

June 29, 1992

Mr. Joseph J. Cellucci
Commissioner of Buildings and Housing
Inspectional Services Department
831 Massachusetts Avenue
Cambridge, MA 02139

RECEIVED BY
OFFICE OF CITY CLERK
1992 JUN 29 PM 4:34
CAMBRIDGE MA.

(DELIVERED BY HAND)

RE: Yoffa Co., Inc., d/b/a MIDAS MUFFLER
2501 Massachusetts Ave./10 Clarendon Ave.
BZA Case 5819/Building Permit No. 031902

Mr. Cellucci:

I write to renew my February 18 and June 12 requests for immediate enforcement of the building, sanitary, and zoning laws. I again urge you to revoke the improperly issued building permit and order all contractors and subcontractors to cease and desist from further construction activity at the above site.

As I mentioned to you in person and by telephone last week, there are several additional reasons why you should rescind the flawed building permit.

1. Contrary to the express conditions of the Board of Zoning Appeal special permit in Case No. 5819, this project is not being constructed "as per the plans submitted" to the BZA. The final plans approved by your department differ from the Board-approved plans in several significant respects.

2. The general contractor, Craig Sutton of Stand Corp., has not abided by his affidavit certifying that he would notify you by February 5 of where he will dispose of solid waste from this project. Thus, in violation of MGL Ch. 40, Sec. 54, the building permit lacks the necessary indication that the possibly contaminated waste from this automotive facility is being removed in accordance with applicable law.

Since the construction and demolition debris is being dumped on the residentially zoned lot at 10 Clarendon Ave. (a few feet away from inhabited dwellings) rather than taken to a licensed disposal facility, a legally required condition of the building permit is being violated by the contractor and ignored by your department. I have called this to the attention of Ron Bentubo, John Fallon, and Ranjit Singanayagam of your staff, as well as discussing the problem with you directly.

Mr. Bentubo has maintained that he found no building code violations at this site, and you have asserted to me that compliance with this provision is merely "a courtesy" that falls outside your actual duties as Building Commissioner. All three of the inspectors witnessed the illegal dumping firsthand, however, and it has been recorded on videotape and witnessed by many neighbors and by other city officials. Moreover, as Building Commissioner you are clearly responsible for enforcing compliance, since the pertinent provisions have been incorporated in the Fifth Edition of the Massachusetts Building Code as Section 114.1.3.

3. You cannot issue a valid building permit for this project until the Community Development Department certifies in writing that the Midas proposal has undergone a small-project review pursuant to Sections 11.40 and 11.109 of the Cambridge Zoning Ordinance. According to Elizabeth Malenfant of the CDD, Midas has not complied with this requirement and no CDD certificate has been issued; so this document cannot have been submitted to you with the building permit application as required by Sections 11.41 and 11.43, which you are also required to enforce.

4. The ongoing open-lot storage of cinder blocks, wooden pallets, and other building materials, the continuing dumping and unfenced storage of dirt fill and construction debris, the repeated overnight parking of trucks and heavy construction machinery, and other unreasonable, unpermitted industrial activities in the Res. B and BA-2 districts constitute patent violations of the zoning ordinance, especially in the absence of a temporary permit to allow reasonable construction activities.

5. Your approval of the building permit application violates several provisions of Section 6.50 of the ordinance, which requires the submission of detailed parking plan information.

Even in the absence of this material, it should be obvious that Midas cannot comply with the BZA-approved plans unless the company secures improved access to the proposed Clarendon Street parking lot. To do so, it must restore the sidewalk and preexisting curb cut unlawfully removed by the subcontractor and then successfully petition the City Council for permission to widen or relocate the curb opening after appropriate departments and affected neighbors have been notified and been given an opportunity to respond.

If the Council does not grant permission, you will be forced to order the demolition and removal of the garage annex that the company has shortsightedly started to build in violation of the law and without first obtaining all necessary permits and licenses from the city.

6. The existence of even a valid BZA special permit would not justify your allowing construction activities to continue in the absence of a valid building permit, a Planning Board special permit waiving the provisions of the Mass. Ave. Overlay District, a solid-waste-disposal certificate, a CDD small-project-review certification, a valid sidewalk-and-street excavation license, a City Council curb cut permit, an expanded fuel-storage license from the License Commission, and a BZA variance.

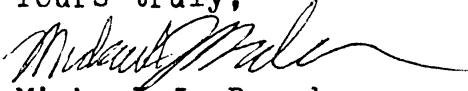
7. As I reminded Mr. Singanayagam last week, temporary signs that violate the sign ordinance are still in place at this site.

In closing, I note that per Section 9.16 of the ordinance you may be fined \$100 daily for every violation you continue to allow by refusing to enforce the law. And as you know, the Massachusetts Building Code provides for stiffer fines--and even imprisonment--to discourage ongoing violations of its provisions.

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I await your timely written response in accordance with applicable law.

Yours truly,



Michael J. Brandon
27 Seven Pines Avenue
Cambridge, MA 02140

cc: Zoning Specialist Ranjit Singanayagam

Chief Inspector Ron Bentubo

Inspector John Fallon

City Manager Robert W. Healy

Cambridge City Council

Elizabeth Malenfant, Lester Barber, Michael Rosenberg/CDD

Massachusetts Board of Building Regulations and Standards

North Cambridge Stabilization Committee

North Cambridge News, Cambridge Chronicle, Cambridge Tab

Cambridge Planning Board

Cambridge Board of Zoning Appeal

Consent Comm. # 34

8-611

Comm. from Michael J. Brandon, 27
Seven Pines Ave., requesting the
city to revoke the building permit and
order all contractors to cease from
further activity at the Midas Muffler
site located at 2501 Mass. Ave.

CAMBRIDGE CITY COUNCIL
CITY CLERK'S OFFICE
CITY HALL

In City Council,

Aug. 3, 1992

Referred to the
City manager
Copy sent to City mgr
8/5/92 @