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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Special Permit

***Nezahualcoytl Leon, Applicant
Stanley and Frances C. Ross, Trustees, Owners
73 Highland Avenue
Map 74, Parcel 5***

March 16, 2023

Nezahualcoytl Leon has applied to the Board of Appeals for a Special Permit under Sections 3.2.5, 3.2.5.2, 5.1.1.1, 5.1.1.5, 5.1.2, 5.1.3, and any other applicable Sections of the By-Law for a restaurant serving meals on the premises and take-out operation accessory to the restaurant and to waive strict adherence to the parking requirements. The request is associated with the establishment of a second location of the Hungry Coyote, a Mexican style restaurant, take out and catering services. The property is located at **73 Highland Avenue, Needham, MA** in the Highland Commercial 128 District. A public hearing was held remotely on Zoom, on Thursday, March 16, 2023 at 7:30 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped February 21, 2023.
- Cover Letter prepared by Frank Holmes, dated February 21, 2023.
- Boundary & Topographic Surveyor prepared by Stantec Consulting Services, Inc., stamped by Gerry L. Holdright, Land Surveyor, dated August 23, 2018.
- Site Plan, stamped by Frank Holmes, Professional Engineer, dated February 18, 2023
- Letter from Frank Holmes dated March 7, 2023 and attached Existing Floor Plan, EX1 prepared by Phung/Proizio, Inc. dated April 22, 2019.
- Letter from David R. Baker, dated February 21, 2023.
- Letter from Dave Roche, Building Commissioner, dated March 7, 2023.
- Email from Tara Gurge, Assistant Public Health Director, March 3, 2023.
- Letter from Lee Newman, Director of Planning and Community Development, dated March 7, 2023.
- Letter from Thomas Ryder, Town Engineer dated March 3, 2023.

- Email from Elizabeth Kaponya, 27 Highland Terrace, Needham Heights, dated March 15, 2023.
- Proposed Floor Plan, prepared by Frank Holmes (FH), dated March 16, 2023.

March 16, 2023

The Board included Jon D. Schneider, Chair; Jonathan D. Tamkin, Vice-Chair; and Howard S. Goldman, Member. Also participating was Nik Ligris, Associated Member. Mr. Schneider opened the hearing at 8:01 p.m. by reading the public notice.

Nezahualcoyotl Leon, the owner of Hungry Coyote, wants to build on the success of his current location at 1185 Highland Avenue and open a second business in Needham. He plans on operating a full-time, take-out restaurant starting with breakfast at 6:00 a.m. and operating through dinner until 9:00 p.m., seven days a week.

He proposed to have a similar operation to DeAngelo, which ran a sub shop at the location for 40 years. He plans to have two cash registers. Mr. Schneider noted that the By-Law requires 10 parking spaces for each cash register. Mr. Leon responded that he could operate his business with one cash register as he does at his current location.

Mr. Schneider asked about the servicing of the dumpster. Mr. Leon expected the dumpster to be serviced once a week for trash and recycling. The dumpster will have a full fenced enclosure.

Mr. Goldman asked about the schedule of deliveries. Mr. Leon said that he personally purchases all the products and there will be no large trucks for drop-off of product. For the first few years he expects to be doing all the purchasing himself.

Mr. Schneider noted that the prior Decision restricted deliveries to before 11:00 a.m. Mr. Leon was agreeable to continuing with that schedule.

Mr. Schneider stated that the prior Decision limited employee parking to three spaces with the employees to use the spaces on the north side. Mr. Leon agreed that three spaces for employee parking was adequate.

Mr. Schneider said that the prior Decision allows for a maximum of six employees. Mr. Leon said there would be a maximum of four employees at one time with three employees for lunch, and three employees for dinner.

Comments received:

- Engineering Department had no comment.
- Planning Board had no comment.
- Health Department requires the applicant to fill an online Food Permit Plan Review application, have sufficient parking lot spaces to allow for accessible separate trash, recycling dumpsters, and waste grease barrel with sufficient service schedule by a licensed waste hauler to prevent pest attraction, and review and approval of equipment

and protocols for catering.

- Building Department wanted to see a detailed floor plan which was provided. He noted that the parking plan has not changed from the previous plan except for the loss of one parking space from the State taking. The plan provided reflects the loss of the parking space. As the business is similar in use to the previous one, the conditions should be the same. The Commissioner had no objection.
- Elizabeth Kaponya, 27 Highland Terrace, asked that the No Parking limit on her street be changed to reflect the new hours of operation; and wanted the dumpster pick-up to be similar to the Panera Plaza dumpster: pick-up to be restricted to 8:30 a.m. -6:00 p.m.

Frank Holmes, son of the property owner, confirmed that there was a loss of a parking space from an eminent domain taking associated with the reconstruction of Highland Avenue. Mr. Schneider asked that Mr. Holmes review the parking required by the By-Law. Mr. Holmes described, that based on the By-Law, the restaurant is required to have 14 parking spaces - ten parking spaces per take-out station; plus four parking spaces associated with the 12 restaurant seats – one parking space per three seats. There are 14 spaces on the lot. The prior tenant had 14 seats inside, but this new tenant will have only 12 seats to compensate for the loss of the one parking space. Mr. Schneider recalled that the parking spaces do not meet design requirements but noted that the Board had granted a waiver in the past. Mr. Holmes stated that the layout of the parking lot has been the same since 1992.

Mr. Goldman thought it was a nice extension of a local business and thought that the parking works. He hoped the applicant will be successful in locating staff. He asked if we had received any objection from neighbors about the proposed hours of operation. Mr. Schneider responded that the Board had received a letter from a neighbor at 27 Highland Terrace...

Janet Epstein, 75 Highland Terrace, was glad to get someone into the building, but was concerned about the long hours the business will be open. She wanted the time of deliveries and trash pick-ups to be limited. She was concerned about people parking across the street on Highland Terrace. She thought once a week trash pick-up was insufficient. Mr. Schneider asked if pick up of trash after 7:00 a.m. would be reasonable. Ms. Epstein agreed that 7:00 a.m. was reasonable. Mr. Schneider said that the Health Department will provide oversight and regulate trash pick-up to be sure that it is sufficient. He also noted that the business is expected to be a take- out operation that will not generate a lot of trash.

Elizabeth Kaponya, 27 Highland Terrace, was concerned about having only one trash pickup per week and the time of trash pick-up. She expressed frustration with the trash pickup at Panera Plaza. They are supposed to have pickup after 8:30 a.m. but were picking up much earlier during January. Mr. Schneider asked if she had reported this issue to the Building Commissioner. Ms. Kaponya said that he has taken it to the Planning Board. Also, she was also concerned about spill over parking onto Highland Terrace. Mr. Schneider asked if she really thought people early in the morning were going to cross Highland Avenue, pass two commercial buildings and park on her street. She responded that she is concerned. Ms. Kaponya said that there are signs on the street prohibiting parking during the hours that Chef Mike operated and thought the hours should be expanded to match the hours of Hungry Coyote.

Mr. Goldman said that the hours are very long. He wants the applicant to do well. He asked the applicant to speak about morning operations.

Mr. Leon said that he will not schedule trash pick-up so early as to disturb the neighbors. He said that he will schedule as many trash pick-ups as needed. The Health Department will closely monitor the business if there are any issues. He has been dealing with the Health Department for four years at his other location. He knows that they respond to any complaints from the neighbors. Many people come to work in the area at 7:00 a.m. He was requesting a 6:00 a.m. opening to be able to provide breakfast to some of these workers. He cooks new food every day and he needs staff early in the morning to prepare food. Most of his business will be between 11:00 a.m. – 2:00 p.m. a dinner offering is not set but is planned. Mr. Leon noted that his customers are in- and out- in 5 minutes. There is no reason they would park in the residential streets. He assured everyone that they are going to be a good neighbor.

Mr. Tamkin thought that Ms Kaponva's requests were reasonable. He would support trash pickup hours to be the same as across the street. He notes that any violation should be reported to the Building Inspector. He asked that the applicant help the neighbors get the time changed on the parking signs. Mr. Schneider noted that the DPW are the ones that could change the signs, Mr. Tamkin said that he is supportive of the hours and granting parking waivers if the applicant can accommodate the neighbors on trash pickup.

There was discussion about the schedule for trash pick-up and deliveries.

Mr. Leon added that there are signs on the property indicating where customers should park.

Ms. Kaponya wanted the parking signs on Highland Terrace modified to reflect the applicant's business hours. Mr. Schneider indicated that parking limits on public streets were not the jurisdiction of the Board, but of the DPW.

Mr. Holmes said that he is local and his family has owned this property for years. He will go to the DPW to ask that signs be changed. He will provide contact information and the neighbors should feel free to call him if there were any problems.

Ms Kaponova asked for Mr. Holmes email. Mr. Schneider indicated that Ms. Collins would provide contact information for Mr. Holmes. Ms. Collins indicated that she will collect the contact information of the property owner, business owner, building commissioner, DPW and provide it to Ms. Kaponya and Ms. Epstein.

Maria Irriti, property owner of 21 Highland Circle, was concerned about trash pick-up between 8:30 a.m. and 9:00 a.m. since that coincides with office tenant peak travel hours. She thought limiting trash pick-up to 7:00-8:00 a.m. made sense. Mr. Schneider said that a one-hour window for trash service was too limiting. Mr. Goldman proposed a trash service schedule of 7:00 a.m. to 6:00 p.m. Mr. Tamkin proposed that the trash be serviced after 7:00 a.m. and no later than 10:00 a.m. Mr. Schneider noted that the dumpster is behind the building. The noise would need to travel across Highland Avenue, past two commercial buildings before reaching any residence.

The closest residence is probably 100 yards. He indicated that he favored a starting point of 7:00 a.m. Mr. Leon said that he will try to have the trash serviced between 7:00 a.m. and before 8:00 a.m. He will provide his telephone number to the neighbors in case there is a problem.

Mr. Goldman moved to grant a Special Permit under Sections 3.2.5, 3.2.5.2, 5.1.1.1, 5.1.1.5, 5.1.2, and 5.1.3, of the By-Law for a restaurant serving meals on the premises and take-out operation accessory to the restaurant and to waive strict adherence to the parking design requirements subject to the following conditions:

- the hours of business will be seven days a week from 6:00 a.m. to 9:00 p.m.;
- deliveries will be conducted before 11:00 a.m.;
- no more than three employees may park on the premises and they shall use the spaces on the right side;
- there will be no more than six employees at any one time on site during the hours of operations;
- trash will be picked up between 7:00 a.m. to 6:00 p.m., with the applicant making efforts for pick-up to occur in the morning;
- there will be one take-out station;
- there will be a limit of 12 seats according to the plans submitted;
- there will be periodic inspection for pests;
- there will be sufficient space available to allow for accessible separate contained trash and recycling dumpsters and a barrel for waste grease;
- trash will be picked up a minimum of once per week and more if required by the Board of Health;
- the outside area will be kept free from trash;
- there will be equipment to prevent the emission of odors;
- snow and ice to be removed off-site. and
- the Special Permit is issued to the applicant and may not be transferred or assigned without approval of the Board.

Mr. Tamkin seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:45 p.m.

Findings:

On the basis of the evidence presented at the hearing, the Board makes the following findings:

1. The premises which is the subject of these applications is located at 73 Highland Avenue, Needham, MA in the Highland Commercial 128 District.
2. The applicant proposes to use the premises as second location for the Hungry Coyote restaurant located at 1185 Highland Avenue serving sit-down and take-out Mexican food for breakfast, lunch and dinner.
3. The premises was most recently occupied by Chef Mike's for both eat-in and take-

out dining for a number of years, and before that as a DeAngelo's, which ran a sub shop at the location for many years.

4. The applicant proposes to retain the interior of the premises as used most recently by Chef Mike's and as shown on the plans submitted to the Board.
5. The applicant has requested 12 indoor seats and one cash register/take-out station. No outdoor seating was requested. The prior tenant had 14 seats, but the applicant has reduced the number of seats to 12 seats to compensate for the loss of one parking space as a result of the Highland Avenue widening project.
6. The restaurant is required to have 14 parking spaces - ten parking spaces per take-out station plus four parking spaces associated with the 12 restaurant seats – one parking space per three seats. There are 14 spaces on the property.
7. The applicant plans to operate the store seven (7) days a week, with hours from 6:00 a.m. to 9:00 p.m.
8. The applicant will have no more than four (4) employees working on the premises at any one time.
9. No more than three vehicles used by employees will be parked on the property and, to the extent possible, they will park in the spaces on the North side of the property.
10. Deliveries will be made before 11:00 am so as to minimize interference with parking.
11. The applicant will install and/or maintain all existing equipment, including exhaust fans, that are necessary to prevent the emission of odors from the premises and the dumpsters.
12. All waste generated by the applicant's business will be controlled and stored in dumpsters located at the rear of the building and secured from animals.
13. Trash will be picked up not less than one time per week, and more frequently if required by the Board of Health, with all trash pick-up to be no earlier than 7:00 a.m. or later than 6:00 p.m., with the applicant agreeing to make efforts for pick-up to occur in the morning.
14. The applicant will have periodic inspection for pests and vermin and provide any treatment needed to control pests and vermin.
15. The applicant will cause all snow and ice to be removed from the premises.
16. The applicant has requested a Special Permit pursuant to Section 5.1.3 of the By-Law (Parking Plan and Design Requirements). The Board had granted such waivers for this property in the past and the parking lot has been the same since approximately 1992.

17. Under Section 5.1.1.5 of the By-Law, a Special Permit to waive strict adherence with the requirements Section 5.1.3 of the By-Law (Parking Plan and Design Requirements) may be granted provided the Board finds that owing to special and unique circumstances, the particular use, structure or lot does not warrant the application of certain design requirements. There is no expansion of the building. The applicant could not comply with design requirements without elimination of a number of parking spaces. There are special and unique circumstances justifying the waiver of design requirements.
18. The Board finds that the issuance of a Special Permit for the use of the premises as a Mexican restaurant for consumption on or off the premises will not be detrimental to the Town or to the general character and visual appearance of the surrounding neighborhood and abutting uses and is consistent with the intent of the By-Law.

Decision:

On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, grants the Applicant a Special Permit in accordance to Sections 3.2.5, 3.2.5.2, of the By-Law for the use of the premises as a Mexican restaurant for consumption on or off the premises, and (ii) grants the applicant a Special Permit under Section 5.1.1.1, and 5.1.1.5 of the By-Law waiving strict adherence with the requirements of Section 5.1.3 (Parking Plan and Design Requirements) of the By-Law in connection with the existing off-street parking areas which the applicant's customers will have the right to use, subject to the following conditions:

1. The restaurant will have a maximum seating capacity of 12 seats. This Decision does not authorize any outdoor seating.
2. The restaurant will have no more than one cash register/take out station.
3. The hours of operation when the restaurant is open to the public shall not exceed 6:00 am to 9:00 pm seven days a week.
4. No more than three vehicles used by employees will be parked on the property and, and to the extent possible they shall park in the spaces on the North side of the property.
5. No more than six employees may be on site at any time during the hours of operations.
6. Deliveries shall be made before 11:00 am so as to minimize interference with parking.
7. The applicant will have such equipment, including exhaust fans, as is necessary to prevent the emission of odors from the premises and the dumpsters.
8. All waste generated by the applicant's business will be controlled and stored in dumpsters located at the rear of the building. The outside area and surrounding neighborhood will be kept free of trash. The dumpsters shall be cleaned and

maintained in compliance with regulations of the Board of Health.

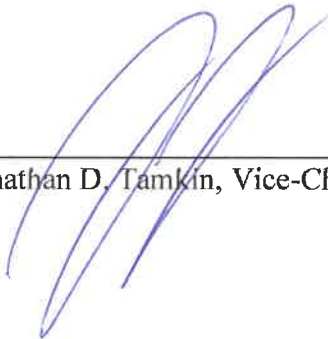
9. Trash will be picked up not less than one time per week, and more frequently if required by the Board of Health with all trash pick to be no earlier than 7:00 a.m. or later than 6:00 p.m., with the applicant making efforts for pick-up to occur in the morning.
10. There will be sufficient space available to allow for accessible separate contained trash and recycling dumpsters and a barrel for waste grease.
11. The applicant will have periodic inspection for pests and vermin and provide any treatment needed to control pests and vermin.
12. The applicant will cause all snow and ice to be removed from the premises.
13. This Special Permit is issued to the applicant and may not be transferred, set over or assigned, directly or indirectly, to any other person or entity without the prior written approval of the Board following such notice and hearing as the Board in its sole discretion shall deem appropriate.
14. Failure to comply with each and every of the foregoing conditions at any time may constitute cause for revocation of this Special Permit by the Board after hearing and notice to the applicant and such other notice as the Board, in its sole discretion, shall deem appropriate.

SIGNATORY PAGE –73 HIGHLAND AVENUE



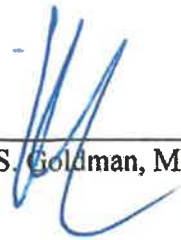
Jon D. Schneider, Chair

SIGNATORY PAGE – 73 HIGHLAND AVENUE



Jonathan D. Tamkin, Vice-Chair

SIGNATORY PAGE – 73 HIGHLAND AVENUE



Howard S. Goldman, Member