TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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Date: 8/18/16 ZBA: 2016-77

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2016 SEP 21 P 12:2

Petition for:	Residential Fee	Commercial & Municipal Fee
Variance	$200	
Special Permit	$200	$500
Special Permit/Findings	$200	
Special Permit Renewals	✓ $150	
Signs		$300
Site Plan Approval without PSI		$2,000 & Fire Department Consulting Fee
Site Plan Approval with PSI		$3,500
Appeals	$200	$300
Comprehensive Permit		$750
Publication & Mailing Fees/All Petitions	$25	$25
Petitioner assumes all costs for Peer Review		

Property Location: 37 POND RD Zoning District: SR 40

Property located in a:

	Yes	No
Historic District		✓
Wetlands Protection Area		
Water Supply Protection District	✓	

Prior Zoning Decisions: Special Permit/Finding: ZBA 2009-43 Variance:

Applicable Section(s) of the Zoning Bylaw:

Explanation of Request:

Renewal of ZBA 2009-43

Requested Relief:

Lot Area	Front Yard Depth (Street Setback)
Lot Coverage	Side Yard Width (Side Line Setback)
Frontage	Rear Yard Depth (Rear Line Setback)
Front Yard Width	Other

OWNER OF PROPERTY/PETITIONER: 37 Pond Rd Realty Trust

MAILING ADDRESS: 37 Pond Rd Wellesley MA

PHONE: WORK: 508 962 1042 HOME: 781 235 0040

SIGNATURE OF OWNER: Francis W. Hunnewell

AGENT FOR HOMEOWNER (PLEASE PRINT):

MAILING ADDRESS:

PHONE: WORK: HOME:

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ZBA 2009-43
Petition of Francis & Emily Hunnewell
37 Pond Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, June 11, 2009 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of FRANCIS & EMILY HUNNEWELL requesting a Special Permit pursuant to the provisions of Section II A 8 (a) and Section XXV of the Zoning Bylaw to allow the premises at 37 POND ROAD, in a 40,000 square foot Single Residence District, to be used as a two-family dwelling, which is a use not allowed by right in a Single Residence District.

On June 22, 2009 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 Leslie Shea, Esq., who said that he was representing Frank and Emily Hunnewell (the "Petitioner").

Mr. Shea said that it is a large house that prior to a few years ago was in disrepair. He said that the house was previously owned by Jane Greene and her Trust. Ms. Greene's son lived there, as well as a boarder, John Gibson, who came to live in the rental portion of the house in 1990. Mr. Gibson's quarters consist of a living room, a bedroom and a kitchen.

Mr. Shea said that Mr. Hunnewell bought the house in April of 2007.

Mr. Shea said that house has been described in decisions for Special Permits issued from 1973 to 2006. He said the number of rooms was described anywhere between 22 and 35 rooms.

Mr. Shea said that Ms. Greene's son decided to sell the house. He said that the general consensus with realtors was that the house would be razed and a large house would be buil, which might entail closing a section of the path off to create a use similar to other houses on Pond Road.

Mr. Shea said that Mr. Greene approached Frank Hunnewell about purchasing the property and fixing the existing house up. The tenant was living in the old servants' quarters at the time. Mr. Hunnewell chose to preserve the house for its historic value.

Mr. Hunnewell came before the Board in 2007 and found out that there were certain aspects of the Special Permit that he was unaware of and was not ready to address at that time. The Board allowed the prior Special Permit to run its term. Mr. Hunnewell proceeded with renovation of the house.

Mr. Shea said that the property is located in a National Historic District, where it is more difficult to do anything with the land.

Mr. Shea said that the house was built in 1875 by Walter Hunnewell. He said that the house was built at a time when there were large families who had servants to take care of them. He said that the house is underutized by Mr. Hunnewell, his wife and two children.

Mr. Shea said that Mr. Gibson would like to move back to the rental unit. Mr. Gibson grew up in Wellesley. He works in the landscaping business. Part of Mr. Gibson's rental agreement was to work on the grounds and to maintain 750 feet of the pathway that borders Lake Waban.

Mr. Shea said that the property does not have the usual density issues.

Mr. Shea said that there are two different Conservation Restrictions on the land. He said that the first restriction went on in 1995 and restricts 3.25 acres along the pathway around Lake Waban. He said that in December of 2002, another restriction went in to effect for four parcels, consisting of 11.3 acres, for 20 years. The restriction states that, at the end of 20 years, one more single family residence can be built on the land. He said that there are over 100 acres of land that the Hunnewell family has protected under Conservation Restrictions.

Mr. Shea said that the value of the land has been decreased and Mr. Hunnewell cannot use the house to its full potential.

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Mr. Shea said that there are costs for the upkeep of the pathway. He said that Mr. Hunnewell has to purchase an insurance umbrella policy to cover liability on the path. He said that Mr. Hunnewell's children are not able to play on the pathway area of the land because of safety issues.

Mr. Shea said that there are cost issues with the insurance and that the land is devalued because of the Conservation Restrictions.

Mr. Shea said that letters of support had been submitted by the neighbors.

Mr. Shea read a portion of ZBA 73-31. He said that it was granted on the basis that a real need existed and that the use would not reduce the value of any property within the district. He said that the decision pre-dates the Conservation Restrictions and the pathway maintenance and insurance costs. He said that the Preamble of the Zoning Bylaw is pertinent to this petition because it expresses the objectives of the Zoning Bylaw. He said that literal application of the Zoning Bylaw should not prevent a good use of the land. He said that there is a financial burden to upkeep the property.

Mr. Shea said that the tenant had been paying $1,000 a month in rent. He said that part of the rental agreement was for Mr. Gibson to maintain the grounds, which included a fair amount of work on the pathway. He said that a good amount of the rental income went to insurance costs and maintenance. He said that the pathway benefits the Town and the College.

The Board said that the Conservation Restrictions have economic benefits. Mr. Shea said that he believes that the restrictions lessen the values of the taxes. He said that the Hunnewells have been willing to place restrictions on their land even though it significantly lessens the value of the land to them. He said that there are certain costs involved to leave a portion of the land open to the public.

Mr. Shea said that the rental property was used as servants' quarters with a kitchen prior to 1925.

The Board said that it was concerned with setting a precedent. The Board said that it is a huge house that is secluded. Mr. Shea said that Mr. Hunnewell is paying to maintain the path for the benefit of the Town. He said that it is unique to this lot as opposed to other houses in Single Residence Districts.

The Board said that it has granted Special Permits for two-family uses that have been existing for several years with the condition that the Special Permit is attached to the family, not the house. The Board said that was the case with the previous permit, which has expired. Mr. Shea said that all of the renovations were done when the Special Permit was in effect. He said that the house needed to be renovated to make it habitable. He said that there were holes in the ceiling.

The Board said that it has issued Special Permits for older homes with unique situations with the condition that it expires with the sale of the house. The Board said that Special Permits for the older homes that pre-date zoning are unique. The Board said that this house has unique historical value.

The Board said that the path is a benefit to the Town and the rental income helps to offset expenses associated with it. The Hunnewells assumed some financial hardhip on behalf of the Town and this is a unique situation.

Francis Hunnewell, 863 Washington Street, said that Ms. Greene was a Hunnewell. He said that Ms. Greene took over the house when her parents died. She did not live there but her son did. Mr. Hunnewell said that there is public benefit that ties into the precedent.

The Board said that if the house was converted back to a single family use there would be no fair financial return. Mr. Shea said that the Board made a finding in 2006 that the house contains 35 rooms and cannot be used economically as a single family dwelling.

The Board said that the rental property has been there since 1973 and that the multi-family use was in place when the bylaw took effect. The Board said that it cannot be turned back into a single family house at a reasonable expense and with a fair financial return because of the other costs incurred due to the unique situation.

Statement of Facts

The subject property is located at 37 Pond Road, in a 40,000 square foot Single Residence District, on a 7.96 acre lot. The house, built in 1875, has been in the family since the original construction. The house contains thirty-five rooms and cannot be used economically as a single family dwelling. The ownership of the property has been assumed by Francis and Emily Hunnewell, who occupy one-half of the premises. The second apartment had been occupied by the same tenant for many years.

ZBA 2009-43
Petition of Francis & Emily Hunnewell
37 Pond Road

The petitioner requests a Special Permit to resume the use of the premises as a two-family dwelling. Special Permits for this use have been granted regularly since 1973.

Decision

This Authority has made a careful study of the information submitted. It is the opinion of this Authority that the original building was in existence when the bylaw took effect, that the current owners have expenses unique to this property related to maintaining the walkway around the pond for public use, including maintenance and insurance costs, and that the building cannot be used or adapted at reasonable expense and with a fair financial return because the loss of the income to offset those expenses which are taken on behalf of the Town would not result in a reasonable expense or fair financial return.

It is the opinion of this Authority that the the use of the premises as a two-family dwelling, with Francis & Emily Hunnewell in residence, shall not substantially reduce the value of any property within the neighborhood, and shall not be injurious or offensive to the neighborhood.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, pursuant to the provisions of Section II A 8 (a) of the Zoning Bylaw, to allow the premises at 37 Pond Road to be used as a two-family dwelling, subject to the following conditions:

1. Said dwelling shall not be occupied by more than two families at any time, and one of the families in residence shall be that of Francis & Emily Hunnewell.

2. Applicable state and local laws and regulations shall be complied with by the petitioner, Francis & Emily Hunnewell.

3. This Special Permit shall expire if any of the Conservation Restrictions for this property expire.

4. This Special Permit shall expire if the land is subdivided and there is an additional residence built.

5. This Special Permit shall have no precedential value for any subsequent owner.

6. This Special Permit shall expire three years from the date time stamped on this decision.

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Petition of Francis & Emily Hunnewell
37 Pond Road

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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.

Cynthia S. Hibbard, Acting Chairman

Robert W. Levy

David L. Grissino

cc: Planning Board
Inspector of Buildings
lrm