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TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS

SPECIAL PERMIT AMENDMENT

Chestnut Street Donuts, Inc., applicant
ND Donuts, LLC, special permit amendment transfer recipient
397-399 Great Plain Avenue
Map 11, Parcel 1

November 21, 2019

Chestnut Street Donuts, Inc., made application to the Board of Appeals for a Special Permit Amendment to allow the transfer of the ownership as required in the Zoning Board Appeals Special Permit dated March 31, 2005 and amended in February 26, 2015 to another Dunkin' Donuts franchisee, ND Donuts, LLC. The property is located at 397-399 Great Plain Avenue, Needham, MA in the Neighborhood Business District. A public hearing was held in the Public Services Administration Building, 500 Dedham Avenue, Needham, MA, on Thursday, November 21, 2019 at 7:45 p.m.

Documents of Record:

- Application for Hearing, dated October 22, 2019, Clerk stamped October 28, 2019.
- 397-399 Great Plain Avenue, ZBA Special Permit Amendment, February 26, 2015.
- Application for Hearing dated January 28, 2015, Clerk stamped January 28, 2015.
- 397-399 Great Plain Avenue, ZBA Special Permit, March 31, 2005.
- Site Plan, prepared by Drake Associates, Inc., November 15, 2004, revised April 8, 2014.
- Email from Dennis Condon, Chief of Fire Department, November 8, 2019.
- Email from Tara Gurge, Assistant Public Health Director, November 13, 2019.
- Memo from John J. Schlittler, Chief of Police,
- Letter from David A. Roche, Building Commissioner, November 12, 2019.
- Letter from Lee Newman, Director of Planning and Community Development, November 20, 2019.

November 21, 2019

The Board included Jon D. Schneider, Chairman; Jonathan D. Tamkin, Member; and Howard S. Goldman, Member. Also participating were Kathy Lind Berardi, Associate Member and Peter Friedenber, Associate Member. Mr. Schneider opened the hearing at 7:45 p.m. by reading the public notice.

Dave Krumsiek, attorney representing the applicant, reported that the applicant is selling the business to Mark Pesce, principal of ND Donuts, LLC. As a condition of *Special Permit*, any transfer of ownership requires approval from the Board.

Mr. Pesce reported that he has been in the business for 37 years both in Dunkin corporate and as a franchise owner. He started in 1987 at his father's Dunkin Donuts in Medford and expanded into Winchester. Over the past 16 years he has built, with partners, over 60 Dunkin Donuts stores – 25 in Maine, 25 in Pennsylvania and 10 in Massachusetts. He recently bought the 10 Massachusetts stores from his partners and sold his Maine and Pennsylvania interests. He now wants to focus his business in Massachusetts.

His business philosophy is to have happy customers; happy team members and being a partner with the community. Presently he does business in Acton, Concord and Maynard. In those communities he has strong connections with the schools, sports and town events. He wants to carry that business philosophy to the four new stores in Needham and Dover as well.

He reported he is an award-winning Dunkin Donut franchisee and operator. His wife has joined him in his company and manages all the community relations and marketing.

He plans to keep the current staff to be overseen by his District Managers. Each District Manager oversees five stores. He recruits and promotes from within his company and hires from the community. The onsite managers will oversee the store employees in the day to day operations. He also provides support to his stores through the Director of Operations. Mr. Pesce offers benefits that a smaller franchisee cannot.

David Harrington, the applicant, reported that Mr. Pesce is buying four businesses: one is in Dover and three are in Needham. The Needham stores are located at 1203 Highland Avenue, 397-399 Great Plain Avenue and 260 Chestnut Street. Only 1203 Highland Avenue and 397-399 Great Plain Avenue have Special Permits that require business transfer approval. Mr. Harrington noted that the economics have change and that selling his stores to a better capitalized interest who has both corporate and store experience is mutually beneficial. He noted that Dunkin corporate supports the transfer as well.

Comments received:

- The Fire Department had no concerns.
- The Health Department requires the transfer recipient complete a Retail Food Permit Applications with required food permit renewal documents and permit fees prior to taking over the businesses and a Tobacco Permit Application.
- The Police Department has no issues.
- The Building Commissioner has no concerns.
- The Planning Board made no comment.

Mr. Schneider stated that the Special Permit at this location was controversial when granted. He noted that the Neighborhood District Zone does not allow fast food use. The Dunkin Donuts operation has been allowed as an accessory use to a convenience store, which is an allowed use. In order to stay in compliance with the Zoning By-Law, a convenience store is required.

He was concerned about the parking at the location. A condition of the Special Permit was to

place barriers to prevent parking in front of the business. He recalled that Mr. Fernandes, the previous owner, had attractive planters to prevent parking and to keep the area safe for pedestrians. He noticed that the planters have been replaced by orange cone(s). He circulated a picture of the current situation. He proposed that there be a condition that planters be required along the front to allow for pedestrian access but prevent parking and through traffic from the gas station. Mr. Pesce agreed to place planters in front of his business.

John Duffy, operating partner of the applicant, reported that the summer planters were hit by driving patrons of the Pharmacy. He explained that the planters were removed and replaced by cones in preparation of winter and to allow the Pharmacy's plow service to clear and sand the area. Mr. Schneider stressed that the planters were a safety concern and that a more careful plow service should be sought. Mr. Pesce agreed to the condition. He offered to stripe the area. Mr. Schneider urged that there be planters that are attractive and that they be placed so as to prevent cars from parking in the area and keep pedestrians safe.

Mr. Goldman moved to grant a Special Permit Amendment to allow the transfer of the business ownership from the applicant to ND Donuts LLC at the property located at 377-399 Great Plain Avenue conditioned on the placement of planters along the front of the property to prevent vehicular traffic and provide a safety buffer for pedestrians. Mr. Tamkin seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:08 p.m.

Findings:

On the basis of the evidence presented at the hearing on the application of Chestnut Street Donuts, Inc., d/b/a Dunkin' Donuts, for an amendment to Zoning Board Appeals Special Permit dated March 31, 2005 and amended in February 26, 2015, to allow for the transfer of the ownership of the Dunkin Donuts business located in the Neighborhood Business District at 397-399 Great Plain Avenue, from the applicant to ND Donuts LLC, the Board makes the following findings:

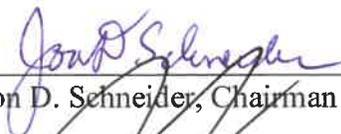
1. The premises is located at 397-399 Great Plain, within the Neighborhood Business District.
2. The applicant intends to sell, and ND Donuts LLC intends to purchase, the existing Dunkin' Donuts franchise business operated by the applicant at the premises and to continue to operate a Dunkin' Donuts franchise at this location. There will be no changes made to the established hours of operation, number of seats or take-out status.
3. The Dunkin' Donuts business at the premises was established as an accessory use to an existing convenience store under a Special Permit dated March 31, 2005 issued to the applicant. Ownership of the applicant was transferred to the present owners under an Amendment dated May 15, 2014. The business added 13 seats and rearranged the space in the premises under an Amendment dated February 26, 2015. Hours of operation were limited to 5:00 a.m. to 11:00 p.m., seven days a week.
4. ND Donuts LLC as transferee, has agreed to be bound, by all terms and conditions imposed under the Special Permit, as amended.

5. ND Donuts has experience in the operation of Dunkin Donuts franchises and is an appropriate transferee.

Decision:

On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, approves the transfer of the Special Permit dated March 31, 2005 and amended in February 26, 2015 for the Dunkin Donuts at 397-399 Great Plain Avenue from Chestnut Street Donuts, Inc. to ND Donuts, LLC subject to:

1. Compliance with all the terms and conditions of the Special Permit, as amended.
2. The holder of the Special Permit will continue to operate, at all times, a full-scale convenience store at the premises, and the Dunkin' Donut operation shall always be accessory to said convenience store use
3. Appropriate sized planters, to be used as barriers, shall all times be placed and maintained by the holder of the Special Permit along the front of the building in which the premise is located, and between the adjacent gas station and the pavement in front of the premises, to prevent vehicles from driving over the curb in front of the premises, or parking in this area, and to provide a safety buffer for pedestrians.
4. Failure to comply with any of the foregoing conditions at any time may constitute cause for the revocation of this Special Permit by the Board after hearing, with notice to the holder, and with such other notice as the Board in its sole discretion, shall deem due and sufficient.
5. The Special Permit, as amended, is issued to ND Donuts LLC only, and may not be transferred, set over, or assigned to any other person or entity without the prior written approval of the Board of Appeals following such hearing and notice, if any, as the Board, in its sole and exclusive discretion, shall deem due and sufficient. Any transfer of control of ND Donuts LLC directly or indirectly, or by operation of law, shall be deemed a transfer or assignment requiring approval of the Board.



Jon D. Schneider, Chairman



Jonathan D. Tamkin, Member



Howard S. Goldman, Member