TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

JOHN A. DONOVAN, JR., Chairman
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ZBA 89-54
Petition of Ajoy and Sarmistha Bhattacharjya
35 Priscilla Circle

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, September 28, 1989 on the petition of AJOY AND SARMISTHA BHATTACHARJYA requesting a variance from the terms of Section XIX and pursuant to Section XXIV-D of the Zoning Bylaw to allow their illegal deck, approximately 27.5 feet by 13.3 feet, at their non-conforming dwelling at 35 PRISCILLA CIRCLE, in a Single Residence District, to be brought into conformance with the current Zoning Bylaw of the Town. Said deck was built by a prior owner without a Building Permit and has less than the required rear setback.

On September 8, 1989, the petitioners requested a hearing before this Authority and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was James Parent, attorney for the Bhattacharjyas, who were present also. Mr. Parent said that the Bhattacharjyas purchased the property on June 29, 1989. In 1982, the Flynns, the prior owners, extended an existing porch and remodeled it as a family room. The rear setback on the Building Permit for the construction was shown as 18.2 feet. Between 1982 and the purchase date, the deck was added without a Building Permit and only 7 feet from the rear lot line which is in violation of the 15 foot rear setback requirement.

Mr. Parent said that the violations were not discovered until shortly before the closing in June. As the closing could not be postponed, the purchase was completed, and the present owners are attempting to rectify the situation by applying for a variance. If the variance is not granted, the deck will have to be removed.

Mr. Parent said that the deck is well screened from the rear. The land behind the deck slopes down at a steep grade, so that the rear abutters cannot see the deck. The Bhattacharjyas, although aware of the violation, did not create it, and would incur financial hardship if forced to remove the deck.

No other person present had any comment on the petition.

Statement of Facts

The non-conforming dwelling is located at 35 Priscilla Circle, in a Single Residence, District, on a 16,806 square foot lot with a minimum rear yard clearance of 7 feet and a minimum right side yard clearance of 19 feet. The house was constructed in 1956 and remodeled with an extension and enclosure of a rear porch to within 18.2 feet by the prior owners in 1982. Sometime between 1982 and June, 1989, a deck was added to the rear of the dwelling without a Building Permit and only 7 feet from the rear lot line in violation of the 15 foot rear setback requirement. Shortly before the closing on the purchase of the property in June, 1989, the

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Bhattacharjyas discovered the violations, and are requesting a variance from the terms of Section XIX of the Zoning Bylaw to bring the property into conformance with the current Zoning Bylaw of the Town.

A Plot Plan, dated August 2, 1989, drawn by Paul J. DeSimone, Registered Land Surveyor; a Mortgage Survey Plot Plan, dated June 26, 1989, drawn by Paul J. DeSimone, Registered Land Surveyor; a copy of the Building Permit #093, dated July 8, 1989, for the remodeling and enclosure of the rear porch, with a Plot Plan, dated July 2, 1982, drawn by Philip R. Brown, Registered Land Surveyor; and photographs were submitted.

The Planning Board, on September 12, 1989, voted to recommend denial of the variance request.

Decision

This Authority has made a careful study of the evidence presented, and is of the opinion that the existing dwelling at 35 Priscilla Circle is not in conformance with the Zoning Bylaw of the Town as noted in the foregoing Statement of Facts.

This Board is of the opinion that although the encroachment of the deck on the rear yard setback is substantial and would never be allowed were the petitioners requesting a variance to construct the deck in its present location, prior rulings in similar situations have allowed the property to be brought into conformance if the violations were caused by past owners and were not created by present owners.

The Board is of the opinion that a literal enforcement of the provisions of Section XIX of the Zoning Bylaw would involve substantial hardship to the petitioner and that the allowance of a variance would not be detrimental to the neighborhood nor be in derogation of the intent or purpose of the Zoning Bylaw.

Therefore, the requested variance from the terms of Section XIX and pursuant to Section XXIV-D of the Zoning Bylaw is granted to allow the existing deck at 35 Priscilla Circle, with a rear setback of 7 feet, as noted in the foregoing Statement of Facts, to be brought into conformance with the current Zoning Bylaw of the Town.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

John A. Donovan, Jr., Chairman

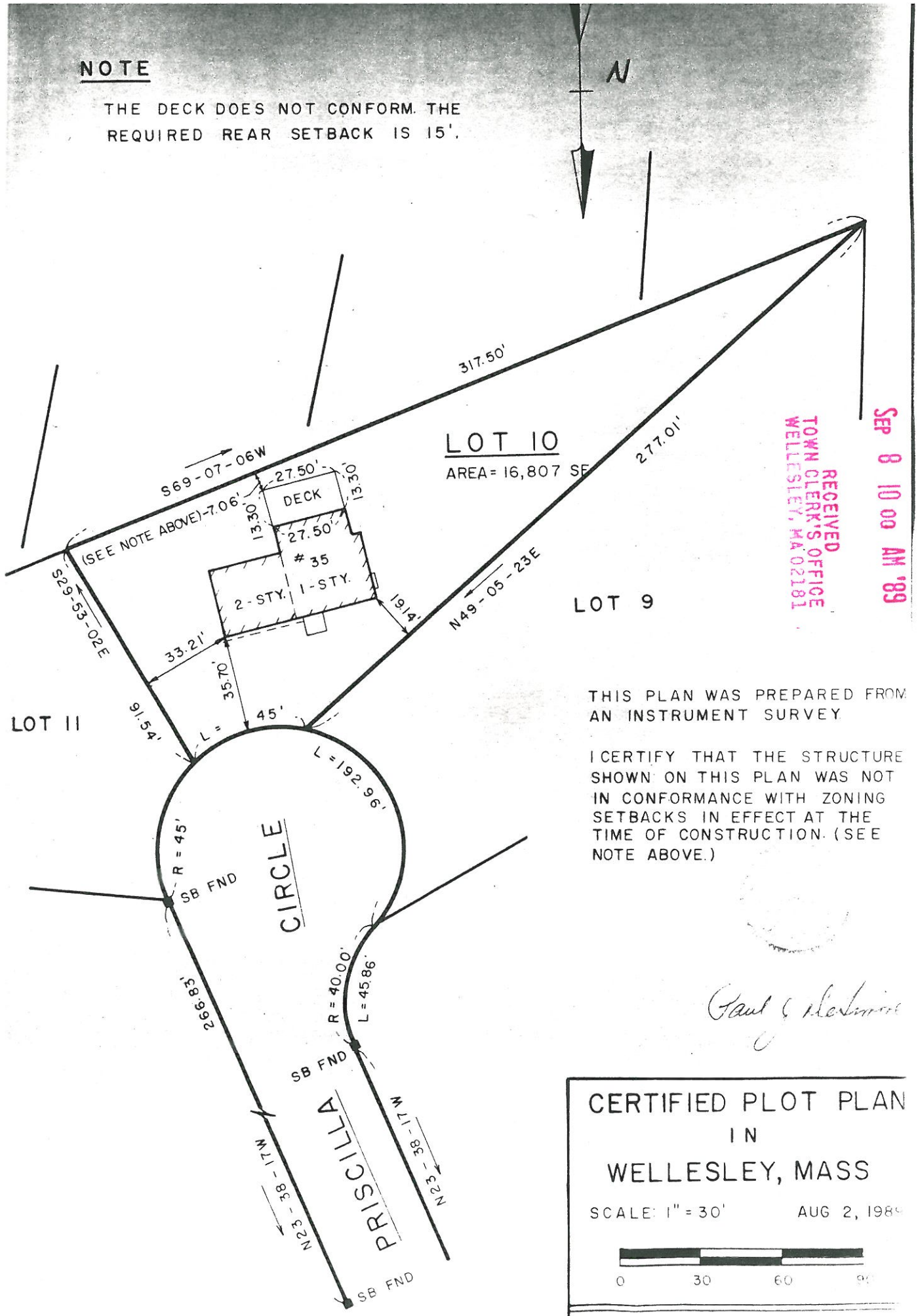
Kendall P. Bates

Franklin P. Parker

cc: Planning Board
Inspector of Buildings
edg

NOTE

THE DECK DOES NOT CONFORM. THE REQUIRED REAR SETBACK IS 15'.



THIS PLAN WAS PREPARED FROM AN INSTRUMENT SURVEY

I CERTIFY THAT THE STRUCTURE SHOWN ON THIS PLAN WAS NOT IN CONFORMANCE WITH ZONING SETBACKS IN EFFECT AT THE TIME OF CONSTRUCTION. (SEE NOTE ABOVE.)

Paul J. DeSimone

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CERTIFIED PLOT PLAN IN WELLESLEY, MASS

SCALE: 1" = 30' AUG 2, 1989

0 30 60 90

CAMERON BROS. INC
485 PLEASANT STREET
MALDEN, MA 02148