



CITY OF CAMBRIDGE

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

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

MEMORANDUM

TO: Robert W. Healy

FROM: Russell B. Higley *RBH*

DATE: December 11, 1996

RE: 315-317 Broadway / 166-172 Prospect Street

I am submitting this memorandum for your review and referral to the City Council in connection with the curb cut application for the above referenced property.

As you may recall, the City was involved in several lawsuits with the former owner, Elie Jammal, regarding the above referenced commercial property at the corner of Broadway and Prospect Street. After participating in extensive settlement negotiations and mediation, the parties reached a comprehensive settlement as to all issues in all four cases. Accordingly, a Settlement Agreement was entered into by the City and the other parties to the lawsuits, which specified the detailed obligations each party was to fulfill.

Pursuant to the Agreement, Mr. Jammal filed applications for and obtained: 1) a variance and special permit from the Inspectional Services Department to correct the premises' parking, landscaping, setback and handicap access violations under the Cambridge Zoning Ordinance, the State Building Code and the Architectural Access Code; 2) a curb cut from the City Council to legalize vehicular access to the premises from Prospect Street; and 3) authorization from the Cambridge Interim Parking Control Commission for authorization as to the number of parking spaces at the premises.

Each of those applications was approved upon the express condition that Mr. Jammal comply with each and every term of the Settlement Agreement, which in turn became part of the Final Judgment and Order of the Court in each of the four lawsuits. Additionally, the Architectural Access Board made compliance with the terms of the Settlement Agreement an express condition of its

conditional approval of Mr. Jammal's proposed provisions for handicap access to the property, subject to review upon completion.

Mr. Jammal subsequently declared bankruptcy, and the lender which held a mortgage upon the property foreclosed upon and sold the property in August, 1995. The new property owners are the Trustees of the Islamic Society of Boston Trust (the "Trust"). Mr. Jammal, and later, the Trust, had been in breach of their obligations under the Settlement Agreement and orders of the court for quite some time, and the relief granted by the BZA lapsed for failure to timely act upon the variance and special permit, which in turn has invalidated the other forms of relief granted.

The Trust sought, and has recently obtained, approval for a proposed Modification of the Settlement Agreement from the various branches of the City and related entities which granted their approvals of the relief previously sought subject to fulfillment of the terms of the Settlement Agreement (the "Modification"). A fully executed copy of the Modification is attached hereto. In addition, the Trust re-applied for and has just been granted a new variance for the same relief granted in the original lapsed variance, and to modify some of their obligations under the Settlement Agreement (which runs with the land, and therefore was attached to their purchase of the property). The Trust's application for a curb cut will be heard by the City Council on Monday, December 16, 1996. The neighbors who were originally defendants in the lawsuits involving the property have agreed, pursuant to the Modification, to support the Trust's applications for the variance, curb cut, and IPCC approval of the parking plan. Copies of their letters of support for the relief requested which were submitted to the BZA and the City Council are also attached hereto for your information.

CONCLUSION AND REQUEST FOR RELIEF TO BE GRANTED:

Because of the complexity and number of issues contemplated by the Settlement Agreement and incorporated as conditions to all forms of relief previously granted, we would recommend that the City Council grant its approval of the curb cut only if all of the conditions as set forth in the Modification to the Settlement Agreement be made a part of the approval granted, and that the approval be made further dependant on all requirements of the Modification being met by the Petitioner.

We further suggest that the above paragraph be read into the record in its entirety to fully document these conditions to the grant of the curb cut, and that a copy of the executed Modification be attached to the Council Order as an incorporated part thereof.

Thank you.

MODIFICATION TO
SETTLEMENT AGREEMENT

1. This document is a modification (the "Modification") to a certain Settlement Agreement (the "Agreement") concerning the land and buildings located at 166-172 Prospect Street and 315-317 Broadway, Cambridge, MA (the "Property") between the parties to the following four civil actions which were pending in Middlesex Superior Court (the "Four Civil Actions"), specifically: 1) in Donut Maker, Inc. and Elie Jammal v. Gadd, et al, C.A. #91-5262, between the plaintiff Elie Jammal ("Jammal") and the defendants Melvin Gadd, Susan Spurlock, Lisa Delima, Edward R. Goode and John Miller, members or former members of the Board of Zoning Appeal of the City of Cambridge (the "BZA"), and Susan Yanow, George Gibson, Marie Gibson, Kevin O'Keefe, Annmarie O'Keefe and Clifford Truesdell (the "Neighbors"); 2) in Michael Nicoloro v. Elie Jammal, et al, C.A. #93-0392, between the substituted plaintiff, Robert R. Bersani, Managing Director / Acting Commissioner of the Department of Inspectional Services of the City of Cambridge ("Bersani"), and the defendant Jammal; 3) in Elie Jammal v. City of Cambridge, C.A. #93-0589, between the plaintiff Jammal and the defendant City of Cambridge (the "City"); and 4) in Joseph Cellucci v. Elie Jammal, et al, C.A. #92-7412, between the substituted plaintiff Bersani, and the defendants, Jammal, Roger Farinha ("Farinha") and John A. Beshai ("Beshai").

2. All parties to the Four Civil Actions executed the Agreement between June 7, 1994 and June 13, 1994.

3. Pursuant to the provisions of the Agreement and under the authority of the City Council, Elie Jammal the prior owner of the Property ("Jammal"), received a curb cut from the City, a variance and special permit from the BZA, a building permit from the City's Inspectional Services Department (ISD) and permission to park six motor vehicles on the premises from the Cambridge Interim Parking Commission Committee (the "IPCC").

4. Certain of the provisions of the Agreement were not complied with by Jammal.

5. On or about August 4, 1995, Suod Ahafi, Trustee of the Islamic Society of Boston Trust became the owner of the Property as the result of a purchase at a foreclosure sale conducted by Greater Boston Bank, by deed dated August 4, 1995 and recorded in the Middlesex County Registry of Deeds in Book 25642, Page 384.

6. On or about June 1, 1996, John A. Beshai, an original party to the Agreement by virtue of his status as a tenant or occupant of the Property, vacated the Property.

7. Because of Jammal's failure to comply with various provisions of the Agreement, inter alia, the relief and approvals issued pursuant to and conditioned upon completion of all improvements set forth in the Agreement have lapsed or been rendered void.

8. Ahafi desires to secure such relief, approvals and permissions from the BZA, the City Council, the IPCC and the ISD and such relief as was granted to Jammal by those parties to permit the use of the Property for all uses lawfully permitted by the applicable provisions of the CZO and all other applicable local, state and federal laws and regulations, and the parties hereto desire that Ahafi should receive all such relief, provided that he complies in all respects with the Agreement, as modified by this Modification, and with the Cambridge Zoning Ordinance ("CZO") and all other applicable local, state and federal laws and regulations.

9. The parties to this Modification desire to present to the Middlesex Superior Court a request for modification of any Orders issued by that Court in the Four Civil Actions so that the Agreement, as modified by this Modification, shall become an additional Order of the Court, and binding upon the parties hereto.

NOW THEREFORE, in consideration of Ten Dollars and other valuable consideration, the receipt and sufficiency of which are acknowledged by all parties hereto, the undersigned hereby agree as follows:

1. Inasmuch as neither Jammal nor Beshai presently have any ownership or other interest in the Property, their assent to this Modification is not required.

2. Upon full execution of this Modification, the parties hereto will jointly request of the Court that it

approve of this Modification, and make it a further Order of the court, without the necessity of either Jammal or Beshai's appearance or assent.

3. Upon full execution of this Modification, Ahafi will move to be substituted for Jammal in such of the Four Civil Actions as Jammal was formerly a party. The remaining parties to this Modification will assent to Ahafi's Motion To Be Permitted To Intervene in the Four Civil Actions, a copy of which is attached as Exhibit A.

4. Ahafi agrees to file a completed application with the City Council on or before September 30, 1996, for a curb cut of fifteen feet (15'), to be placed at the northeast corner of the Property, bounded by Prospect Street and located at a distance of five feet (5') in from the northerly line of the Property. Ahafi agrees that upon issuance of the curb cut he will cause to be posted on the Property at all times a sign, complying with all requirements of the Traffic and Parking Commission and the City of Cambridge Traffic Regulations, clearly directing that all traffic exiting the Property must exit to the right only, up Prospect Street in the northerly direction. The City's representative will work with any City departments which must approve the curb cut application before it is sent to the City Council in order to facilitate obtaining their approval of the application, and the City will make its best efforts to have the application placed expeditiously on the agenda for City Council meeting on

September 30, 1996. Ahafi agrees to appear at that City Council meeting in support of the curb cut application and to talk to neighbors and abutters and make best efforts to secure their support of that application as well.

5. Ahafi filed a completed application with the BZA on or about July 3, 1996, for a variance from the BZA of various back and side yard set back requirements and other relief, including a variance to set back requirements pertaining to the landscaping screening along the Broadway and Prospect Street sides of the Property, between the public sidewalk and the concrete curb bumpers to placed and permanently tied down. The BZA scheduled a hearing on that variance application for August 29, 1996 and, at the request of Ahafi, the hearing has been continued until September 26, 1996.

6. Ahafi agrees to meet to discuss with neighbors and abutters his application for a variance and to seek their support and approval of the application. He agrees to appear at the BZA hearing in support of the application for a variance.

7. Pursuant to Section 9 of the Agreement, Jammal filed a certain plan with the ISD which showed various improvements to the Property. The parties stipulate and agree that all improvements set out in Section 9 of the Agreement have been made in accordance with the Agreement with the exception of the improvements set forth in:

a. Section 9.a) (addition of an elevator or a handicap lift for handicap access to the second floor of the building, pursuant to a building permit and approval by the Inspectional Services Department and by the State Department of Public Safety and a variance from the Architectural Access Board ("AAB") if necessary);

b. Section 9.c) (the permanent tying down of one concrete bumper between the parking area and the sidewalk), all other improvements required by Section 9.c) have been performed in accordance with the Agreement; and

c. Section 9.g) (lines and permanent marking on the pavement to indicate the placement of all six approved parking spaces, with signage indicating that there is to be no parking at the present existing space on the north side of the building facing Prospect Street, and the installation of drainage on the lot, pursuant to a plumbing permit and DPW approval), all other improvements in Section 9.g) having been performed in accordance with this Agreement. Ahafi agrees that any and all other improvements set forth in paragraph 9 which have not been completed will be completed expeditiously.

8. Ahafi agrees to file a completed application with the ISD on or before September 30, 1996 for a building permit, order to carry out those obligations of Jammal under the Agreement which, as listed above, have not been performed to date, and to prepare and file with the ISD, on or before September 30, 1996, , i) an affidavit signed by

Ahafi which details the improvements remaining to be done at the Property as set forth in Paragraph 9 of the Agreement; ii) a Plan of Access for the second floor of the Property, including the provisions of either a handicap lift or an elevator, and iii) a Parking Plan for the Property. Ahafi agrees to apply to the IPCC for approval of the parking plan on or before September 30, 1996. The City's representative will work with the City's Department of Traffic and Parking to facilitate obtaining approval of the application and will make its best efforts to have the application placed on the IPCC's hearing agenda as expeditiously as possible. Ahafi agrees to appear at the IPCC hearing in support of the parking plan and to indicated his support of same.

9. The Neighbors agree to make their best efforts to appear at the City Council meeting in support of the curb cut application, at the BZA hearing in support of the BZA variance and at the IPCC hearing in support of the Parking Plan. In the event any of the Neighbors cannot attend any of these meetings, he or she agrees to submit a detailed letter indicating full support of these applications to appropriate authorities prior to the hearing.

10. Ahafi shall continue to complete any and all incomplete improvements set forth in Section 9 of the Agreement and pursuant to the provisions thereof, and, in addition, agrees that upon receiving (a) the building permit(s); (b) the variance; (c) the curb cut approval and (d) the IPCC approval of the Parking Plan, to immediately

have his contractor or builder commence the completion of the improvements set forth in paragraph 9 of the Agreement and to have all such improvements (with the exception of the handicap lift or elevator) completed by not later than three weeks after the date of which ever of the building permit, the variance, the curb cut approval or the IPCC approval he receives last, or the expiration of any appeal period pursuant thereto (the "Work Completion Date"), unless Ahafi is prevented from completing the improvements and his obligations under this Modification by an act of God. Upon completion of all such improvements (other than the handicap lift or elevator) and a satisfactory inspection by the ISD (which the ISD agrees to promptly undertake after written notice of completion from Ahafi), a temporary certificate of occupancy for the first floor space will issue from the ISD within 10 days, with a final Certificate of Occupancy conditioned upon the installation of a handicap lift or elevator and satisfactory inspection by the ISD that the entire buildings is suitable for occupancy and in compliance with all applicable federal, state and local laws, rules, regulations and ordinances.

11. Ahafi agrees to diligently proceed with his obligations under the terms of this Modification, and to have all such applications, petitions, improvements to the Property and any other promised tasks or work under this agreement, with the sole exception of the handicapped lift or elevator, completed by no later than the Work Completion

Date specified in the immediately preceding paragraph, above, and further agrees that the Modification and request for the court's approval of same as a further order of the court in each of the Four Civil Actions will not be filed with the court until all such obligations have been fulfilled and all such work completed, including the installation of the handicapped lift or elevator, as contemplated by the terms of the Agreement and this Modification. As to the handicapped lift or elevators, Ahafi agrees to pursue his application to the AAB for a variance for the second floor access diligently, and to provide ISD with a copy of the completed variance application when submitted to the AAB. The handicapped lift or elevator will be fully installed by no later than fourteen weeks after variance approval is received from the AAB. After a satisfactory inspection by ISD and/or any other authorized inspection agency, a final certificate of occupancy for the building will issue from the ISD within ten days. Ahafi agrees that in the event that a variance from AAB and a building permit have not been obtained for the handicap lift, and the handicap lift installed, inspected and approved to the ISD, the State Department of Public Safety and the AAB as satisfying all applicable federal, state and local laws, rules, regulations and ordinances, by on or before September 26, 1997, the temporary certificate of occupancy and any and all other approvals granted in connection with or contemplated by the

Agreement and this Modification will be revoked and rendered void.

12. In the event that all obligations have not been fulfilled and all work completed pursuant to the terms of this Agreement by on or before the dates specified in the two immediately preceding paragraphs, above, Ahafi agrees that the City of Cambridge and its agents, servants or employees may revoke any and all building permits, curb cut and Parking Plan approvals, variances and temporary or final certificates of occupancy granted pursuant to the terms of the Agreement or this Modification, and hereby reserves all legal rights and remedies it may have against Ahafi for violations of the Zoning Ordinance, the State Building Code, the AAB and the ADA, and any other applicable federal, state or local laws, rules, regulations, or ordinances.

13. Ahafi agrees and understands that all improvements to the subject Property or obligations performed pursuant to this Modification are subject to any and all applicable Federal, State and Cambridge laws, rules, regulations or ordinances, and further understands and agrees that this Modification in no way precludes the City, the Commonwealth of Massachusetts, or the United States from enforcing any violations of any such applicable laws, rules, regulations or ordinances in the future. Ahafi represents, and the City's ISD recognizes, to the best of its knowledge, that the work to be done at the Property by Ahafi and all plans and applications to be filed by Ahafi will be in compliance

Date specified in the immediately preceding paragraph, above, and further agrees that the Modification and request for the court's approval of same as a further order of the court in each of the Four Civil Actions will not be filed with the court until all such obligations have been fulfilled and all such work completed, including the installation of the handicapped lift or elevator, as contemplated by the terms of the Agreement and this Modification. As to the handicapped lift or elevators, Ahafi agrees to pursue his application to the AAB for a variance for the second floor access diligently, and to provide ISD with a copy of the completed variance application when submitted to the AAB. The handicapped lift or elevator will be fully installed by no later than fourteen weeks after variance approval is received from the AAB. After a satisfactory inspection by ISD and/or any other authorized inspection agency, a final certificate of occupancy for the building will issue from the ISD within ten days. Ahafi agrees that in the event that a variance from AAB and a building permit have not been obtained for the handicap lift, and the handicap lift installed, inspected and approved to the ISD, the State Department of Public Safety and the AAB as satisfying all applicable federal, state and local laws, rules, regulations and ordinances, by on or before September 26, 1997, the temporary certificate of occupancy and any and all other approvals granted in connection with or contemplated by the

Agreement and this Modification will be revoked and rendered void.

12. In the event that all obligations have not been fulfilled and all work completed pursuant to the terms of this Agreement by on or before the dates specified in the two immediately preceding paragraphs, above, Ahafi agrees that the City of Cambridge and its agents, servants or employees may revoke any and all building permits, curb cut and Parking Plan approvals, variances and temporary or final certificates of occupancy granted pursuant to the terms of the Agreement or this Modification, and hereby reserves all legal rights and remedies it may have against Ahafi for violations of the Zoning Ordinance, the State Building Code, the AAB and the ADA, and any other applicable federal, state or local laws, rules, regulations, or ordinances.

13. Ahafi agrees and understands that all improvements to the subject Property or obligations performed pursuant to this Modification are subject to any and all applicable Federal, State and Cambridge laws, rules, regulations or ordinances, and further understands and agrees that this Modification in no way precludes the City, the Commonwealth of Massachusetts, or the United States from enforcing any violations of any such applicable laws, rules, regulations or ordinances in the future. Ahafi represents, and the City's ISD recognizes, to the best of its knowledge, that the work to be done at the Property by Ahafi and all plans and applications to be filed by Ahafi will be in compliance

with the Zoning Ordinances, the State Building Code, the AAB Regulations and any other applicable federal, state and local laws, rules and regulations or ordinances.

14. Ahafi agrees to have his contractor maintain a clear and shoveled passageway in the winter months, or whenever there is snow or ice, on the public sidewalks which abut the length of his property lines along Broadway and Prospect Street, pursuant to a maintenance contract.

15. Ahafi agrees to make a total contribution to the City for dedicated youths for programs of building improvements to the Area 4 Youth Center of Ten Thousand Dollars, which contribution will be made in accordance with the following payment schedule: two payments, each of Twenty-Five Hundred Dollars are to be paid, the first on or before September 26, 1996 and the second on or before November 1, 1996 and One Thousand Two Hundred Fifty Dollars are to be paid on or before the first day of each month thereafter, beginning December 1, 1996, until paid in full.

16. The parties agree that this Modification will be governed by the laws of the Commonwealth of Massachusetts.

17. If any provisions of this Modification or the application of it to any party is declared void, illegal, or unenforceable, the remainder of this Settlement Agreement shall be valid and enforceable to the extent permitted by the applicable law. In such event, the Parties will use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by

provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.

18. The Parties to this Modification each acknowledge and agree that this Modification is made after full consideration of its effects and ample opportunity to consult with their independent counsel with respect to the advisability of agreeing and becoming bound by the terms and conditions of this Modification.

Executed under seal this 25 day of September, 1996.

Dated: 9/25/96

AHAFI, SUOD
Suod Ahafi, as Trustee of
Islamic Society of Boston
Trust

Dated: 9/30/96

The City of Cambridge

By: [Signature]
City Manager

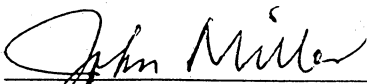
Robert R. Bersani, as he is Managing Director / Acting Commissioner of the Department of Inspectional Services of the City of Cambridge

Dated: 9/26/96

[Signature]
Robert R. Bersani

John Miller, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9-26-96


John Miller

Susan Spurlock, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Susan Spurlock

Edward R. Goode, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Edward R. Goode

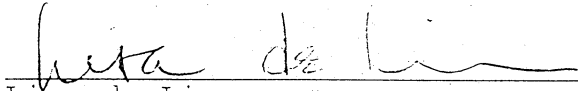
Melvin Gadd, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9/26/96

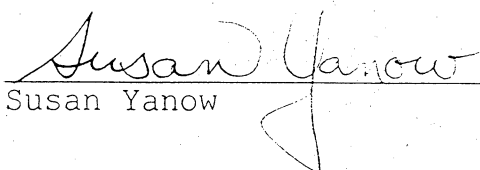

Melvin Gadd

Lisa de Lima, as she is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 10-10-96


Lisa de Lima

Dated: 9-26-96


Susan Yanow

Dated:

9/26/96

Cliff Truesdell
Clifford Truesdell

Dated:

9/25/96

George Gibson
George Gibson

Dated:

9/25/96

Marie Gibson
Marie Gibson

Dated:

10-8-96

Kevin O'Keefe
Kevin O'Keefe

Dated:

10/7/96

Annmarie O'Keefe
Annmarie O'Keefe

John Miller, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9-26-96

John Miller
John Miller

Susan Spurlock, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9/30/96

Susan Spurlock
Susan Spurlock

Edward R. Goode, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Edward R. Goode

Melvin Gadd, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9/26/96

Melvin Gadd
Melvin Gadd

Lisa de Lima, as she is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Lisa de Lima

Dated: 9-26-96

Susan Yancow
Susan Yancow

John Miller, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9-26-96

John Miller
John Miller

Susan Spurlock, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Susan Spurlock

Edward R. Goode, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9-30-96

Edward R. Goode
Edward R. Goode

Melvin Gadd, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9/26/96

Melvin Gadd
Melvin Gadd

Lisa de Lima, as she is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Lisa de Lima

Dated: _____

Susan Yanow

221 Norfolk Street
Cambridge MA 02139

September 26, 1996

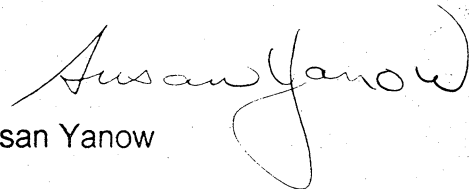
Board of Zoning Appeal
Cambridge

Re: 315-317 Broadway

To whom it may concern;

As a party to the settlement agreement regarding this property, I wish to go on record in support of the variance and curb cut requested by the current owner, providing that ALL provisions of the settlement agreement and Modification to that agreement are complied with.

Sincerely,

A handwritten signature in cursive script that reads "Susan Yanow". The signature is written in dark ink and is positioned above the printed name.

Susan Yanow

Clifford Truedell
29 Essex Street
Cambridge, MA 02139-2647

September 26, 1996

Cambridge Zoning Board of Appeals
831 Massachusetts Avenue
Cambridge, MA 02139

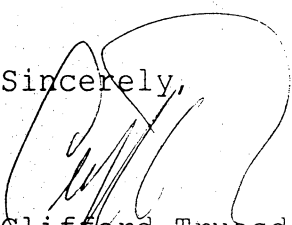
RE: Case No. 7325
166-172 Prospect Street, Cambridge, MA
315-317 Broadway, Cambridge, MA

I write to express my strong support to the variances for 166-172 Prospect Street and 315-317 Broadway, Cambridge, MA and the minor modifications to the original agreement made with the original owner. These modifications with the original owner reflect the fact he could not carry out the terms before his unfortunate bankruptcy. The agreement and modifications are a fair settlement of what had been a long and ~~ranched~~ dispute.

Corous

The neighbors are glad to see it resolved and support the requested variances.

Sincerely,



Clifford Truesdell

October 10, 1996

To whom it may concern:

Re: 166-172 Prospect St, Camb. MA
315-317 Broadway, Camb. MA.

This letter will act as confirmation
of our support to the agreement we signed
on September 25, 1996 regarding "the Modification
to Settlement Agreement."

Sincerely,

Mare Gibson
George Gibson

12 Tremont Street
Cambridge MA 02139

October 10, 1994

Board of Zoning Appeal
Cambridge

Re: 315-317 Broadway

To whom it may concern,

As parties to the settlement agreement regarding this property, we wish, I and my husband Kevin O'Keefe, to go on record in support of the variance and curb cut requested by the current owner, providing that ALL provisions of the settlement agreement and Modification to that agreement are complied with.

Sincerely
Annmarie O'Keefe



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
FAX. 349-4307



23.

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

December 16, 1996

To The Honorable, The City Council:

Please find attached for your consideration and action a communication from City Solicitor Russell Higley, relative to 315-317 Broadway / 166-172 Prospect Street concerning the curb cut application for the above referenced property.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
attachments

Consent Agenda #23

Relative to a communication from the
City Solicitor relative to 315-317
Broadway/ 166-172 Prospect Street
concerning the curb cut application.

In City Council December 16, 1996

*Referred to
Consent Communication #1*



City of Cambridge

Consent Communication #1

IN CITY COUNCIL

December 16, 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.

Ahafi Suod

166-172 Prospect Street and
315-317 Broadway; and be it further

ORDERED: That the City Council approves this curb cut subject to the conditions contained in the Modification to the Settlement Agreement dated September 30, 1996, which conditions shall be made a part of the approval granted and further that all of the requirements contained in the Modification Agreement be met by the petitioner.

In City Council December 16, 1996

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in cursive script, reading "D. Margaret Drury". The signature is written in dark ink and is positioned to the right of the word "ATTEST:-".

D. Margaret Drury
City Clerk



CITY OF CAMBRIDGE

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

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

MEMORANDUM

TO: Board of Zoning Appeal

FROM: Nancy E. Glowa *NEG*

DATE: October 10, 1996

RE: 315-317 Broadway / 166-172 Prospect Street

As you may recall, the City was involved in several lawsuits with the former owner, Elie Jammal, regarding the above referenced commercial property at the corner of Broadway and Prospect Street. After participating in extensive settlement negotiations and mediation, the parties reached a comprehensive settlement as to all issues in all four cases. Accordingly, a Settlement Agreement was entered into by the City and the other parties to the lawsuits, which specified the detailed obligations each party was to fulfill.

Pursuant to the Agreement, Mr. Jammal filed applications for and obtained: 1) a variance and special permit from the Inspectional Services Department to correct the premises' parking, landscaping, setback and handicap access violations under the Cambridge Zoning Ordinance, the State Building Code and the Architectural Access Code; 2) a curb cut from the City Council to legalize vehicular access to the premises from Prospect Street; and 3) authorization from the Cambridge Interim Parking Control Commission for authorization as to the number of parking spaces at the premises.

Each of those applications was approved upon the express condition that Mr. Jammal comply with each and every term of the Settlement Agreement, which in turn became part of the Final Judgment and Order of the Court in each of the four lawsuits. Additionally, the Architectural Access Board made compliance with the terms of the Settlement Agreement an express condition of its conditional approval of Mr. Jammal's proposed provisions for handicap access to the property, subject to review upon completion.

Mr. Jammal subsequently declared bankruptcy, and the lender which held a mortgage upon the property foreclosed upon and sold the property in August, 1995. The new property owners are the Trustees of the Islamic Society of Boston Trust (the "Trust"). Mr. Jammal, and later, the Trust, have been in breach of their obligations under the Settlement Agreement and orders of the court for quite some time, and the relief granted by the BZA has lapsed for failure to timely act upon the variance and special permit, which in turn has invalidated the other forms of relief granted.

The Trust has now presented an application for a variance from the BZA, seeking to obtain a new variance for the same relief granted in the original lapsed variance, and to modify some of their obligations under the Settlement Agreement (which runs with the land, and therefore was attached to their purchase of the property). Accordingly, they sought, and received, approval for a proposed Modification of the Settlement Agreement from the various branches of the City and related entities which granted their approvals of the relief previously sought subject to fulfillment of the terms of the Settlement Agreement (the "Modification"). A fully executed copy of the Modification is attached hereto.

The request for a variance was scheduled to be heard by the BZA on August 29, 1996, which was continued to provide all concerned persons an opportunity to consider the proposal and seek consensus as to the proposed Modification. The BZA rescheduled the case to September 9, 1996, which was later continued to October 10, 1996, by agreement of all parties.

CONCLUSION AND REQUEST FOR RELIEF TO BE GRANTED:

Because of the complexity and number of issues contemplated by the Settlement Agreement and incorporated as conditions to all forms of relief previously granted, the City requests that the Board grant the variance only if all of the conditions as set forth in the Modification to the Settlement Agreement be made a part of the variance granted, and that the grant of the variance be made further dependant on all requirements of the Modification being met by the Petitioner, including City Council approval of the curb cut application, Interim Parking Control Commission ("IPCC") approval of the parking plan, and Architectural Access Board ("AAB") approval of the variance for a handicap lift, if such variance is required by the AAB.

The City respectfully requests that the above paragraph be read into the record in its entirety to fully document these conditions to the grant of the variance, and that a copy of the executed Modification be attached to the variance Decision as an incorporated part thereof.

Thank you.

221 Norfolk Street
Cambridge MA 02139

September 26, 1996

Board of Zoning Appeal
Cambridge

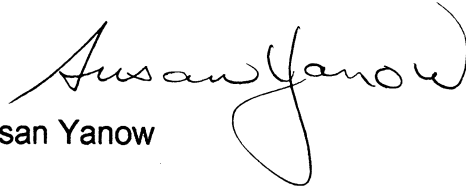
Re: 315-317 Broadway

To whom it may concern;

As a party to the settlement agreement regarding this property, I wish to go on record in support of the variance and curb cut requested by the current owner, providing that ALL provisions of the settlement agreement and Modification to that agreement are complied with.

Sincerely,

Susan Yanow

A handwritten signature in cursive script that reads "Susan Yanow". The signature is written in dark ink and is positioned above the printed name "Susan Yanow".

Clifford Truedell
29 Essex Street
Cambridge, MA 02139-2647

September 26, 1996

Cambridge Zoning Board of Appeals
831 Massachusetts Avenue
Cambridge, MA 02139

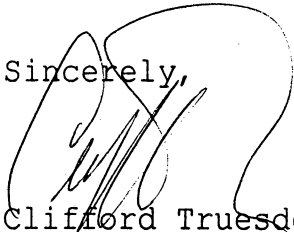
RE: Case No. 7325
166-172 Prospect Street, Cambridge, MA
315-317 Broadway, Cambridge, MA

I write to express my strong support to the variances for 166-172 Prospect Street and 315-317 Broadway, Cambridge, MA and the minor modifications to the original agreement made with the original owner. These modifications with the original owner reflect the fact he could not carry out the terms before his unfortunate bankruptcy. The agreement and modifications are a fair settlement of what had been a long and ~~ranched~~ dispute.

corous

The neighbors are glad to see it resolved and support the requested variances.

Sincerely,



Clifford Truesdell

October 10, 1996

To whom it may concern:

Re: 166-172 Prospect St, Camb. MA
315-317 Broadway, Camb. MA.

This letter will act as confirmation
of our support to the Agreement we signed
on September 25, 1996 regarding "the Modification
to Settlement Agreement."

Sincerely,

Mare Gibson
George Gibson

12 Tremont Street
Cambridge MA 02139

October 10, 1994

Board of Zoning Appeal
Cambridge

Re: 315-317 Broadway

To whom it may concern,

As parties to the settlement agreement regarding this property, we wish, I and my husband Kevin O'Keefe, to go on record in support of the variance and curb cut requested by the current owner, providing that ALL provisions of the settlement agreement and Modification to that agreement are complied with.

Sincerely
Charmaine O'Keefe

MODIFICATION TO
SETTLEMENT AGREEMENT

1. This document is a modification (the "Modification") to a certain Settlement Agreement (the "Agreement") concerning the land and buildings located at 166-172 Prospect Street and 315-317 Broadway, Cambridge, MA (the "Property") between the parties to the following four civil actions which were pending in Middlesex Superior Court (the "Four Civil Actions"), specifically: 1) in Donut Maker, Inc. and Elie Jammal v. Gadd, et al, C.A. #91-5262, between the plaintiff Elie Jammal ("Jammal") and the defendants Melvin Gadd, Susan Spurlock, Lisa Delima, Edward R. Goode and John Miller, members or former members of the Board of Zoning Appeal of the City of Cambridge (the "BZA"), and Susan Yanow, George Gibson, Marie Gibson, Kevin O'Keefe, Annmarie O'Keefe and Clifford Truesdell (the "Neighbors"); 2) in Michael Nicoloro v. Elie Jammal, et al, C.A. #93-0392, between the substituted plaintiff, Robert R. Bersani, Managing Director / Acting Commissioner of the Department of Inspectional Services of the City of Cambridge ("Bersani"), and the defendant Jammal; 3) in Elie Jammal v. City of Cambridge, C.A. #93-0589, between the plaintiff Jammal and the defendant City of Cambridge (the "City"); and 4) in Joseph Cellucci v. Elie Jammal, et al, C.A. #92-7412, between the substituted plaintiff Bersani, and the defendants, Jammal, Roger Farinha ("Farinha") and John A. Beshai ("Beshai").

2. All parties to the Four Civil Actions executed the Agreement between June 7, 1994 and June 13, 1994.

3. Pursuant to the provisions of the Agreement and under the authority of the City Council, Elie Jammal the prior owner of the Property ("Jammal"), received a curb cut from the City, a variance and special permit from the BZA, a building permit from the City's Inspectional Services Department (ISD) and permission to park six motor vehicles on the premises from the Cambridge Interim Parking Commission Committee (the "IPCC").

4. Certain of the provisions of the Agreement were not complied with by Jammal.

5. On or about August 4, 1995, Suod Ahafi, Trustee of the Islamic Society of Boston Trust became the owner of the Property as the result of a purchase at a foreclosure sale conducted by Greater Boston Bank, by deed dated August 4, 1995 and recorded in the Middlesex County Registry of Deeds in Book 25642, Page 384.

6. On or about June 1, 1996, John A. Beshai, an original party to the Agreement by virtue of his status as a tenant or occupant of the Property, vacated the Property.

7. Because of Jammal's failure to comply with various provisions of the Agreement, inter alia, the relief and approvals issued pursuant to and conditioned upon completion of all improvements set forth in the Agreement have lapsed or been rendered void.

8. Ahafi desires to secure such relief, approvals and permissions from the BZA, the City Council, the IPCC and the ISD and such relief as was granted to Jammal by those parties to permit the use of the Property for all uses lawfully permitted by the applicable provisions of the CZO and all other applicable local, state and federal laws and regulations, and the parties hereto desire that Ahafi should receive all such relief, provided that he complies in all respects with the Agreement, as modified by this Modification, and with the Cambridge Zoning Ordinance ("CZO") and all other applicable local, state and federal laws and regulations.

9. The parties to this Modification desire to present to the Middlesex Superior Court a request for modification of any Orders issued by that Court in the Four Civil Actions so that the Agreement, as modified by this Modification, shall become an additional Order of the Court, and binding upon the parties hereto.

NOW THEREFORE, in consideration of Ten Dollars and other valuable consideration, the receipt and sufficiency of which are acknowledged by all parties hereto, the undersigned hereby agree as follows:

1. Inasmuch as neither Jammal nor Beshai presently have any ownership or other interest in the Property, their assent to this Modification is not required.

2. Upon full execution of this Modification, the parties hereto will jointly request of the Court that it

approve of this Modification, and make it a further Order of the court, without the necessity of either Jammal or Beshai's appearance or assent.

3. Upon full execution of this Modification, Ahafi will move to be substituted for Jammal in such of the Four Civil Actions as Jammal was formerly a party. The remaining parties to this Modification will assent to Ahafi's Motion To Be Permitted To Intervene in the Four Civil Actions, a copy of which is attached as Exhibit A.

4. Ahafi agrees to file a completed application with the City Council on or before September 30, 1996, for a curb cut of fifteen feet (15'), to be placed at the northeast corner of the Property, bounded by Prospect Street and located at a distance of five feet (5') in from the northerly line of the Property. Ahafi agrees that upon issuance of the curb cut he will cause to be posted on the Property at all times a sign, complying with all requirements of the Traffic and Parking Commission and the City of Cambridge Traffic Regulations, clearly directing that all traffic exiting the Property must exit to the right only, up Prospect Street in the northerly direction. The City's representative will work with any City departments which must approve the curb cut application before it is sent to the City Council in order to facilitate obtaining their approval of the application, and the City will make its best efforts to have the application placed expeditiously on the agenda for City Council meeting on

September 30, 1996. Ahafi agrees to appear at that City Council meeting in support of the curb cut application and to talk to neighbors and abutters and make best efforts to secure their support of that application as well.

5. Ahafi filed a completed application with the BZA on or about July 3, 1996, for a variance from the BZA of various back and side yard set back requirements and other relief, including a variance to set back requirements pertaining to the landscaping screening along the Broadway and Prospect Street sides of the Property, between the public sidewalk and the concrete curb bumpers to placed and permanently tied down. The BZA scheduled a hearing on that variance application for August 29, 1996 and, at the request of Ahafi, the hearing has been continued until September 26, 1996.

6. Ahafi agrees to meet to discuss with neighbors and abutters his application for a variance and to seek their support and approval of the application. He agrees to appear at the BZA hearing in support of the application for a variance.

7. Pursuant to Section 9 of the Agreement, Jammal filed a certain plan with the ISD which showed various improvements to the Property. The parties stipulate and agree that all improvements set out in Section 9 of the Agreement have been made in accordance with the Agreement with the exception of the improvements set forth in:

a. Section 9.a) (addition of an elevator or a handicap lift for handicap access to the second floor of the building, pursuant to a building permit and approval by the Inspectional Services Department and by the State Department of Public Safety and a variance from the Architectural Access Board ("AAB") if necessary);

b. Section 9.c) (the permanent tying down of one concrete bumper between the parking area and the sidewalk), all other improvements required by Section 9.c) have been performed in accordance with the Agreement; and

c. Section 9.g) (lines and permanent marking on the pavement to indicate the placement of all six approved parking spaces, with signage indicating that there is to be no parking at the present existing space on the north side of the building facing Prospect Street, and the installation of drainage on the lot, pursuant to a plumbing permit and DPW approval), all other improvements in Section 9.g) having been performed in accordance with this Agreement. Ahafi agrees that any and all other improvements set forth in paragraph 9 which have not been completed will be completed expeditiously.

8. Ahafi agrees to file a completed application with the ISD on or before September 30, 1996 for a building permit, order to carry out those obligations of Jammal under the Agreement which, as listed above, have not been performed to date, and to prepare and file with the ISD, on or before September 30, 1996, , i) an affidavit signed by

Ahafi which details the improvements remaining to be done at the Property as set forth in Paragraph 9 of the Agreement; ii) a Plan of Access for the second floor of the Property, including the provisions of either a handicap lift or an elevator, and iii) a Parking Plan for the Property. Ahafi agrees to apply to the IPCC for approval of the parking plan on or before September 30, 1996. The City's representative will work with the City's Department of Traffic and Parking to facilitate obtaining approval of the application and will make its best efforts to have the application placed on the IPCC's hearing agenda as expeditiously as possible. Ahafi agrees to appear at the IPCC hearing in support of the parking plan and to indicated his support of same.

9. The Neighbors agree to make their best efforts to appear at the City Council meeting in support of the curb cut application, at the BZA hearing in support of the BZA variance and at the IPCC hearing in support of the Parking Plan. In the event any of the Neighbors cannot attend any of these meetings, he or she agrees to submit a detailed letter indicating full support of these applications to appropriate authorities prior to the hearing.

10. Ahafi shall continue to complete any and all incomplete improvements set forth in Section 9 of the Agreement and pursuant to the provisions thereof, and, in addition, agrees that upon receiving (a) the building permit(s); (b) the variance; (c) the curb cut approval and (d) the IPCC approval of the Parking Plan, to immediately

have his contractor or builder commence the completion of the improvements set forth in paragraph 9 of the Agreement and to have all such improvements (with the exception of the handicap lift or elevator) completed by not later than three weeks after the date of which ever of the building permit, the variance, the curb cut approval or the IPCC approval he receives last, or the expiration of any appeal period pursuant thereto (the "Work Completion Date"), unless Ahafi is prevented from completing the improvements and his obligations under this Modification by an act of God. Upon completion of all such improvements (other than the handicap lift or elevator) and a satisfactory inspection by the ISD (which the ISD agrees to promptly undertake after written notice of completion from Ahafi), a temporary certificate of occupancy for the first floor space will issue from the ISD within 10 days, with a final Certificate of Occupancy conditioned upon the installation of a handicap lift or elevator and satisfactory inspection by the ISD that the entire buildings is suitable for occupancy and in compliance with all applicable federal, state and local laws, rules, regulations and ordinances.

11. Ahafi agrees to diligently proceed with his obligations under the terms of this Modification, and to have all such applications, petitions, improvements to the Property and any other promised tasks or work under this agreement, with the sole exception of the handicapped lift or elevator, completed by no later than the Work Completion

Date specified in the immediately preceding paragraph, above, and further agrees that the Modification and request for the court's approval of same as a further order of the court in each of the Four Civil Actions will not be filed with the court until all such obligations have been fulfilled and all such work completed, including the installation of the handicapped lift or elevator, as contemplated by the terms of the Agreement and this Modification. As to the handicapped lift or elevators, Ahafi agrees to pursue his application to the AAB for a variance for the second floor access diligently, and to provide ISD with a copy of the completed variance application when submitted to the AAB. The handicapped lift or elevator will be fully installed by no later than fourteen weeks after variance approval is received from the AAB. After a satisfactory inspection by ISD and/or any other authorized inspection agency, a final certificate of occupancy for the building will issue from the ISD within ten days. Ahafi agrees that in the event that a variance from AAB and a building permit have not been obtained for the handicap lift, and the handicap lift installed, inspected and approved to the ISD, the State Department of Public Safety and the AAB as satisfying all applicable federal, state and local laws, rules, regulations and ordinances, by on or before September 26, 1997, the temporary certificate of occupancy and any and all other approvals granted in connection with or contemplated by the

Agreement and this Modification will be revoked and rendered void.

12. In the event that all obligations have not been fulfilled and all work completed pursuant to the terms of this Agreement by on or before the dates specified in the two immediately preceding paragraphs, above, Ahafi agrees that the City of Cambridge and its agents, servants or employees may revoke any and all building permits, curb cut and Parking Plan approvals, variances and temporary or final certificates of occupancy granted pursuant to the terms of the Agreement or this Modification, and hereby reserves all legal rights and remedies it may have against Ahafi for violations of the Zoning Ordinance, the State Building Code, the AAB and the ADA, and any other applicable federal, state or local laws, rules, regulations, or ordinances.

13. Ahafi agrees and understands that all improvements to the subject Property or obligations performed pursuant to this Modification are subject to any and all applicable Federal, State and Cambridge laws, rules, regulations or ordinances, and further understands and agrees that this Modification in no way precludes the City, the Commonwealth of Massachusetts, or the United States from enforcing any violations of any such applicable laws, rules, regulations or ordinances in the future. Ahafi represents, and the City's ISD recognizes, to the best of its knowledge, that the work to be done at the Property by Ahafi and all plans and applications to be filed by Ahafi will be in compliance

Date specified in the immediately preceding paragraph, above, and further agrees that the Modification and request for the court's approval of same as a further order of the court in each of the Four Civil Actions will not be filed with the court until all such obligations have been fulfilled and all such work completed, including the installation of the handicapped lift or elevator, as contemplated by the terms of the Agreement and this Modification. As to the handicapped lift or elevators, Ahafi agrees to pursue his application to the AAB for a variance for the second floor access diligently, and to provide ISD with a copy of the completed variance application when submitted to the AAB. The handicapped lift or elevator will be fully installed by no later than fourteen weeks after variance approval is received from the AAB. After a satisfactory inspection by ISD and/or any other authorized inspection agency, a final certificate of occupancy for the building will issue from the ISD within ten days. Ahafi agrees that in the event that a variance from AAB and a building permit have not been obtained for the handicap lift, and the handicap lift installed, inspected and approved to the ISD, the State Department of Public Safety and the AAB as satisfying all applicable federal, state and local laws, rules, regulations and ordinances, by on or before September 26, 1997, the temporary certificate of occupancy and any and all other approvals granted in connection with or contemplated by the

Agreement and this Modification will be revoked and rendered void.

12. In the event that all obligations have not been fulfilled and all work completed pursuant to the terms of this Agreement by on or before the dates specified in the two immediately preceding paragraphs, above, Ahafi agrees that the City of Cambridge and its agents, servants or employees may revoke any and all building permits, curb cut and Parking Plan approvals, variances and temporary or final certificates of occupancy granted pursuant to the terms of the Agreement or this Modification, and hereby reserves all legal rights and remedies it may have against Ahafi for violations of the Zoning Ordinance, the State Building Code, the AAB and the ADA, and any other applicable federal, state or local laws, rules, regulations, or ordinances.

13. Ahafi agrees and understands that all improvements to the subject Property or obligations performed pursuant to this Modification are subject to any and all applicable Federal, State and Cambridge laws, rules, regulations or ordinances, and further understands and agrees that this Modification in no way precludes the City, the Commonwealth of Massachusetts, or the United States from enforcing any violations of any such applicable laws, rules, regulations or ordinances in the future. Ahafi represents, and the City's ISD recognizes, to the best of its knowledge, that the work to be done at the Property by Ahafi and all plans and applications to be filed by Ahafi will be in compliance

with the Zoning Ordinances, the State Building Code, the AAB Regulations and any other applicable federal, state and local laws, rules and regulations or ordinances.

14. Ahafi agrees to have his contractor maintain a clear and shoveled passageway in the winter months, or whenever there is snow or ice, on the public sidewalks which abut the length of his property lines along Broadway and Prospect Street, pursuant to a maintenance contract.

15. Ahafi agrees to make a total contribution to the City for dedicated youths for programs of building improvements to the Area 4 Youth Center of Ten Thousand Dollars, which contribution will be made in accordance with the following payment schedule: two payments, each of Twenty-Five Hundred Dollars are to be paid, the first on or before September 26, 1996 and the second on or before November 1, 1996 and One Thousand Two Hundred Fifty Dollars are to be paid on or before the first day of each month thereafter, beginning December 1, 1996, until paid in full.

16. The parties agree that this Modification will be governed by the laws of the Commonwealth of Massachusetts.

17. If any provisions of this Modification or the application of it to any party is declared void, illegal, or unenforceable, the remainder of this Settlement Agreement shall be valid and enforceable to the extent permitted by the applicable law. In such event, the Parties will use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by

provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.

18. The Parties to this Modification each acknowledge and agree that this Modification is made after full consideration of its effects and ample opportunity to consult with their independent counsel with respect to the advisability of agreeing and becoming bound by the terms and conditions of this Modification.

Executed under seal this 30 day of September, 1996.

Dated: 9/25/96

HAFAI SUOD
Suod Ahafi, as Trustee of
Islamic Society of Boston
Trust

Dated: 9/30/96

The City of Cambridge

By: [Signature]
City Manager

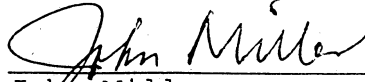
Robert R. Bersani, as he is Managing Director / Acting Commissioner of the Department of Inspectional Services of the City of Cambridge

Dated: 9/26/96

[Signature]
Robert R. Bersani

John Miller, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9-26-96


John Miller

Susan Spurlock, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Susan Spurlock

Edward R. Goode, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Edward R. Goode

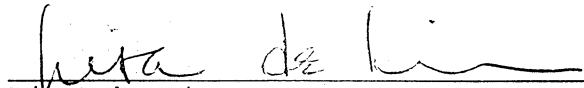
Melvin Gadd, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9/26/96

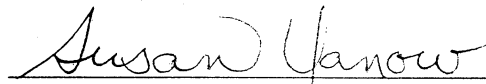

Melvin Gadd

Lisa de Lima, as she is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 10.10.96


Lisa de Lima

Dated: 9-26-96


Susan Yanow

John Miller, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9-26-96

John Miller
John Miller

Susan Spurlock, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Susan Spurlock

Edward R. Goode, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9-30-96

Edward R. Goode
Edward R. Goode

Melvin Gadd, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9/26/96

Melvin Gadd
Melvin Gadd

Lisa de Lima, as she is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

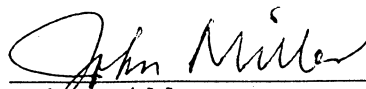
Lisa de Lima

Dated: _____

Susan Yanow

John Miller, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9-26-96


John Miller

Susan Spurlock, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Susan Spurlock

Edward R. Goode, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Edward R. Goode

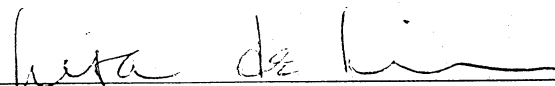
Melvin Gadd, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9/26/96

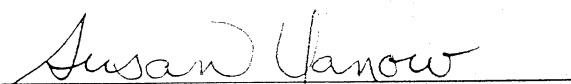

Melvin Gadd

Lisa de Lima, as she is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 10-10-96


Lisa de Lima

Dated: 9-26-96


Susan Yanow

John Miller, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9-26-96

John Miller
John Miller

Susan Spurlock, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9/30/96

Susan Spurlock
Susan Spurlock

Edward R. Goode, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Edward R. Goode

Melvin Gadd, as he is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: 9/26/96

Melvin Gadd
Melvin Gadd

Lisa de Lima, as she is a member of the Zoning Board of Appeals of the City of Cambridge

Dated: _____

Lisa de Lima

Dated: 9-26-96

Susan Yanow
Susan Yanow

Dated:

9/26/96

Cliff Truesdell
Clifford Truesdell

Dated:

9/25/96

George Gibson
George Gibson

Dated:

9/25/96

Marie Gibson
Marie Gibson

Dated:

10-8-96

Kevin O'Keefe
Kevin O'Keefe

Dated:

10/7/96

Annmarie O'Keefe
Annmarie O'Keefe

CITY OF CAMBRIDGE
INSPECTIONAL SERVICES
SEP 30 PM 1 33

#19960907

APPLICATION FOR DRIVEWAY CUTS AND OPENINGS

CITY OF CAMBRIDGE

RECEIVED BY
OFFICE OF CITY CLERK
JUL 20 AM 10 08
CAMBRIDGE MA.



INSTRUCTIONS:

In order to obtain permission for a driveway cut or opening you must first get approval from the Department of Inspectional Services on the zoning requirements for off-street parking, including the cooperation of your immediate abuttors.

To receive a review from Inspectional Services you must fill out Part I of the application. Be sure to draw your plot plan on Drawing 1, choosing the lot that represents your lot's position, i.e. corner or interior. You must also include a sketch of the proposed driveway, including dimensions, on Drawing 2. You may then calculate the cost of the driveway by using the formula based on your choice of surfaces. You must also include a signed abuttor sheet for each of your abuttors: back yard, one on either side and the abuttor directly across the street.

Once you have gathered this information on the application, it should be submitted to:

Zoning Officer
Inspectional Services
831 Massachusetts Avenue
Cambridge, MA 02139

If the application is approved by Inspectional Services, it will then be sent on to Traffic and Parking, the Historical Commission and the Department of Public Works. If approved by Public Works, the application and backup will be sent to the City Council for their approval. Once the City Council approves, the driveway curb cut can be installed. However, the full cost of the cut must be paid to Public Works before the work will start.

If, however, Inspectional Services denies your application you may then appeal to the Zoning Board of Appeals.

DATE:

9 / 30 / 96

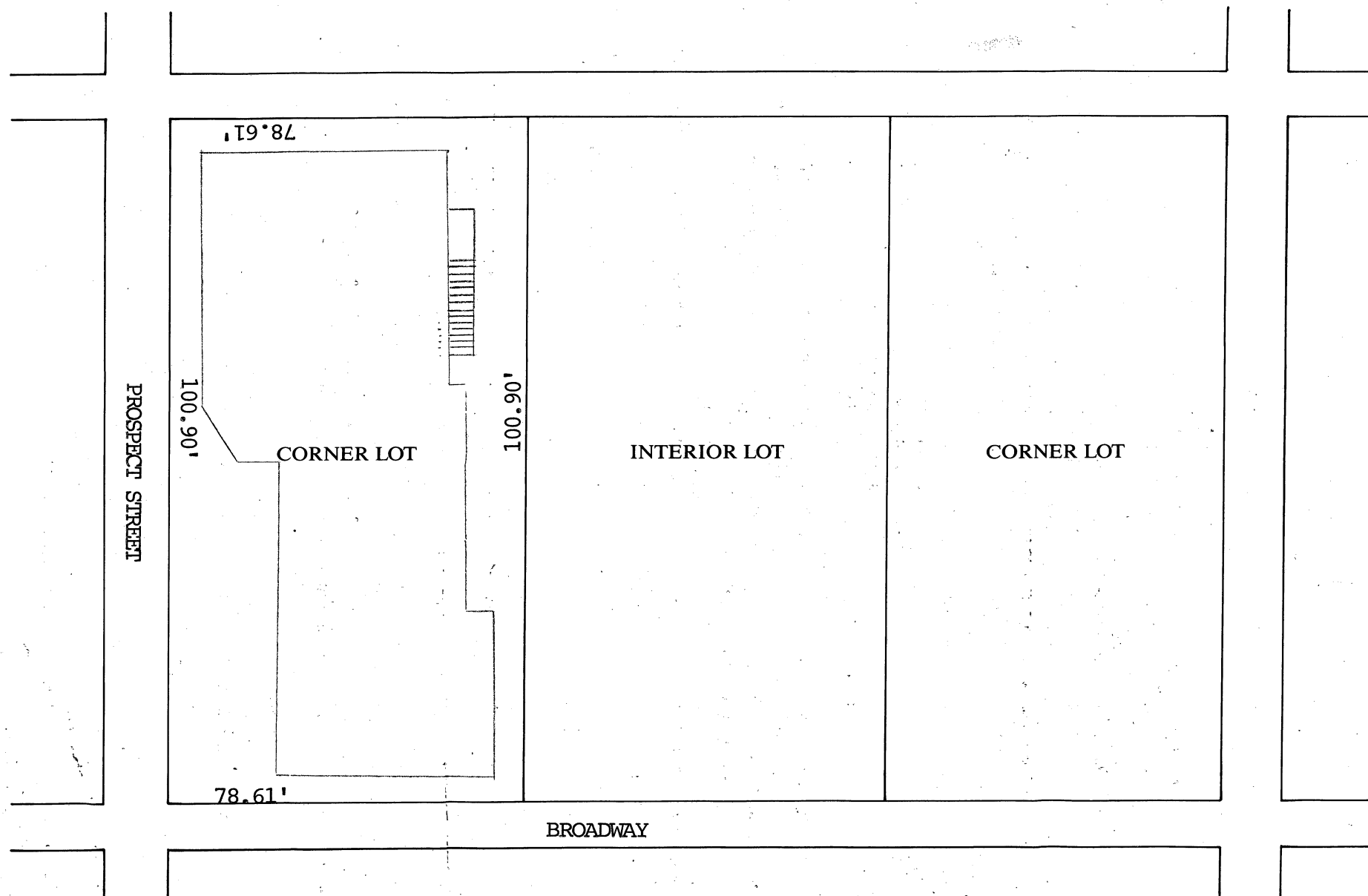
PART I:

Address of proposed curb cut or off-street parking facility:	166-172 Prospect Street, Cambridge 315-317 Broadway, Cambridge
Frontage: 100.90 feet	Block and Lot: Block 87-Lot 153
Setback (distance from building to sidewalk):	27.5 feet (Prospect St.) / 3.5 feet (Broadway)
Distance from proposed driveway to surrounding structures and property line:	
Dimensions of proposed driveway:	15 feet wide x 27 feet
Location of any trees, sign posts, fire hydrants, utility poles, etc., in direct vicinity of proposed driveway:	NONE

- ☒ Plot plan is included
- ☒ Sketch of driveway with cost estimate is included --NO COST ESTIMATE--DRIVEWAY ALREADY BUILT
- ☐ All abuttor's forms are included

DRAWING 1:

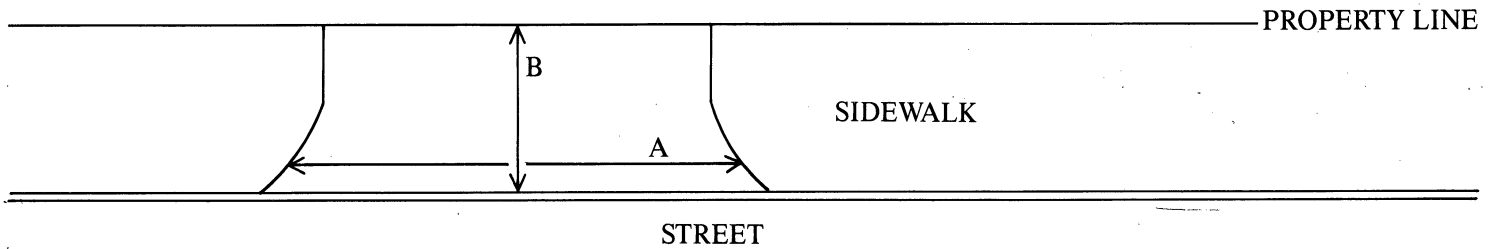
PLEASE INDICATE LOCATION OF HOUSE AND DRIVEWAY.
BE SURE TO GIVE DIMENSIONS OF LOT.



DRAWING 2:

SKETCH OF PROPOSED DRIVEWAY WITH COST ESTIMATE

CITY OF CAMBRIDGE



A = _____ FT. ÷ 3 = _____ YARDS

DRIVEWAY ALREADY BUILT

B = _____ FT. ÷ 3 = _____ YARDS

A × B = _____ SQUARE YARDS

COST ESTIMATE:

BRICK: _____ SQUARE YARDS × \$70/SQUARE YARD = \$ _____

BRICK ON CONCRETE: _____ SQUARE YARDS × \$85/SQUARE YARD = \$ _____

CONCRETE: _____ SQUARE YARDS × \$40/SQUARE YARD = \$ _____

ASPHALT: _____ SQUARE FEET × 1 TON/40 SQUARE FEET × \$125/TON = \$ _____

DRIVEWAY ALREADY MADE.

DEPARTMENT OF PUBLIC WORKS SCHEDULED DATE FOR CONSTRUCTION:

/ /

DEPARTMENT OF PUBLIC WORKS STATED FEE: \$ _____

The undersigned agrees to pay the stated fee for the driveway installation in full within two (2) weeks of the estimated starting date of construction before the Department of Public Works shall proceed with construction:

Owner's signature: AKIAP? SUE Date: 9-30-96

Address: 204 Prospect St - Camus -

Funds Received: \$ _____

Check Number: _____

APPLICATION FOR DRIVEWAY CUTS AND OPENINGS

CITY OF CAMBRIDGE

PART II: INSPECTIONAL SERVICES DEPARTMENT

☒ Application approved

☐ Application denied

Reason: B2A 7325

Signature: *[Signature]* THIS WAS PREVIOUSLY

Date: 9/30/96

Title: APPROVED BY CITY

PART III: TRAFFIC AND PARKING DEPARTMENT

☒ Application approved

☐ Application denied

Reason:

Signature: *[Signature]*

Date: 11/20/96

Title: DEP TRAFFIC DIR.

PART IV: HISTORICAL COMMISSION

☒ Application approved

☐ Application denied

Reason:

Signature: *[Signature]*

Date: 11/20/96

Title: Exec. Dir.

PART V: PUBLIC WORKS DEPARTMENT

☒ Application approved

☐ Application denied

Reason:

Signature: *[Signature]*

Date: 11/20/96

Title: Supt of Streets



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

(617) 349-4260

FAX (617) 349-4307

tty/TDD (617) 492-0235

D. MARGARET DRURY
CITY CLERK

DONNA P. LOPEZ
DEPUTY CITY CLERK

October 24, 1996

Dear Neighborhood Representative:

This office is in receipt of a copy of a petition from Ahafi Suod requesting *a new curb cut at the premises numbered 315-317 Broadway and 166-172 Prospect Street, Cambridge, Massachusetts.*

The City Council has directed that all curb cut petitions be submitted to the appropriate Neighborhood Associations for the locality where the curb cut would be made, so that the association may have an opportunity for review, prior to action by the City Council.

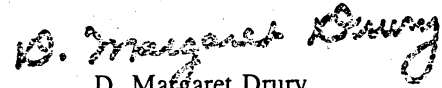
Please indicate by return mail your approval or disapproval of the petition within twenty one days from the date of this letter. If the response is "disapproval" please state reasons. Be sure to sign the form and include a daytime phone number. I have enclosed a self-addressed stamped envelope to facilitate your reply.

As soon as this office has received both the completed application and your neighborhood association response, I will place the petition on the agenda for the next City Council meeting. If I do not receive a response from your neighborhood organization by twenty one days from the date of this letter, I will place the petition on the agenda for the next City Council meeting.

If your neighborhood association cannot complete its review by twenty one days from today, you may extend the reply time another seven days by requesting an extension by letter to me with a copy to the petitioner. However, I urge you to make every effort to complete your review as soon as possible.

Thank you for your cooperation.

Sincerely yours,


D. Margaret Drury
City Clerk

Name of Neighborhood Association: Benjamin Barnes-Neighborhood 4 Coalition

hereby _____ approve _____ disapprove of said driveway petition.

Comments: _____

Signature of authorized association representative _____

Daytime telephone no. _____

cc: Petitioner

CITY HALL, 795 MASSACHUSETTS AVENUE CAMBRIDGE, MASSACHUSETTS 02139



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

(617) 349-4260

FAX (617) 349-4307

tty/TDD (617) 492-0235

D. MARGARET DRURY
CITY CLERK

DONNA P. LOPEZ
DEPUTY CITY CLERK

October 24, 1996

Dear Neighborhood Representative:

This office is in receipt of a copy of a petition from Ahafi Suod requesting *a new curb cut at the premises numbered 315-317 Broadway and 166-172 Prospect Street, Cambridge, Massachusetts.*

The City Council has directed that all curb cut petitions be submitted to the appropriate Neighborhood Associations for the locality where the curb cut would be made, so that the association may have an opportunity for review, prior to action by the City Council.

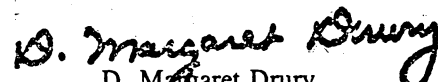
Please indicate by return mail your approval or disapproval of the petition within twenty one days from the date of this letter. If the response is "disapproval" please state reasons. Be sure to sign the form and include a daytime phone number. I have enclosed a self-addressed stamped envelope to facilitate your reply.

As soon as this office has received both the completed application and your neighborhood association response, I will place the petition on the agenda for the next City Council meeting. If I do not receive a response from your neighborhood organization by twenty one days from the date of this letter, I will place the petition on the agenda for the next City Council meeting.

If your neighborhood association cannot complete its review by twenty one days from today, you may extend the reply time another seven days by requesting an extension by letter to me with a copy to the petitioner. However, I urge you to make every effort to complete your review as soon as possible.

Thank you for your cooperation.

Sincerely yours,


D. Margaret Drury
City Clerk

Name of Neighborhood Association: Ralph Boynton-Neighborhood 4 Coalition

hereby _____ approve _____ disapprove of said driveway petition.

Comments: _____

Signature of authorized association representative _____

Daytime telephone no. _____

cc: Petitioner

CITY HALL, 795 MASSACHUSETTS AVENUE CAMBRIDGE, MASSACHUSETTS 02139



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

(617) 349-4260

FAX (617) 349-4307

tty/TDD (617) 492-0235

D. MARGARET DRURY
CITY CLERK

DONNA P. LOPEZ
DEPUTY CITY CLERK

October 24, 1996

Dear Neighborhood Representative:

This office is in receipt of a copy of a petition from Ahafi Suod requesting *a new curb cut at the premises numbered 315-317 Broadway and 166-172 Prospect Street, Cambridge, Massachusetts.*

The City Council has directed that all curb cut petitions be submitted to the appropriate Neighborhood Associations for the locality where the curb cut would be made, so that the association may have an opportunity for review, prior to action by the City Council.

Please indicate by return mail your approval or disapproval of the petition within twenty one days from the date of this letter. If the response is "disapproval" please state reasons. Be sure to sign the form and include a daytime phone number. I have enclosed a self-addressed stamped envelope to facilitate your reply.

As soon as this office has received both the completed application and your neighborhood association response, I will place the petition on the agenda for the next City Council meeting. If I do not receive a response from your neighborhood organization by twenty one days from the date of this letter, I will place the petition on the agenda for the next City Council meeting.

If your neighborhood association cannot complete its review by twenty one days from today, you may extend the reply time another seven days by requesting an extension by letter to me with a copy to the petitioner. However, I urge you to make every effort to complete your review as soon as possible.

Thank you for your cooperation.

Sincerely yours,

D. Margaret Drury
City Clerk

Name of Neighborhood Association: Karen Larson-Inman Square Improvement Association

hereby _____ approve _____ disapprove of said driveway petition.

Comments: _____

Signature of authorized association representative _____

Daytime telephone no. _____

cc: Petitioner



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

(617) 349-4260

FAX (617) 349-4307

tty/TDD (617) 492-0235

D. MARGARET DRURY
CITY CLERK

DONNA P. LOPEZ
DEPUTY CITY CLERK

October 24, 1996

Dear Neighborhood Representative:

This office is in receipt of a copy of a petition from Ahafi Suod requesting *a new curb cut at the premises numbered 315-317 Broadway and 166-172 Prospect Street, Cambridge, Massachusetts.*

The City Council has directed that all curb cut petitions be submitted to the appropriate Neighborhood Associations for the locality where the curb cut would be made, so that the association may have an opportunity for review, prior to action by the City Council.

Please indicate by return mail your approval or disapproval of the petition within twenty one days from the date of this letter. If the response is "disapproval" please state reasons. Be sure to sign the form and include a daytime phone number. I have enclosed a self-addressed stamped envelope to facilitate your reply.

As soon as this office has received both the completed application and your neighborhood association response, I will place the petition on the agenda for the next City Council meeting. If I do not receive a response from your neighborhood organization by twenty one days from the date of this letter, I will place the petition on the agenda for the next City Council meeting.

If your neighborhood association cannot complete its review by twenty one days from today, you may extend the reply time another seven days by requesting an extension by letter to me with a copy to the petitioner. However, I urge you to make every effort to complete your review as soon as possible.

Thank you for your cooperation.

Sincerely yours,

D. Margaret Drury
City Clerk

Name of Neighborhood Association: John Pitkin- Mid Cambridge Neighborhood Association

hereby _____ approve _____ disapprove of said driveway petition.

Comments: _____

Signature of authorized association representative _____

Daytime telephone no. _____

cc: Petitioner

CITY HALL, 795 MASSACHUSETTS AVENUE CAMBRIDGE, MASSACHUSETTS 02139



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

(617) 349-4260

FAX (617) 349-4307

tty/TDD (617) 492-0235

RECEIVED BY
OFFICE OF CITY CLERK
96 NOV -4 AM 11:54
CAMBRIDGE MA.

D. MARGARET DRURY
CITY CLERK

DONNA P. LOPEZ
DEPUTY CITY CLERK

October 24, 1996

Dear Neighborhood Representative:

This office is in receipt of a copy of a petition from Ahafi Suod requesting *a new curb cut at the premises numbered 315-317 Broadway and 166-172 Prospect Street, Cambridge, Massachusetts.*

The City Council has directed that all curb cut petitions be submitted to the appropriate Neighborhood Associations for the locality where the curb cut would be made, so that the association may have an opportunity for review, prior to action by the City Council.

Please indicate by return mail your approval or disapproval of the petition within twenty one days from the date of this letter. If the response is "disapproval" please state reasons. Be sure to sign the form and include a daytime phone number. I have enclosed a self-addressed stamped envelope to facilitate your reply.

As soon as this office has received both the completed application and your neighborhood association response, I will place the petition on the agenda for the next City Council meeting. If I do not receive a response from your neighborhood organization by twenty one days from the date of this letter, I will place the petition on the agenda for the next City Council meeting.

If your neighborhood association cannot complete its review by twenty one days from today, you may extend the reply time another seven days by requesting an extension by letter to me with a copy to the petitioner. However, I urge you to make every effort to complete your review as soon as possible.

Thank you for your cooperation.

Sincerely yours,

D. Margaret Drury

D. Margaret Drury
City Clerk

Name of Neighborhood Association: John Pitkin- Mid Cambridge Neighborhood Association

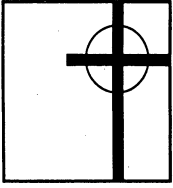
hereby _____ approve _____ disapprove of said driveway petition.

Comments: *The subject property is not in Mid-Cambridge. No comment*

Signature of authorized association representative *John Pitkin*

Daytime telephone no. *497-8171*

cc: Petitioner



FAITH
LUTHERAN
CHURCH

RECEIVED BY
OFFICE OF CITY CLERK

96 DEC 12 PM 1:08

CAMBRIDGE MA.

311 Broadway
Cambridge, MA 02139
617-354-0414

The Rev. Michael A. Cook, Pastor

December 10, 1996

Cambridge City Council
795 Mass Avenue
Cambridge, Mass 0239

Dear Council Members:

Grace and Peace!

This letter is to express our approval of the curb cut requested by the Islamic Society of Boston for their property located at 315 Broadway.

Peace be with your Spirit.

The Rev. Michael Cook
Pastor

RECEIVED BY
OFFICE OF CITY CLERK

96 DEC 12 PM 1:07

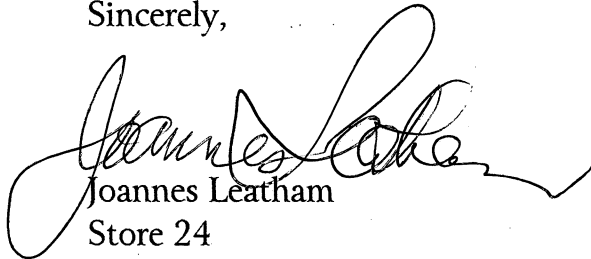
CAMBRIDGE MA.

November 27, 1996

City Council
Cambridge, MA 02139

I would hereby like to offer my support of the curb cutting on the 315 Broadway property. This particular property has been vacant for some time now and I welcome this positive improvement. Myself and other community members look forward to the completion of this project.

Sincerely,



Joannes Leatham
Store 24

RECEIVED BY
OFFICE OF CITY CLERK

96 DEC 12 PM 1:07

CAMBRIDGE MA.

December 03, 1996

City Council
Cambridge, MA 02139

I would hereby like to offer my support of the curb cutting project on the 315 Broadway property. This particular property has been vacant for some time now and I welcome this positive improvement. Myself and other community members look forward to the completion of this project.

Sincerely,



Chung S. Park
Owner
Koreana Restaurant & Bar
154-158 Prospect Street
Cambridge, MA 02139

RECEIVED BY
OFFICE OF CITY CLERK
96 DEC 12 PM 1:07
CAMBRIDGE MA.

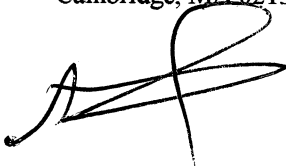
December 02, 1996

City Council
Cambridge, MA 02139

I would hereby like to offer my support of the curb cutting on the 315 Broadway property. This particular property has been vacant for some time now and I welcome this positive improvement. Myself and other community members look forward to the completion of this project.

Sincerely,

Eddie Elias
Manager of Broadway Mobil
320 Broadway
Cambridge, MA 02139

A handwritten signature in black ink, appearing to be 'Eddie Elias', written over the typed name and address.

City Council
City of Cambridge

Dec. 12, 1996

Dear City Councilor's:

Many times in the pass weeks, My self and other member of the Society contacted our neighbor Mr. Jane Hahdle and Asked him to write us a letter of support. He expressed his agreement to do so. Up until last night visit we have not received such letter.

Sincerely

~~AHAFI SUOD~~

Suod Ahafi, Trustee

RECEIVED BY
OFFICE OF CITY CLERK
96 DEC 12 PM 1:07
CAMBRIDGE MA.



8114

City of Cambridge

MASSACHUSETTS 96 NOV -7 PM 3:01

BOARD OF ZONING APPEAL
CAMBRIDGE MA.

CASE NO: 7325

LOCATION: 315 Broadway Business A-1 Zone
Cambridge, MA

PETITIONER: Islamic Society Of Boston - Suod Ahafi

PETITION: Variance: To legalize the placement of existing structure at 315 Broadway and 162 Prospect Street, if granted this variance would change the commitments made by the prior owner of the property and terms of the prior variance granted in case #6951, the settlement agreement and the order of the Court, between the prior owner City Of Cambridge and multiple parties with respect to multiple law suits.

VIOLATIONS: Art. 6.000, Sec. 6.44.1B (Off Street Parking Facilities). Sec. 6.48.1 (Landscaping). Sec. 6.42 (Off Street Parking Spaces). Art. 5.000, Sec. 5.33 (Table Of Dimensional Requirements). Sec. 5.40 (Transitional Requirements).

DATE OF PUBLIC NOTICE: August 15 & 22, 1996

DATE OF PUBLIC HEARING: August 29, 1996

MEMBERS OF THE BOARD:

John Miller, Chairperson	X
Lauren Curry	
Charles Pierce	X
Michael Wiggins	X
John O'Connell	X

ASSOCIATE MEMBERS:

Susan Spurlock	
Theodore Hartry	X
Arch Horst	
Laura Kershner	
James Daniel	
David Gray Hanson	

Members of the Board of Zoning Appeal heard testimony and viewed materials submitted regarding the above request for relief from the requirements of the Cambridge Zoning Ordinance.

The Board is familiar with the location of the petitioner's property, the layout and other characteristics as well as the surrounding district.

Case No.: 7325
Location: 315 Broadway/162 Prospect Street
Petitioner: Islamic Society of Boston

On October 10, 1996, Suod Ahafi of 102 Prospect Street, Cambridge, Trustee of the Islamic Society of Boston Trust, appeared before the Board of Zoning Appeal seeking a variance to legalize the placement of the existing structure at 315-317 Broadway and 166-172 Prospect Street, which, if granted, would change the commitments made by the prior owner of the property and terms of the prior variance granted in Case #6951, the settlement agreement and the order of the Court, between the prior owner, the City of Cambridge, and multiple parties with respect to multiple law suits at 315 Broadway Street. The petitioner submitted plans, drawings and photographs detailing the proposed project.

The Chair of the Board mentioned that this case had been continued, on August 29, September 19, and September 26, 1996, so that the petitioner could meet and continue dialogue with the City Solicitor's Office.

At the October 10, 1996 BZA Hearing, The Chair read into the record a memorandum dated October 10, 1996 from Nancy Glowa, of the Office of the City Solicitor, stated that "As you may recall, the City was involved in several lawsuits with the former owner, Elie Jammal, regarding the above referenced commercial property at the corner of Broadway and Prospect Street. After participating in extensive settlement negotiations and mediation, the parties reached a comprehensive settlement as to all issues in all four cases. Accordingly, a Settlement Agreement was entered into by the City and the other parties to the lawsuits, which specified the detailed obligations each party was to fulfill.

Pursuant to the Agreement, Mr. Jammal filed applications for and obtained: 1) a variance and special permit from the Inspectional Services Department to correct the premises' parking, landscaping, setback and handicap access violations under the Cambridge Zoning Ordinance, the State Building Code and the Architectural Access Code; 2) a curb cut from the City Council to legalize vehicular access to the premises from Prospect Street; and 3) authorization from the Cambridge Interim Parking Control Commission for authorization as to the number of parking spaces at the premises.

Each of those applications was approved upon the express condition that Mr. Jammal comply with each and every term of the Settlement Agreement, which in turn became part of the Final Judgement and Order of the Court in each of the four lawsuits. Additionally, the Architectural Access Board made compliance with the terms of the Settlement Agreement an express condition of its conditional approval of Mr. Jammal's proposed provisions for handicap access to the property, subject to review upon completion.

Mr. Jammal subsequently declared bankruptcy, and the lender which held a mortgage upon the property foreclosed upon and sold the property in August, 1995. The new property owners are the Trustees of the Islamic Society of Boston Trust (the "Trust"). Mr. Jammal, and later, the Trust, have been in breach of their obligations under the Settlement Agreement and orders of the court for quite some time, and the relief granted by the BZA has lapsed for failure to timely act upon the variance and special permit, which in turn has invalidated the other forms of relief granted.

The Trust has now presented an application for a variance from the BZA, seeking to obtain a new variance for the same relief granted in the original lapsed variance, and to modify some of their obligations under the Settlement Agreement (which runs with the land, and therefore was attached to their purchase of the property). Accordingly, they sought, and received, approval for a proposed Modification of the Settlement Agreement from the various branches of the City and related entities which granted their approvals of the relief previously sought subject to fulfillment of the terms of the Settlement Agreement (the "Modification"). A fully executed copy of the Modification is attached hereto.

The request for a variance was scheduled to be heard by the BZA on August 29, 1996, which was continued to provide all concerned persons an opportunity to consider the proposal and seek consensus as to the proposed Modification. The BZA rescheduled the case to September 9, 1996, which was later continued to October 10, 1996, by agreement of all parties.

Conclusion and request for relief to be granted:

Because of the complexity and number of issues contemplated by the Settlement Agreement and incorporated as conditions to all forms of relief previously granted, the City requests that the Board grant the variance only if all of the conditions as set forth in the Modification to the Settlement Agreement be made a part of the variance granted, and that the grant of the variance be made further dependant on all requirements of the Modification being met by the Petitioner, including City Council approval of the curb cut application, Interim Parking Control Commission ("IPCC") approval of the parking plan, and Architectural Access Board ("AAB") approval of the variance for a handicap lift, if such variance is required by the AAB.

The City respectfully requests that the above paragraph be read into the record in its entirety to fully document these conditions to the grant of the variance, and that a copy of the executed Modification be attached to the variance Decision as an incorporated part thereof."

No abutters were present and no other letters were submitted from any abutters indicating any support of or opposition to the variance.

After discussion, the Chair moved that the Board adopt the memorandum of October 10th, written by Nancy Glowa, with all the conditions as so stated, and that the variance approved by the Board includes as a condition the terms of the Settlement Agreement, as modified to approved the request for a variance to legalize the placement of the existing structure at 315-317 Broadway and 166-172 Prospect Street, which will change the commitments made by the prior owner of the property and the terms of the prior variance granted in Case #6951. The five member Board voted unanimously to grant the variance.

The Board based its decision on the hardship caused the Petitioner by the literal enforcement of the Ordinance. The hardship is owing to the shape and location of the structures and the land on which they are situated, but does not affect generally the zoning district in which they are located. The Board also found that desirable relief could be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Ordinance.

The Board of Zoning Appeal is empowered to waive local zoning regulations only. This decision therefore does not relieve the petitioner in any way from the duty to comply with local ordinances and regulation of other local agencies, including, but not limited to the Historical Commission, License Commission and the Rent Control Board and/or compliance with requirements pursuant to the Building Code and other applicable codes.


John Miller, Chairperson

Attest: A true and correct copy of decision filed with the offices of the City Clerk and Planning Board on Nov. 7, 96 by Maria Pacheco, Clerk.

Twenty days have elapsed since the filing of this decision

No appeal has been filed _____.

Appeal has been filed and dismissed or denied _____

Date _____ City Clerk.

Consent Communication #1

H-193

Petition was received from Ahafi Suod,
requesting a curb cut at the premises
numbered 166-172 Prospect Street and
315-317 Broadway.

In City Council December 16, 1996

ORDER ADOPTED

with conditions
outlined in
Agenda #25