



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

MICHAEL F. GLAVIN  
EXECUTIVE DIRECTOR

PLANNING DIVISION

**ZONING BOARD OF APPEALS MEMBERS**

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**Case #: ZBA 2017-92**  
**Site:** 49 Cedar Street  
**Date of Decision:** November 8, 2017  
**Decision:** Petition Approved with Conditions  
**Date Filed with City Clerk:** November 22, 2017

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**ZBA DECISION**

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<b>Applicant Name:</b>	Alan Peterson of A. Peterson Development, LLC
<b>Applicant Address:</b>	7 Fairfield Street, Medford, MA 02155
<b>Property Owner Name:</b>	Alan Peterson of A. Peterson Development, LLC
<b>Property Owner Address:</b>	7 Fairfield Street, Medford, MA 02155
<b>Agent Name:</b>	None

**Legal Notice:** Applicant and Owner, Alan Peterson of A. Peterson Development, LLC, seeks Special Permits to increase the FAR and GFA by more than 25% each, construct an addition along the left side yard setback that horizontally and vertically extends this dimensional non-conformity, and under Article 9 for parking relief.\*\* RB zone. Ward 5.

<u>Zoning District/Ward:</u>	RB Zone. Ward 5
<u>Zoning Approval Sought:</u>	Increase FAR, GFA, extend non-conforming setbacks, parking relief
<u>Date of Application:</u>	August 17, 2017
<u>Date(s) of Public Hearing:</u>	11/8/2017
<u>Date of Decision:</u>	11/22/2017
<u>Vote:</u>	5-0

Appeal #ZBA 2017-92 was opened before the Zoning Board of Appeals in the Aldermanic Chambers located on the second floor of Somerville 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  
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722  
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**DESCRIPTION:**

1. **Subject Property:** The subject property is a 2 ½ - story, two-family, gable-fronted residential structure located in the RB zone. The structure contains 1,844 square feet of living space and rests on a 4,565 square foot lot.
2. **Proposal:** The Applicant proposes maintaining the two-family use while activating the basement space and adding a rear addition.

**Site:**

The property boasts a long backyard which currently is approximately 74.9 feet in length from the rear façade of the house. Though the open space in the rear of this yard will be shortened due to the proposed addition and one new parking space, the rear yard will still be significant in its length at 45.3 feet. The width of the yard is just over 33 feet.

The Application states that the project will improve the existing conditions on the property relative to storm water management as StormTech chambers will be installed. The Board notes that in addition to the chambers the Applicant proposes using permeable pavers on the driveway in place of the impervious bituminous material currently extant in this area of the property.

The Applicant proposes removing the bituminous material that forms the driveway at the front of the property along its right elevation. In its place, the Applicant proposes a ribbon driveway consisting of permeable pavers with a landscaped strip separating the ribbon bands.

Currently, there is a two-story oriel window along the right façade of the house. This oriel, on the first floor level, protrudes into the driveway space by over 2 feet, reducing the width of the driveway in that location to 6.4 feet. This width does not meet minimum driveway width requirements. To eliminate this problem, the Applicant proposes removing the first floor oriel so that the driveway width will measure over 8 feet (8.4 feet exactly) in that location so that it may function as a compliant driveway.

**Landscaping:**

The property currently presents a large rear yard that appears mostly covered by grass/weed-like growth. There are several trees on the property, several of them invasive species (such as Norway Maple) that will be removed. With the rear and front yards tallied together, approximately 65% of the property is covered by greenery of varying qualities.

The Applicant's updated application increases the landscaping percentage significantly from the original plan. The initial plan reduced the landscaping to 25% from an existing 65%. The updated proposal now proposes an overall landscaping percentage of 50%. A large-canopy tulip tree is proposed along with numerous, shrubs, perennials, and grass areas.

**Parking:**

One parking space is extant under current conditions, along the right elevation of the property. The existing space does allow for a vehicle to be parked in this location without any portion of the vehicle resting beyond the front façade plane of the house.

The Applicant has updated their proposal based feedback from the ZBA at the October 18, 2017, ZBA hearing to provide only the existing single-vehicle parking space on the site. The extended driveway and paved parking pad at the rear of the lot have been removed from the Applicant's proposal.

The Applicant is increasing the overall bedroom count on the property by one. Under existing conditions on the property, Unit 1 contains 2 bedrooms and Unit 2 has 3 bedrooms. The proposed conditions show Unit 1 with 3 bedrooms and Unit 2 with 3 bedrooms. Despite this increase in bedroom count, no parking relief is needed, even with removing the second parking space from the proposal. The calculation works out as

follows:

**New parking requirement – Old parking requirement = # of new spaces required\***

$$4.0 \text{ spaces} - 3.5 \text{ spaces} = .5$$

*\*when the result of this calculation equates to less than one or a negative number, additional spaces are not required to be provided.*

As noted earlier, the existing, single parking space found along the right elevation of the property will remain.

#### **FAR & GFA**

The FAR for this property is currently at .40. The Applicant proposes increasing the FAR by more than 25% to .98, which will all but max out the available FAR on this site. The size of the addition to the property will increase the GFA by more than 25%.

#### **Design:**

As described earlier in this report, the property is a 2 ½-story, gable-fronted residential structure. The Applicant proposes reconstructing the front entry porch and removing the first level of a right elevation oriel window in order create a driveway whose width is code-compliant. The Applicant proposes adding a two-story addition at the rear of the property. This addition will be minimally-visible from the public way.

Along the right elevation of the proposed addition, two gabled dormers are proposed. At the rear of the second-story unit, a deck is proposed along with egress stairs. Along the left elevation of the property two new gabled dormers are also proposed. The Applicant also proposes installing new windows along this façade of the original house.

#### **Dwelling units**

There are currently two dwelling units within the structure on the property. The number of dwelling units will remain the same under the Applicant's proposal. The bedroom count in each of the units will change, however. Existing conditions for Unit 1 show one bedroom. Existing conditions for Unit 2 show four bedrooms. The Applicant's proposal shows each unit with three bedrooms each.

The portions of the Applicant's proposal triggering the need for zoning relief under SZO Section 4.4.1 are:

- FAR increase of more than 25%
- GFA increase of more than 25%
- Addition to rear of house within the left side yard setback
- Parking\*\*

ZBA agrees with Staff concerns regarding the rear of the property and the proposed parking scenario, then the ZBA should consider conditioning their decision such that the existing space on the right elevation may remain but that no additional spaces be provided on-site.

In response to ZBA and staff concerns stated at the October 18, 2017 hearing, the Applicant amended their plans as follows:

- The driveway extending the length of the property along the right elevation has been removed.
- The paved parking area initially proposed at the rear of the property has been removed.
- The existing parking space at the right front elevation of the property has been extended a few feet

beyond the projection of the bay on the right façade of the house. The impervious surface used for the currently parking space will be removed and permeable pavers installed in its stead.

- The back yard of the property will be landscaped with shrubbery and perennials.
- A large canopy tulip tree will be planted toward the rear of the yard.
- Two patio areas will be created in the rear yard. Areas not landscaped with shrubs and plantings will be planted with grass.
- The existing sugar maple, identified by an arborist as failing, will be removed.
- The two challenged trees (one of them an invasive Norway maple) at the left front of the property abutting the public sidewalk will be removed and a native species will be planted in their stead.

**3. Green Building Practices:** The Application states the follow as regards green building practices:  
*"The proposed renovation will meet the Five Star Energy standards and all energy code requirements by providing proper insulation and air sealing to the building envelope and installing high energy efficient mechanical equipment. All windows and skylights will be LowE argon filled high efficiency windows."*

**4. Comments:**

Alderman: The Applicant has reached out to the Ward 5 alderman, Mark Niedergang, concerning this project.

Alderman Niedergang submitted written comments prior to the October 18, 2017 ZBA hearing. His comments were forwarded to the members of the ZBA and were acknowledged on-the-record the night of the hearing.

**STAFF NOTE:** At the October 18, 2017 ZBA hearing, the ZBA concurred with Staff's initial concern regarding the amount of on-site parking being proposed for this site along with the truncated turn aisle and amount of hardscape associated with the proposal. Staff met with the Applicant team on Wednesday, October 25<sup>th</sup> to work through the concerns raised. The changes made to the Applicant's proposal in response to the Board's concerns are reflected both in the updated plan set provided to the Board and in the descriptions of the project changes provided by Staff throughout this updated report.

Though private land disputes are not matters in which Staff gets involved, it is Staff's understanding that issues concerning adverse possession of land between 49 Cedar Avenue and 51 Cedar Avenue have been worked out among these two parties.

**FINDINGS FOR SPECIAL PERMIT (SZO §7.3):**

*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 §7.3, 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.”*

**GFA, FAR, & Left Side Yard Setback**

The Board finds that the increase in both GAR and FAR by more than 25% will not be substantially more detrimental to the site or the surrounding neighborhood than the existing conditions.

The initial proposal from the Applicant included a rear addition that was almost 15 feet longer than the current proposal with significant massing on all stories. The current proposal is the result of significant reduction in massing and volume. The rear addition, rather than following current non-conforming line of the house, the Applicant has stepped the addition in to be more than 5 feet off of the left side yard lot line. Though this is still non-conforming, it improves an existing non-conformity of 2 feet.

Overall, the project proposes an increase in bedroom count of 1 (from 5 bedrooms on the property to 6 bedrooms). The Board finds that the addition of 1 bedroom will not be more detrimental to the site or surrounding neighborhood than the current situation.

This property already contains two dwelling units. The Board does not anticipate an uptick in traffic volume, congestion, queueing, or pattern due to the addition of one bedroom. If the ZBA approves the plan as presented with two off-street parking spaces, then, in theory, the on-street parking need will be reduced by one vehicle.

The Engineering Department will make the final determination as to the adequacy of the proposed storm water management proposal in relation to the increase in lot coverage. Any issues regarding impacts to the sewer and water will be determined by the relevant departments during the building permit sign-off process.

The rear of the property is significantly shaded under current conditions. Although some invasive tree species will be removed, The Board does not anticipate that a significant uptick in the amount of light penetrating the rear portion of this yard. That said, the Board also does not anticipate that the proposed changes to the property will significantly increase the amount of shading created on this or abutting properties.

Lastly, given that the property is already a two-family, the Board does not anticipate a significant increase in the amount of noise or odor to be generated by the new residents of these units.

**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.

**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”.***

Staff finds that the proposed project, as-conditioned, is consistent with the intent of the RB zoning district which is “...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.”

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

The proposal will not add ~~one unit~~ 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 Board finds that the proposed project complies with the purposes of SomerVision in that it visually improve an existing property and will remove invasive tree species that negatively impact the local, native flora.

**DECISION:**

**Special Permit under §4.4.1**

Based on the materials submitted by the Applicant, the above findings and subject to the following conditions, the Board recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMITS**.

The recommendation is based upon a technical analysis by Planning Staff of the application material based upon the required findings of the Somerville Zoning Ordinance, and is based only upon information submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings and/or conditions based upon additional information provided to the Board during the public hearing process.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is to increase the CAR and FAR by more than 25% through finishing the basement, renovating the existing structure and adding a rear addition within the left side yard setback.	BP/CO	ISD/Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>August 17, 2017</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>September 28, 2017</td><td>Updated plans submitted to OSPCD</td></tr><tr><td>October 30, 2017</td><td>Updated plans submitted to OSPCD</td></tr></table>				Date (Stamp Date)	Submission	August 17, 2017	Initial application submitted to the City Clerk's Office	September 28, 2017	Updated plans submitted to OSPCD	October 30, 2017	Updated plans submitted to OSPCD
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October 30, 2017	Updated plans submitted to OSPCD											
<u>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.</u>												
Pre-Construction & Construction Impacts												
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 standard.	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	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								
5	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	T&P									
6	<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>	During Construction	ISD									



7	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	
8	<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><u>ALL</u></b> construction-related debris shall be placed in dumpsters or similar at the end of <b><u>EACH</u></b> day;</li> <li>- Items removed from the existing building as part of the project process shall be disposed of in dumpsters <b><u>at the end of each day</u></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><u>Under no circumstances</u></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><u>ALL</u></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/Plng	
9	During the construction process, all snow shall be removed from the driveways, parking spaces, walkways and abutting sidewalks. All such snow shall be removed from the site and not piled on the parcel in any manner.	During Construction	ISD	
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 <b><u>NOT</u></b> 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/Plng/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	<p>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.</p> <p>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.</p>	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	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	
17	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	
18	Planning Staff shall review and approve the proposed trees to be planted, including species and caliper, prior to their installation on the site. Planning Staff shall coordinated with staff landscape architects/planners as-needed to ensure that native species are planted.	CO	Plng/ISD	
<b>Miscellaneous</b>				
19	<p>Gas and electric meters shall not be located on the front façade of the structure. Gas and electric meters may be located on the side of the structure but shall be screened from the street by a hardy, staff-approved evergreen planting.</p> <p>Utilities shall not be located adjacent to windows and shall not impact any parking, landscaping, or egress. The provisions of this condition may be waived Staff if the applicant submits a letter from the utility, signed by a utility representative, on utility letterhead, indicating that there is no feasible alternative to placing meters in violation of this condition.</p>	CO	Plng/ISD	

20	The existing windows on the left elevation of the original structure may be replaced, but shall remain the same size as current. Any change in dimensions will result in the windows needing to be inoperable, fire-rated or glass block windows in keeping with fire prevention codes.			
21	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	
22	Exhaust/venting pipes protruding from the roof shall be wrapped or painted to match the color of the shingling.	CO	Plng/ISD	
23	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>				
24	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
25	All lighting shall be downcast and shall not spill onto the public way or onto neighboring properties in any fashion.	CO	ISD	
26	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>				
27	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  
Pooja Phaltankar (Alt.)

Attest, by the Planner: \_\_\_\_\_

Sarah M. 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 \_\_\_\_\_

