

*COPY
- TO CITY COUNCILLORS, PLEASE*

August 18, 1989

Mr. Joseph J. Cellucci
Commissioner of Buildings and Housing
c/o Cambridge City Hall
Cambridge, Massachusetts 02139

RE: Yoffa Company, Inc., d/b/a Midas Muffle
10 Clarendon Avenue/2501 Massachusetts
BZA Case No. 5819

*Copies Sent Under
Separate Cover 7/89
Needs Only to Be
Indexed.*

Dear Commissioner Cellucci:

We write you pursuant to MGL 40A, sect of the zoning ordinance as it pertains to M at 10 Clarendon Ave. and 2501 Massachusetts

As you know, the Board of Zoning Appeals the City Clerk a decision granting a "special" in the above case. Previously, in our July 12 letter to the BZA (copy attached), we cited more than a dozen specific zoning violations inherent in the revised plan that was concocted by the petitioner and quickly sanctioned by the Board without fully reviewing its legal ramifications under the ordinance. On July 27, however, the Board formally declined to reconsider its decision or even to seek guidance from the city's Law Department unless a lawsuit is filed. In essence, the BZA's actions indicate that its members have no intention of carefully applying or abiding by the zoning laws you are charged with enforcing under MGL 40A and Section 9.11 of the ordinance.

We therefore urge you to initiate "appropriate action or proceedings in the name of the City of Cambridge to prevent, correct, restrain, or abate violations" of the ordinance, as required by Section 9.15. We request that you take the following enforcement actions without delay, as well as any others deemed appropriate:

1. Ask the City Manager to authorize an expedient legal opinion from the City Solicitor addressing (a) our specific allegations of zoning violations, (b) the propriety of the BZA's procedures, actions, and written decision in this case, (c) the legal effect of the apparently inadequate "special permit" that was granted, and (d) the steps that you might take to ensure enforcement of the ordinance in this matter.

2. If necessary, file an appeal of the BZA decision with an appropriate court within the statutory time limit--an appeal seeking to annul the Board's decision and asking for a court injunction compelling the BZA to comply with applicable zoning restrictions and not overstep its authority in conducting its business and making its future deliberations.

3. Notify all concerned parties that Section 9.12 and MGL 40A, sec. 7, prohibit you from granting building permits for this project until all proper variances and special permits have been legally obtained from the appropriate officials. Specifically, make it clear that even if there is no court challenge, the BZA special permit does not provide the petitioner with adequate relief from the zoning restrictions and does not give you the authority to allow this project to proceed in the absence of (a) a special permit properly issued by the Planning Board (not the BZA) pursuant to Section 11.108, or (b) specific variances (not a vague special permit) granted by the BZA following a properly advertised public hearing as required by law.

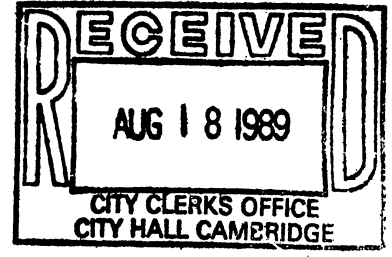
(MORE)

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RE: Yoffa Company, Inc., d/b/a Midas Muffler
10 Clarendon Avenue/2501 Massachusetts Avenue
BZA Case No. 5819

Dear Commissioner Cellucci:

We write you pursuant to MGL 40A, section 7, to request prompt enforcement of the zoning ordinance as it pertains to Midas Muffler's planned expansion at 10 Clarendon Ave. and 2501 Massachusetts Ave.

As you know, the Board of Zoning Appeals on August 10, 1989, filed with the City Clerk a decision granting a "special permit"--but not a variance-- in the above case. Previously, in our July 12 letter to the BZA (copy attached), we cited more than a dozen specific zoning violations inherent in the revised plan that was concocted by the petitioner and quickly sanctioned by the Board without fully reviewing its legal ramifications under the ordinance. On July 27, however, the Board formally declined to reconsider its decision or even to seek guidance from the city's Law Department unless a lawsuit is filed. In essence, the BZA's actions indicate that its members have no intention of carefully applying or abiding by the zoning laws you are charged with enforcing under MGL 40A and Section 9.11 of the ordinance.

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4. Order the immediate removal of all temporary signs at 2501 Mass. Ave. that do not comply with Sections 7.11 and 7.125.D.--namely, the "Nobody Beats Midas" banners hanging from the building and attached to the pole of the permanent freestanding sign at the front of the lot, and the paper sign affixed to the window glass that exceeds the allowable 30% area and is also in violation of the 15-day restriction.

We would be happy to meet with you to discuss our concerns in more detail and look forward to receiving your response within fourteen days.

Sincerely yours,



Michael J. Brandon
27 Seven Pines Avenue



Richard D. Clarey
15 Brookford Street

encl.

cc: City Manager Robert Healy; City Solicitor Russell Higley; Chairman Paul Dietrich, Cambridge Planning Board; Asst. City Manager for Community Development Michael Rosenberg & Zoning Specialist Lester Barber; Chairman Mel Gadd, Cambridge Board of Zoning Appeals; Cambridge City Council; Chairman George McCray, North Cambridge Stabilization Committee; Traffic Commissioner George Teso

O-114

Comm. from Michael J. Brandon & Richard D. Clarey Re: Yoffa Company, Inc., d/b/a Midas Muffler, 10 Clarendon Ave./2501 Mass. Ave., BZA Case No. 5819; said comm. requesting prompt enforcement of the Zoning Ordinance pertaining to Midas Muffler's proposed expansion.

August 18, 1989