



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

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**Case #: ZBA 2018-66**  
**Site: 75 Rush Street**  
**Date of Decision:** June 20, 2018  
**Decision:** Petition Approved with Conditions  
**Date Filed with City Clerk:** July 3, 2018

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**ZBA DECISION**

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**Applicant Name:** Elan Sassoon  
**Applicant Address:** 295 Upland Avenue, Newton, MA 02461  
**Owner Name:** Firojkhan & Azmeena Pathan  
**Owner Address:** 75 Rush Street, Somerville, MA 02145  
**Alderman:** Matthew McLaughlin

**Legal Notice:** Applicant, Elan Sassoon, and Owners, Firojkhan and Azmeena Pathan, seek Special Permits under §4.4.1 of the SZO to alter a non-conforming structure by increasing the GFA by more than 25%, extending the non-conforming rear yard setback along the length of the lot, among others. The number of units on the property will increase from one unit to three. Parking relief under Article 9 of the SZO. RB zone. Ward 1.

<u>Zoning District/Ward:</u>	RB Zone. Ward 1.
<u>Zoning Approval Sought:</u>	§4.4.1 and Article 9
<u>Date of Application:</u>	April 26, 2018
<u>Date(s) of Public Hearing:</u>	June 20, 2018
<u>Date of Decision:</u>	June 20, 2018
<u>Vote:</u>	5-0

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Appeal #ZBA 2018-66 was opened before the Zoning Board of Appeals in the Visiting Nurses Association, 3<sup>rd</sup> floor Community Room, 259 Lowell Street, Somerville. 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.



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**DESCRIPTION:**

The Applicant proposes to increase the number of units from one to three. This will be accomplished by removing the 3-bay garage and adding an addition to the rear of the existing residential structure. The large, new addition will be “modern” in its design and will be differentiated from the existing structure in this manner. The existing residential structure will receive an addition on its left elevation in the form of a cross-gable. All of the bituminous material will be removed from the site and quality landscaping will be added in its place.

Because this is a corner lot, an Applicant has the right to choose which street frontage will constitute their front yard. In the case of 75 Rush Street, the Applicant has elected to use the Flint Street frontage as its front yard. Under existing conditions, front yard parking already exists on this portion of the property. Therefore, the proposed front yard surface parking proposed by the Applicant is an existing, non-conforming use that may remain.

The triggers for special permitting are as follows:

**GFA**

Due to the nature of the rear addition, the Gross Floor Area (GFA) of the property will increase by more than 25%. This increase in usable square footage will bring the FAR on this property from .49 to .98, just under the 1.0 FAR limit for an RB-zoned property.

**Rear Yard Setback**

Because the Flint Street frontage is now the designated front yard, this makes the portion of the property abutting 73 Rush Street the rear yard. The rear elevation of the house rests 3.3 feet from the lot line in a zone where a 20-foot rear yard setback is required. The additions to the structure that the Applicant proposes will, in some areas maintain this 3.3-foot setback and in others increase the setback slightly by inseting the façade of the building. The need for the special permit comes from the upward extension of this non-conforming setback along the length of the parcel.

**Parking**

Three (3) spaces of parking relief are needed. The parking calculations area examined later in this report.

**FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 & Article 9):**

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 conforms to the requirements of §4.4.1 and §5.1.4 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 and §9.13 of the SZO**

#### **Section 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.”***

#### **Gross Floor Area (GFA)**

A Special Permit is needed when an Applicant proposes increasing the Gross Floor Area (GFA) by more than 25%. The Applicant proposes an increase in GFA of 49%. The purpose of this increase is to accommodate two additional residential units on the property.

#### **Rear Yard Setback**

The existing conditions on the property make for a long structure that runs nearly the length of the parcel along the rear lot line. The main house presents rear additions and a breezeway that all connect to a 3-bay garage at the end of the parcel.

The rear yard setback is currently 3.3 feet from the property line at its shortest point. The Applicant proposes keeping this non-conformity. In some areas the 3.3-foot setback will be maintained while in others the distance from building façade to property line will be increased by indenting a portion of the new addition.

As noted earlier, the need for the special permit comes from the upward extension of this non-conforming setback. To create the modern Mansard-style addition that is proposed, the new rear additions to the building will rise to a height of 32 feet. A height of 40 feet is allowed in the RB zone.

#### **Additional Findings**

In taking into account the information above, the ZBA must ask itself if the upward increase in massing on this parcel, created by the increased GFA and upward extension of the rear yard setback, is more detrimental to the neighborhood than the existing conditions on the site.

Examination of the surrounding neighborhood shows a mixture of gable-fronted structures similar in nature to the single-family at 75 Rush Street. In addition, a multi-unit, low-rise, mid-20<sup>th</sup>-century residential structure across the street (Flint) stands out as incongruous to the physical character of the rest of the neighborhood. Further, period Mansard-roofed residential structures also dot the surrounding area. The majority of the parcels in this area are almost completely covered with bituminous material. Density in the Rush/Flint neighborhood ranges from single- to multi-unit residential occupancy.

The Board offers that the increased permeability of the parcel, the removal of bituminous material and installation of quality landscaping significantly improve parcel. These proposed changes green the parcel and offer quality outdoor space. Overall, the proposed project also offers improvements to the site in terms of upgrading the exterior of the existing building and removing a cement block garage.

The proposed density of 3 units is consistent with allowable residential density in the RB district and is also consistent with many of the surrounding parcels in the Flint/Rush neighborhood.



The addition of two additional residential units and their associated bathrooms and kitchens will increase the demand on the municipal water supply and City sewer capacity. The Applicant will be required to comply with the City’s policy for new connections and modifications to the municipal sewer and drainage system. This is a condition of any approvals granted by the ZBA. The Applicant’s proposal in this regard will be submitted to Engineering and reviewed/altereD/approved by that Department independent of Planning Staff review.

In addition, the Board finds that the significant increase of the permeability of the lot (through the removal of the bituminous material) should greatly reduce the amount of stormwater runoff that evacuates this property into the municipal sewer system. Instead, a greater amount of stormwater should be able to percolate through the parcel rather than into the City’s system.

During the construction phase of this project, the neighborhood can expect an uptick in the amount of noise and, possibly, construction-related odors, emanating from this parcel. However, the Board anticipates that this increase in noise/odor will be temporary and will dissipate once the construction phase is complete. The City of Somerville does have noise ordinances to which residents are expected to adhere. Therefore, should inhabitants of the surrounding neighborhood find that there is undue noise coming from any of the units at 75 Rush Street, they should follow normal protocol by contacting the proper city authorities and register a complaint.

The upward extension of the non-conforming rear yard setback will add increased massing along the length of the parcel. The building height will increase by four (4) feet overall – from 28 feet to 32 feet. If the ZBA has concerns about shading, they may wish to request that a shadow study be performed.

The character of the neighborhood is clearly residential in nature and is comprised of an amalgam of building styles – gable-fronted, Mansard, mid-century non-descript low-rise. The Applicant’s proposal maintains the gable-fronted single-family structure that has been extant on this site for over 100 years. The design that is proposed for the rear addition is that of a modern take on the classic Mansard. There is a shorter “connector” between the existing structure and the new additions that provides a visual break from old to new (see Sheet A1.7). The “modern” Mansard style with standing seam metal roof is somewhat of a stylistic departure from other residential structures in the neighborhood. That said, the project overall might serve as a catalyst for improvements on other surrounding parcels in the Flint/Rush neighborhood.

**Section 9.13 of the SZO (Article 9)**

Under existing conditions, the property can provide three (3) legal spaces. The Applicant proposes maintaining the same number of parking spaces under the proposed conditions.

Dwelling Area	Existing Bdrs.	Parking Req.	Dwelling Area	Proposed Bdrs.	Parking Req.
Unit 1	4	2.0	Unit 1	2	1.5
Unit 2	n/a	n/a	Unit 2	3	2.0
Unit 3	n/a	n/a	Unit 3	3	2.0
<b>Total: 2.0</b>			<b>Total: 5.5</b>		

Formula:

*new parking requirement – old parking requirement = # of spaces of relief needed\**

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5.5 spaces – 2 spaces = 3.5 spaces

Under existing conditions, this property is required to provide two (2) legal parking spaces but is able to provide three (3). Under the proposed conditions, the Applicant is required to provide 3.5 (rounded to 4) additional parking spaces on the site. This means that a total of 6 spaces should be provided on-site. The Applicant proposes providing three (3) spaces. This leaves a differential of 3 parking spaces for which the Applicant cannot provide. The Board is supportive of granting relief for these three (3) spaces.

The Applicant's proposal is consistent with the ZBA's interest in providing one on-site space per residential unit. The Applicant's proposal is also consistent with the ZBA's interest in not providing amenity parking spaces on-site and preferring the installation of increased, quality landscaping instead.

*\*When this result is a negative number or >1, no parking relief is needed. The result of this formula is then compared against the number of spaces that the applicant proposes to provide on the site. If this number is greater than the number of spaces of relief needed, then no special permit for parking relief is required.*

**Pursuant to Section 9.13 of the SZO, the Board also provides the following assessment of this project against the following categories:**

Increase in traffic volumes

The density on this site will increase from one residential unit to three residential units. There exists the possibility of additional vehicles using this site and surrounding streets to enter and exit the property once the project is complete. Taken independently, an increase of two residential units and a minimum of one car associated with each the Board does not find would constitute any significant increase in traffic volumes.

1. Increased traffic congestion or queuing of vehicles

As noted above, the Board does not find that the increase in two residential units on the site will create traffic congestion of queuing of vehicles – entering or exiting the site or the immediate area.

2. Change in the type(s) of traffic

As the use of the property is remaining residential, changes in the types of traffic is not anticipated. The neighborhood can expect an up-tick in construction-related traffic during the active construction period on the site. However, this type of traffic will be limited to the project duration

3. Change in traffic patterns and access to site

The traffic patterns on Rush and Flint Streets will remain as they do today. Access to the site will be from the same direction as current.

4. Reduction in on-street parking

Because two additional residential units are being added to the property, it is fair to say that there may be an increase in the number of vehicles used by residents of the site and, consequently, there may or may not be a need for some of the residents and their guests to use on-street parking.

5. Unsafe conflict of motor vehicle and pedestrian traffic

Given the proposed locations of the three on-site parking spaces, vehicular traffic will be entering and exiting the parcel in the same manner that it does under existing conditions: from Flint Street and likely via pulling into and backing out of the parcel.



**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 the proposal is consistent with the purposes of the RB zone which are “[t]o 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.” The one-to-three unit proposal is consistent with what is allowed in the RB zone from a site density perspective.

**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 proposed upgrades to this property will visually improve the site from the public way. Rush and Flint Streets consist of one-, two-, three-, and multi-family residential buildings. The proposal maintains the gable-fronted single-family structure on the site while adding a side, cross-gable addition. The bulk of the changes to the site in terms of form and massing occur deeper in the lot. Though these additions will be visible from the public way (mainly Flint Street), their design provides a visual improvement to the neighborhood.

**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 improve the visual appearance of an existing property and will add two more dwelling units to the City’s housing stock. The proposal will upgrade the parcel by removing all bituminous material and allow for the installation of quality landscaping/green material.

**DECISION:**

**Special Permit under §4.4.1 and Article 9**

Present and sitting were Members Orsola Susan Fontano, Elaine Severino, Danielle Evans, Josh Safdie, and Pooja Phaltankar. Upon making the above findings, Danielle Evans 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
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1	Approval is to remove the existing garage, add a large rear addition, add an addition to the left elevation of the existing structure, remove all bituminous material and re-landscape, increase the GFA by more than 25%, create an upward extension of the non-conforming rear yard setback and parking relief for 3 standard spaces.	BP/CO	ISD/Plng.	
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>April 26, 2018</td> <td>Application submitted to City Clerk's office.</td> </tr> </tbody> </table> <p>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.</p>			
Date (Stamp Date)	Submission			
April 26, 2018	Application submitted to City Clerk's office.			
<b>Design</b>				
1	All materials, including, but not limited to windows, exterior finishes, siding, and similar shall be submitted to, reviewed and approved by Planning Staff prior to the issuance of a building permit. Vinyl (including PVC) shall not be permitted.	BP	ISD/Plng	
2	The existing door hood and associated scrolls and drops shall be retained and used in this same location.	CO	ISD/Plng	
3	Any trim/moulding/bracket details discovered as a result of removing the existing man-made siding shall be retained/replicated on the finished project.	CO	ISD/Plng	
4	The illegal 6-foot fence shall be removed from the Rush and Flint Street frontages.	CO	ISD/Plng	
<b>Pre-Construction</b>				
5	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	Engineering/ISD	
6	The Applicant must obtain new street addresses for the new units on the property from the Engineering Department prior to the issuance of a building permit.	BP	Engineering/ISD	
<b>Construction Impacts</b>				
7	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	



8	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/ISD	
9	The name(s) and contact information of all entities working on the site shall be posted in an area easily-visible from the public way for the passing public to see.	During Construction	ISD	
10	Construction shall be limited to M-F 7:30am – 5:00pm. No weekend/holiday construction or construction-related work shall occur.	During Construction	ISD	
11	Prior to the issuance of a building permit, the Applicant shall submit full engineering plans to the Engineering Department for their review and approval.	BP	ISD/PIng/Eng.	
<b>Public Safety</b>				
12	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
13	All smoke detectors shall be hard-wired.	CO	Fire Prevention / ISD	
14	The building shall be sprinkled	CO	Fire Prevention/ ISD	
15	All exterior lighting on the site shall be downcast and shall not cast light onto surrounding properties in any fashion.	CO	ISD	
16	In accordance with City of Somerville ordinances, no grills, barbeques, chimineas or the like shall be allowed on decks and porches. These requirements shall be written into any rental agreements or condo documents. Proof of the inclusion of this language shall be shown to Planning Staff prior to the issuance of a CO.	CO/Perpetual	ISD/PIngFP	
<b>Site</b>				
17	All plantings and their locations along with all hardscaping materials, design and location for driveways, walkways, fencing, etc., shall first be reviewed and approved by Planning Staff prior to the issuance of a building permit.	BP	ISD/PIng	
18	No vents shall exit onto the Flint or Rush Street façades of the structure. All venting, pipes, conduits and the like shall be painted the same color as the exterior of the structure from which they protrude.	CO	ISD/PIng	
19	Utility meters shall not be installed on the Rush Street façade. Any utility meters installed on the Flint Street façade shall be screened with evergreen vegetation.	CO	ISD/PIng	
20	All bituminous material shall be removed from the site.	CO	ISD/PIng	
21	All materials for hardscaping shall be submitted to Planning Staff for their review and approval prior to the issuance of a building permit	BP	ISD/PIng	
22	Vinyl siding, trim, fencing, or decking material shall not be used on this site	CO	ISD/PIng	





23	All mechanicals shall be screened from view from the public way. All screening materials shall be reviewed and approved by Planning Staff prior to installation	CO	ISD/Plng	
24	The location of mechanicals (such as AC condensers) shall be first reviewed and approved by the Zoning Review Planner prior to their installation.	BP	ISD	
25	Garbage and recycling shall be stored out-of-view from the public way and shall be screened. Screening material and storage location shall first be reviewed and approved by Planning Staff.	CO	ISD	
26	A maximum 6-foot, solid wood fence shall be installed along the property line separating 75 Rush Street from 73 Rush Street. Where the fence meets the public way between these two Rush Street parcels, the fence will gradually step back from 4 feet to 6 feet. Planning Staff shall review and approve the fence material and design prior to installation.	CO	ISD/Plng	
27	The parking area shall be constructed of pea stone or of permeable pavers. Materials and installation design shall first be reviewed and approved by Planning Staff prior to installation.	CO	ISD/Plng	
<b>Utilities</b>				
28	Utilities shall be buried unless ordered otherwise by Lights and Lines.	CO	Lights and Lines/ISD	
<b>Miscellaneous</b>				
29	A construction traffic management plan shall be submitted to Traffic & Parking for their review and approval prior to the issuance of a building permit.	BP	Traffic & Parking	
30	The Flint Street frontage on this parcel shall remain the front yard (or primary front yard) hereon forward.	Perpetual	ISD/Plng/E engineering	
<b>Final Sign-Off</b>				
31	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*  
Danielle Evans  
Elaine Severino  
Josh Safdie  
Pooja Phaltankar (*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 \_\_\_\_\_

