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Jan 22, 2012

TO THE COUNCILORS AND CITY MANAGER OF THE CITY OF  
CAMBRIDGE:

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OFFICE OF THE CITY CLERK  
CAMBRIDGE, MASSACHUSETTS

We are writing concerning the curb cut Eric Griffith seeks to make on Wyman Street, a short narrow dead-end street the end of which borders on Mr. Griffith's property at 79 Raymond Street. Wyman Street is bounded on its northern side by the 79 Raymond Street property of Mr. Griffith and by property of Stephen Fitzsimmons at 3 Wyman Street, which is adjacent to the proposed curb cut and driveway. The southern side of Wyman Street is bounded by property of Margot Welch at 77 Avon Hill Street and property of Judith Parker at 8 Wyman Street. Ms. Parker's house and driveway are directly opposite the location of the proposed curb-cut.

In accordance with the City's procedure for approving curb-cuts Ms. Parker and Mr. Fitzsimmons were asked to sign abutter forms indicating approval or disapproval of the curb-cut; Mr. Fitzsimmons signed his approval. Ms. Parker did not sign and wrote a letter strongly opposing the curb-cut placement on the grounds that it "would increase the traffic and parking, turning what is a 'manageable' cul-de-sac into a congested one—which in winter is heavily congested as is." Also the residents of 20 Bellevue Avenue, whose property is directly adjacent to the end of the proposed driveway, were asked to sign the form: one of them, Lowry Pei, signed; the other, Vaughn Sills, did not sign and has since signed a petition, sent to the Council, opposing the curb-cut. A fourth approval, signed by a signature that appears to be Farah Ibrahim (Mr. Griffith's wife), for whose benefit the curb-cut is sought, and who is not an abutter, is of no effect.

Of the three households most affected by the curb cut one approved it, one disapproved, and the approval of the third is questionable because only one member of the household signed it.

Mr. Griffith maintains that the curb cut is necessary so that his in-laws may have a separate entrance into their apartment and that the curb cut and driveway will be used only sparingly. We, neighbors, protest that once the curb cut is granted there can be no enforceable legal restriction on its use by Mr. Griffith or future owners of the property. We believe that use of Wyman Street as a passage to the 79 Raymond Street property will have an adverse

effect on the use and enjoyment of the properties on Wyman Street and upper Avon Hill Street now and in the future.

An opinion dated Feb. 1, 1996 from the City Solicitor (Russell Higley) discusses various state laws and court cases concerning a municipality's authority with respect to curb cuts and concludes, "there must be a balancing of the public interests involved and the private property owners' interests." The property owners' interest is then discussed as fundamentally a "right of access to the abutting public way." Citing 39 Am. Jur. 2nd, "Highways, Streets, and Bridges," §181 [1968]), the opinion then elaborates:

**It is important to note that the property owner has the right to construct a driveway in front of his premises only if reasonably necessary and if done in such a way as not to interfere with the rights of the public. . . . Accordingly, as this right is not absolute, it is significantly diminished where the property owner already has access to their premises from a public or private way, where it interferes with the rights of the public to have public shade trees, on-street parking, safe and smooth traffic flow, the preservation of historic structures, streets and neighborhoods, and the provision of services and utilities, etc., and is thus subject to a proper balancing of the private and public interests.**

*Since Mr. Griffith already has ample access to his property from 79 Raymond Street, the additional curb cut is superfluous; his in-laws can arrive at their apartment through the existing driveway. After consultation with neighbors about this matter Mr. Griffith asked his architect to come up with alternative access for his in-laws, not making use of the curb cut. In an email of December 11, 2011 Mr. Griffith acknowledge that none of the architect's solutions would "accommodate the access we are seeking for the already constructed house."*

The City Solicitor's letter next provides a list of criteria that the City Council, as well as the various city departments that review curb cut applications prior to the Council (the Inspectional Services Department of the Board of Zoning Appeal; the Traffic, Parking, and Transportation Department; the Historical Commission; and the Department of Public Works) should apply in reviewing these applications. The criteria relevant to our concerns are the following:

b. **“Review of traffic safety concerns,”** which includes **“a determination of what effect the driveway will have on the street it is on as to the volume of traffic. . .[and] the location of the proposed driveway in relation to other driveways.”**

*Two facts are relevant to a denial of the curb cut on these grounds: first, the proposed driveway is directly opposite the existing driveway of Judith Parker, a dissenting abutter; second, the Cambridge Nursery School is located across Avon Hill Street from Wyman Street. Monday through Friday through most of the year parents drop off and retrieve children from the school, parking temporarily on Avon Hill and Wyman Streets wherever they can find space. The additional curb cut on Wyman Street would thus impact traffic volume and parking availability during drop-off and pick-up time.*

e. **“Consideration of the concerns and responses of members of the community, including neighbors, abutters and the appropriate neighborhood associations in the area of the applicant”**

*Through numerous and strongly worded emails, letters, and petitions to and conversations with members of the City Council many neighbors have already voiced their opposition to the proposed curb cut and are doing so again with this letter.*

This legal opinion concludes with a consideration of what might happen if a Council decision on a curb cut went to court.

Although the above referenced case law suggests that a municipality must permit a property owner access to the premises from a public or private way, we believe that the special circumstances existing in the City of Cambridge, an old, densely developed and populated urban environment might well be sufficient to persuade a Court that a denial of a curb cut for vehicular access to a lot may be justifiable. **An even stronger argument can be made for the denial of a curb cut where one already exists. Thus, where a second or third curb cut is requested, and a review of the relevant criteria demonstrates that it would not be in the public's best interests to add another curb cut in that location, a denial of that application would in all likelihood be upheld by the Courts...** Accordingly, where some criteria support a grant of a curb cut and others support a denial, the

City Council must balance the various interests identified in the Memorandum and, guided by the appropriate considerations and potential impact on the community, and the Council's best judgment, attempt to arrive at the most reasonable decision. **The more objective and demonstrable the criteria, the stronger the case will be for validation of the City Council's decision to grant or deny a curb cut.**

We also wish to call the Council's attention to Provision 3 of the procedures for filing and processing an application for a curb cut, which states that an applicant for a curb cut "must also include signed abutter's forms of those abutters in front, side, rear, and across the street from the property which the curb cut will be made [sic]. If the applicant is unable to obtain these signatures, he/she must include a statement with the application that an attempt was made to secure the required signatures and that it was not possible to obtain them and indicate the reasons why it was not possible to obtain the signatures."

*It is not clear that Mr. Griffith has obtained all the required signatures, nor that he has attempted to obtain them, nor that he has included with the application a statement explaining why it was not possible to obtain the required signatures.*

In addition Provision 10 cautions applicants (in bold, full caps) not to **"EXPEND ANY MONEY ON MODIFICATIONS TO THEIR PROPERTY IN ANTICIPATION OF THEIR APPLICATION BEING APPROVED BY THE COUNCIL."** It then continues:

If a curb cut is required in connection with a project for which a building permit from the Inspectional Service Department is required, the building permit will not be issued until approval for the curb cut is first obtained from the Council. In extraordinary cases, an incremental (foundation, site work, etc.) building permit may be issued if the following conditions, as a minimum, are met: the application has been initiated with the Inspectional Services Department, approvals from abutters have been obtained, a hardship is demonstrated, **and** the applicant states that he/she is proceeding at his/her own risk."

issued. Yet it appears that the conditions necessary for "extraordinary cases" have not all been met: approvals have not been obtained from all the abutters; no hardship has been demonstrated; and the applicant, Mr. Griffith, has not stated that he is proceeding at his own risk.

In sum we ask the Council to reject Mr. Griffith's application for three reasons:

- 1) Mr. Griffith did not follow the correct application procedure. If he had applied for approval of the curb-cut before the building permit was issued, it might have been possible for him and his neighbors to negotiate an accommodation of his wishes with their concerns. Also it is not clear that all the abutters that were required to be consulted were consulted.
- 2) The effect of Mr. Griffith's obtaining the curb-cut would enhance the value of his property and diminish that of his close neighbors, in particular the value of Ms. Parker's property, which is directly opposite the proposed curb-cut and driveway.
- 3) In view of the fact that Mr. Griffith already has ample access to his property from Raymond Street, the benefit of the curb-cut to him is out-weighed by its detriment to Ms. Parker and other neighbors including the children attending the Cambridge Nursery School and their parents.

On behalf of many neighbors of the property that you will give this letter serious consideration. Thank you.

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40 Avon Hill St

77 Avon Hill St

77 Avon Hill St

54 Avon Hill St

Roy M. Shulman

44 Avon Hill St.

Opie Scovos

1 Hillside Pl.  
44 Avon Hill St

John Sete

Sarah H. Kneger

71 Avon Hill St.

Victoria Randle

46 Avon Hill St.

Jill Shulman

44 Avon Hill St.

Mike Melton

74 Avon Hill St

Sh. H. H.

82 Avon Hill St

May Sue Wagner

82 Avon Hill Street

John F. F.

21 Bates St

John F. F.

51 Avon Hill St.

Robert S. Bond

51 Avon Hill St.

Robert F. F.

39 Linnaean  
8 Wymann St.

John W. Parker

21 Bates St.

Robert F. F.

86 Avon Hill St.

Jessie Blout

39 Linnaean

Mary Rowe

103 Avon Hill St

Mary Jane Kornacki

Chas. H. Weed

109 Avon Hill St

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30 Hillside Ave

Jacqueline Olds

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Ann Lobb

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