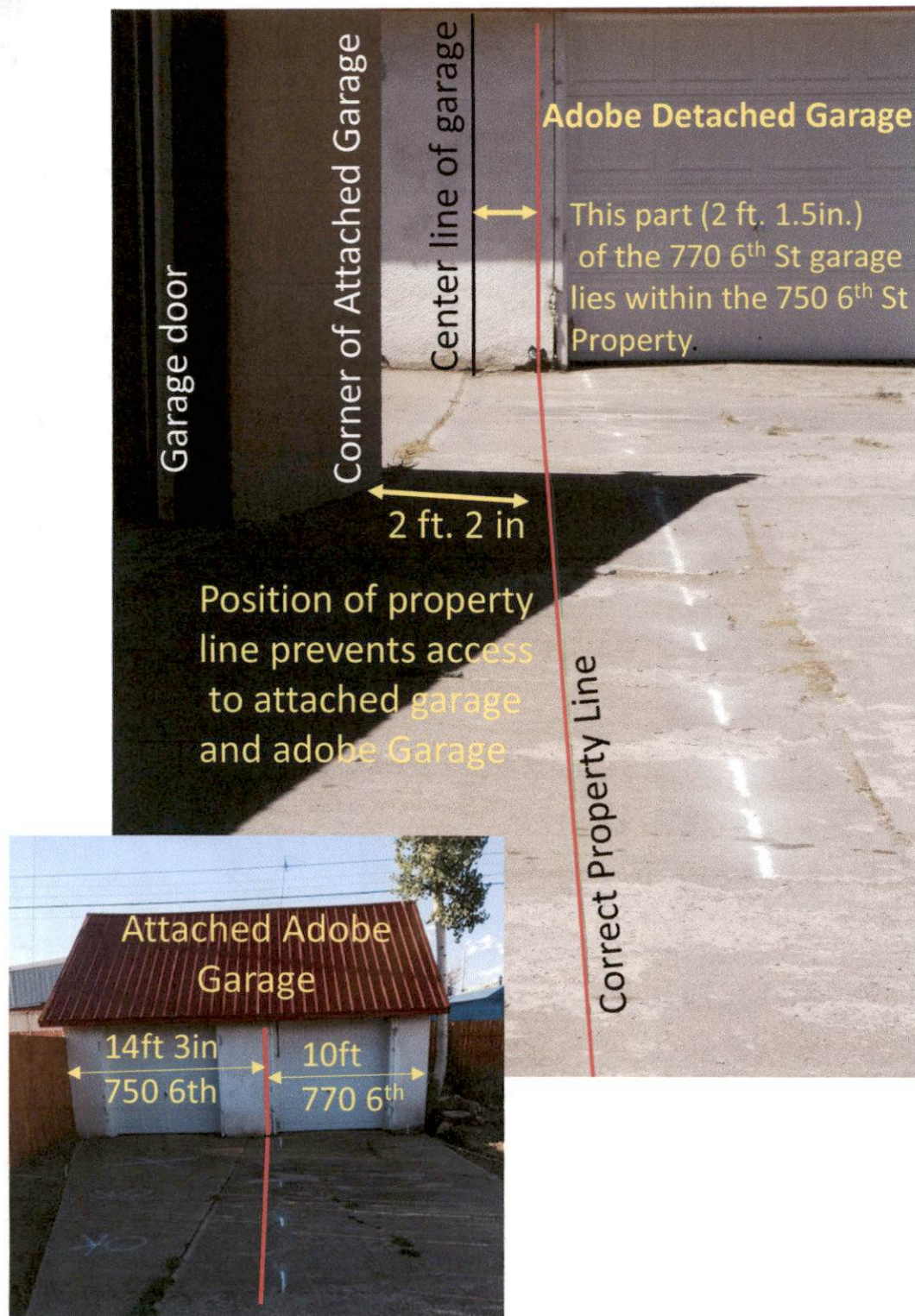


**Figure 4.** Tried to mark current property line in white. Had the original surveyor (Ed Eavensen, 7/9/20) come to check which of two moiled x's on driveway defines the property line in driveway. This corrected my mistake, the line had to be moved 1 ft. to the west leaving just 5 ft. 8in of width on 750 6<sup>th</sup> St. side.

**Note:** narrow 750 6<sup>th</sup> driveway before corrected width. Red Line in photo is correct, no room for a car.





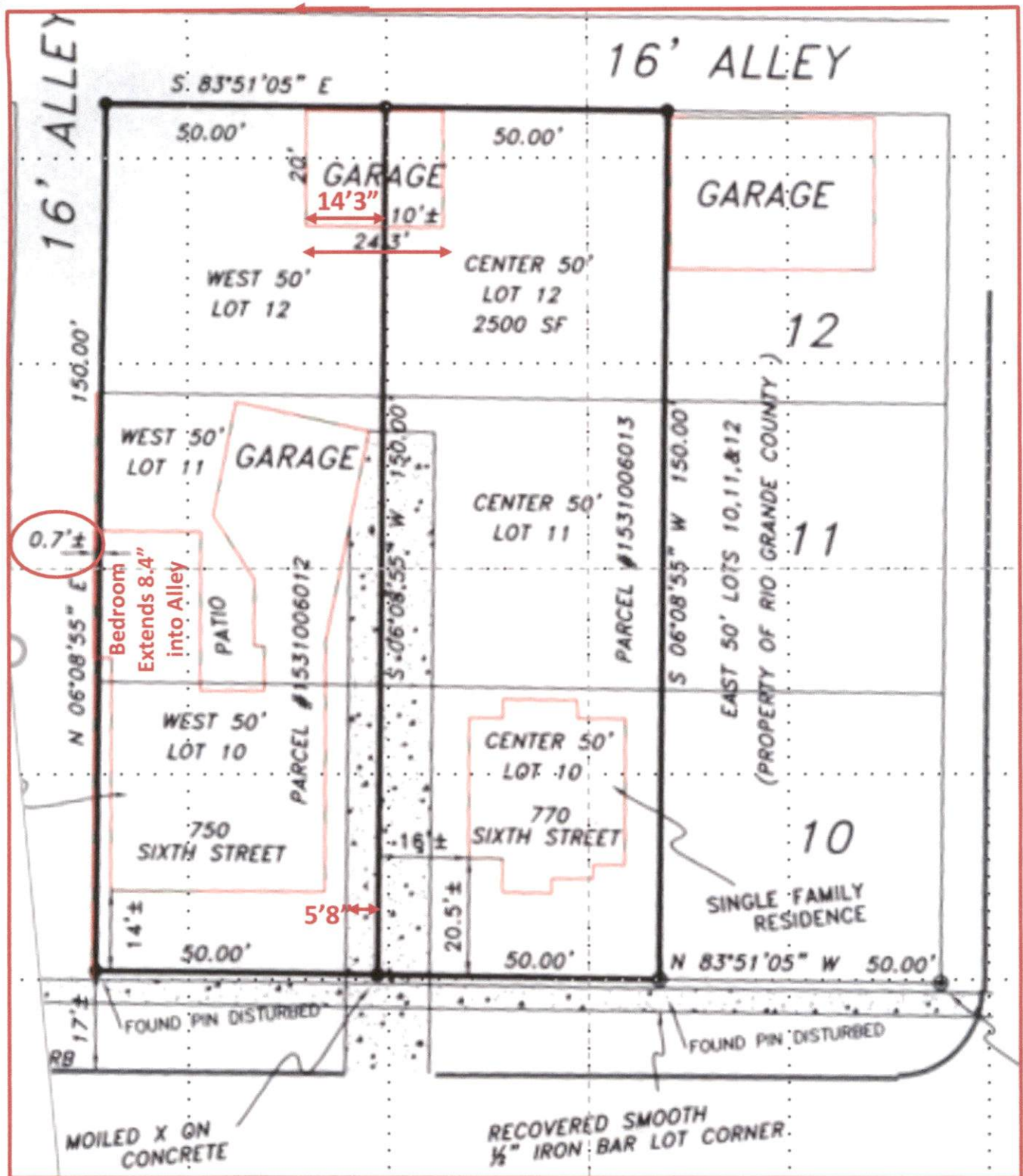


**Figure 5** Current Situation of building placement, property line and lack of access to the Attached and Detached Garages on the 750 6<sup>th</sup> Address



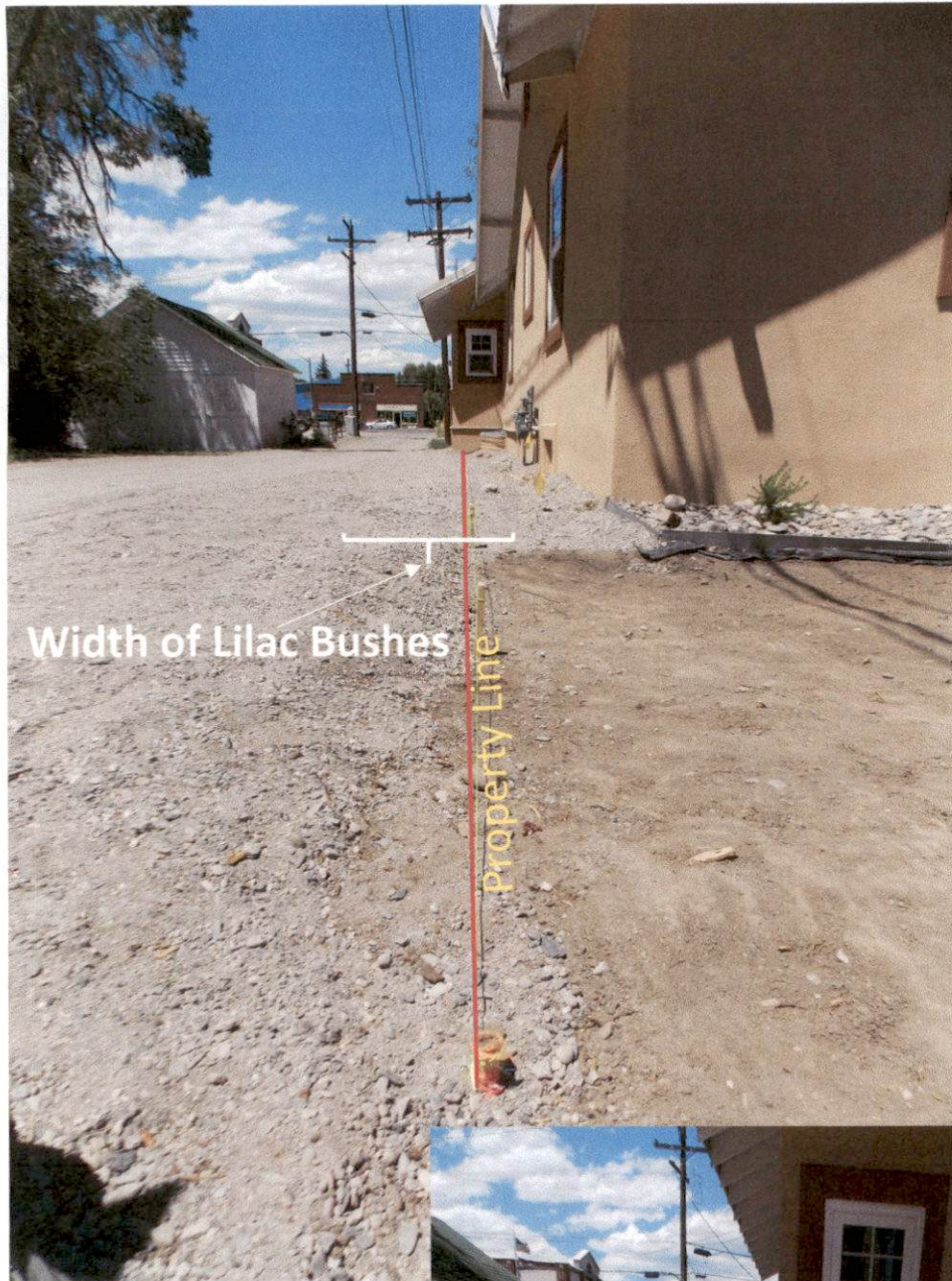


**Figure 6. New Driveway under construction.**  
The North end, in front of adobe detached garages, will be the last section to be completed during the week of 8/17.

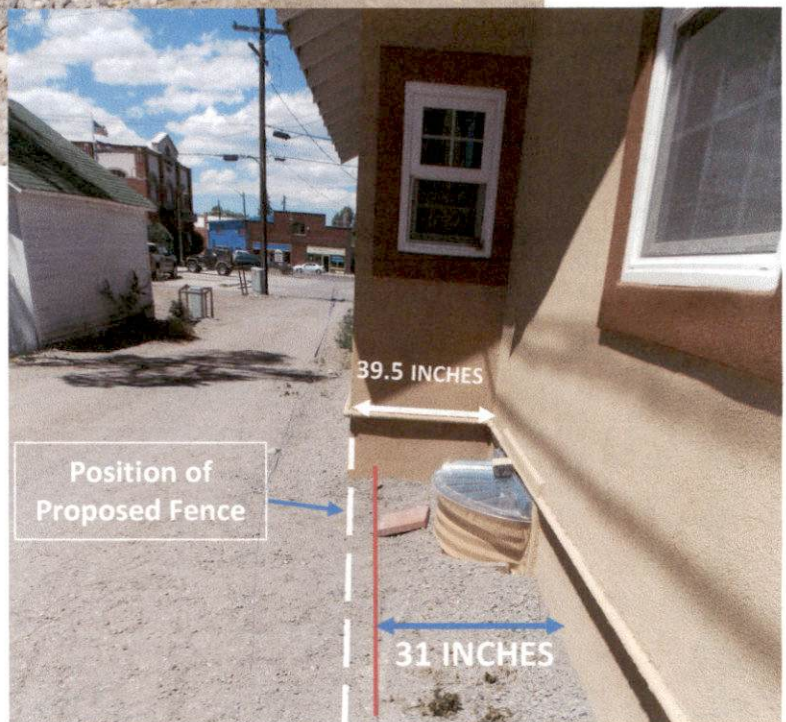


**Figure 7.** Request for permission to build a fence along the west side of my house at 750 6<sup>th</sup> ST. From the corner of the bedroom to front of house. The Follow-up and Revised Survey by Ed Eavenson, 7/9/20. shows the .7 ft (8.4 inch) bump out of the bedroom into the alley.

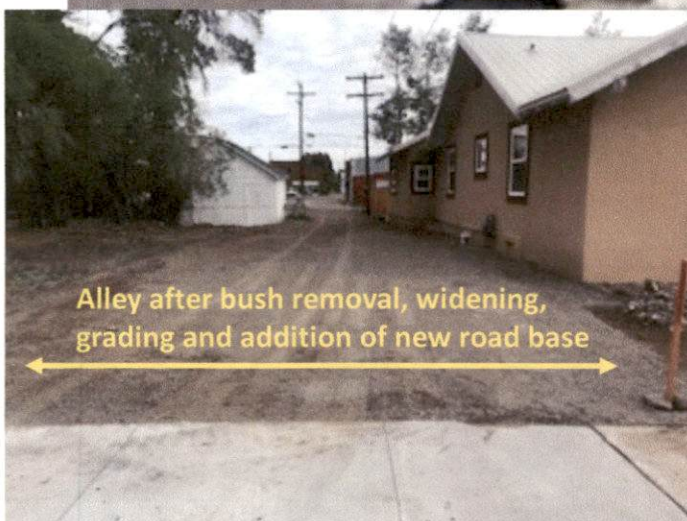




**Figure 8.** Portion of the Bedroom bump out into the alley is 8.5 Inches. Permission is requested to build a 6 ft. parallel cedar privacy fence from corner of bump out to front corner of house at proposed fence position (dashed white line).







**Figure 9.** Google Earth view showing alley and bushes before removal and a ground view of improved alley after removal of bushes and berm.