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**Moynihan, Cornelius**

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**From:** Howard Medwed [hmedwed@burnslev.com]  
**Sent:** Friday, January 06, 2012 12:41 PM  
**To:** 'mameve'; Moynihan, Cornelius; 'Bonnie Moynihan (moynihan@dor.state.ma.us)'; 'Howard Medwed (hmedwed@comcast.net)'; 'Brian C. Levey'  
**Subject:** AVON HILL - MCQUILLAN APPLICATION APPEAL JAN. 5, 2012 (01667332).PDF  
**Attachments:** AVON HILL - MCQUILLAN APPLICATION APPEAL JAN. 5, 2012 (01667332).PDF

Enclosed is the date stamped appeal filed yesterday with the Cambridge City Clerk. The hearing is Ground Hog Day at 6 PM at the Cambridge City Center. I plan to do a memo expanding on each appeal point.

Howard D. Medwed  
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\*Only print this e-mail if necessary.

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**From:** Susan Small  
**Sent:** Friday, January 06, 2012 11:07 AM  
**To:** Howard Medwed  
**Subject:** Emailing: AVON HILL - MCQUILLAN APPLICATION APPEAL JAN. 5, 2012 (01667332).PDF

**Howard D. Medwed  
58 Washington Avenue  
Cambridge, Massachusetts 02140**

January 5, 2012

The City Clerk's Office  
Cambridge City Hall  
795 Massachusetts Ave  
Cambridge, MA 02139

2012 JAN -5- P 4:47  
OFFICE OF THE CITY CLERK  
CAMBRIDGE, MASSACHUSETTS

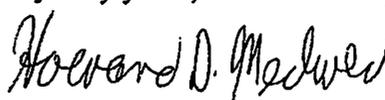
Re: Avon Hill Neighborhood Conservation District Commission ("AHNCDC")  
Case # AH-407 37 Lancaster Street  
Application of John McQuillan to construct a handicap ramp at rear entry and  
driveway at north side of property

Dear Sir/Madam;

Enclosed for filing is an appeal to the Cambridge Historical Commission of the  
AHNCDC determination filed with your office on December 22, 2011 in the above referenced  
matter.

Please acknowledge receipt of this enclosure on the copy of this letter provided.

Very truly yours,



Howard D. Medwed

cc with enclosure: Cambridge Historical Commission

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Cambridge Historical Commission

2012 JAN - 5 P 4: 47

Appeal from a Determination of the  
Avon Hill Neighborhood Conservation District Commission

OFFICE OF THE CITY CLERK  
CAMBRIDGE, MASSACHUSETTS

Case #AH-407 37 Lancaster Street

Application of John McQuillan to construct a handicap ramp at rear entry and driveway on the north side of property

At a hearing held on December 19, 2011 the Avon Hill Neighborhood Conservation District Commission ("Commission") at which Vice Chairman Art Bardige, Member Catherine Henn and Alternates Heli Meltsner and Mark Goldberg voted 3 to 1 to issue a certificate of appropriateness in respect to project described in the above referenced application; that determination was filed on December 22, 2011 with the City clerk of Cambridge.

The Appellants are ten or more registered voters of the City of Cambridge whose names and signatures are set out below who oppose the foregoing determination for the reasons set out below and such other reasons as the Cambridge Historical Commission ("Historical Commission") may determine. Section 2.78.240 of the City Code of Cambridge provides in pertinent part:

Any applicant aggrieved by a determination of a neighborhood conservation district commission or ten registered voters of the City opposing a determination under this article may appeal to the Historical Commission within twenty days after the filing of the notice of such determination with the City Clerk. The Historical Commission may overrule the determination and return it for reconsideration consistent with that finding.

The Commission committed the following errors in the December 19 hearing:

1. Bifurcation of the project- While segments of a larger project may be considered severally, such segmentation is erroneous if the segments are interrelated so as not to be severable. In this case the commission's failure to consider the Applicant's plans in respect to the main circular driveway simultaneously with the rear driveway proposal was erroneous. The plans for the main circular driveway and the proposed rear driveway are inextricably linked, and both plans should have been considered together. Failure to require joinder of the plans was erroneous. Steps which are required to give functionality to the project under consideration must be considered together.
2. Failure to balance abutters' detriment and Applicant's benefit- The Vice Chair ruled that the Commission should not consider an alternative plan which would have satisfied the Applicant's stated need for the rear driveway, namely vehicular access to the handicap ramp without requiring a rear driveway extending to Washington Avenue. This unnecessary driveway requires a curb cut on Washington Avenue. This is contrary to the mandate that the Commission seek to achieve consensus (Article V 4 of the Council Order establishing the Commission). This consensus includes Members, Alternates and

public comments. This would not permit lawn and planting in the place where the driveway would come out on Washington. This is contrary to the conservation the visual goals set out in Article V B of the Council Order which includes balancing the interests of applicants with the District's patterns of open vistas, enhancing the pedestrians visual enjoyment and preserving the visual form of the District's landscapes. It was erroneous for the chair to disallow the suggested non-driveway supported by Alternates Goldberg and Meltsner and Member Henn.

3. Failure to allow opponents to rebut the Applicant's personal closing speech- The Applicant introduced new, misleading prejudicial information about the opponents. The closing speech referred to anonymous written threats which did not emanate from any of the abutters and referred to outreach efforts which terminated at least 5 months before the current application was filed. Failure to allow rebuttal was erroneous.
4. Lack of due process-The Vice Chairman of the Commission's discussion indicated that he had either decided the case prior to the hearing or based his decision in material part on the new, misleading information referred to in 3 above and 5 below.
5. Use of criteria which are other than in the guidelines- Vice Chair Bardige indicated that the basis of his decision was a desire not to see the house continue to be unoccupied or be put back on the market. The implied threat of these results was neither part of the evidence nor an allowable basis for a decision.
6. Voting irregularities-The colloquy between Alternate Meltsner and Member Henn during the discussion phase of the hearing in which they indicated that they did not favor the issuance of a certificate of appropriateness as to the rear driveway, but Member Henn indicated that she voted in favor of the Applicant to avoid a tie. Alternate Goldberg indicated that he favored a solution which avoided having a rear driveway, which was supported by Alternate Meltsner and Member Henn and ruled out by the Vice Chairman. In the absence of these irregularities the vote would have been a tie or 3 to 1 against the issuance of a certificate of appropriateness.

Based on the foregoing errors and such other reasons as the Historical Commission may find the Appellants ask the Historical Commission to overrule the determination of the Commission in this matter and remand this case for consideration consistent with its findings.

Executed under seal this 5th day of January, 2012.

1. <u>Howard D. Meadow</u>	<u>58 WASHINGTON AVE.</u>
<u>HOWARD D. MEADOW</u>	
2. <u>Mary H. Tamblich</u>	<u>58 Washington Avenue</u>
<u>MARY H. TAMBlich</u>	
3. <u>Cornelius J. Moynihan</u>	<u>58 Washington Ave.</u>
<u>CORNELIUS J. MOYNIHAN</u>	
4. <u>Elizabeth R. Moynihan</u>	<u>58 Washington Ave.</u>
<u>ELIZABETH R. MOYNIHAN</u>	
5. <u>Mary H. Tamblich</u>	<u>33 Arlington St.</u>
<u>Mary H. Tamblich</u>	

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|-----|---|---------------------|
| 6.  | <del>Scott Doughty</del><br>SCOTT DOUGHTY           | 37 Arlington Street |
| 7.  | <del>Wylie O'H. Doughty</del><br>WYLIE O'H. DOUGHTY | 37 Arlington Street |
| 8.  | <del>Margory Wunsch</del><br>MARGORY WUNSCH         | 78 Washington Ave.  |
| 9.  | <del>Carl Wunsch</del><br>Carl Wunsch               | 78 Washington Ave   |
| 10. | <del>Brenda Steinberg</del><br>Brenda Steinberg     | 63 Washington Ave   |
| 11. |   |                     |
| 12. |   |                     |
| 13. |   |                     |

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