TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

JOHN A. DONOVAN, JR., Chairman
ROBERT R. CUNNINGHAM
KENDALL P. BATES

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Executive Secretary
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431-1019

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FRANKLIN P. PARKER
SUMNER H. BABCOCK

ZBA 90-1
Petition of Christopher and Elizabeth Shedd
102 Evergreen Avenue

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, January 18, 1990 in the Great Hall of the Town Hall, 525 Washington Street, Wellesley, on the petition of CHRISTOPHER AND ELIZABETH SHEDD, requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow their non-conforming illegal deck, approximately 12.8 feet by 14.2 feet, at their conforming dwelling at 102 EVERGREEN AVENUE, in a Single Residence District, to be brought into conformance with the current Zoning Bylaw. Said deck was built by the prior owner without a building permit and has less than the required left side yard.

On January 2, 1990 the petitioners requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was William Mone, attorney for the petitioners. Mr. Christopher Shedd, the petitioner, and Dr. Michael Mendelson, the previous owner, were also present. Mr. Mone stated that immediately prior to the closing on the sale of the property, both buyer and seller learned that the existing deck was non-conforming. An escrow arrangement was entered into pending the resolution of the problem. If the variance is not granted, the non-conforming portion of the deck will have to be removed at the expense of the seller.

Mr. Mone gave a history of the original purchase of the property by Dr. Mendelson from the builder. Dr. Mendelson later built the deck himself, unaware that a building permit was necessary or that the deck was non-conforming.

The Board stated that had a variance been requested prior to construction of the deck, it probably would have been denied as the encroachment of 4 feet on the left side yard is considerable.

Dr. Mendelson apologized for his error, reiterated the history of the purchase, and said that the affected abutters supported the petition. He added that he would bear the expense of removing the non-conforming portion of the deck if the variance is not granted.

No other person present had any comment on the petition.

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Statement of Facts

The conforming dwelling is located at 102 Evergreen Avenue, in a Single Residence District on a 6,537 square foot lot. The non-conforming deck, attached to the dwelling, is approximately 14.2 feet by 12.8 feet with a minimum left side yard ZBA clearance of 16.10 feet at the left front corner and 16.37 feet at the left rear corner. The deck was built by the prior owner without a building permit.

Shortly before the closing on the sale of the property, it was discovered that the deck is not in conformance with the current Zoning Bylaw in regard to the setback from the left side property line. Funds are being held in an escrow account pending the disposition of the request.

A Plot Plan dated November 17, 1989, revised December 18, 1989, drawn by Armand Provost, Registered Land Surveyor; and photographs were submitted.

The Planning Board, on January 9, 1990, voted to oppose the granting of the side yard variance.

Decision

This Authority has made a careful study of the evidence submitted, and is of the opinion that the deck attached to the conforming dwelling at 102 Evergreen Avenue is not in conformance with the current Zoning Bylaw of the Town.

Variances may only be granted by the Permit Granting Authority once they have found any or all of the following (Section XXIV-D 1. as quoted from the Zoning Bylaw):

"1. ...

a. Literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant owing to circumstances relating to: i) soil conditions, ii) shape, or iii) topography of such land or structures, especially affecting such land or structures, but not generally affecting the zoning district in which it is located; and the hardship shall not have been self-created; and

b. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this Zoning Bylaw."

This Authority fails to find "substantial hardship" within the meaning of Section XXIV-D of the Zoning Bylaw.

Therefore, it is the unanimous opinion of this Authority that this request for a variance be denied, that this petition be dismissed, and that the following conditions be fulfilled:

1. The non-conforming portion of the deck be removed so that the left side yard conforms with the 20 foot side yard requirement in the Zoning Bylaw.

2. A certified Plot Plan showing the totally conforming structure must be submitted to the office of the Zoning Board of Appeals.

3. Conditions #1 and 2 must be completed by April 1, 1990.

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

Robert R. Cunningham

cc: Planning Board
Inspector of Buildings
edg

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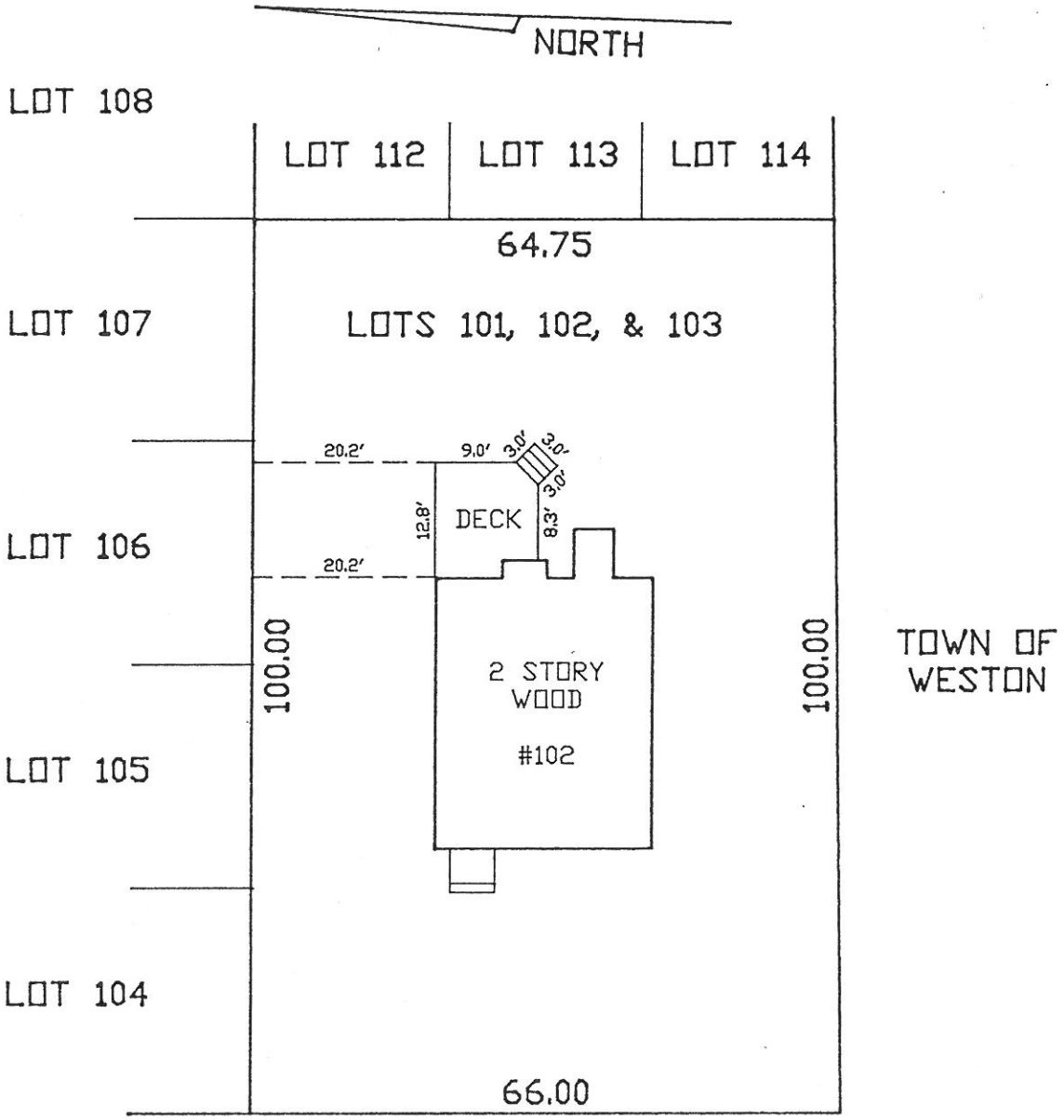


PLAN OF LAND IN WELLESLEY

SHOWING
ALTERATIONS TO DECK

Owner: Christopher E. Shedd

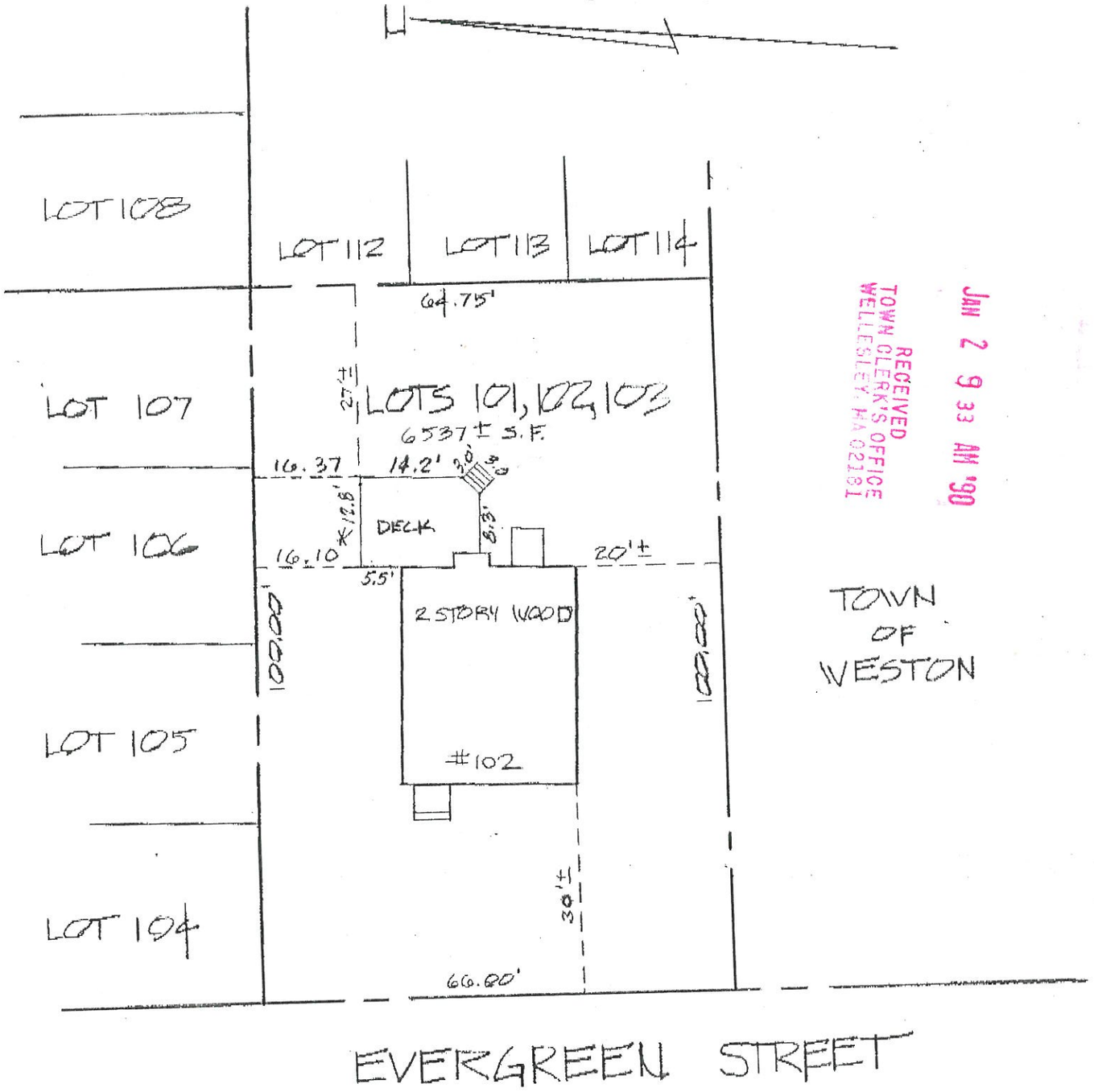
SEPT. 13, 1990
SCALE: 1" = 20'

BRADFORD ENGINEERING CO.
P.O. BOX 1244
HAVERHILL, MA. 01831

COMMONWEALTH OF MASSACHUSETTS
ARMAND E. PROVOST, JR.
10307
REGISTERED
LAND SURVEYOR

ARMAND E. PROVOST JR. R.L.S. #10307

* deck is a sideyard zoning violation



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MORTGAGE INSPECTION PLAN

LOCATED IN

WELLESLEY

MASSACHUSETTS

BUYER: CHRISTOPHER SHEDD

TO THE NORTHEASTERN MTG
AND ITS TITLE INSURERS.

I, CERTIFY THAT I HAVE EXAMINED THE PREMISES AND THE BUILDINGS SHOWN DO (NOT) CONFORM TO THE ZONING LAWS AND AMENDMENTS, I.e. FRONT, SIDE, & REAR YARD SETBACK ONLY, OF WELLESLEY WHEN CONSTRUCTED.
I, FURTHER CERTIFY THAT THIS PROPERTY IS NOT LOCATED IN THE ESTABLISHED FLOOD HAZARD AREA. 250255 0005 B Sept. 5, 1979

EXAMINATION OF THE RECORDS IS MADE ONLY SUBSEQUENT TO THE RECORDED DATE OF THE LATEST DEED, AND DOES NOT INCLUDE VERIFYING THE ACCURACY OF THE DEED DESCRIPTION PREVIOUS TO ITS DATE OF RECORD.

THIS COMPANY IS NOT RESPONSIBLE FOR ANY INDENTURES MADE SUBSEQUENT TO THE RECORDED DATE OF THE LATEST DEED OF RECORD.

WHENEVER BUILDINGS ARE SHOWN LESS THAN ONE FOOT FROM THE PROPERTY LINE, IT IS ADVISED THAT A MORE PRECISE SURVEY BE MADE TO VERIFY THESE MEASUREMENTS.

NOTE:
THIS CERTIFICATION IS BASE ON THE LOCATION OF SURVEY MARKERS OF OTHERS, AND DOES NOT REPRESENT A PROPERTY SURVEY.
THIS CERTIFICATION TO BE USED FOR MORTGAGE PURPOSES ONLY.

OFFSETS AS SHOWN ARE NOT TO BE
USED FOR THE ESTABLISHMENT OF PROPERTY LINES

ARMAND P. ROUSSEAU R.L.S. #10307

DEED
BOOK 6676
PAGE 622
CERT. NO. ———

PLAN BK. 69 PAGE ———
PLAN # 3324 DATED 1913

NOV. 17, 1989
SCALE: 1" = 20'
REVISED 12/18/89

BRADFORD ENGINEERING CO.
P.O. BOX 1244
HAVERHILL MA. 01831
TEL. (508) 373-2308

CM