



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

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POOJA PHALTANKAR, (ALT.)

**Case #: ZBA 2018-17**  
**Site: 28 Rush St**  
**Date of Decision:** March 7, 2018  
**Decision:** Petition Approved with Conditions  
**Date Filed with City Clerk:** March 20, 2018

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**ZBA DECISION**

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**Applicant Name:** Mariano & Leonor Tavares  
**Applicant Address:** 28 Rush Street, Somerville, MA  
02143  
**Owner Name:** Mariano & Leonor Tavares  
**Owner Address:** 28 Rush Street, Somerville, MA 02143  
**Alderman:** Matthew McLaughlin

**Legal Notice:** Applicants and Owners, Mariano Tavares and Leonor Tavares, seek special permits under §4.4.1 of the SZO to build a rear deck within setbacks. RB zone. Ward 1.

<u>Zoning District/Ward:</u>	RB zone. Ward 1.
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	January 19, 2018
<u>Date(s) of Public Hearing:</u>	3/7/2018
<u>Date of Decision:</u>	March 7, 2018
<u>Vote:</u>	4-0

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Appeal #ZBA 2018-17 was opened before the Zoning Board of Appeals in the Aldermanic Chambers, City Hall, 93 Highland Avenue. 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.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143  
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**DESCRIPTION:**

The Applicant proposes adding a second-floor deck at the rear of the property. Below the location of the proposed deck is a shed which will remain in place.

In their submitted materials, the Applicants proposed a deck that is 6 feet in depth and 14 feet in length. Since the time of submission, the proposed depth of the deck has changed to 8 feet. The proposed length remains at 14 feet. Due to the unavailability of the individual providing the renderings for this project, the renderings before the ZBA still show a 6-foot depth to the deck. Staff recommends that, should the ZBA decide to approve the rear deck, a condition be added to the decision that changes the deck width from 6 feet to 8 feet with the requirement that the measurement be changed on plans submitted to ISD for building permit purposes.

The trigger for the special permit in this case is the rear yard setback. The rear yard setback is currently non-conforming at 17.2 feet from the rear façade of the house. The setback is further diminished from the rear façade of the shed by another roughly 7 ½-8 feet, leaving the existing rear yard setback at just over 9 feet. The required setback in this zone is 20 feet.

The proposed deck would be built at the second-story level over the existing shed, thus leaving the rear setback at roughly come to rest just before the start of the driveway at the rear of the property.

**FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):**

*In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §4.4.1 of the SZO. This section of the report goes through §4.4.1 in detail.*

**1. Information Supplied:**

The Board finds that the information provided by the Applicant with regard to the interior arrangement of the structure and exterior elevations conforms to the requirements of §4.4.1 of the SZO.

**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."***Regarding §4.4.1 of the SZO**

*Section 4.4.1 states that "[l]awfully existing nonconforming 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 nonconforming 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."*



The Board finds that the proposal to add a rear deck complies with the standards set forth for special permits under §4.4.1 of the SZO. The addition of this proposed deck, even at the increased depth of 8 feet (from the originally proposed 6 feet) is consistent with city goals of providing quality outdoor living space for residents. There is already a shed at the rear of the property located at roughly the same distance from the rear property line. The deck will be at the second-story level above the shed. The proposed deck will add further massing to the rear of the house. However, the openness of the deck (it will be neither enclosed nor have a roof) should help reduce this visual massing.

The Board finds that this proposed alteration to the property will not be substantially more detrimental than the existing conditions on the property. The proposed deck, at 8x14, is just large enough to provide a small outdoor eating and sitting space. While some temporary uptick in noise is to be expected from the construction process, the Board does not anticipate undue noise to be generated either in quantity or volume from this outdoor space beyond that normally generated by a small number of people experiencing an outdoor eating/sitting area.

Moreover, the Board finds that, as seasonal usable space whose function is ancillary to the principal structure, by its very nature, the proposed deck will not unduly impact the municipal water supply or sewer capacity. The Board further finds that on-street parking and traffic volumes will not be affected and there will not be any substantial uptick in noise or odors as a result of the proposed project. Lastly, the Board finds that the addition of a rear deck, especially one that does not further violate the existing non-conforming setback, is in keeping with other residential buildings in the neighborhood and is consistent with the urban living experience in the City of Somerville.

**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 Board finds that constructing an 8x14 rear deck is consistent with the purpose of the RB district which is to "...to establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts."

**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."***

The inclusion of a rear deck is consistent with other residential structures in the neighborhood, including that of a multi-unit residential structure directly across Brook Street from this property. In that instance, there are two stories of rear decks within close proximity of both the rear property line and the rear abutting building.

**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 affordable housing.

**6. SomerVision:**



The proposal will allow the property owners to have access to additional outdoor space.

### **DECISION:**

#### **SPECIAL PERMIT (SZO §4.4.1)**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, and Josh Safdie. 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 **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes				
1	Approval is for the construction of a rear, second-story deck within the rear yard setback.	BP/CO	ISD/PIng.					
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>January 19, 2018</td><td>Application submitted to City Clerk’s office.</td></tr></table>				Date (Stamp Date)	Submission	January 19, 2018	Application submitted to City Clerk’s office.
	Date (Stamp Date)				Submission			
January 19, 2018	Application submitted to City Clerk’s office.							
Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval. Whether or not a change is <i>de minimis</i> in nature must be determined by the Planning Office.								
Design								
2	All materials to be used for the construction of the deck shall be submitted to, reviewed and approved by Planning Staff prior to the issuance of a building permit. No vinyl products shall be permitted.	BP	ISD/PIng					
Construction Impacts								
3	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 standard.	CO	DPW					
4	All construction materials and equipment shall be stored on site. 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/ISD					
5	The name(s )and contact information of all entities working on the site shall be posted in an easily-visible area at the job site.	During Construction	ISD					
6	Construction shall be limited to M-F 7:30am – 5:00pm. No weekend construction or construction-related work shall occur.	During Construction	ISD					



<b>Public Safety</b>				
7	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
8	In accordance with City of Somerville ordinances, no grills, barbeques, chimineas, portable fire pits similar mechanisms of heating and/or cooking shall be used or stored on the deck.	Perpetual	ISD/Fire Prevention	
9	All lighting installed for the deck shall be downcast and shall not shine onto the public way or abutting properties in any fashion.	Perpetual	ISD	
<b>Final Sign-Off</b>				
10	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  
Elaine Severino  
Josh Safdie

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 \_\_\_\_\_

