



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

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**Case #: ZBA 2018-43**  
**Site: 26-28 Upland Road**  
**Date of Decision:** June 6, 2018  
**Decision:** *Petition Approved with Conditions*  
**Date Filed with City Clerk:** June 13, 2018

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**ZBA DECISION**

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**Applicant / Owner Name:** Upland Road, LLC  
**Applicant / Owner Address:** 80 Monroe Street, Belmont, MA 02478  
**Alderman:** Katjana Ballantyne

Legal Notice: 26-28 Upland Road (ZBA 2018-43): Applicant and Owner, Upland Road, LLC, seeks Special Permits under §4.4.1 of the SZO to, at a minimum, finish the basement and install window wells within the side yard setback. Parking relief under Article 9 of the SZO is also needed.\* RA zone. Ward 7.

\*Since the publication of this legal notice, it has been determined that no parking relief is needed for this project. An explanation for this determination follows in the decision.

<u>Zoning District/Ward:</u>	RA Zone. Ward 7
<u>Zoning Approval Sought:</u>	§4.4.1, §9.13, and §7.11
<u>Date of Application:</u>	March 29, 2018
<u>Date(s) of Public Hearing:</u>	June 6, 2018
<u>Date of Decision:</u>	June 6, 2018
<u>Vote:</u>	5-0

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Appeal #ZBA 2018-43 was opened before the Zoning Board of Appeals in the Visiting Nurse Association, 3rd floor Community Room, 259 Lowell Street, Somerville, MA. 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.



## **I. DESCRIPTION:**

The Applicant proposes finishing the basement and adding two bedrooms to Unit 1. One of these bedrooms will be located in the basement while the second new bedroom will be located on the first floor. The Applicant proposes increasing the already non-conforming FAR from .83 to 1.06.

## **II. FINDINGS FOR SPECIAL PERMITS (SZO §4.4.1, §9.13, & §7.11)**

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

### **1. Information Supplied:**

The Board finds that the information provided by the Applicants conforms to the requirements of §4.4.1, Article 9 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.”***

#### **Under SZO §4.4.1**

*Section 4.4.1 states that “[l]awfully existing non-conforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by special permit authorized by the SPGA in accordance with the procedures of Article 5. The SPGA must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing non-conforming building. In making the finding that the enlargement, extension, renovation or alteration will not be substantially more detrimental, the SPGA may consider, without limitation, impacts upon the following: traffic volumes, traffic congestion, adequacy of municipal water supply and sewer capacity, noise, odor, scale, on-street parking, shading, visual effects and neighborhood character.”*

With the exception of the installation of the window well toward the rear portion of the left elevation of the property, the work requiring special permitting is all being conducted internally. Finishing basements is a ubiquitous way in Somerville for property owners to gain additional meaningful living space within their homes/units.

26-28 Upland Road is already over the maximum FAR allowed for an RA-zoned property. The maximum allowed is .75 and this locus already presents at .83 under existing conditions. The Applicant proposes increasing the FAR to 1.06 through finishing the basement and interior reconfigurations on the first floor.

The Board finds that these largely internal changes will not negatively impact the visual experience of this property from the public way, thus rendering null any concerns about visual effects and negative impacts on neighborhood character. Further, the interior changes are not expected to create conditions that would result in long-term impacts on the neighborhood in terms of odor and noise, nor would these changes create new instances of shading on surrounding properties.



The property is currently a two-unit residential structure and will remain as such after this project. Therefore, the consistency of this two-family density does not foreshadow future issues with traffic congestion, volume, or on-street parking.

**Under SZO §9.13**

As noted at the beginning of this decision, since the issuance of the legal notice, it has been determined that no parking relief is needed for this project. The formula for determining this appears directly below:

Unit #	Existing BDR	Parking Req.	Proposed BDR	Parking Req.
#1	4	2.0	4	2.0
#2	2	1.5	4	2.0
		<b>Total: 3.5</b>	<b>Total: 4.0</b>	

Formula: *New parking requirement - Old parking requirement = spaces of relief needed\**

For 26-28 Upland Road: **4.0 - 3.5 = .5 spaces**

*\* When the result of this formula is less than one or a negative number, then no parking relief is needed.*

Therefore, there is no parking relief needed for the proposal at 26-28 Upland Road because the result of the formula is less than 1 space.

**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, as conditioned, 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 secure safety from fire, panic and other dangers; and to encourage the most appropriate use of land throughout the City.

The Board finds that the proposed inclusion of a window well for emergency egress from the new basement bedroom, though required by building code, goes to the purpose of promoting the general health and welfare of inhabitants of the City.

**4. Purpose of District: *The Applicant has to ensure that the project “is consistent with the intent of the specific zoning district as specified in Article 6”.***

The Board finds that the proposed project, as-conditioned, is consistent with the intent of the RA zoning 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.”



The Applicant is retaining the two-family use of the property which is in keeping with the purposes of the RA district.

**5. Housing Impact: Will not create adverse impacts on the stock of existing affordable housing.**

The proposal will not add to the existing stock of the City’s affordable housing units.

**6. SomerVision Plan: Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville’s neighborhoods, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs.**

The proposal will upgrade an existing residential unit for future renters or buyers. As the proposed change will increase the bedroom count from two to four in this unit, the unit now has the possibility of being a “family friendly” unit.

**DECISION:**

**Special Permit under §4.4.1 and §9.13**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Danielle Evans, and Anne Brockelman. Upon making the above findings, Richard Rossetti made a motion to approve the request for the Special Permit. Elaine Severino seconded the motion. 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 increase in the non-conforming FAR that will result from finishing the basement and reconfiguring the first floor; inclusion of a window well at the rear of the left elevation of the structure.	BP/CO	ISD/PIng.									
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>March 29, 2018</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>May 15, 2018</td> <td>Updated plans submitted to OSPCD</td> </tr> <tr> <td>May 29, 2018</td> <td>Applicant memo received by OSPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	March 29, 2018	Initial application submitted to the City Clerk’s Office	May 15, 2018	Updated plans submitted to OSPCD	May 29, 2018	Applicant memo received by OSPCD
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	March 29, 2018				Initial application submitted to the City Clerk’s Office							
May 15, 2018	Updated plans submitted to OSPCD											
May 29, 2018	Applicant memo received by OSPCD											
<p><b><u>Any changes to the approved site plan or elevations that are not de minimis must receive SPGA approval. Whether or not a change is de minimis in nature must be determined by the Planning Office.</u></b></p>												



<b>Pre-Construction &amp; Construction Impacts</b>				
2	The Applicant shall, at his expense, replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standards.	CO	DPW	
3	The Applicant shall post the name and phone number of the general contractor, owner, and all sub-contractors at the site entrance where it is visible to people passing by.	During Construction	Plng./ISD	
4	The applicant must comply with the: "Policy for new connections to and modifications to existing connections to the municipal sewer and drainage system stormwater management and infiltration/inflow mitigation." The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation.	BP	Plng/ISD/Highways/Engineering	
5	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	Cont.	Plng./ISD	Deed submitted & application form signed
6	All construction materials and equipment shall 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	ISD/T&P	
7	<b><u>Construction shall occur from 7:30am – 5:00pm Monday-Friday ONLY. There shall be no construction or construction-related work allowed on the weekends or holidays.</u></b>	During Construction	ISD	
8	The Applicant shall ensure that all food waste associated with construction personnel be removed from the premises at the end of each work day.	During Construction	ISD	



9	<p>The Applicant shall, throughout the construction process, ensure that the project site remains as follows:</p> <ul style="list-style-type: none"> <li>- <b>ALL</b> construction-related debris shall be placed in dumpsters or similar at the end of <b>EACH</b> day;</li> <li>- Items removed from the existing building as part of the project process shall be disposed of in dumpsters <b>at the end of each day</b> and/or placed in storage off the premises. These items may include, but are not limited to: mechanicals, pipes, vents, household appliances, toilets, bathtubs, refrigerators, etc.</li> <li>- <b>Under no circumstances</b> shall debris from demolition, construction waste, or the like fall upon, be placed upon or otherwise encroach on abutting properties or the public way.</li> <li>- <b>ALL</b> hazardous material including, but not limited to, asbestos (siding, pipe wrap, insulation, etc.), oil tanks, etc., shall be removed by a licensed, insured, and qualified specialist.</li> </ul>	Pre-Construction & during construction process	ISD/PIng	
10	Deliveries to the construction site shall only occur during 9am and 3pm Monday through Friday. No deliveries to the construction site shall occur on weekends or holidays.	During construction	Traffic & Parking/ISD	
11	Construction and construction-related personnel shall NOT arrive at the job site before 7:30 am. Construction-related vehicles shall not be left to idle on or near the property and site personnel shall be mindful of surrounding property owners by not playing music, engaging in loud conversations, and the like before, during, or after the work day.	During construction	ISD	
12	The Applicant shall submit a proposed drainage report, stamped by a registered PE in Massachusetts that demonstrates compliance with the City’s stormwater policy.	BP	ISD/PIng/Engineering	
13	The Applicant shall contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction. There is a moratorium on opening streets from November 1 <sup>st</sup> to April 1 <sup>st</sup> and there is a list of streets that have additional opening restrictions.	BP	ISD/Engineering	
<b>Design</b>				



14	The Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to construction. There shall be no vinyl used on this property for siding, trim, doors or the like. Windows shall be aluminum clad. Wood or cementitious material shall be used for trim, siding, decking and the like.  Windows shall have muntins (grids) applied to the glass. No between-the-glass grids shall be allowed. Windows shall not be tinted nor shall they convey any reflective or mirrored quality.	BP	Plng/Zoning Review Planner	
<b>Site</b>				
15	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.	Perpetual	ISD	
16	The Applicant shall present a landscaping proposal for the front yard to Planning Staff for their review and approval. All landscaping materials screening materials and materials used for parking/driveway area shall first be reviewed and approved by Planning Staff prior to their installation and again prior to final sign-off.	CO	Plng/ISD	
17	Garbage and recycling containers shall be stored out-of-view of the public way. All such containers and container areas shall be screened with either evergreen plantings (no arborvitae) or wood screening. Locations for containers shall be indicated on the final plan set submitted to ISD for building permits. Screening material shall be reviewed and approved by Planning Staff prior to installation.	Screening material: BP  Installation of container site and screening: CO	Plng/ISD	
18	All materials used for any hardscaping (walkways, parking areas, landscaping walls, and similar) shall first be presented to Planning Staff for their review and approval prior to installation.	CO	Plng/ISD	
<b>Miscellaneous</b>				
19	Electrical conduits on the exterior of buildings shall be painted to match the color of the wall material to which they are attached. Conduits are not allowed on the front of any structure.	CO	Plng/ISD	
20	Exhaust/venting pipes protruding from the roof shall be wrapped or painted to match the color of the shingling.	CO	Plng/ISD	



21	There shall be no vents or exterior pipes located on the front façade of the building. All vents and exterior pipes shall be painted or wrapped to match the color of the structure from which they protrude.	CO	Plng/ISD	
<b>Public Safety</b>				
22	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP	
23	All lighting shall be downcast and shall not spill onto the public way or onto neighboring properties in any fashion.	CO	ISD	
24	The Applicant shall maintain a 20-foot drive aisle between the garage and the rear egress stairs of the residential dwelling.	CO	Plng/ISD	
25	Per City of Somerville fire prevention regulations, grills, barbeques, chimineas or similar shall not be used or stored on porches or decks. The Applicant shall write such specifications into any condo docs and/or rental agreements. The Applicant shall provide the City proof of such inclusion prior to the receipt of a Certificate of Occupancy	CO	Plng/ISD	
<b>Final Sign-Off</b>				
26	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*  
Elaine Severino  
Daniel Evans  
Anne Brockelman (*Alt.*)

Attest, by City Planner: \_\_\_\_\_  
Sarah White

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 \_\_\_\_\_

