



**CITY OF SOMERVILLE, MASSACHUSETTS**  
***MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT***  
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PLANNING DIVISION

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**Case #: ZBA 2016-113**  
**Site: 98 Highland Road**  
**Date of Decision: January 4, 2017**  
**Decision: Petition Approved with Conditions**  
**Date Filed with City Clerk: January 9, 2017**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Jennifer & Scott Hardin
<b>Applicant Address:</b>	35 Avalon Road, Reading, MA 01867
<b>Property Owner Name:</b>	Hardin Realty Development, LLC
<b>Property Owner Address:</b>	35 Avalon Road, Reading, MA 01867
<b>Agent Name:</b>	N/A

<u>Legal Notice:</u>	Applicant, Hardin Realty Development LLC, and Owners, Jennifer and Scott Hardin, seek a Special Permit under SZO §4.4.1 to finish the basement of a non-conforming three-family residential by adding a family room, bathroom, and two bedrooms and §9.13 for parking relief.
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<u>Zoning District/Ward:</u>	RA zone/Ward5
<u>Zoning Approval Sought:</u>	§4.4.1 & §9.13
<u>Date of Application:</u>	September 14, 2016
<u>Date(s) of Public Hearing:</u>	11/2, 11/16, 12/7/16 & 1/4/17
<u>Date of Decision:</u>	January 4, 2017
<u>Vote:</u>	5-0

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Appeal #ZBA 2016-113 was opened before the Zoning Board of Appeals at the Visiting Nurse Association on November 2, 2016. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After two hearings of deliberation, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143  
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722  
[www.somervillema.gov](http://www.somervillema.gov)

**DESCRIPTION:**

The Applicant would like to add approximately 800 square feet of occupiable space in the basement comprising of a family room, bathroom, and 2 bedrooms and convert 2 closets on the third floor to a bathroom. There will be no exterior work or landscaping changes but relief is requested for parking. After two neighborhood meetings, the proposal was changed to only have one bedroom.

**FINDINGS FOR SPECIAL PERMIT (SZO §5.1):**

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. **Information Supplied:**

The Board finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. **Compliance with Standards:** *The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."*

*Nature of Application:* RA - Residence Districts

Section 4.4.1 states that "[l]awfully existing one-and two-family dwellings which are only used as residences, which are nonconforming with respect to dimensional requirements, may be enlarged, extended, renovated or altered by special permit granted by the SPGA in accordance with the procedures of Article 5."

This alteration to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO). In considering a special permit, Staff find that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure and use. The proposal is limited to internal alterations only

The proposal has been designed with setbacks that minimally impact the neighbors affecting the following nonconforming use/dimensions:

Lot Area: the current size is only 3,440 square feet when the required minimum for the district is 10,000sf.

Floor Area Ratio: currently 1.01, the proposal increases the F.A.R. to 1.23, and the requirement in the district is 0.75.

Yards: Front Setback current dimension is 8.3 feet, the proposal does not alter that dimension, and the requirement in the district is 15 feet. Other non-conforming dimensions that will not be altered include the Side (3.8' and 10.1') and Rear Yards along with the 43' frontage.

SZO §9.13 allows for sites with nonconforming parking to apply for a Special Permit to modify parking requirements if the total number of spaces is less than six. In considering a special permit under §9.13 of the SZO the Applicant must be able to demonstrate that granting the requested special permit would not cause detriment to the surrounding neighborhood.



With the addition of 1 bedroom, unit 1 has 3 bedrooms and requires 2 spaces, and units 2 and 3 have 2 bedrooms requiring 1.5 spaces each unit, for a required total of 5 spaces. The site plan shows 4 existing parking. The application request was relief for 1 parking space (from 4 spaces to 5 spaces),

As the property has been using the driveway as parking for 4 cars with no problems, the neighbors have agreed that the driveway will continue to operate in the same manner. Therefore no impact is anticipated on the neighborhood.

3. Consistency with Purposes: *The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."*

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promoting the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to conserve the value of land and buildings; to preserve the historical and architectural resources of the City; and to protect and promote a housing stock that can accommodate the diverse household sizes and life stages of Somerville residents at all income levels, paying particular attention to providing housing affordable to individuals and families with low and moderate incomes.

The proposal is consistent with the purpose of the district, which is "to establish and preserve quiet neighborhoods of one- and two-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts."

In considering a special permit under §9.13 of the SZO the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1. The property has been using the driveway as parking for 4 cars with no problems and will continue to operate in the same manner. Therefore there will be no additional impact on the neighborhood and meets the purpose of §9.13.

4. Site and Area Compatibility: *The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."*

*Surrounding Neighborhood:* The neighborhood is a typical one-, two-, and three-family residential neighborhood just east of Powder House Circle and south of Ball Square. The surrounding houses and 2-1/2 story wood structures and gambrel-roofed like the subject property.

*Impacts of Proposal (Design and Compatibility):* The proposal does not alter any exterior conditions so there will be no design or compatibility issues.

5. Adverse environmental impacts: *The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.*

*Impacts of Proposal (Environmental):* This proposal has no adverse environmental impacts.

6. Vehicular and pedestrian circulation: *The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.*



*Impacts of Proposal (Circulation):* This proposal will have no additional vehicular and pedestrian circulation impacts on the neighborhood.

### **DECISION:**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Josh Safdie with Anne Brockelman absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is for the conversion of a partial basement to a family room, bathroom, and 1 bedroom for Unit 1. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/PIng .									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>September 14, 2016</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>November 17, 2016</td><td>Plans labeled “Site Plan – 98 Highland Road Condominium”, “Second Floor (Unit 2)”, “Existing Third Floor”, and “Proposed Third Floor”</td></tr><tr><td>December 19, 2016</td><td>Replacement plan labeled “Unit 1 Proposed Plan” showing Basement and First Floors”</td></tr></table>				Date (Stamp Date)	Submission	September 14, 2016	Initial application submitted to the City Clerk’s Office	November 17, 2016	Plans labeled “Site Plan – 98 Highland Road Condominium”, “Second Floor (Unit 2)”, “Existing Third Floor”, and “Proposed Third Floor”	December 19, 2016	Replacement plan labeled “Unit 1 Proposed Plan” showing Basement and First Floors”
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December 19, 2016	Replacement plan labeled “Unit 1 Proposed Plan” showing Basement and First Floors”											
Any changes to the approved plans that are not <i>de minimis</i> must receive SPGA approval.												
<b>Pre-Construction</b>												
2	A detailed Basement Plan and additional information must be submitted to address the departmental comments prior to application for Building Permit.	BP	Eng.									
<b>Construction Impacts</b>												
3	The applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	PIng.									
4	Approval is subject to the Applicant’s and/or successor’s right, title and interest in the property.	Cont.	PIng.	Deed submitted & application formed signed								

5	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
<b>Design</b>				
6	The unlabeled area between the bathroom and utility area on the submitted "Unit 1 Proposed Plan – Basement" drawing shall not be further enclosed or wired and plumbed for use as a kitchen at any time.	BP	Plng.	
7	Snow plowed from the development shall be limited to an on-site storage area.	Cont.	ISD.	
<b>Miscellaneous</b>				
8	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD	
<b>Public Safety</b>				
9	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
10	Parking for 4 automobiles must be provided in the driveway at all times. Condominium documents shall be amended to specify that all resident parking shall be in the driveway at all times. No on-street parking shall be allowed.	CO/ Perpetuity	ISD/T&P	
<b>Final Sign-Off</b>				
11	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*  
Richard Rossetti, *Clerk*  
Danielle Evans  
Elaine Severino  
Josh Safdie

Attest, by the Administrative Assistant: \_\_\_\_\_

Dawn M. Pereira

Copies of this decision are filed in the Somerville City Clerk's office.  
Copies of all plans referred to in this decision and a detailed record of the  
SPGA proceedings are filed in the Somerville Planning Dept.

**CLERK'S CERTIFICATE**

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on \_\_\_\_\_ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or  
\_\_\_\_\_ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or  
\_\_\_\_\_ there has been an appeal filed.

Signed \_\_\_\_\_ City Clerk Date \_\_\_\_\_

