



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

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PLANNING DIVISION STAFF

SARAH LEWIS, *DIRECTOR OF PLANNING*
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ALEX MELLO, *PLANNER*
MONIQUE BALDWIN, *ADMINISTRATIVE ASSISTANT*

Case #: ZBA 2018-167

Date: December 12, 2018

Recommendation:
Deny Administrative Appeal & Uphold ISD Decision

ZBA STAFF REPORT

Site: 654 Mystic Avenue

Applicant Name: Linda Pingiaro & James DeMichelle, individually and as Trustee of 48-50 Ash Avenue Condominium

Applicant Address: 48 Ash Avenue, Unit B,
Somerville, MA 02145

Agent: Philip H. Cahalin
Agent Address: 85 Exchange Street, Ste. 206,
Lynn, MA 01901



Alderman: Jesse Clingan

Legal Notice: Applicant, Linda Pingiaro and James DeMichelle, individually and as Trustee of 48-50 Ash Avenue Condominium, seek an Administrative Appeal per SZO §3.1.9, §3.2, and §3.2.3 of building permit No. B18-000680 issued by the Inspectional Services Department (ISD). The property for which the building permit was issued is owned by 654 Mystic, LLC. BB zone. Ward 4.

Dates of Public Hearing: December 12, 2018 - ZBA

The Applicant also appears to be appealing the issuance of building permits B18-000681, and B18-000682, but only provides a copy of the building permit for the permit noted in the legal notice.

I. GROUNDS FOR APPEAL

Linda Pingiaro and James De Michelle, individually and as Trustee [sic] of 48-50 Ash Avenue Condominium (hereafter referred to as “the Appellants”) are abutters to the 654 Mystic Avenue. 654 Mystic Avenue is the subject of the Administrative Appeal.

The Appellants allege that building permit B18-000680 issued on September 27, 2018¹.

- 1 – The developer has impermissibly split the lot into more than two lots and the project does not qualify as a subdivision.
- 2 – The proposed building is not permitted because the proposed units are not found in the table of permitted uses.
- 3 – The project needs a special permit because it is a six unit dwelling.
- 4 – The buildings violate the height limits of three stories and 40’.

The Appellants’ allegations and related sub-claims are discussed below. Due to the length of the statements submitted by the Appellants, Staff responses to each of these arguments and sub-claims are addressed in **red text** within the body of the Appellant’s arguments.

II. BACKGROUND

Subject Property

The subject property is a 9,745 square foot lot containing an 830 square foot commercial structure formerly housing an auto garage. The locus is covered with bituminous material (asphalt) and presents a retaining wall running along the rear length of the property. A shorter, stepped retaining wall runs along the Moreland Avenue frontage. Currently, there are three, large curb cuts providing access to the property from Mystic Avenue. For some time, a chain-link fence has run the length of the Mystic Avenue frontage. The property overlooks Mystic Avenue and I-93. The property is located in the BB zone, but the rear of the property abuts an RA zone.

History

The property at 654 Mystic Avenue came before the Planning Board for the purpose of a lot split along with Design and Site Plan Review. Though the parcel is located in the BB zone, the Planning Board is the SPGA that has authority over lot splits and the design and site plan reviews associated with them (§5.4 of the SZO).

The proponents of the development project at 654 Mystic Avenue came before the Planning Board several times. In 2016, the proponents came before the Planning Board for a subdivision. In 2017, the proponents changed their request from a subdivision to a lot split. This was done to ensure that the language of the Planning Board approvals was consistent with the language in the SZO and because the property owners’ proposal met the description of a lot split, but not that of a subdivision. Further

¹ The Appellants note in their supporting statements that they contest the issuance of building permits B18-000681, and B18-000682 as well. These building permits were issued for two additional lots created out of the original 654 Mystic lot, 656 and 658 Mystic Avenue. The above said, the Appellants submitted their appeal application only noting 654 Mystic Avenue as the locus subject to their appeal.

appearances before the Planning Board in 2017 and 2018 allowed for review and approval of changes to façade details and the number of units in each residential structure on each new lot.

An brief overview of the recent history of this site appears below:

December 8, 2016 – Planning Board grants approval for a subdivision to subdivide one lot into three

July 13, 2017 – Planning Board grants approval for lot splits, dividing one lot into three lots. Three-unit buildings are proposed for each lot.

July-August 2017 – Abutter, Linda Pingiaro files an Open Meeting Law (OML) violation complaint with the Commonwealth regarding the July 13, 2017 Planning Board hearing. The City responded to the Commonwealth regarding this complaint. The complaint was later dismissed.

August 17, 2017 – Planning Board grants approval for lot splits, dividing one lot into three lots; SZO section numbers were corrected in this version of the approvals. Due to the Open Meeting Law (OML) violation complaint, the project proponents opted for their case to be re-heard to ensure the Planning Board decision could not be contested based on the OML complaint.

February 13, 2018 – Planning Board grants approval for lot splits, dividing one lot into three lots. The Applicant proposes changes to the fenestration and reducing the number of units per building/lot from three (3) to two (2). This is also approved.

September 27, 2018 – Building permits B18-000680 (654 Mystic), B18-000681 (656 Mystic), and B18-000682 (658 Mystic) are issued by the Inspectional Services Department (ISD)

October 25, 2018 – The Appellants file an Administrative Appeal of the building permit(s) with the Somerville City Clerk.

December 6, 2018 – Attorneys for owners of 654, 656, and 658 Mystic Avenue submit memorandum to Planning Staff refuting the Appellants' claims.

III. APPEAL

Role of the ZBA: In an Administrative Appeal hearing, the ZBA hears appeals of the decision of the Superintendent of Inspectional Services. The process for such appeals is set out in MGL 40A, Section 8 and Section 3.2 of the SZO. An appeal may be filed by any person aggrieved by an order or decision of the Superintendent of Inspectional Services. All Administrative Appeals must be heard by the ZBA, even if another Special Permit Granting Authority (SPGA) was the permit granting authority. In the case, of 654 Mystic Avenue, the Planning Board was the SPGA.

The ZBA must determine whether to affirm the ISD decision or overturn it and why.

Staff believes that the Appellant s have status as (an) aggrieved party in this circumstance due to their being a direct abutter(s) or an abutter to an abutter of the project site. Staff believes that this Administrative Appeal is properly before the Board.

2. Analysis of the Appeal

OSPCD staff has reviewed:

1. the Administrative Appeal application from the Appellants
2. ISD files for the lots located at 654, 656, and 658 Mystic Avenue
3. the zoning relief files from 2016 – 2018 pertaining to the original 654 Mystic Avenue parcel
4. memorandum from the property owner of 654, 656, and 658 Mystic Avenue

In their appeal, the Appellant has put forth four (4) main arguments and and myriad sub-claims. These arguments and sub-claims are discussed below. Due to the length of the statements submitted by the Appellants, Staff responses to each of these arguments and sub-claims is addressed in **red text** within the body of the Appellant's claims. Where Appellant claims are repetitious, Staff will only address them in detail once.

1 – The Appellants allege that:

The developer has impermissibly split the lot into more than two lots and the project does not qualify as a subdivision.

The SZO makes an express distinction in the number of divisions of land allowed under lot splits and subdivisions, lot splits are allowed only for the “division of a lot or parcel of land into two (2) smaller lots or parcels of land.” SZO, §2.2.95.b Subdivisions allow for division of land into “two (2) or more lots.” SZO, §2.2.163. Allowing multiple or successive lot splits to by-pass the restriction on the number of divisions allowed effectively renders meaningless the distinction made in the Ordinances between subdivisions and lot splits.

Staff Response: The initial approval sought by the property owner of 654 Mystic Avenue was for a subdivision with Design and Site Plan Review. The definition of a subdivision in §2.2.163 allows for the “...division of a tract or parcel of land into two or more lots...” This section of the SZO also indicates that, in order for a subdivision to be an appropriate division of land, the land must be situated “...where a new thoroughfare or way is needed to provide access to the lot(s) which would otherwise be landlocked”.

It was never the case with 654 Mystic Avenue that a new thoroughfare would be needed to access the site from any direction. The site is clearly not landlocked as it has frontage along Mystic Avenue and Mooreland Street. Due to this nuance of the subdivision definition, it was later determined that, in fact, the owner of 654 Mystic Avenue needed a series of lot splits, not a subdivision. It is a series of lot splits that the Planning Board approved.

The Appellants continue: If the number of divisions of land allowed under lot splits and subdivisions are the same, there is no purpose served by having two different types of division of land permitted. A division of land into “two or more lots” must qualify as a subdivision, i.e. it is permissible only “where a new thoroughfare or way is needed to provide access to the lot(s) which would otherwise be landlocked.” SZO, §2.2.163. Otherwise, the property may be divided into no more than two smaller lots. No new thoroughfare or way is needed to provide access to landlocked lots at 654 Mystic Ave.

Staff Response: What is before the ZBA is not whether or not the property at 654 Mystic Avenue should have been divided via the subdivision method. The points made immediately above by the Appellants serve to distract the ZBA from the core issue that they must address in this concern: whether or not the building permit is invalid in part due to 654 Mystic Avenue having been divided into more than two lots through the lot split process.

Section 5.4 of the SZO provides the Planning Board with the authority to grant lot splits with Design and Site Plan Review. A Lot split is defined in §2.2.95.b of the SZO as *the division of a lot or parcel of land into two (2) smaller lots or parcels of land*. The Appellants contend that the SZO limits a parcel to having only one additional lot created from it. There is no evidence in the SZO to support this claim. Moreover, the SZO does not prevent the Planning Board from granting another lot split of the new parcel resulting from the first lot split.

Staff finds that the Appellants' allegations are not supported by the SZO and that the Planning Board has rightly granted a series of lot splits of the original property at 654 Mystic Avenue such that three new buildable lots were formed.

2 – The Appellants allege that:

The proposed building is not permitted because the proposed units are not found in the table of permitted uses.

The building consists of three sets of two townhouse-like structures over jointly owned garages. This doesn't qualify for any permitted use in the Table of Uses. The units are not townhouses because the common garage prevents them from being entirely separated by a firewall "from foundation to roof line." SZO, §2.2.166.

Staff Response: The structures as-approved are considered townhouses by both Planning Staff and ISD. The full definition of "townhouse" reads as follows:

2.2.166. Townhouse. *Attached dwelling units completely separated by a continuous vertical fire wall which are constructed so that each unit (a) has two (2) building faces with outside exposure; (b) has separate entrances from the outside; (c) reaches from foundation to roof line; and (d) each unit is arranged, intended and designed as a residence for one (1) family.*

The Appellant has misread the definition of townhouse. The Appellant mistakenly reads that the definition requires there to be a continuous vertical firewall through the parking garage level up through the roof. The definition requires the dwelling units² to be completely separated by a continuous vertical fire wall. A dwelling unit is where people live. People do not live in garages by zoning definition. The garage is not part of the dwelling unit.

As seen on Sheets A-101, A-102, A-103, and A-104, the dwelling units are separated by a continuous vertical firewall. Further, each of the three structures containing two-unit townhouses is also separated by a continuous vertical firewall and separating foundation wall.

The misreading of the definition of "townhouse" appears to come from a simple misunderstanding of the agreement between subjects and verbs in a complex sentence; the flow of the definition is broken up by items in a list, making for a more challenging read. The definition of townhouse breaks down as follows:

² **2.2.46. Dwelling Unit.** A single unit providing complete, independent living facilities containing one (1) or more rooms arranged for the use of one (1) or more individuals living together as a single housekeeping unit, with cooking, living, sanitary and sleeping facilities.

1. Attached dwelling units... which are constructed so that each unit (a) has two (2) building faces with outside exposure

As illustrated on Sheet A-300, there are two building faces for each unit contained in each townhouse structure.

2. Attached dwelling units... which are constructed so that each unit...(b) has separate entrances from the outside;

As illustrated on Sheet A-300, each of the units in each of the townhouse structures has a separate entrance from the outside.

3. Attached dwelling units... which are constructed so that each unit...(c) reaches from foundation to roof line;

As illustrated on Sheets A-101 through A-104, each of the two dwelling units in each of the townhouse structures reaches from foundation to roof line. The dwelling units do not overlap each other as in a "Philadelphia" style townhouse for example. Thus, each dwelling unit individually reaches from foundation to roof line.

4. Attached dwelling units... which are constructed so that each unit... and (d) each unit [sic] is arranged, intended and designed as a residence for one (1) family.

As illustrated on Sheets A-101 through A-104, each dwelling unit is intended and designed for one (1) family.

The Appellants continue: They are not two family or multiple dwellings because there is no portion of any unit that is entirely above or below another unit. SZO, §§2.2.42 and 2.2.45. Because the common garage is jointly owned by both units above, the portion applicable to one unit can not [sic] be considered below the other unit because it is not below the portion of the other unit which is also the garage. Because the proposed structure doesn't qualify as any permitted use in the Table of Uses, it is not permitted. SZO, §7.7

Staff Response: The owner of 654 Mystic Avenue does not claim that the structures being built are two- or multi-family. The structures being built are townhouses. Townhouses are explicitly allowed in §7.11 of the SZO, the Table of Permitted Uses as follows:

Note— [§ 7.11](#) was amended by Ordinance 2000-8 on May 25, 2000.

PRINCIPAL USE (unless specified otherwise)	DISTRICT												
	RA	RB	RC	NB	CBD	BA	BB	IA	IB (18)*	IP	OS	UN	ASMD
d. Town houses													
2 units (1)*	Y	Y	Y	Y	-	Y	Y	-	-	-	-	Y	SPSR-A
3 units (1)*	-	Y	Y	Y	-	Y	Y	-	-	-	-	-	SPSR-A
4-6 units	-	-	SP	SP	SP	SP	SP	-	-	-	-	-	SPSR-A
7 or more units	-	-	SPSR	SPSR	SPSR	SPSR	SPSR	-	-	-	-	-	SPSR-A

* See Footnotes [Section 7.12](#).

As can be seen from the table above, the SZO allows townhouse structures in the BB zone without the need for a special permit (hence the “Y” for “yes” in the BB column). In fact, a townhouse structure with two (2) units, exactly that which is proposed by the owner of 654 Mystic Ave, is allowed in this district.³

3 – The Appellants allege that:

The project needs a special permit because it is a six unit dwelling.

The proposed development consists of one building with six residential units. Because the property is in a Business B district. This requires a special permit. Irrespective of whether the units are considered townhouses or units in a multiple dwelling building. SZO, §7.11(1)(c) and (d).

Staff Response: The Appellants’ premise above is false. The BB zone has no dimensional requirements for side yard setbacks. Therefore, distinct and separate structures containing one or more dwelling units each may touch each other at the property line. The property lines literally run through the right or left sides of each of the structures. There is no special permit required. There are three legal, buildable lots that have been created through a series of lot splits, each of which was approved to contain one townhouse structure containing two dwelling units. The approved townhouses are allowed without a Special Permit as indicated in the Use Table and associated discussion above.

³ The reference to Section 7.12 footnote 1 refers back to Section 7.3 of the SZO and increased density for affordable housing in RA and RB zones which does not apply to this case.

The Appellants continue: Splitting the lot into three smaller lots and placing a party wall at the lot line doesn't convert the project into three separate buildings because uses are not classified by lot, and a party wall is not an element that defines a building, and party walls don't create detached dwellings which are defined as "[a] dwelling which is designed to be and is substantially separate from any other structure or structures except accessory buildings." SZO §2.2.41. A multiple dwelling is defined as "A residential building intended and designed to be occupied by four (4) or more families, where each of the units or any portion thereof, must be above or below at least one of the other units." SZO §2.2.42.

Staff Response: Staff is unclear as to what the Appellants mean by "uses are not classified by lot." Uses are categorized by zone. "Use" refers broadly to residential versus commercial and their related specific subsets. In this case, a residential use is being activated and is a use that is allowed in the BB zone.

Staff has already discussed the Appellants' claims regarding the creation of more than one legal building lot. Staff also has already addressed the Appellants' earlier point regarding the type of dwellings that have been approved for this site. They are townhouses both by definition and in fact of approved construction.

The Appellants continue: A building is defined as "[a]ny structure...having a roof or other covering, and designed or used for the shelter or enclosure of any person...situated on private property and used for purposes of a building." SZO, §2.2.21. It is clear that the project consists of one building as defined because it has one roof. Party walls are not mentioned in the definition. It is also clear that the structure does not consist of three detached dwellings because not only is there one roof, there are single facades on the front and the back. Party walls do not "substantially separate" the adjoining structures from one another.

Staff Response: Staff has already discussed the fact that the BB zone has no required side yard setbacks. Therefore, separate structures may be built right on the property line such that structures touch.

The Appellants continue: The fact that the finished grade was calculated on the basis of the project's being one building also underscores the fact that it is not three separate two family buildings. See sheet A-021 for each permit. (With each permit there are two sets of plans. The plans filed with the Planning Board and the plans filed with each permit application. They have the same designations. Unless otherwise noted, the references are made to the plans filed with the individual permit applications.) Finally, to the extent that the project could be considered either three two family building or one six family building, it must be considered one six family building because that is the more restrictive classification. SZO §7.8.

Staff Response: Staff has already discussed the fact that the BB zone has no required side yard setbacks. Therefore, separate structures may be built right on the property line such that structures touch. The structures are townhouses by definition.

4 – The Appellants allege that:

The buildings violate the height limits of three stories and 40'.

The building consists of four floors. Only three stories and 40' height are allowed because the structure is almost entirely within 30 feet of the RA line in the back. SZO §8.6.20.

Staff Response: The townhouse structures are three stories. The basement-level garage area does not count as a story because its ceiling is less than 5 feet above the proposed average finished grade abutting

the building.⁴ This can be seen on Sheets A-021 and A-022. Therefore, the townhouse structures, at 40' are at the height allowed where they rest within 30 feet of the RA district at the rear of the property.

The Appellants continue: The developers claim that the first floor is a basement and not a story because the ceiling is less than five feet above the average finished grade. A-021; SZO §2.2.14. However, they calculated the average finished grade incorrec~~t~~ed to arrive at this conclusion. If it has been calculated correctly it would be clear that the first floor does not qualify as a basement.

The calculations for the finished grade are shown on sheet A-021 for each property. The sheet A-021 with the permit application for lot 656 shows both side yard slopes relative to the proposed building. The developers used the average elevation of the adjoining land method rather than the lowest point on the slope method. Because of the substantial slope, they should have used the lowest point on the slope method. That would have made the finished grade 19'.

Staff Response: The term "substantial slope" used by the Appellant above is not a term that is used or defined in the SZO. Further, the land does not slope away from the approved structures. The structures are to be built into the existing slope of the land. The existing slope exists at the left rear of the parcel and is shown along the property line with Moreland Street.

The average finished grade has been calculated correctly based on slope and based on the definition of a basement. In addition, the ZBA should review the calculations that the owner of 654 Mystic Avenue has provided in their approved plan set. **These calculations can be viewed on Sheet A-021.** There are four images on this page. Each image shows the slope of the land along with the points at which measurements were taken to determine the average grade in that area. Above each graphic, the architect has provided the formula used to calculate the average grade for each area. Lastly, the average finished grade around the garage is shown outlined at the right side of the sheet. The average finished grade has been determined to be 6'10".

The Appellants continue: The two side views show substantial slopes from the back of the property to the front. The Moreland Elevation shows a continuous slope from an elevation somewhat less than 28' in the rear to 19' in the front. The East Elevation shows a slope from 28' down to a point in front of the proposed structure about 4' lower and from there to the front property line where it vertically drops to 19'. The shown slopes clearly call for the lowest point on the slope method which would put the finished grade at 19' rather than the average elevation of the adjoining land method used by the developers.

Staff Response: Staff has already addressed this issue immediately above.

The Appellants continue: It appears that the developers intend to use retaining walls on the property lines in some complex fashion in [sic] avoid this inevitable conclusion. For example, the East Elevation shows a sudden drop in grade of more than 4' at the front property line and the Moreland Elevation shows the grade below the top of the garage in the rear which requires at least 18" of dirt on top. Planning Board Decision, PB 2018-01, Condition 32.

Staff Response: The SZO does not prohibit property owners/developers from bringing in fill or constructing retaining walls as mechanisms for achieving average finished grade / building height.

⁴ As defined in §2.2.14 of the SZO as follows: ***Basement.*** A story with at least forty (40) percent of its height below finished grade. However, for purposes of determining compliance to the height limit requirement of this Ordinance, a basement shall not be considered a story unless its ceiling is five feet or more above the average finished grade abutting the building. [Emphasis added by Staff.]

The Appellants continue: In the Land Court appeal, the developers claimed that retaining walls would not be used to obtain the finished grade. However, their plans clearly show retaining walls in use. The Site Plan and Sections A-A and E-E of the Grading & Stormwater Plan (the Grading & Stormwater Plan filed with the Planning Board has all of the Sections on one sheet for ease of reference) show proposed retaining walls on the sides of the building and sheets A-101 and A-410 show retaining walls in the front.

Staff Response: Statements made in a Court appeal are of no consequence to Planning Staff and the ZBA in the matter of an Administrative Appeal and will not be considered.

Further, as stated above, the SZO does not prohibit property owners/developers from bringing in fill or constructing retaining walls as mechanisms for achieving average finished grade / building height.

The Appellants continue: In any event, it is clear that the developers haven't provided anywhere near enough information to show that they're entitled to use the average elevation of the land adjoining the building method rather than the lowest point on a slope method. It is noted that the "detailed engineering renderings" they're required to provide relative to the issue as a condition prior to the issuance of the permit don't appear to be in the ISD files. Planning Board Decision, PB 2018-01, Condition 7.

Staff Response: Staff has already addressed the issue of slope above.

Regarding engineering renderings, they are noted as "Drawing 3" of the permit set for the site and were prepared by Strong Civil Design, LLC of Braintree. Condition 7 noted above (and as seen on attached Planning Board decision) has been met.

The Appellants continue: A couple of notes about any effort to use retaining walls to justify the average elevation of the land adjoining the building method. First, Sections B-B, C-C, D-D, and E-E of the Grading & Stormwater Plan show slopes away from the building and the proposed grades in the back and Moreland Street sides toward the proposed retaining walls.

Staff Response: Staff has already addressed the issue of slope earlier in this report. The proposed building is to be built into the existing topography of the land.

The Appellants continue: Second, even if the finished grade were to be level from the building to a proposed retaining wall, that is irrelevant to the measure of the slope. Slope is simply the difference in height between two points divided by the distance. SZO, §2.2.147. The land at the building would be one point, the lot line at the bottom of the retaining wall would be the second. Hence there would be a substantial slope from the wall to the lot line irrespective of whether the land to the retaining wall was level.

Staff Response: Staff has already addressed the issue of slope earlier in this report. Based on the calculations and graphs provided by the architect along with a review by the Zoning Review Planner, Staff finds that the average finished grade has been correctly calculated. Further, the term "substantial slope" does not exist in the SZO and, therefore, carries no definition with it.

The Appellants continue: Third, the language used in the definition of finished grade, SZO, §2.2.63 "[w]hen the finished ground level slopes away from the exterior walls" and Figure 2E show that the "substantial slope" is relative to the building as a whole. In this instance the slope is from the back of the building to the front. It is obviously substantial. Hence, the low point of the slope, 19', is the finished grade.

Staff Response: Staff has already addressed the issue of slope earlier in this report. Based on the calculations and graphs provided by the architect along with a review by the Zoning Review Planner, Staff finds that the average finished grade has been correctly calculated. Further, the term “substantial slope” does not exist in the SZO and, therefore, carries no definition with it.

The Appellants continue: Finally, the height of the building shows the flat roof to be just 1’6” below the 40’ height limit. There is a gabled roof on Moreland Street side of the proposed building. Although there is no height given, it looks to be clearly over the 40’ height limit and clearly violates Condition 8 of the Planning Board Decision, PB 2018-01.

Staff Response: If the flat roof is 1’6” below the 40-foot height limit, then clearly this complies with the height requirement for this site under these circumstances. Sheets A-020 and A-022 show the building heights. For gable roofs, the building height is not measured to the peak of the roof gable, but the average height between the plate and ridge of a gable (SZO §2.2.66). The gable may appear higher due to its architectural form and to how height measurements must be determined with this roof style.

IV. RECOMMENDATION

- Staff finds that the allegations put forth by the Appellant do not constitute a basis for overturning the decision of ISD to issue building permit(s) for 654, (656, and 658) Mystic Avenue.
- Planning staff recommends that the ZBA **DENY** the Appellant’s administrative appeal and **UPHOLD** the issuance of the building permit by ISD.



CITY OF SOMERVILLE
ISD/BUILDING DIVISION

Building Permit

Permit #: B18-000680

Issue Date: 09/27/2018

CSL License Number: 96985

Property: 654 MYSTIC AVE
Description of Work: Bldg 1 - Construct new 2-family building on newly created lot 654 per planing board decision
Map: 46
Block: Lot: C 1

Owner
S/O 654 MYSTIC LLC
11 ELKINS ST #250
BOSTON, MA 02127

Architect/Engineer
Khalsa Design
6175912086
Registration #:

Contractor
Ryan Hunt

HIC #: 172473

Noted below are the required minimum building inspections. It is the responsibility of the Permit Holder to notify the Building Division for the required minimum inspections. The Permit Holder shall notify the Building Official twenty-four (24) hours in advance of the required minimum inspection. The Building Official has forty-eight (48) hours to respond. Any work performed, completed and covered without the required minimum inspection is in violation of 780 CMR: The Mass. State Building Code.

An Owner who obtains a building permit to his/her own work, or an owner who hires an unregistered contractor (not registered in the Home Improvement Contractor (HIC) Program), will NOT have access to the arbitration program or guaranty fund under M.G.L. c. 142A. (The fund only applies to 1-4 unit buildings.)

APPROVED
FOR CONSTRUCTION

A. B.

By: Albert Bargoot

Title: Local Building Inspector

Date: September 27, 2018

Inspection Type	Date	Inspector	Comments
Excavation			
Drains			
Footings			
Electrical Foundation			
Rough Frame/Fire Blocking			
Foundation			
Insulation			
Screw			
Final			
Electrical Rough			
Plumbing Rough			
Electrical Final			
Plumbing Final			
Gas Rough			
Gas Final			
Smoke Detector			
Fire Dept Inspection			
Planning Department Inspection			
Engineering Inspection			
Final C of O			

PLEASE CONTACT

Kelly Como

FOR INSPECTIONS AT
Tel: 617-625-6600 Ext. 5600
or on our online portal at
www.somervillema.gov/isd



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

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GERARD AMARAL, (ALT.)

Case #: PB 2018-01
Site: 654 Mystic Avenue
Date of Decision: February 13, 2018
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: February 27, 2018

PLANNING BOARD DECISION

Applicant Name: Anthony Fava & Ryan Hunt
Applicant Address: 11 Elkins Street, Ste. 205, Boston, MA 02127
Property Owner Name: 654 Mystic LLC
Property Owner Address: 11 Elkins Street, Ste. 205, Boston, MA 02127
Agent Name: Gordon E. Meyer & Associates, P.C.
Agent Address: 8 Winchester Street, Boston, MA 02116-5424
Alderman: Jesse Clingan

Legal Notice: Owner, 654 Mystic LLC and Applicants, Anthony Fava & Ryan Hunt seek Design and Site Plan Review per Section 8.8 and 5.4 of the SZO for lot splits to divide one lot into three lots. BB zone. Ward 4.

<u>Zoning District/Ward:</u>	BB zone. Ward 4
<u>Zoning Approval Sought:</u>	§8.8 and 5.4
<u>Date of Application:</u>	December 29, 2017
<u>Date(s) of Public Hearing:</u>	1/31/ & 2/13/2018
<u>Date of Decision:</u>	February 13, 2018
<u>Vote:</u>	5-0

Appeal #PB 2018-01 was opened before the Planning Board 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 two hearings of deliberation, the Planning Board took a vote.



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STAFF NOTE: The property at 654 Mystic Avenue has appeared before the Planning Board several times in the last year. Initially, in December of 2016, the Planning Board approved a subdivision with Design & Site Plan Review. This approval would have allowed the Applicant to create three building lots with three dwelling units on each lot. Since this initial approval was conferred, the Applicant has been back before the Planning Board to correct procedural errors and minor design changes.

The purpose of 654 Mystic Avenue appearing before the Planning Board on January 31, 2018, is to request approval for a modified proposal:

The Applicant seeks to split the existing lot into three conforming building lots but seeks to construct three, 2-unit residential structures on each lot (instead of the originally-approved 3-unit residential structures on each lot).

I. PROJECT DESCRIPTION

1. **Subject Property:** The subject property is a 9,745 square foot lot containing an 830 square foot commercial structure formerly housing an auto garage. The subject property is covered with bituminous material (asphalt) and presents a retaining wall running along the rear length of the property. A shorter, stepped retaining wall runs along the Moreland Avenue frontage. Currently, there are three, large curb cuts providing access to the property from Mystic Avenue. For some time, a chain-link fence has run the length of the Mystic Avenue frontage. The property overlooks Mystic Avenue and I-93. The property is located in the BB zone, but the rear of the property abuts an RA zone.

Fig.1 , below: Aerial view of subject parcel.

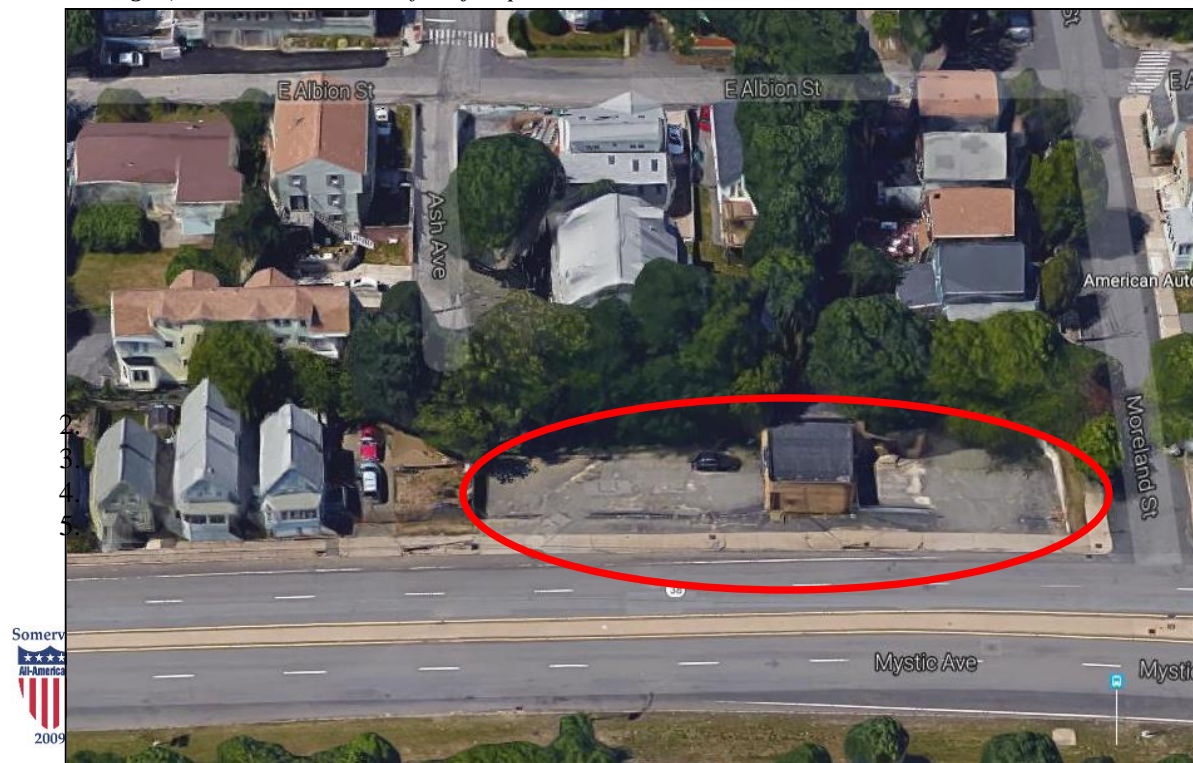


Fig. 2, below: View of parcel from corner of Moreland looking toward Somerville



Fig. 3, below: Right corner of lot as it abuts Moreland Street.

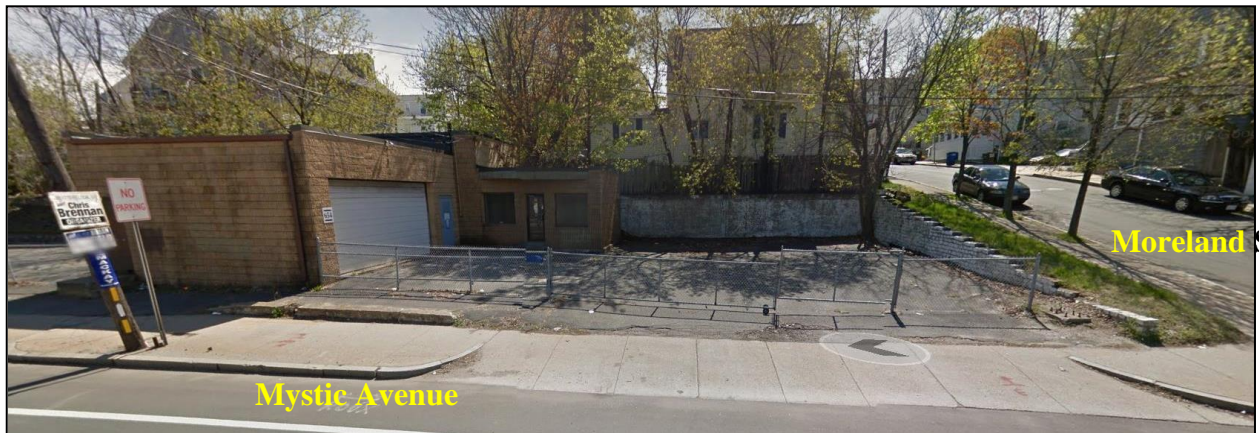


Fig. 4, below: Left corner of lot as it abuts 640 Mystic Avenue. The property at 640 Mystic Avenue (off-image, left) has been demolished since this google image was taken in spring, 2016)



2. **Proposal:** The Applicant proposes to split this parcel at 654 Mystic Avenue into three buildable lots. The details of the Applicant's proposal area as follows:

Lot size: Since the BB zone does not have a minimum lot size requirement all of the proposed lots are buildable lots. Irrespective of this, the Applicant proposes three building lots of the following sizes:

3,127 square feet
3,163 square feet
3,168 square feet

End 654 Mystic property boundary (not to scale)

Lot area per dwelling unit: The Applicant proposes two (2) dwelling units on each lot for a total of six (6) dwelling units across the original parcel. The minimum lot area per d.u. in the BB zone is 875 square feet. The Applicant proposes lot area per d.u. as follows:

1,563 of lot area per unit (2 units on lot)
1,581 of lot area per unit (2 units on lot)
1,584 of lot area per unit (2 units on lot)

This amount is greater than the minimum required lot area per dwelling unit ratio of 875 square feet.

FAR: At 1.05, 1.04, and 1.00, the proposed dwelling units are well under the maximum-allowed FAR of 2.0 in this BB zone.

Front, rear and side yards: There are no side yard minimums required for this project as the side yards of this BB lot do not abut a residential district. The rear yard, because it abuts an RA

district line, must be no less than 15 feet deep as per *SZO §8.5.i footnote 12*. The proposal complies with this requirement.

Landscaping/pervious/ground coverage: The majority of the existing parcel is covered with bituminous material, leaving approximately 1% “landscaped” under current conditions. The Applicant’s proposal states that it would bring 52%, 52%, and 56% landscaping on each of the three parcels.

Front yard setback: Section 8.5.g footnote 5 of the SZO allows for the reduction of front yard setbacks, but for those setbacks to be no less than 10 feet. The Applicant will meet a 15-foot front yard setback.

Pervious area: With regard to pervious material, overall ground coverage and landscaping, the Applicant does not create any new non-conformities and the proposal improves upon the existing conditions.

Building height: Normally, in the BB zone, buildings may have a maximum height of 50 feet and be up to four stories. However, in cases such as 654 Mystic where the property abuts an RA district line, any structure (or portion of a structure) within thirty feet of that district line shall be limited to three stories and forty feet in height. The design of the proposed residences causes the roofline to step down as the building reaches the rear of the lot. The front-most portion of the building, which is 30-feet from the RA district line, is presented as 3 stories and 38’-9” high, complying with the district requirements.

II. RECOMMENDATION

Site Plan Approval under §5.4

Section 5.4.1 and 8.8 of the SZO allows the Planning Board to consider approval of lot splits under Section 5.4 of the Ordinance, as follows:

- a. SZO Section 5.4.6(A) and (B) indicates the basis under which a Design and Site Plan Review shall be approved or may be disapproved.***
 - ***Section 5.4.6(A) indicates that the board shall make any positive findings indicated for the specific district for which the process is applied.***

No specific findings are identified in the SZO for this district. The proposed use and structures are permitted by-right in this zoning district.

- ***Section 5.4.6(B) indicates that the Board may only deny an application when:***
 - i. The submission fails to furnish adequate information required for review***

A complete submission shall include the information in item 4.C of Chapter 6 of the Rules and Regulations (Rules and Regulations Pertaining to Design and Site Plan Review).

Staff finds that the Applicant has submitted documentation satisfying the requirements via the application documents, architectural, landscaping, and engineering plans and related reports.

ii. *The imposition of reasonable conditions would not ensure compliance to the standards, as applicable*

Staff finds that the conditions outlined in the table at the end of this report to be reasonable and shall be implemented on this project. All future plans and associated documents that are submitted to the City of Somerville for review/approval/permitting henceforth regarding the development of this land shall reflect these conditions.

iii. *The submittal, although proper in form, includes or creates an intractable problem so intrusive on the needs of the public in one regulated aspect or another and cannot be adequately mitigated.*

Staff finds that, as conditioned, the project has no intractable problems.¹ The project proposal complies with the requirements of the SZO.

Based upon this standard and the above findings, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **SITE PLAN APPROVAL**.

The Applicant has provided a complete application, reasonable conditions can be placed on the proposal to ensure that the project conforms to the standards and criteria set forth in Section 5.4, and the project complies with applicable requirements of the Somerville Zoning Ordinance.

Based upon this standard and the above findings, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **SITE PLAN APPROVAL**.

The Applicant has provided a complete application, reasonable conditions can be placed on the proposal to ensure that the project conforms to the standards and criteria set forth in Section 5.4, and the project complies with applicable requirements of the Somerville Zoning Ordinance.

The Rules and Regulations Chapter 6, Section 6.C. state that, “[w]hen an application is deemed generally acceptable, but is of a nature where specific approval of each standard or criteria of SZO Section 5.4.6 cannot be reached (such as in subdivision [lot splits], where all physical site development plans may not be finalized at the time of the plot recording), the Planning Board may attach a condition(s) requiring

¹ It's worth noting that this standard originates from case law interpreting the intent and legality of Site Plan Approval as a home rule element in zoning. No appellate court decision has upheld a denial of a site plan approval on the basis of an intractable situation. Therefore, Planning and Zoning Boards typically work towards establishing adequate conditions to address concerns of by-right proposals submitted through site plan review processes.

recording of deed restrictions or covenants ensuring future compliance with specifically applicable standards of SZO section 5.4.”

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	<p>Approval is for the split of parcel 46/C/1 into three lots of the following approximate dimensions: 3,127 ± sf; 3,163 ± sf; 3,168 ± sf.</p> <p><u>No building permit shall be issued until the plan set matches the plans dated 2/9/2018</u></p> <table><tr><th>Date</th><th>Submission</th></tr><tr><td>December 29, 2017</td><td>Application filed with City Clerk’s Office</td></tr><tr><td>February 9, 2018</td><td>Updated plans submitted to OSPCD</td></tr></table> <p><u>ANY</u> changes to the approved plans shall be submitted to Planning Staff for their review prior to implementation of said changes. Planning Staff shall determine if the changes proposed are <i>de minimis</i> in nature or if the proposed changes require Planning Board review.</p>	Date	Submission	December 29, 2017	Application filed with City Clerk’s Office	February 9, 2018	Updated plans submitted to OSPCD	BP	Plng.	
Date	Submission									
December 29, 2017	Application filed with City Clerk’s Office									
February 9, 2018	Updated plans submitted to OSPCD									
2	Trash and recycling storage for all 6 units shall be located inside of the structures.	Perpetual	Plng./ISD							
3	A private company shall be hired to remove trash and recycling on a regular basis.	Perpetual	ISD/Planning							
4	All snow shall be carted off-site.	Perpetual	ISD/Planning							
5	The Applicant shall submit to Planning Staff certified copies of the recorded/registered documents.	Building Permit	Plng.							
6	There shall be no parking in the front yard of any of the parcels. All front yards shall be landscaped/patio area	Perpetual	Plng./ISD							



	and shall contribute to and not detract from landscaping and pervious surface calculations.			
7	The Applicant shall present updated civil plans to the Planning Office and to the City's Engineering Department depicting how much fill will be added to the site, of what the fill is comprised, where the fill comes from, and detailing engineering renderings of what the actual finished grade will be. Planning and Engineering must sign off on these plans before any permits are issued for work on the site.	BP/site prep	Plng/Engineering/ISD	
8	The roof shall remain flat and there shall be no roof decks permitted on the site.	Perpetual	ISD/Planning	
9	Landscaping shall be installed exactly as rendered on the plan set dated February 9, 2018. There shall be no reduction in plant count or changes in plant type without prior submission to and approval by Planning Staff.	CO	Plng/ISD	
10	The applicant shall ensure that all landscape/pervious calculations match submitted plans.	BP	Plng/ISD	
11	<p>Prior to the start of construction, an engineering report shall be submitted on the retaining wall at the back of the lot. The engineering report shall:</p> <ul style="list-style-type: none"> • Present a plan for addressing the structural integrity of the existing retaining wall in relation to the proposed project; • Be presented to the City Engineer for review and sign off prior to the issuance of a building permit. <p>Implementation of engineering plan:</p> <ul style="list-style-type: none"> • The engineering plan shall be followed exactly as signed off by the City Engineer • The City Engineer shall sign off on all work performed on the existing or new retaining wall. 	BP	Plng/Engineering	
12	All environmental reports and testing shall be submitted to Planning Staff as they are completed. Staff reserves the right to ask that these reports be "peer reviewed" by a city consultant at the cost of the Applicant.	BP	Plng/Engineering	
13	ALL materials proposed for the exterior of the new construction will be presented to Planning Staff for their review and approval PRIOR TO their installation	CO	Planning/ISD	
14	A new hydrant shall be installed on Ash Avenue. Said hydrant and its <u>exact</u> location shall be shown on revised civil plans.	BP	Fire Prevention/Planning/ISD	
15	The electric, telephone, cable TV and other such lines and equipment shall be placed underground from the	BP	Wiring Inspector	



	source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.		/Electrical	
16	The Applicant shall meet all of Fire Prevention's requirements	CO	Fire Prevention	
17	ALL exterior lighting on ALL facades of the building shall be downcast and shall not cast light onto any abutting properties.	CO/Perpetual	ISD/Planning	
18	The Applicant shall consult with Lights and Lines to determine the need/location for transformers/conduits and the like on the property and/or the upgrade of any pole/line capacity.	BP	Lights & Lines	
19	The Applicant shall work with the Sustainable Neighborhoods Initiative coordinator to review air handling and filtration systems in the building. Air intakes shall not be located between the building and Mystic Avenue, shall provide adequate filtration systems to address the particulates that typically come off I-93. The final plan for particulate handling shall be submitted to ISD prior to the issuance of a building permit.	BP	ISD/Sustainable Neighborhoods	
20	The project shall be subject to the city stormwater policy, including the required removal of infiltration and/or inflow based upon providing either construction to reduce the inflow/outflow or a mitigation payment as established by the City Engineer's office.	BP	Engineering/ ISD	
21	Any venting pipes shall be wrapped to match the color of the roofing material through which it protrudes or shall be painted to match the color of the siding through which it protrudes.	Perpetual	Planning/ ISD	
22	There shall be no venting on the Mystic Avenue façade of the buildings.	Perpetual	Planning/ ISD	
23	All greenery shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Planning/ ISD	
24	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	Planning/ ISD	
25	Storm water runoff shall not be routed into the City sewer system. Plans for such runoff must be approved by the Engineering Department and shall not create storm water maintenance issues for abutting properties or the City.	BP	Engineering	
26	The Applicant must provide an accessibility narrative prior to the issuance of a building permit.	BP	ISD	



27	The Applicant shall provide notice of intent to strictly comply with applicable State and Federal regulations regarding air quality including without limitation continuous dust control during demolition and construction.	BP	ISD/OSE	
28	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	BP	OSE/FP/B OH	
29	Any new curb cuts shall be poured in accordance with the specifications of the Highway Superintendent	CO	Eng./High ways/ ISD	
30	Venting from the garage shall be on the front of the building, and not adjacent to abutting properties at the side or rear	CO/Perpetual		
31	The design of the wall (required by condition #8) shall incorporate the design of the French drain that will collect water by the wall and discharge it.	BP/Perpetual	Eng./Plan ning/ISD	
32	The garage area in the back yard shall be covered by a minimum of 18 inches of dirt.	CO/Perpetual	Planning/I SD	
33	Each unit shall include two deeded parking spaces. The remaining two parking spaces in each garage shall be available to visitors of all three of the units that share the garage.	CO/Perpetual	Planning/I SD	
34	Prior to the application for a Building Permit being submitted, revised elevations shall be submitted to Planning Staff for their review and approval of materials and palette. The palette of materials shown on the front elevation shall be comprised of four materials: full-sized brick or alternate material, two types of siding, and cementitious panels. The palette of materials approved by Planning Staff for the front elevation shall be similarly represented on the rear of the structure so that there is a coherent expression across the entire building and so that each unit is expressed individually.	BP	Planning/I SD	

Attest, by the Planning Board:



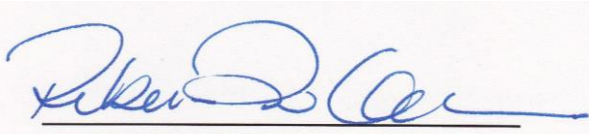

Kevin Prior, Chairman



Joseph Favaloro



Dorothy A. Kelly Gay



Rebecca Lyn Cooper



Michael A. Capuano, Esq.

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 _____

