

BOARD OF ZONING APPEALS

Agenda

March 31, 2010

4:00 P.M.

- 1. Call to Order; Roll Call**
- 2. Invocation and Pledge of Allegiance**
- 3. Public Comments**
- 4. Consent Agenda**
 - A. Approval of Agenda Format
 - B. Approval of Minutes of June 8, 2009
- 5. New Business**
 - A. Variance Application-607 Pine Street-New Home Plan with Porch encroachment into the rear yard setback.
- 6. Adjourn**



DRAFT
Board of Zoning Appeals
Regular Meeting
Town Hall
June 8, 2009
4:00 p.m.

At approximately 4:00 p.m. in the Town Hall, Chairman Roger Munz called to order the Board of Zoning Appeals Public Hearing and Meeting. In attendance were board members Pete Baumann, Julia Parr and Jay Wiegner. Board member Steve Hairfield was not in attendance. Also present were Town Planner Tom Bonadeo and Town Clerk Libby Hume as well as two members of the public. The applicant, Mr. Paul Forst, was not in attendance.

Roger Munz informed the board members that he previously had a working relationship with the applicant as an onsite representative for approximately 6-7 months regarding the Mack building and has had numerous out-of-town real estate transactions with him. Mr. Munz went on to state that if the board felt it was appropriate, he would recuse himself from the discussion and vote on this issue. Tom Bonadeo stated that since the dealings were in the past, he did not see a conflict of interest regarding this application. Jay Wiegner and Julia Parr were also in agreement.

Tom Bonadeo reviewed the application specifics and the duties of the Board of Zoning Appeals (BZA) as outlined in §2.6.2 of the Zoning Ordinance.

PUBLIC COMMENTS

Mr. & Mrs. Jerome Loomis, 240 Randolph Avenue, addressed the Board stating that a precedent would be set if the application were approved to allow the applicant to rent ground level units as residential vs. commercial. Mr. Loomis added that the units were rented as residential last year and tenants were sitting on the sidewalk and their personal belongings were scattered at the entrances on the sidewalks. Mrs. Loomis stated that it would be a hardship for tenants to live in these units since there is no yard or place to sit and gather except for on the sidewalk. Last year, a tenant in the end unit owned a dog and would walk the dog on the Loomis' property. Also, there were some suspected illegal activities taking place in the units.

Tom Bonadeo stated that he received a phone call from Ms. Katherine Nottingham and she expressed similar concerns as Mr. and Mrs. Loomis.

APPLICATION OVERVIEW AND DISCUSSION

The Board reviewed the Application for Zoning Variance from Mr. Paul Forst. Tom Bonadeo stated that the zoning ordinance currently allows residential units on the second and upper stories only with parking in the back for apartments. All the buildings on Strawberry Street between Mason and Randolph Avenues are commercial and this building has no residential right-of-way and the property line goes to the sidewalk. No buildings along Randolph Avenue, with the exception of the Post Office, are commercial.

There was much discussion regarding the three conditions that must be met before a variance could be granted. The conditions are as follows: i) The strict application of the ordinance would produce undue hardship; ii) Such hardship is not shared generally by other properties in

the same zoning district and the same vicinity; iii) The authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance. It was agreed that the hardship, which was due to the economic times vs. the ordinance, regarding the renting of commercial space was shared by a number of businesses in Town and the applicant stated in his letter that there were over 20 vacant commercial units in Cape Charles. The Board also agreed that the character of the area would be affected by allowing the units to be rented as residential units.

Roger Munz stated that due to the absence of Steve Hairfield, there could be a split decision. Even though, as chairman, he usually votes on applications, he offered to abstain from the vote regarding this application. Tom Bonadeo stated that the Cape Charles BZA did not currently have by-laws but in the other boards and commissions, the chairperson typically does not vote except in the event of a tie. After some discussion, Mr. Munz stated that he would abstain from the vote.

Roger Munz called for the vote. Board members Pete Baumann, Julia Parr and Jay Wiegner unanimously voted against approval of the zoning variance.

Roger Munz adjourned the meeting of the Cape Charles BZA at 4:58 PM.

Chairman Roger Munz

Town Clerk

Board of Zoning Appeals Staff Report

From: Tom Bonadeo

Date: March 31, 2010

Item: 5A - Variance Application – 607 Pine Street – Mr. and Mrs. Proto

Attachments: Application, letter and explanation from the applicant, plan, pictures of the lot

Background

The lot was purchased several years ago and a setback variance was granted in the fall of 2000. There were four variances granted. At the time of this variance no other houses existed on the block.

1. The side yard setback was reduced by five feet (95 sq. ft.).
2. The rear yard setback was reduced by five feet (260 sq. ft.).
3. The front setback was reduced by six feet (312 sq. ft.).
4. The porch was allowed to be 50% of the front of the house.
5. The original building footprint was 1336 sq. ft. These variances added 667 sq. ft. for a total building area of 2003 sq. ft.

This lot is in the Sea Cottage Addition of Cape Charles and is not a standard lot shape of 40 x 140 (5600) square feet with possible building footprint of 2550 square feet. The lot in question is 83 feet across the front, 87 feet on one side and 74 feet on the other side (approx. 6640 square feet) with a possible building footprint today of 2210 square feet.

Application Specifics

In 2000 there were no homes built within the blocks from Pine to Bay and Washington to Jefferson. The zoning ordinance was used to determine the setbacks for building at 607 Pine. This means a 30' front setback, a 25' rear setback and a 30' corner lot side setback. The lot contains 6640 square feet, 1040 square feet more than an R-1 conforming Cape Charles lot.

Mr. and Mrs. Proto asked for and were given the variances stated above. If not acted upon within one year, the variance is no longer valid. During the years between December of 2000 and 2010, two homes have been built within the block. The first home was built on Bay and has a 30' front yard setback and the other setbacks meet the ordinance. A home was built on Pine and Madison and the house was aligned with a house on the next block as allowed by the ordinance creating a 13' front yard setback. This is now the standard for the block of Pine between Jefferson and Washington Avenues.

The corner side yard setback in the R-1 Zone was also changed from 30' to meet the neighborhood requirement. When the setback is aligned with the home across Pine Street the side yard setback measures 26'. These changes can be seen in the attached overhead photo with lot lines marked Exhibit 1.

The plans for the home have been reviewed by the Historic District Review Board and were approved for architectural compliance at their March, 2010 meeting.

Variance Criteria

Section 2.6.2 B of the Zoning Ordinance provides the following guidance in determining the need to grant variances:

"No such variance shall be authorized by the board unless it finds all of the following conditions exist:

- 1. That the strict application of the ordinance would produce undue hardship.*
- 2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity*
- 3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance."*

The lot was purchased prior to December of 2000 and the current house plans have just been created. Staff worked with the Protos to determine the buildable area since the 2000 variance had expired and the ordinance had changed. The following items should be considered in meeting all three criteria.

1. The current building area is larger than the original building area in 2000 and larger than the area allowed by the variance in 2000 due to changes in the ordinance and neighborhood.
2. The depth of the lot is less than 140 feet but is no shorter than many other lots in the general vicinity. The lots directly across Pine Street are shallower than this one. Many lots are shallower and the ordinance makes an exception only for lots less than 40' deep.
3. The variance may not be a substantial detriment to the neighborhood. It would put the rear porch closer to the alley than other houses in the neighborhood. If this variance were granted all other lots could make the same request for the same reason. This would imply that other lots share the same problem and that is not allowed in the variance process. This also would have the effect of changing the ordinance for which the BZA does not have the authority.
4. The Supreme Court of Virginia has ruled that an "undue hardship" means that one couldn't use the property at all.
5. To grant a variance, all three conditions must exist.

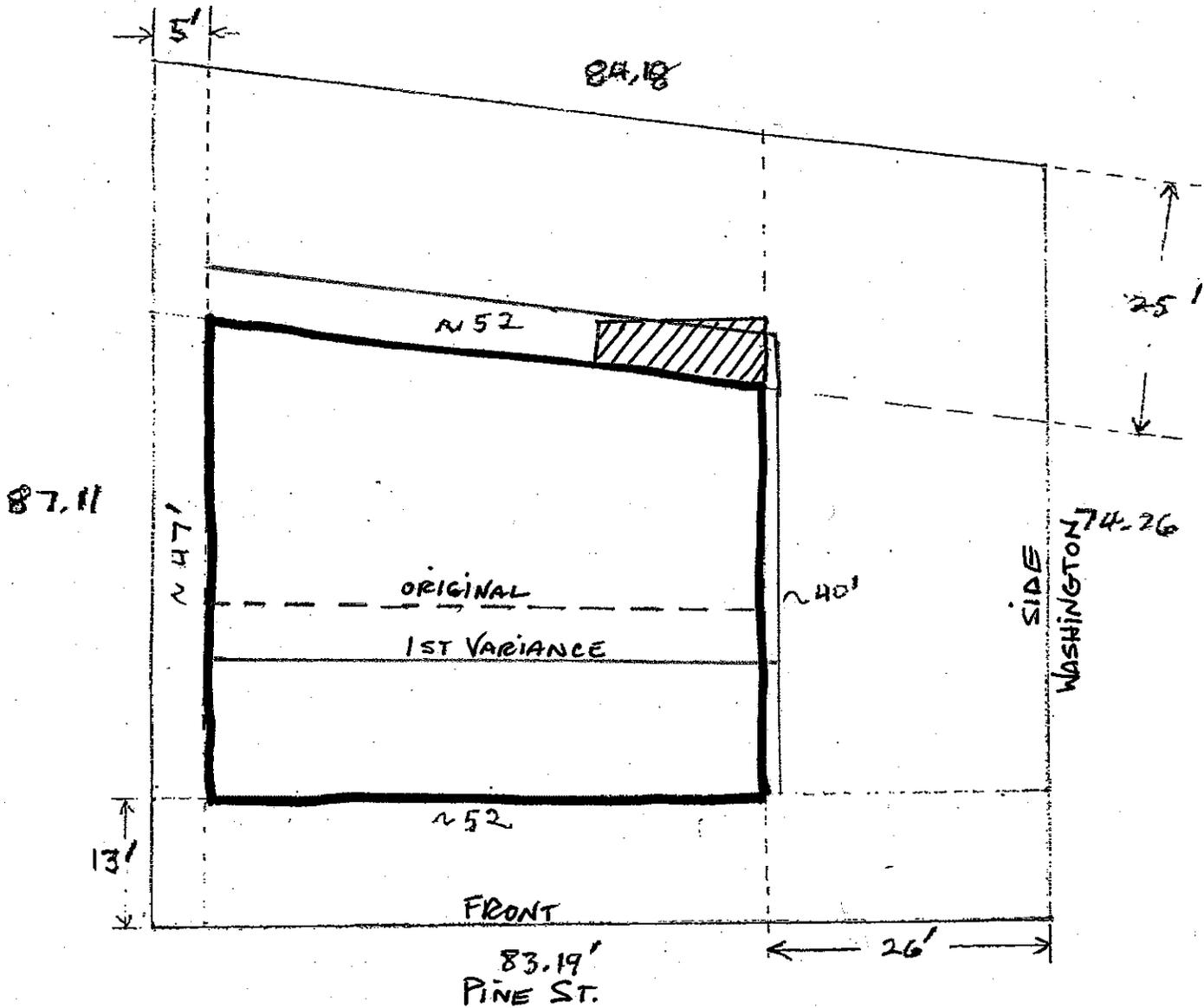
Recommendations

1. Determine if all three of the conditions outlined in Section 2.6.2 B of the Zoning Ordinance exist.
2. Determine if the Board of Zoning Appeals will issue a variance for the rear yard setback.



EXHIBIT 1

PINE ST LOT BUILDABLE AREA



1. SET BACKS SHOWN AS - - - -
2. SET BACKS ARE TO FRONT OF HOUSE, NOT TO PORCH
3. UTILITY BUILDINGS (INCLUDING DEPOSIT CHARGE) 5' FROM ANY PROPERTY LINE & 15' FROM HOUSE. SET BACK NOT SHOWN

$\frac{1}{16}'' = 1'$

6/5/09
GRP



MUNICIPAL CORPORATION OF CAPE CHARLES, VIRGINIA

Application for Zoning Variance

Date 02/25/10

Permit No. PA10
Fee: \$250.00

Applicant GEORGE R. & NANCY M. PROTO Signature [Signature]
Address 16 SAUNDERS AVE Cape Charles, VA 23310 Telephone 845 471 8453
POUGHKEEPSIE, NY 12603

Owner SAME
Address SAME City _____ State _____ ZIP Code _____

Contractor TBD
Address _____ City _____ State _____ ZIP Code _____
Town License No. _____ State License No. _____

Location of Improvement CORNER OF PINE & WASHINGTON
Lot No. 4 Block No. 11 Lot Size 87 x 83 (WOM) Lot Area 6712 ft²
Type of Improvement NEW HOME CONSTRUCTION
Proposed Use RESIDENTIAL
Estimated Construction Costs \$ 300,000

Dimension of Structure or Improvement Width 25 (MAX) Length 52' Height 36' (APPROX)
Total Square Footage 2641 ft²

Structure or Improvement will be set back

13' from front property line (PREVAILING SET BACK)
26' from side property line (PREVAILING SET BACK)
5' from side property line on corner lot
25' FOR BRANCH from rear property line SEE LETTER & SKETCH FOR DETAILS
18' TO 21' FOR A 17' PORTION OR SET BACK

Town Water Permit EES * Town Sewer Permit EES *

* LETTER FROM TOWN ATTACHED.

CERTIFICATION OF APPLICANT

I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer, and water ordinances, and private building restrictions, if any, which may be imposed on the property by deed. Furthermore, I certify that the changes to the improvement before or during construction will be provided to the Zoning Administrator and Building Official before such changes are constructed.

Signature of Owner/Agent [Signature]

BUILDING PERMIT

Issuance of the Zoning Variance in itself does not permit the applicant, owner, or contractor to proceed with the improvements noted above. Improvements can proceed only after issuance of a building permit from the Cape Charles Building Official, whose office is in the Municipal Building at 2 Plum Street in Cape Charles and who can be reached at 757-331-2176.

Date Approved _____ Date Denied _____

Zoning Administrator _____

16 Spoor Ave.
Poughkeepsie, NY 12603
Phone: 845 471 8455
Email: gproto@hvc.rr.com

February 25, 2010

Mr. Roger Munz, Chair
Zoning Board of Appeals
Town of Cape Charles
2 Plum St
Cape Charles, VA 23310

Dear Mr. Munz,

We are writing to request a variance for setback requirements for our property, lot 4, block 11 (map # 083A1-02-11-004) on the corner of Pine and Washington.

The following variances are requested:

1. A variance of 7 feet for the rear set back on the north end of the buildable area of the lot. This variance is to extend south for a distance of 17 feet 6 inches. At the southern most end the variance requested narrows to 4 feet, 6 inches. The back property line and setback line for the house are at an angle to the front property line and Pine Street so the depth of the variance becomes narrower at its southern end.

The variance is requested in order to allow a covered (not enclosed) rear porch. The porch, itself will be 7 feet deep and extend 6 feet into the setback area at its north end and 3 feet, 6 inches into the setback area at its southern end. The roof will extend an additional foot beyond the porch for the length of the porch.

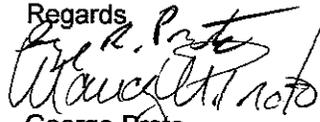
2. A variance is requested to allow the front porch to be a minimum of 22 feet in length.

The lot in question is an odd shape which does not conform to the usual long, rectangular lots found in Cape Charles where structures may be built consistent with the zoning ordinance.

Enclosed are the following:

1. A completed Application for Zoning Variance.
2. A check for \$250 for the application fee.
3. A sketch of the site plan. In addition, a detailed floor plan, showing a precise outline of the house footprint relative to the set backs will be sent to Mr. Bonadeo.
4. A list of adjacent property owners with their addresses.
5. A letter from the Town of Cape Charles documenting payment of water and sewer permits.

Regards,



George Proto

Nancy N. Proto

Enclosures: 5

cc: Mr. Tom Bonadeo (by email)

EXPLANATION FROM MR. EMES PRATO

Per the Town of Cape Charles zoning ordinance there are 3 conditions which must be met in order to be granted a variance. These are:

1. That the strict application of the ordinance would produce undue hardship.
2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

This request addresses these issues in order:

1. Undue hardship

We purchased the lot only because it allowed a view of the Bay from the Northwest corner of the house. The difficulty with the lot is that on the Washington side, which might allow such a view, the lot is very shallow. Prior to purchasing we sought variances to allow for the design of the home to accommodate this view of the Bay and, indeed, purchase of the lot was contingent upon approval of these variances. Note that none of the lots in this section of Cape Charles meets the standard lot size and shape for the town, but the lots adjacent to our property are larger, and therefore allow more flexibility in house design.

This house is a retirement home. Its design needed to allow for first floor living in the future while maintaining the rooms we needed – eat-in kitchen, dining room, living room, laundry room, two-car garage, plus an office as a potential future bedroom. In order to have a view of the bay from the rooms used most frequently, a view from a porch, rooms of a reasonable size and a room for a future BR, we needed more depth on the Washington side. The shape of the lot, combined with its size causes a hardship as it does not accommodate these design requirements, because it is shallower on the Washington St. side.

For the past year we have been struggling to come up with a design plan that will give us the rooms that we want – reasonable size rooms with a room for a future BR, plus a porch to enjoy the Bay. It has proved impossible to design a home that would accommodate a floor plan that would give us the living space that we need, plus a porch that would allow us to sit out and enjoy our view of the Bay.

The variance requested would allow us to have a back porch so that we can sit out and enjoy the Bay - which is the reason we bought the lot to begin with.

2. Hardship not shared

This hardship is not shared by other lot owners. Their lots are either larger or a standard rectangular shape found throughout the town which gives more useable area for building.

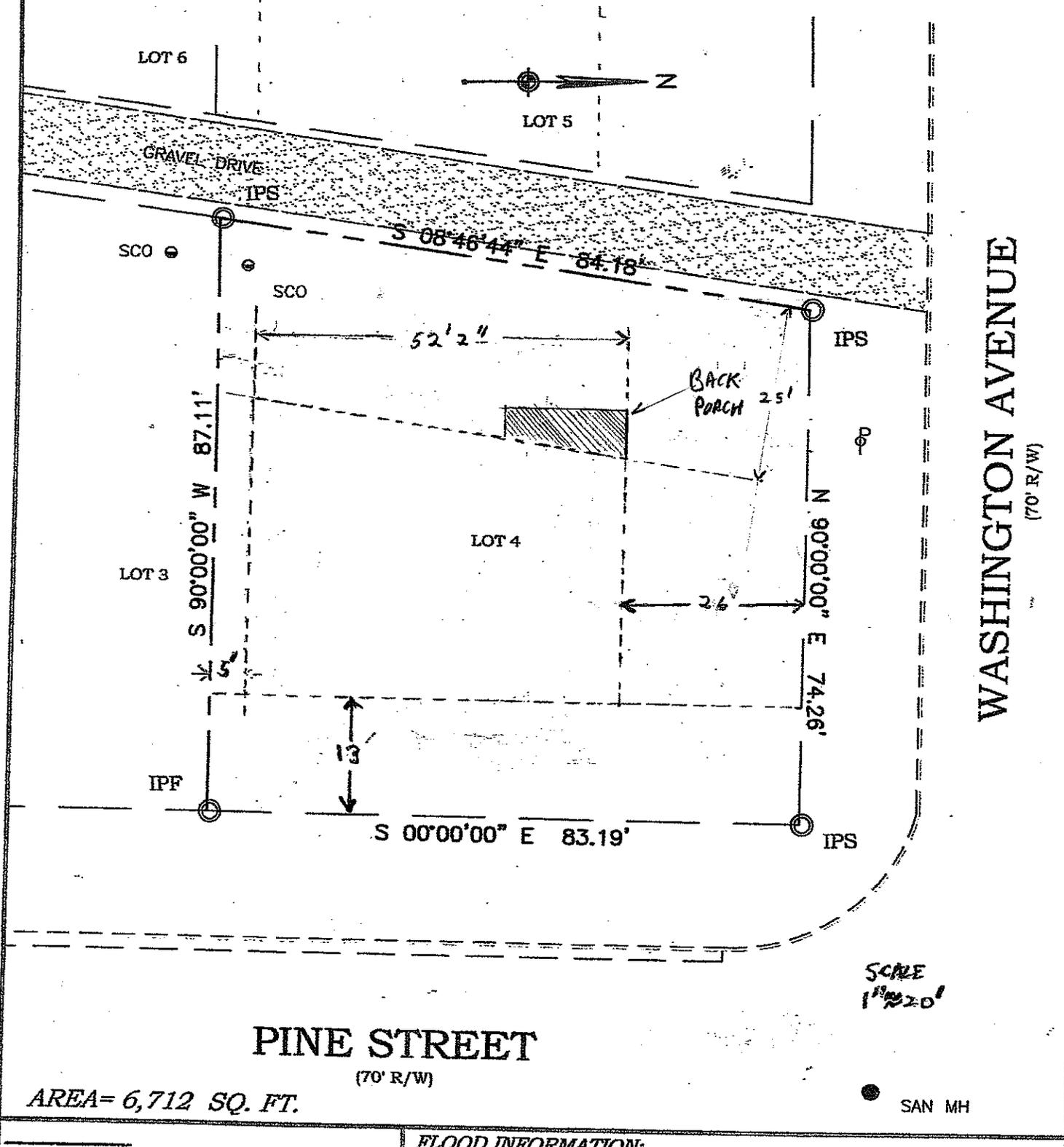
3. No substantial detriment to others

It will not be a detriment to the adjacent property owners. (The plan has already been approved by the historical review board). The porch will extend into our back yard and will not obstruct the view of any of the adjacent property owners.

THIS IS TO CERTIFY THAT ON 4-25-08 I SURVEYED THE PROPERTY SHOWN ON THIS PLAT, AND THAT THE TITLE LINES AND THE WALLS OF THE BUILDING(S) ARE SHOWN ON THIS PLAT. THE BUILDING(S) STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENT OF OTHER BUILDING(S) ON THE PROPERTY EXCEPT AS SHOWN.

1. NO TITLE REPORT WAS FURNISHED TO THE SURVEYOR PRIOR TO THE EXECUTION OF THIS SURVEY.
2. THIS SURVEY IS NOT INTENDED TO SHOW ANY PHYSICAL IMPROVEMENTS, UTILITIES AND/OR EASEMENTS THAT MAY AFFECT THE PROPERTY SHOWN HEREON, EXCEPT AS NOTED.

Scott A. Smith
 SCOTT A. SMITH LIC# 2556



Adjacent Property Owners:

1. Robert and Jeanne Schlegel
7320 Glenroie #11-D
Norfolk, VA 23505

2. Lori Costa
8778 W. Huguenot Rd.
Richmond, VA 23235

3. Eugene + Barbara Seiter
118 Laydon Way
Pogueson, VA 23662

4. Howard + Shannon Helenbrook
120 King Forest Lane
Newport News, VA 23608

5. Susan Durlak + Marshea Moore
8778 W. Huguenot Rd.
Richmond, VA 23235