



# City of Cambridge

CALENDAR ITEM #16

IN CITY COUNCIL

March 4, 1996

**ORDERED:** That the Commissioner of Public Works be authorized to construct curb cuts over sidewalks in front of estates upon the streets as hereinafter named, the expense thereof to be charged to the appropriation for Public Works Department, Paving (Edgestones and Sidewalks). The entire cost of material and labor furnished to be repaid to the City by the owners of abutting estates.

Midas Muffler

10 Clarendon Avenue

In City Council March 4, 1996

Failed of adoption by a ye and nay vote:-

Yeas 4; Nays 4; Absent 0; Present 1.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

*D. Margaret Drury*

D. Margaret Drury  
City Clerk

RECONSIDERATION FILED ON MOTION OF COUNCILLOR REEVES.

3/25/96

CITY OF CAMBRIDGE

APPLICATION FOR DRIVEWAY CUTS AND OPENINGS  
ABUTTOR'S FORM

To Whom It May Concern:

As owner or agent of 22 Clarendon Avenue

☒ approval

Cambridge, Massachusetts, I do hereby declare

☐ disapproval

of the installment of:

Off-Street Parking Facility located at 10 Clarendon Avenue

Signed: Alighton E. Spooner

Date: March 25, 1996

Address: 22 Clarendon Avenue, Cambridge, MA 02140



# City of Cambridge

CALENDAR ITEM #16  
RECONSIDERATION #1  
IN CITY COUNCIL

~~March 4, 1996~~  
March 25, 1996

ORDERED: That the Commissioner of Public Works be authorized to construct curb cuts over sidewalks in front of estates upon the streets as hereinafter named, the expense thereof to be charged to the appropriation for Public Works Department, Paving (Edgestones and Sidewalks). The entire cost of material and labor furnished to be repaid to the City by the owners of abutting estates.

Midas Muffler

10 Clarendon Avenue

In City Council March 25, 1996  
Adopted by a ye and nay vote:-  
Yeas 5; Nays 4; Absent 0.  
Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

*D. Margaret Drury*

D. Margaret Drury  
City Clerk

3/18 <sup>renewed</sup> meeting

## City of Cambridge

MASSACHUSETTS

In City Council

3/26

, 1996

Recommendation of Miles Maffey Carls Act

| YEA | NAY | ABSENT | PRESENT |                             |
|-----|-----|--------|---------|-----------------------------|
|     |     |        |         |                             |
|     | ✓   |        |         | Ms. Kathleen L. Born        |
|     | ✓   |        |         | Ms. Henrietta Davis         |
|     | ✓   |        |         | Mr. Francis H. Duehay       |
| ✓   |     |        |         | Mr. Anthony Galluccio       |
| ✓   |     |        |         | Mr. Kenneth E. Reeves       |
| ✓   |     |        |         | Mr. Michael A. Sullivan     |
| ✓   |     |        |         | Mr. Timothy J. Toomey, Jr.  |
|     | ✓   |        |         | Ms. Katherine Triantafillou |
| ✓   |     |        |         | Mayor Sheila T. Russell     |

5 4 0 0

revised  
3/18/maly

# City of Cambridge

MASSACHUSETTS

In City Council

3/26

, 1996

Midas Muffler Curb Cut

| YEA | NAY | ABSENT | PRESENT |                                       |
|-----|-----|--------|---------|---------------------------------------|
|     |     |        |         |                                       |
|     | ✓   |        |         | VM<br><del>NAY</del> Kathleen L. Born |
|     | ✓   |        |         | Ms. Henrietta Davis                   |
|     | ✓   |        |         | Mr. Francis H. Duehay                 |
| ✓   |     |        |         | Mr. Anthony Galluccio                 |
| ✓   |     |        |         | Mr. Kenneth E. Reeves                 |
| ✓   |     |        |         | Mr. Michael A. Sullivan               |
| ✓   |     |        |         | Mr. Timothy J. Toomey, Jr.            |
|     | ✓   |        |         | Ms. Katherine Triantafillou           |
| ✓   |     |        |         | Mayor Sheila T. Russell               |

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# City of Cambridge

MASSACHUSETTS

In City Council 3-4, 1996

*Unfinished 16*

| YEA | NAY | ABSENT         | PRESENT |                             |
|-----|-----|----------------|---------|-----------------------------|
|     |     |                |         |                             |
|     | ✓   |                |         | Ms. Kathleen L. Born        |
|     | ✓   |                |         | Ms. Henrietta Davis         |
|     | ✓   |                |         | Mr. Francis H. Duehay       |
| ✓   |     |                |         | Mr. Anthony Galluccio       |
|     |     | <del>ABD</del> | 1       | Mr. Kenneth E. Reeves       |
| ✓   |     |                |         | Mr. Michael A. Sullivan     |
| ✓   |     |                |         | Mr. Timothy J. Toomey, Jr.  |
|     | ✓   |                |         | Ms. Katherine Triantafillou |
| ✓   |     |                |         | Mayor Sheila T. Russell     |

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Cal # 16

MOTION FOR RECONSIDERATION SUBMITTED BY COUNCILLOR \_\_\_\_\_

RECEIVED BY  
OFFICE OF CITY CLERK

96 MAR -5 AM 11.15

CAMBRIDGE MA.

\_\_\_\_\_  
Date

I hereby file reconsideration  
of Thomas Gurt Cut 10 Clarendon Ave.

Kenneth E. Green  
Signature



RECEIVED BY  
OFFICE OF CITY CLERK

JAN 24 PM 2:25

**CITY OF CAMBRIDGE**

Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139  
Tel. (617) 349-4121  
Fax. (617) 349-4134

CAMBRIDGE MA.

*Russell B. Higley*  
City Solicitor

*Donald A. Drisdell*  
Deputy City Solicitor

*Michael C. Costello*  
Assistant City Solicitor

Legal Counsel

*Birge Albright*  
*Gail S. Gabriel*  
*Arthur J. Goldberg*  
*Linda A. Stamper*  
*Deborah R. Cautela*  
*Nancy E. Glowa*

January 24, 1996

Ms. D. Margaret Drury  
City Clerk  
City Hall  
795 Massachusetts Avenue  
Cambridge, MA 02139

**Re: Calendar Item Number Two, May 1, 1995**

Dear Ms. Drury:

The City Council has requested a report as to the status of litigation involving the Midas Muffler business located at 10 Clarendon Avenue, Cambridge (the "Premises").

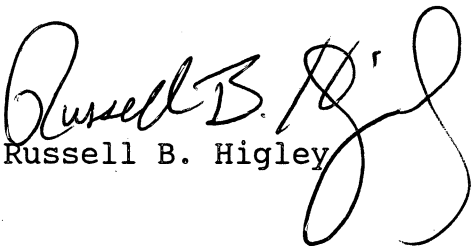
The Cambridge Board of Zoning Appeal ("BZA") granted a special permit to the owner of the property, Yoffa Co., Inc., d/b/a/ Midas Muffler ("Midas"), stating in its decision that the relief was "granted on the condition that the proposed construction be as per the plans submitted and the subject property be landscaped as per the discussions held and the revised plans submitted." After Midas completed construction, its application for a Certificate of Occupancy was denied by the Inspectional Services Department ("ISD"), because the Clarendon Avenue access to the site did not conform with the plans specifically approved by the BZA, and because Midas did not have curb cut approval from the City Council. Midas appealed the ISD's decision to the BZA, who upheld the denial of the Certificate of Occupancy.

Midas appealed the BZA's decision to the Superior Court. After a jury-waived trial before Superior Court Judge Thomas E. Connolly on May 18, 1994, the Court upheld the BZA's decision, stating that the BZA's denial of the Certificate of Occupancy was valid, because the project as built did not comply with the plans previously approved by the BZA, and because Midas had failed to get City Council approval for the new proposed curb cut.

Midas then appealed the Superior Court's decision to the Massachusetts Appeals Court on December 23, 1994. On February 13, 1995, Midas filed a motion to stay all proceedings in the Appeals Court until the trial transcript was completed. The Court granted the motion, staying the appeal to March 31, 1995. Thereafter, on May 4, 1995 Midas filed a motion to enlarge time for the filing of a status report and to further stay the appellate proceedings until the trial transcript was completed. The Court granted the second motion to stay, staying the appellate proceedings to June 5, 1995, stating that a status report was to be filed on that date.

On June 20, 1995 the Appeals Court, having received no status report from Midas on June 5, 1995, entered a Notice of Dismissal to the Trial Court, and dismissed the appeal. Accordingly, the original Superior Court judgment in favor of the BZA is final, and the BZA's denial of a Certificate of Occupancy to Midas has been upheld.

Very truly yours,

  
Russell B. Higley

Recon #1  
Communications and reports from  
City Officers #1

H-30

Communication was received from D. Margaret Drury, City Clerk, transmitting correspondence from Russell B. Higley, City Solicitor, regarding Calendar Item Number Two of May 1, 1995 involving the Midas Muffler business located at 10 Clarendon Avenue, Cambridge.

3/25/96

Councillor Sullivan moved reconsideration and on a Roll Call Vote Reconsideration Prevailed.

Order Adopted  
5-4-0-0

3/4/96  
Order failed of Adoption  
4-4-0-1  
Reconsideration filed by Councillor Reeves

In City Council January 29, 1996

Referred back to City Manager for further information regarding legal basis for criteria.

Petition for curb cut at 10 Clarendon sent to CM 1/29/96