

**ZONING BOARD OF APPEALS**

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ZBA 2011-38  
Petition of Hunnewell Land Trust  
891 Washington Street

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Pursuant to due notice, the Special Permit Granting authority held a Public Hearing on Thursday, July 7, 2011 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of HUNNEWELL LAND TRUST requesting a Special Permit pursuant to the provisions of Section II A 8 (a) and Section XXV of the Zoning Bylaw to allow the accessory garage apartment at 891 WASHINGTON STREET to continue to be used as a separate dwelling unit, which is a use not allowed by right in a Single Residence District.

On June 22, 2011, the petitioner filed a request for 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 Walter Hunnewell, Jr., who said that he is one of the Trustees of the Hunnewell Land Trust (the "Petitioner"). He said that the Petitioner is requesting renewal of the Special Permit for the continued use of the accessory garage apartment, which was originally used as employees' quarters.

Mr. Hunnewell said that there has been no change in the ownership or the use as a one-bedroom apartment. He said that the tenant who lived there for many years passed away. He said that there have been two tenants in the past four years. The Board asked if the tenants were employees. Mr. Hunnewell said that they were not.

The Board said that the Planning Board recommended that the petition to renew the Special Permit to allow an accessory garage apartment to continue to be used as a separate dwelling unit be denied. The Planning Board further stated that per Section II, A., 8., a., a residence for not more than two families is allowed with the issuance of a Special Permit provided that "the building so used was in existence when this Bylaw took effect" and provided further that, "the original building can no longer be used or adapted at a reasonable expense and with a fair financial return for a use regularly permitted in the district."

The Board said that because the Petitioner had no forewarning of the Planning Board recommendation, the Board might consider limiting the Special Permit to the existing tenant.

Mr. Hunnewell said that the 891 Washington Street property has one main residence that has always had two residential units and a separate garage apartment that was used by employees years ago. He said that when the Special Permit was granted 24 years ago it was deemed appropriate in that it represented a continued use of the unit.

Mr. Hunnewell asked that the hearing be continued to allow Counsel for the Petitioner to have an opportunity to review the facts.

The Board said that the Bylaw requires the Board to make a finding that the building can no longer be used or adapted at a reasonable expense or with fair financial return. The Board said that it has to find that the use of the accessory apartment is an economic necessity.

The Board said that this garage was built in the 1900's, which does pre-date the Zoning Bylaw. The Board said that the employee apartment use was grandfathered.

The Board voted unanimously to extend the Special Permit for 60 days and to continue the petition to September 8, 2011.

### **September 8, 2011**

Presenting the case at the hearing was Les Shea, Esq. and Walter Hunnewell, Jr., Trustee, Hunnewell Land Trust.

Mr. Hunnewell read a prepared statement to the Board. He said that this is the eighth time since 1987 that the Trust has come before the Board to apply for a renewal of the Special Permit. He said that they strongly disagreed with the Planning Board's July finding which cited sections of the Zoning Bylaw and recommended that the Board deny renewal of the Special Permit. He said that for 21 years through the 2008 Special Permit, previous Boards had interpreted the pertinent bylaws to allow this Special Permit. He said that there has been no change or revision to the pertinent bylaws. He said that the bylaws seem open to some interpretation with respect to this situation.

Mr. Hunnewell said that there has been no new construction on this 5.6 acre parcel since the early 1900's. He said that the buildings on the parcel consist of the 1770's vintage main residence, which is the original Welles family homestead, from which the Town's own name is derived. He said that in addition to the main residence, there is the garage building that was constructed in the early 1900's, that is comprised of the subject apartment and parking bays. He said that there are also two uninhabited wood frame farm structures on the property. He said that the buildings in their structurally unchanged condition pre-date the 1925 establishment of the Town's Zoning Bylaws (ZBL).

Mr. Hunnewell said that the subject apartment has always existed within the garage building. He said that the apartment was initially built and utilized as an employee's residence. He said that in the first Special Permit application in 1987, Arnold Hunnewell stated to the Board that the apartment was never abandoned. He said that when the apartment was updated in 1987, the first Special Permit was requested and was granted. Mr. Hunnewell said that this is a small one bedroom apartment. He said that it has been continuously rented since 1987.

Mr. Hunnewell said that the majority of the 5.6 acres are utilized by the abutting Hunnewell Farm as feeding pasture for the Farm's livestock. He said that none of the 891 Washington Street property is subject to restrictive covenants. He said that there is approximately 550 feet of frontage on Washington Street and 325 feet of frontage on Pond Road. He said that a realtor would say that the parcel's best use

would be for development into house lots. He said that owners have chosen to not pursue such an end. He said that they choose to maintain the parcel as it has always existed.

Mr. Hunnewell said that the Hunnewell Land Trust is an owner of the 891 Washington Street parcel. He said that it is also an owner of the abutting 28 acre Hunnewell Farm property at 901 Washington Street. He said that the Land Trust's only significant source of income is the tenant rents at 891 Washington Street. He said that besides maintenance and insurance, the Land Trust's other expense is Wellesley Real Estate Taxes for 891 & 901 Washington Street and several unimproved parcels nearby. He said that the Land Trust has been cash flow negative for some years now. He said that even as the Hunnewell family strives to preserve this pristine rural farm setting, which also serves as a gateway to Wellesley, loss of the income generated by the garage apartment would further erode the ability of the owners to maintain and preserve this part of Wellesley's heritage. He said that the owners have tried hard to meet their perceived ability to preserve this unique rural and historic setting that they and many of the public enjoy as they drive by, bicycle and jog through the area.

Mr. Hunnewell said that none of the abutting neighbors have ever challenged the renewal of the Special Permit. He said that they are, in fact, concerned that the Special Permit might be denied, which would further call into question the sustainability of the present conditions at 891 Washington Street and the adjacent farm property.

Mr. Hunnewell said that, on behalf of the owners, he respectfully asked that the Board consider the unchanged conditions at 891 Washington Street and continue to renew the Special Permit.

Mr. Shea said that he read the Planning Board's recommendation and the Zoning Board of Appeals' notes from the previous hearing. He said that there are different ways of interpreting the ZBL. He read Section II A and Section II A 8 (a) of the ZBL. He said that the bylaw referred to no new building or a building that is in existence. He said that specifically would be the garage in question. He said that ZBA 87-48 would back up the suppositions of fact that Mr. Hunnewell put to the Board that the buildings have been there since the early 1900's.

Mr. Shea said that the Board does have the authority to grant the Special Permit. He said that in 1987 when the Land Trust came before the Board, Mr. Hunnewell said that it was for renovations. Mr. Hunnewell said that the apartment was never abandoned. Mr. Shea said that the apartment was renovated on the premise that the Town would grant a Special Permit. He said that the Special Permit has been in continuous use since that time.

Mr. Shea said that he was not going to argue if the pre-existing nonconforming garage apartment use was abandoned or not. He said that he was requesting that a Special Permit be granted for an additional three year period.

Mr. Shea said that the family has been good to the Town. He said that the only income that they have is from the two-families in the house and this apartment. He said that there is no positive cash flow.

The Board said that it asked for additional information, which Mr. Hunnewell furnished. The Board said that the Special Permit has been granted since 1987. The Board said that the income is relied upon to support the other good things that the Hunnewell Land Trust does.

There was no one present at the Public Hearing who wished to speak to the petition.

Statement of Facts

The subject property is located at 891 Washington Street, on a 5.629 acre lot on the corner of Washington Street and Pond Road, in a Single Residence District. A two-family dwelling, two detached garages, and a barn are located on the premises. The garage closest to the house was constructed in the early 1900's and is used as a three-car garage, which has an attached two-story apartment. In June 1987, the Board of Appeals granted a Special Permit (ZBA 87-48) for the premises to be used as a separate dwelling unit, as the use had been discontinued for more than a two-year period. The Special Permit was renewed every three years since that time.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. It is the opinion of this Authority that the requested Special Permit can be granted pursuant to Section II A 8 (a) of the Zoning Bylaw to allow a garage apartment at 891 Washington Street to continue to be used as a separate dwelling unit, as the original building can no longer be used or adapted at a reasonable expense and with a fair financial return for a use regularly permitted in the district, and as said use shall neither be detrimental to the neighborhood nor in derogation of the intent and purpose of the Zoning Bylaw.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, subject to the following conditions:

1. All applicable State and local laws and regulations shall be complied with by both the petitioner and the tenant.
2. This Special Permit shall expire three years from the date time stamped on this decision.

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.

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J. Randolph Becker, Acting Chairman

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Robert W. Levy

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David L. Grissino

cc: Planning Board  
Inspector of Buildings  
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