



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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MICHAEL F. GLAVIN  
EXECUTIVE DIRECTOR

PLANNING DIVISION

**ZONING BOARD OF APPEALS MEMBERS**

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JOSH SAFDIE (ALT.)

**Case #: ZBA # 2013-19**  
**Site: 263 Elm Street a/k/a 5 Davis Square**  
**Date of Decision: April 17, 2013**  
**Decision: Petition Approved with Conditions**  
**Date Filed with City Clerk: April 24, 2013**

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**ZBA DECISION**

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<b>Applicant Name:</b>	NE Frog Pond, LLC
<b>Applicant Address:</b>	715 Boylston Street, 2 <sup>nd</sup> Floor, Boston, MA 02116
<b>Property Owner Name:</b>	The 5 Davis Square, LLC, c/o Dreyfus Realty
<b>Property Owner Address:</b>	1259 Broadway, Somerville, MA 02144
<b>Agent Name:</b>	Adam Dash, Esq.
<b>Agent Address:</b>	48 Grove Street, Suite 304, Somerville, MA 02144

Legal Notice: Applicant, NE Frog Pond LLC, and Owner, The 5 Davis Square LLC, seek a Special Permit with Design Review under SZO §7.11.10.2.1.a to establish a fast order food establishment (frozen yogurt parlor), a Special Permit under SZO §4.4.1 to modify the existing storefront, including window openings, and a Special Permit under SZO §9.13.a for relief from parking requirements.

<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.10.2.1.a, §4.4.1 & §9.13.a
<u>Date of Application:</u>	March 18, 2013
<u>Date(s) of Public Hearing:</u>	April 17, 2013
<u>Date of Decision:</u>	April 17, 2013
<u>Vote:</u>	5-0

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Appeal #ZBA 2013-19 was opened before the Zoning Board of Appeals at Somerville City Hall on April 17, 2013. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143  
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c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.

**DESCRIPTION:**

The Applicant, NE Frog Pond LLC, proposes to convert an existing commercial space, previously used as an insurance office, into a frozen yogurt parlor called Pinkberry. The Pinkberry concept is to offer tart yogurt flavors that are fat free milk based and kosher. In addition to yogurt, Pinkberry offers breakfast/probiotic options, custom smoothies, fresh seasonal fruit, fruit bowls, and catering options.

The commercial space has a gross floor area of 2,078 square feet and a net floor area of 1,780 square feet with less than 20 feet of street frontage. Renovations to the storefront will include the installation of operable café windows to the right of the door with two decorative metal panels below, bullnose lintels above the windows and doors, and a façade of smooth stone veneer. The existing wall, which is angled toward the main entry, will be modified to create a more prominent angle to provide more space around the main entry door. The existing ADA accessible entry will be refurbished as well as the apartment entry at the left end. Existing HVAC equipment, located at the rear of the unit above the single story roof, will be demolished and replaced in a location further back from the edge of the building, but still above the single story roof. Screening of the equipment will include vertical wood slats approximately 3" apart.

The interior of this commercial space will be outfitted with a seating area for 15 patrons which includes bar seating and a trash station, a service area, two bathrooms, and a back of house or preparation area with a rear egress and storage. Up to four employees will be present at a time and hours of operation are Sunday through Thursday, 8 a.m. to 11 p.m., and Friday and Saturday, 8 a.m. to midnight. There is no parking associated with this commercial space, nor with any other unit in this building.

Signage for Pinkberry will include a 1" x 1" green aluminum trellis with the Pinkberry logo and a double face blade sign for a total of 49 square feet. The standard 24" Pinkberry logo will be internally illuminated by LED lamps and mounted over a new medium density overlay panel board. A double face blade sign will be mounted to the right of the Pinkberry logo and will also be illuminated by LED lamps. Additionally, the address "265" will be painted on the existing substrate above the apartment entry to differentiate the residential entry from the commercial storefront.

**FINDINGS FOR SPECIAL PERMIT WITH DESIGN REVIEW (SZO §7.11.10.2.1.a, §4.4.1, and §9.13.a):**

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied: The Board finds that the information provided by the Applicant conforms to the requirements of §5.1.2 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."

In considering a special permit under §4.4 of the SZO, the Board finds that the proposed use and alterations to the façade and interior space would not be substantially more detrimental to the neighborhood than the existing use or structure. A yogurt parlor fits appropriately within the existing fabric of Davis Square and activates this particular storefront. The establishment would have up to four employees present at a time and the proposed hours of operation would be Sunday through Thursday, 8 a.m. to 11 p.m., and Friday and Saturday, 8 a.m. to midnight. The proposed changes to the façade of the building will be an improvement as both the commercial and residential entries will be refurbished and renovations to the storefront will include the installation of operable café windows to the right of the door with two decorative metal panels below, bullnose lintels above the windows and doors, and a façade of smooth stone veneer. These changes will help sustain the vibrancy of the streetscape and the high quality pedestrian environment of Davis Square.



In considering a Special Permit under §9.13 of the SZO the Applicant must be able to demonstrate that granting the requested special permit would not cause detriment to the surrounding neighborhood through any of the criteria as set forth under SZO §9.13, which are as follows:

- 1) increase in traffic volumes;
- 2) increased traffic congestion or queuing of vehicles;
- 3) change in the type(s) of traffic;
- 4) change in traffic patterns and access to the site;
- 5) reduction in on-street parking; or
- 6) unsafe conflict of motor vehicle and pedestrian traffic.

Fort Hill Infrastructure Services thoroughly explains that requesting relief for six (6) parking spaces for this type of use at the proposed site will have a minimal impact on the surrounding neighborhood, in regard to the above criteria. Patrons who frequent this type of establishment often do so as a secondary trip and generally walk or take public transportation. However, upon driving to this location, parking can be located either on-street or in municipal lots surrounding the Square.

The Department of Traffic and Parking does not fully support the assertion made by Fort Hill and notes that due to a lack in fulfilling the six required off-street parking spaces, there will be a minor increase in the traffic congestion and vehicle delay in this location of Davis Square. To encourage appropriate turnover rates, reduce parking in the residential neighborhood, and to promote a safe comprehensive transportation network, the Department of Traffic and Parking require that the Applicant purchase and deliver to the City six (6) single space parking meters.

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 is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to "providing for and maintaining the uniquely integrated structure of uses in the City; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality."

The proposal is consistent with the purpose of the Central Business District, SZO §6.1.5, which is, "[t]o preserve and enhance central business areas for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale in those areas. A primary goal for these districts is to provide environments that are safe for and conducive to a high volume of pedestrian traffic with a strong connection to retail and pedestrian accessible street level uses."

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 proposal is designed to be compatible with the characteristics of the surrounding area and is consistent with the district standards and guidelines for developments within the CBD as laid out in SZO §6.1.5, which are as follows:

1. *Across the primary street edge, the building should complete the streetwall.*

The existing building completes the streetwall along Elm Street. The Applicant does propose to alter the streetwall as part of this proposal; however, the proposal is consistent with creating a complete streetwall, which will refurbish and improve the existing commercial storefront.



2. *At the street level, provide continuous storefronts or a pedestrian arcade which shall house either retail occupancies, or service occupancies suitably designed for present or future retail use.*

The proposed changes to the façade of the building maintain a continuous storefront along Elm Street. The proposed yogurt establishment will replace an office use which is not as pedestrian oriented as the proposed use. The proposal will enhance and activate the existing storefront, which will help maintain an interactive sidewalk and a pedestrian friendly environment.

3. *Massing of the building should include articulation which will blend the building in with the surrounding district. At the fourth floor, a minimum five-foot deep setback is recommended.*

The proposal does not include changes to the massing of the building. The proposed changes to the structure will enhance the pedestrian environment by activating the commercial storefront and refurbishing the façade.

4. *Locate on-site, off-street parking either at the rear of the lot behind the building or below street level; parking should not abut the street edge of the parcel.*

There are no changes proposed to the existing parking situation at the site. The Applicant requests relief under SZO §9.13.a for six (6) parking spaces.

5. *Provide access to on-site, off-street parking from either a side street or alley. Where this is not possible, provide vehicular access through an opening in the street level facade of the building of a maximum twenty-five (25) feet in width.*

The Applicant does not propose changes to the existing parking situation at this site.

The proposal is also designed to be compatible with the characteristics of the surrounding area and is consistent with the design guidelines for a business zone as laid out in SZO §5.1.5.A as follows:

1. *Maintain a strong building presence along the primary street edge, continuing the established streetwall across the front of the site so as to retain the streetscape continuity; however, yards and setbacks as required by Article 8 shall be maintained.*

The existing building completes the streetwall along Elm Street. The Applicant does propose to alter the streetwall as part of this proposal; however, the proposal is consistent with creating a complete streetwall, which will refurbish and improve the existing commercial storefront. There are no yards or setbacks that will be altered as part of this proposal.

2. *Differentiate building entrances from the rest of the primary street elevation, preferably by recessing the entry from the plane of the streetwall or by some other articulation of the elevation entrance.*

The Applicant does not propose to slightly alter the existing entrance to the commercial space but not to the residential units above. The existing wall, which is angled toward the main entry, will be modified to create a more prominent angle to provide more space around the main entry door. The existing door to the subject commercial space is slightly recessed and is currently ADA accessible from the Elm Street streetscape. The Applicant proposes to refurbish these entries and improve the commercial façade through the installation of operable café windows to the right of the door with two decorative metal panels below, bullnose lintels above the windows and doors, and a façade of smooth stone veneer.

3. *Make use of the typical bay widths, rhythms and dimensions prevalent in buildings adjacent to the site, especially in new construction or substantial redevelopment.*



The Applicant will maintain the typical bay width, rhythm, and dimensions of the storefront in the existing building. The physical composition of the storefront will be improved which will enhance the streetscape of Elm Street. Entries to the storefront and residential units above will be refurbished, but not altered. Renovations to the storefront will include the installation of operable café windows to the right of the door with two decorative metal panels below, bullnose lintels above the windows and doors, and a smooth stone veneer façade. The existing wall, which is angled toward the main entry, will be modified to create a more prominent angle to provide more space around the main entry door. Signage for the yogurt parlor, Pinkberry, will include a 1”x 1” green aluminum trellis with the Pinkberry logo and a double face blade sign for a total of 49 square feet. Additionally, the address “265” will be painted on the existing substrate above the apartment entry to differentiate the residential entry from the commercial storefront.

4. *Clearly define these bay widths, rhythms and dimensions, making them understandable through material patterns, articulations and modulations of the façades, mullion design and treatment, etc.*

As a part of this proposal, the Applicant will maintain the typical bay width, rhythm, and dimensions of the storefront in the existing building. The width and rhythm of the bays will be more clearly defined through the installation of operable windows and a new stone veneer façade. The existing commercial entry is slightly recessed from the sidewalk along Elm Street, separating it from the pedestrian way, and the Applicant proposes to slightly increase the angle between the streetwall and the entry door.

5. *Provide roof types and slopes similar to those of existing buildings in the area.*

The Applicant does not propose to change the roof type or slope on the existing building as part of this proposal.

6. *Use materials and colors consistent with those dominant in the area or, in the case of a rehabilitation or addition, consistent with the architectural style and period of the existing building. Use of masonry is encouraged, but not considered mandatory.*

Renovations to the storefront include materials and colors consistent with those dominant in the area such as the proposed stone veneer. The installation of operable café windows to the right of the door with two decorative metal panels below and bullnose lintels above the windows and doors are consistent with the architectural style and period of the existing building. Signage has been modified to comply with SZO standards and while the colors of the signage represent a more modern era, the signage itself is compatible with the surrounding area and improves the streetscape.

7. *When parking lots are provided between buildings, abutting the primary street and breaking the streetwall, provide a strong design element to continue the streetwall definition across the site, such as a low brick wall, iron works or railing, trees, etc.*

There is currently no on-site parking for the existing building and the Applicant does not propose to change the existing parking situation. The existing building, which consumes a majority of the parcel, will be maintained as will the strong presence of the subject building along Elm Street. The Applicant requests relief under SZO §9.13.a for six (6) parking spaces.

8. *Locate transformers, heating and cooling systems, antennae, and the like, so they are not visible from the street; this may be accomplished, for example, by placing them behind the building, within enclosures, behind screening, etc.*

Existing HVAC equipment, located at the rear of the unit above the single story roof, will be demolished and replaced in a location further back from the edge of the building, but still above the single story roof. Screening of the equipment will include vertical wood slats approximately 3” apart.



9. *Sites and buildings should comply with any guidelines set forth in Article 6 of this Ordinance for the specific base or overlay zoning district(s) the site is located within.*

The proposal is consistent with the guidelines set forth for developments within a Central Business District, as laid out in SZO §6.1.5. Please refer to the above detailed responses with regard to this design guideline.

5. Adverse environmental impacts: The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.

No adverse environmental impacts are anticipated as a result of this proposal. No new noise, glare, smoke, vibration, nor emissions of noxious materials, nor pollution of water ways or ground water, nor transmission of signals that interfere with radio or television reception are anticipated as part of the proposal. The signage will be illuminated internally by LED lamps and will have a minimal impact on the surrounding area.

6. Vehicular and pedestrian circulation: The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.

The Applicant proposes not to alter the existing parking situation at this site. The Applicant requests a Special Permit under SZO §9.13.a to reduce the number of required off-street parking spaces. Under §9.13.a, the SPGA may grant a Special Permit to modify certain parking standards of Article 9, "where the total number of parking spaces required by the Ordinance is six (6) or fewer, the requirements for lots or sites that are nonconforming with respect to parking as specified in Section 9.4 may be modified." Therefore, the Applicant requests relief of the resulting requirement for six (6) additional parking spaces.

The Parking Memorandum submitted as part of this Special Permit application by Fort Hill Infrastructure Services, LLC indicated that the impact of the proposed project on the Davis Square parking supply is likely to be minimal. The memorandum strongly encourages the Applicant to consider offering discounted MBTA passes to employees, to participate in the City's employee parking program, and to make customers fully aware of the public transportation options available to them, especially through the use of Pinkberry's website. The Parking Memorandum also states how the proposed use of the space, a yogurt parlor, generates secondary trips in that patrons of the proposed establishment will have already visited another establishment in Davis Square. Trips generated by the yogurt parlor will be offset by the proximity of the storefront to alternate modes of transportation (Red Line, bus services, taxis, Tufts Shuttle Bus, Community Path, etc.) and the multiple public parking lots located within 500 feet of the proposed establishment. These factors will help minimize impacts of the parking needs for the proposed yogurt parlor.

7. Fast food establishments: In special permit applications for fast-order, take-out or automobile oriented food service establishments, there shall be establishment of a need for such a facility in the neighborhood or in the City, and impacts on traffic circulation, parking and visual, physical, or historical characteristics of the particular location shall not be detrimental.

The proposal is designed to be compatible with the characteristics of the surrounding area and is consistent with the district standards and guidelines for developments within the CBD as laid out in SZO §6.1.5, and with the design guidelines for a business zone as laid out in SZO §5.1.5.A. Findings regarding the consistency of the proposal with these elements of the SZO can be found in Part II, Section 4 of this report. The establishment of this proposed yogurt parlor would help maintain the vibrancy of the streetscape and the high quality pedestrian environment of Davis Square, which is a benefit to the surrounding neighborhood.



The subject storefront has been vacant for several months, so the establishment of Pinkberry at this location will activate the storefront. Regarding “establishment of a need for such a facility in the neighborhood,” the Applicant has submitted two petitions (with approximately 370 signatures) in support of the establishment of Pinkberry in Davis Square. As noted on both petitions, the signatures support that “the Pinkberry product and experience are unique, in part, due to the fact that the yogurt is uniquely tangy, the shop is not self-service and the ambiance and products appeal to a clientele not currently being met by other businesses in Davis Square.” Pinkberry’s concept is to offer tart yogurt flavors that are fat free milk based and kosher. In addition to yogurt, Pinkberry offers breakfast/probiotic options, custom smoothies, fresh seasonal fruit, fruit bowls, and catering options.

As previously mentioned, the Department of Traffic and Parking does not fully support the opinion of Fort Hill and notes that relief from the requested parking spaces will minimally increase traffic congestion and vehicle delay in this location of the Square. Additionally, a slight decrease in pedestrian and bicycle safety as well as a lower turnover rate for parking spaces will also result from the establishment of Pinkberry. Aside from these noted impacts, negative effects are not anticipated from the proposed parking relief. To alleviate these concerns and to encourage appropriate turnover parking turnover rates, the Applicant is required to purchase and deliver to the City six (6) single-space parking meters capable of accepting coins, credit cards and pay-by-cell phone technology.



**DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Josh Safdie. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit. Richard Rossetti 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										
1	<p>Approval is for a Special Permit with Design Review under SZO §7.11.10.2.1.a to establish a fast order food establishment (frozen yogurt parlor), a Special Permit under SZO §4.4.1 to modify the existing storefront, including window openings, and a Special Permit under SZO §9.13.a for relief from parking requirements. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(March 18, 2013)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>September 14, 2012 (April 10, 2013)</td> <td>Existing and proposed plot plans submitted to OSPCD</td> </tr> <tr> <td>October 4, 2012 (April 10, 2013)</td> <td>Pinkberry Fit-Out Plans submitted to OSPCD (Cover, A-1, A-1A, A-2, A-2A, A-3, A-3A, &amp; A-4)</td> </tr> <tr> <td>(April 10, 2013)</td> <td>Pinkberry, Davis Square (Sheets 1-22)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan, elevation or use that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(March 18, 2013)	Initial application submitted to the City Clerk's Office	September 14, 2012 (April 10, 2013)	Existing and proposed plot plans submitted to OSPCD	October 4, 2012 (April 10, 2013)	Pinkberry Fit-Out Plans submitted to OSPCD (Cover, A-1, A-1A, A-2, A-2A, A-3, A-3A, & A-4)	(April 10, 2013)	Pinkberry, Davis Square (Sheets 1-22)	BP/CO	ISD/PIng.	
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2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP											
3	Signage for Pinkberry shall be installed according to the plans. The aluminum trellis is included as part of the signage.	CO	ISD/PIng.											
4	The Applicant shall purchase and deliver to the City six (6) single space parking meters capable of accepting coins, credit cards, and pay by phone technology. The parking meters should be manufactured by the IPS Group or an approved equal. Specifications for all requirements of the parking meters can be supplied by the Department of Traffic and Parking if required and necessary.	CO	T&P											
5	There shall be three feet of clearance around the relocated rooftop HVAC equipment.	CO	Wiring											



6	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	
7	The special permit is for a yogurt establishment only. Transfer to another fast order food establishment will require a new special permit.	Perpetual	ISD	
8	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:

Herbert Foster, *Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
Danielle Evans  
Josh Safdie (Alt.)

Attest, by the Senior Planner:

\_\_\_\_\_   
Lori Massa

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 \_\_\_\_\_

