



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

JOHN A. DONOVAN, JR., Chairman
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KENDALL P. BATES

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Executive Secretary
Telephone
431-1019 X208

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SUMNER H. BABCOCK

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ZBA 94-12
Petition of John Gillespie
65 Shore Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 24, 1994, at 8 p.m. in the Great Hall at the Town Hall, 525 Washington Street, Wellesley, on the petition of JOHN GILLESPIE requesting a Special Permit/Finding that the proposed alteration to his pre-existing nonconforming structure at 65 SHORE ROAD, with less than the required right and left side yard setbacks, in a Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Said alteration shall consist of demolition and reconstruction of the existing nonconforming structure by replacing the walls and floor on the existing foundation with no expansion of the existing footprint, while supporting the existing roof.

On February 7, 1994, the petitioner 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 Richard Silva, contractor for Mr. Gillespie, who was not present. Mr. Silva said that the plan is to remove the understructure, while maintaining the roof by stanchions and supports. The reconstruction would be done by hand on the existing foundation, and there would be no expansion of the footprint.

The Board noted that a portion of #64 Shore Road is on Town land and asked what was being done to rectify the situation. The Board understood that there is a court action by Mr. Gillespie requesting that the Town deed to him the land on which #64 is located.

The Board expressed concern that any decision made by the Board could impact a decision by the Court, and suggested continuing the hearing to March 24, 1994, in order to obtain an opinion from Town Counsel. Mr. Silva agreed to continue the hearing. The Board also requested that Mr. Gillespie be present at the next hearing.

Due notice of the hearing on March 24, 1994 was given by mailing and publication which included a change in the hearing room to the Selectmen's Meeting Room.

Presenting the case at the hearing on March 24, 1994, was Richard Silva, who was accompanied by John Gillespie. Mr. Silva stated that Town Counsel had written to the Board stating that Mr. Gillespie is not suing the Town. The Board chairman read from Town Counsel's letter of February 25, 1994, stating that the Board's decision would have no effect on the "issues being litigated", and stated he would presume that there was litigation,

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25 STATE STREET, MA 02181

and asked what the litigation involved. Mr. Silva responded that it dealt with the parcel of land on which #64 Shore Road is located, but reiterated that Mr. Gillespie is not suing the Town. Mr. Gillespie is attempting to purchase the land from the Town and has submitted an offer of \$1,000, but has not received an answer from the Town.

Mr. Silva described the project as he had done at the previous Public Hearing, and stated that there would be no change in the footprint of the structure. The walls and floor would be replaced beneath the existing roof, which would be supported by stanchions during the construction.

The Board expressed concern with granting any petition for a property where serious zoning violations existed, as it might appear that the Board was condoning the existing violations. Although there are two dwellings on two separate lots, the two dwellings have been combined into one structure through the connection of the two structures by a porch/garage, straddles the lot line. The porch/garage has no setback on either side of the center lot line, and was constructed in violation of a ZBA decision in 1954. A portion of the dwelling at #64 Shore Road is located on Town Land which is also in violation of the Zoning Bylaw.

No other person present had any comment on the petition.

Statement of Facts

The subject nonconforming dwelling is located at 65 Shore Road, on a 4,210 square foot lot, in a Single Residence District with a minimum right front corner clearance of 9 feet, a minimum right rear corner clearance of 14 feet and no left side yard setback. The nonconforming dwelling at 64 Shore Road encroaches on Town property on the left side and rear of the dwelling, and is situated on a 4,210 square foot lot. The lots together have a combined total of 8,420 square feet. The dwellings at 64 Shore Road and 65 Shore Road are connected by a two-car garage/porch and cover more than 25% of the total acreage.

On March 11, 1954, the Board of Appeals heard a petition for special exceptions to allow Mr. Gillespie to construct an addition of two bedrooms and a bathroom at 64 Shore Road, leaving less than the required right side yard; to permit the construction of a garage to remain in violation of the Building Code, and to permit the lot coverage to be more than 25% of the area of the lot. Work on the addition and garage had been started without obtaining the required permits.

A Plot Plan dated March 1, 1954, drawn by Gleason Engineering Company, showed two dwellings, both located on the petitioner's property; the proposed addition to #64; and the garage under construction to be three feet from #64 and 6 feet from #65. The Board granted variances for the completion of the addition and the garage as specified in said plot plan. The Building Permit for the garage (Permit #11870) was issued on April 5, 1954. The plot plan drawn on the application shows the garage attached to 64 Shore Road, with a 4 foot separation from 65 Shore Road, although the dimensions stated on the application are the

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same as those for which the variance was granted.

On October 11, 1956, a Building Permit (Permit #12848) was issued to the petitioner to add two rooms to the rear of the house at 64 Shore Road. The Plot Plan attached to the permit shows a portion of #64 to be located on Town land, but does not show any garage. No variance for this construction was ever applied for or granted.

On September 17, 1987, the Board of Appeals heard a petition for a variance to demolish and reconstruct the house at 65 Shore Road while retaining the roof; the addition of 2 rooms over the two-car attached garage; and additions to the right rear and front corners of the house which would have less than the required right side setbacks.

The Board denied the variance and found that as the petitioner was in violation of the Zoning bylaw, desirable relief could not be granted.

The petitioner is currently requesting a Special Permit/Finding to demolish the existing walls and floor, while supporting the existing roof, and reconstructing the walls and floor on the same foundation with the same footprint at 65 Shore Road.

At this time, the petitioner is engaged in an action against the Town which has been filed in Norfolk Superior Court (Gillespie v. Wellesley, Norfolk Superior Court, C.A. 93-02002). The substance of the Complaint is a claim of adverse possession by the Plaintiff, regarding the property on which the dwelling at 64 Shore Road is located.

Albert S. Robinson, Town Counsel, has advised the Board of Appeals in a letter dated February 25, 1994, that any decision made by the Board relative to the petitioner's request for a Special Permit/Finding for construction at 65 Shore Road would not affect the pending litigation.

A Plot Plan dated July 23, 1987, revised February 3, 1994, drawn by U.M. Schiavone, Registered Professional Land Surveyor; and Floor plans and elevations dated February 2, 1994, drawn by Rick's Custom Carpentry were submitted.

On March 7, 1994, the Wetlands Protection Committee voted to issue a Negative Determination of Applicability with Conditions for the proposed construction at 65 Shore Road.

On March 15, 1994, the Planning Board reviewed the petition and voted to recommend that the petition be dismissed based on insufficient information.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the two hearings. The subject dwelling does not conform to the current Zoning

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Bylaw as noted in the foregoing Statement of Facts.

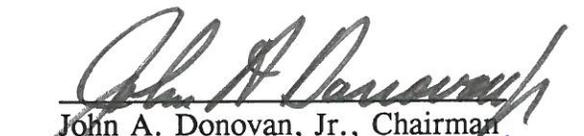
It is the opinion of this Authority that the demolition and reconstruction of the existing walls and floor on the same foundation with no expansion of the existing footprint, while supporting the existing roof, will not intensify the existing nonconformities or create additional ones, as there will be no expansion of the footprint, nor of the height of the walls or roof. Therefore, the proposed demolition and reconstruction will have no effect on the existing zoning violations.

Therefore, a Special Permit is hereby issued for the proposed demolition and reconstruction subject to the following conditions:

1. All construction shall be in accordance with the plot plan and construction sketches submitted and noted in the foregoing Statement of Facts. All reconstruction shall be contained in the existing footprint, and no expansion of that footprint is allowed.
2. There shall be no increase in the height of the walls or roof following reconstruction of same.
3. All conditions contained in the Negative Determination of Applicability issued by the Wetlands Protection Committee shall be incorporated into this decision.
4. The decision of this Authority to grant the Special Permit does not in any way validate or condone the existing zoning nonconformities and irregularities present on both #64 and #65 Shore Road.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon his receipt and approval of a building application and detailed construction plans.

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

Kendall P. Bates


William E. Polletta

cc: Planning Board
Wetlands Protection Committee
Inspector of Buildings

edg

TOWN OF WELLESLEY



MASSACHUSETTS

ALBERT S. ROBINSON, TOWN COUNSEL

August 14, 1995

TELEPHONE (617) 235-3300
TELECOPIER (617) 235-8090

40 GROVE STREET
WELLESLEY, MA 02181

Judith A. Nicolson, Director
Natural Resources Commission
Town Hall
Wellesley, MA 02181

RE: Gillespie v. Town of Wellesley
C. A. 93-20002

Dear Judy:

Judgment has now entered in the referenced matter, relocating and defining the property line as determined by the Town Engineer's May 3, 1995 plan, a copy of which you have already seen and approved. A copy of the judgment as entered is enclosed for your records. I have received the Gillespies' \$10,000 check payable to the Town, and will be transmitting it together with a copy of this letter to the Treasurer for deposit.

This wraps it up I believe and unless you have any questions or know of anything I have overlooked, in which case please call. The file is now being closed. Thank you for your help in bringing this to closure.

Very truly yours,

Albert S. Robinson

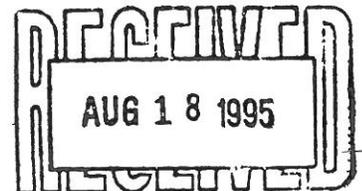
ASR:mp

File: WJ-272

v:\asr\town\legal\gillespie.judg

enclosure

cs: Marc V. Waldman, Treasurer and Collector, with enclosure \$10,000 bank
check, Middlesex Savings Bank No. 387639
R. Arnold Wakelin, Jr., Executive Director, General Governmental Services
Stephen Fader, P.E., Town Engineer



NRC

COPY

rec'd 7/31/90
Docketed 8/10/90

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF THE COMMONWEALTH

NORFOLK, SS.

SUPERIOR COURT
CIVIL NO.
93-2002

JOHN P. GILLESPIE)
ET AL)
vs.)
TOWN OF WELLESLEY)

JUDGMENT

Based upon facts stipulated to be the parties hereto, Judgment is entered as follows:

The plaintiffs John P. Gillespie and Eileen F. Gillespie have acquired title in fee simple by open, continuous and adverse possession for a period in excess of twenty years with possession having commenced at least as early as 1956 to the following land, which stand in record title to the Town of Wellesley:

The land in Wellesley off Shore Terrace and adjacent to the land of John P. Gillespie and Eileen F. Gillespie described in a deed dated August 15, 1951, and recorded in Norfolk County Registry of Deeds in Book 3024, Page 148, described as follows:

Beginning at the Northerly point of the Plaintiff's land, as described in their deeds and as shown as the Easterly end of a 31.2 foot boundary on the attached plan; thence

N 85° 52' 08" E 12.10 feet to a point which point is ten feet distant from and perpendicular to the Northeasterly side of the standing house no. 64 measured from the Northwesterly corner of said house; thence

S 65° 12' 14" E 55 feet ; thence

S 21° 59' 17" E 14.60 feet to a point; thence

S 5° 05' 57" W 41.60 feet to a point; thence

N 27° 13' 00" W by Plaintiff's remaining land 55.46 feet; thence

N 54° 07' 00" W again by plaintiff's remaining land 47.50 feet to the point of beginning.

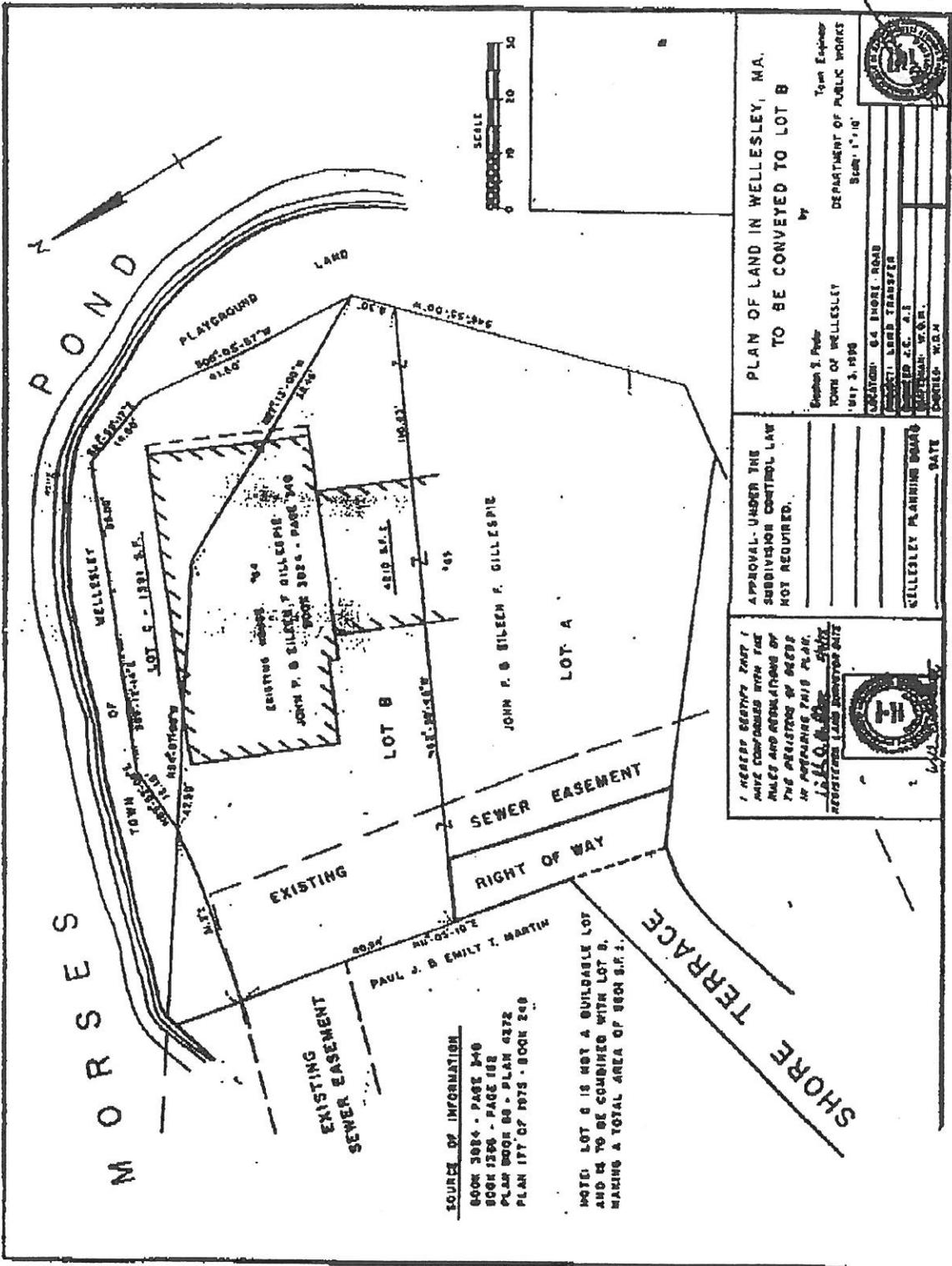
A land acquired by adverse use by the Plaintiffs is shown as Lot C on a plan entitled "Plan of Land in Wellesley, Ma. To Be Conveyed to Lot B by Stephen S. Fader Town Engineer Town of Wellesley Department of Public Works May 3, 1995", a copy of which is attached hereto and made a part hereof

Entered at Dedham this 31 day of July, 1995.

Charles J. Hely, J.

A TRUE COPY

Attest: Mary A. Pashin
Deputy Assistant Clerk



PLAN OF LAND IN WELLESLEY, MA.
TO BE CONVEYED TO LOT B

by
Town Engineer
DEPARTMENT OF PUBLIC WORKS
Scale: 1" = 10'

SECTION 2, POND
TOWN OF WELLESLEY
MAY 3, 1936

REGISTERED
G. S. SHORE ROAD
PLAT LAND TRANSFER
RECORDED 20. 41
WELLESLEY TOWN
DEPT. OF P.W.

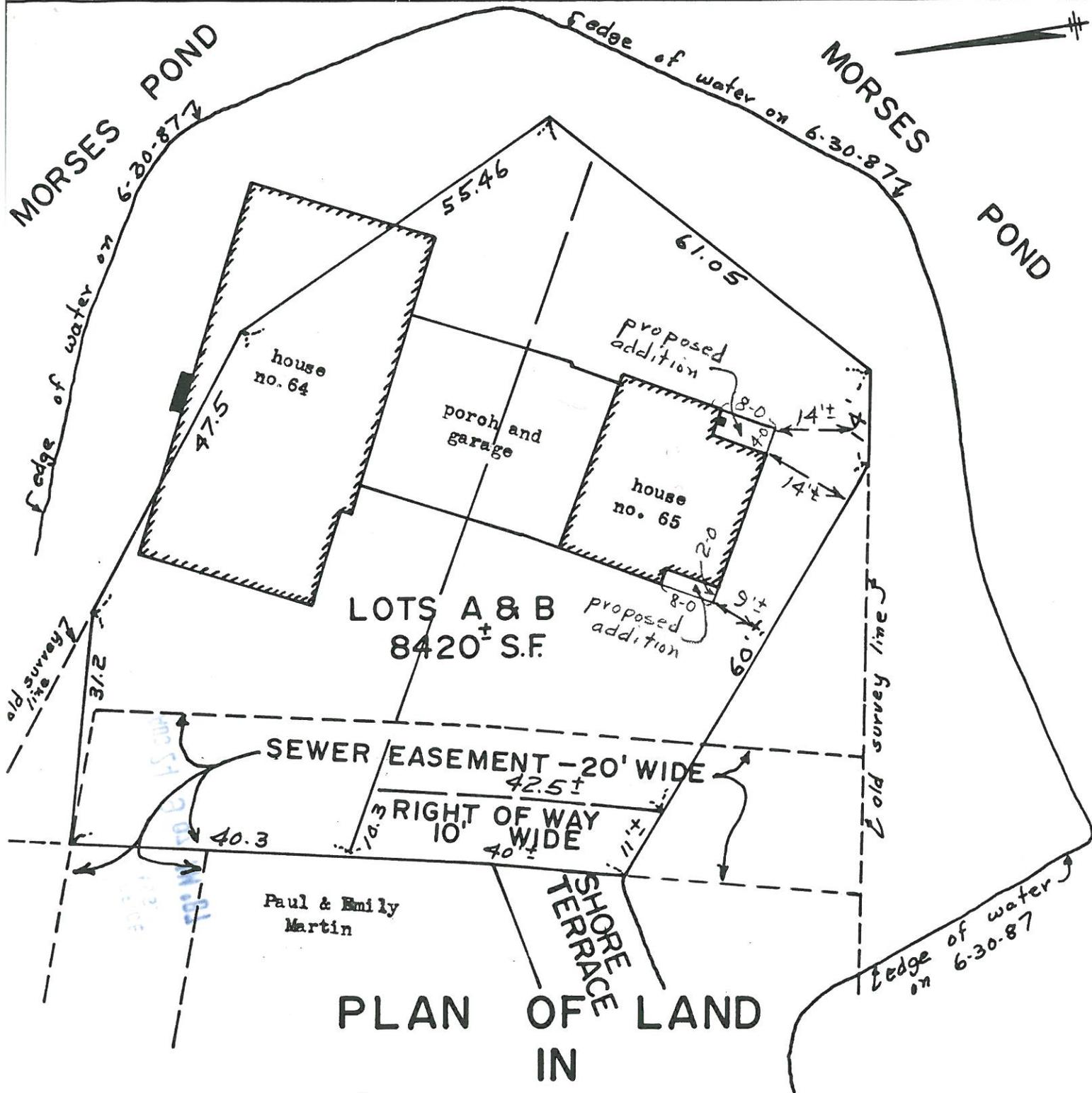
APPROVAL UNDER THE
SUBDIVISION CONTROL LAW
NOT REQUIRED.

WELLESLEY PLANNING BOARD
DATE

I HEREBY CERTIFY THAT I
HAVE COMPARED WITH THE
PLAT AND RECORDS OF DEEDS
THE RECORDS OF DEEDS
IN RELATION TO THIS PLAN,
AND I CERTIFY THAT THE
REGISTERED LAND INFORMATION

SOURCE OF INFORMATION
BOOK 3084 - PAGE 340
BOOK 3296 - PAGE 182
PLAN BOOK 88 - PLAN 4272
PLAN 177 OF 1975 - BOOK 268

NOTE: LOT B IS NOT A BUILDABLE LOT
AND IS TO BE COMBINED WITH LOT A,
MAKING A TOTAL AREA OF 3800 S.F.



**PLAN OF LAND
IN
WELLESLEY MASS.**

TO ACCOMPANY THE PETITION OF

**JOHN P. GILLESPIE
65 SHORE ROAD
WELLESLEY**



U.M. Schiavone

**SCALE 1 IN = 20 FT
U.M. SCHIAVONE
NEWTON LOWER FALLS**

**JULY 23, 1987
LAND SURVEYOR
MASS.**