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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS
SPECIAL PERMIT**

***Rainbow Angel, Inc., Applicant
250 Highland, LLC, Owner
250 Highland Avenue
Map 300, Parcel 58***

November 20, 2024

Rainbow Angel, Inc. (the “Applicant”) applied for a Special Permit to allow the use for a dine-in restaurant with accessory take-out under Section 3.2.5.2 and to waive strict adherence to the number of required parking and the parking plan and design requirements under Sections 5.1.1.5, 5.1.2, and 5.1.3 of the Zoning By-Law (“the By-Law”) to allow the operation of a Taiwanese restaurant. The property is located in the Highland Commercial-128 (HC-128) zoning district at 250 Highland Avenue (the “Premises”). A hybrid public hearing was held in the Charles River Room, Public Services Administration Building, 500 Dedham Avenue on Wednesday, November 20, 2024 at 8:00 p.m., continued on Thursday, December 19, 2024; and January 29, 2025.

Documents of Record:

- Application for Hearing dated October 25, 2024, Clerk stamped October 28, 2024.
- Letter from George Giunta, Jr., dated October 25, 2024.
- Plot Plan prepared by Cerrato Land Surveying, stamped by Scott M. Cerrato, Professional Land Surveyor, dated October 5, 2024
- Floor Plan Layout with Five Tables and 20 seats.
- Existing and Proposed Floor Plan, Registered Architect Stamp.
- Memorandum in Support prepared by George Giunta, Jr. dated October 25, 2024.
 - Exhibit A – Building Permit No. 15212
 - Exhibit B - Building Permit No. 5586
 - Exhibit C – Redd’s Deli Layout
 - Exhibit D – Current Menu Offering
- Letter from Sylvia Makarios, Manager, 250 Highland, LLC.
- Letter from Joe Prondak, Building Commissioner, November 7, 2024.

- Letter from Lee Newman, Director of Planning and Community Development, November 19, 2024.
- Letter from Thomas Ryder, Town Engineer, November 12, 2024.
- Email from Tara Gurge, Assistant Public Health Director, November 8, 2024.
- Email from John Schlittler, Chief of Police, Police Department, December 31, 2024.
- Email from Thomas M. Conroy, Fire Chief, Fire Department, November 6, 2024.
- Email from Joe Prondak, Building Commissioner, January 22, 2025.
- Letter from Allen R. Douglass and Christine Lachkey, Directors of Needham Montessori School, November 20, 2024.
- 238 Highland Avenue – Special Permit Amendment – March 16, 2023.
- 238 Highland Avenue - Special Permit Amendment – March 18, 2021.
- 238 Highland Avenue - Special Permit Amendment – April 26, 2018.
- 238 Highland Avenue - Special Permit – September 19, 2017.
- Accident Reports at 250 Highland Avenue and First Avenue, 01/01/2014 – 12/11/2024 - Needham Police Department.
- Motor Vehicular Accidents 1st and Highland Avenue Tabulation – ZBA Staff.
- Letter from George Giunta, Jr. dated December 18, 2024.
- Letter from George Giunta, Jr dated January 21, 2025.
- Parking Evaluation 250 Highland Avenue and Attachments, prepared by MDM Transportation Consultants Inc., Robert J. Michaud, P.E., Managing Principal and Andrew J. Arseneault, Project Manager, January 21, 2025.
- Certification to Participate Fully in a ZBA Public Hearing after an Absence (Mullin Rule) – Jonathan D. Tamkin, January 29, 2025.

November 20, 2024

The Board included Howard S. Goldman, Acting-Chair; Nikolaos Ligris, Member and Peter Friedenberg, Associate Member. Also in attendance Valentina Elzon, Associate Member. Mr. Goldman opened the hearing at 8:45 p.m. by reading the public notice.

George Giunta, the attorney representing the Applicant, and Ching Chu Lee Cheng and her interpreter, Shion Ping Cheng were in attendance. The Premises is located at the corner of Highland Avenue and First Avenue containing approximately 5,541 square feet of land with 55.78 feet of frontage on Highland Avenue and 86.42 feet of frontage on First Avenue. The Premises consists of an existing 1,584 square foot one-story commercial building, known and numbered as 250 Highland Avenue and 248 Highland Avenue and parking area.

Since 1964 the Premises has been used and occupied as a dine-in and take-out restaurant. Originally by Redd's Deli, a 74-seat operation, followed by Mighty Sub in 1989, a 62-seat operation with a major take-out business which closed in June, 2023. The Premises is currently vacant and the interior has been gutted.

The Applicant has been operating Jean and Lee Kitchen, a successful Taiwanese Restaurant located at 108 Oak Street in Newton Upper Falls, since February 2014. Since Covid, approximately 65% of its business is take-out with some dine in. The Applicant wishes to relocate her business to Needham.

The Applicant proposes a restaurant offering take-out and some dine-in option with a 20-seat capacity. The business will be open from 11:00 a.m. to 9:00 p.m., open six days a week, closed on Tuesdays. To allow for expansion the Applicant is requesting to be allowed to be open 7 days a week. There will be a maximum of five employees on site – Mrs. Lee, the Chef and three support staff. The staff will arrive together by carpool in one vehicle and will park at Restaurant Depot, who have agreed to support one parking space for employees.

There are five parking spaces available on site. Only Mrs. Lee will park on site. Four parking spaces will be available for customers.

The Applicant reached out to the Needham Montessori School (“Montessori School”) (the holder of several special permits issued by the Board) located at 238 Highland Avenue who agreed to allow the use of eleven parking spaces during the Applicant’s operating hours as long as they do not obstruct the school’s exit doors and walkways to the playground. Mr. Giunta provided a letter from the Montessori School outlining the details of the arrangement. None of the parking spaces in the parking lot used by the Montessori School are identified and designated for use to individual tenants.

Mr. Goldman inquired if the use by the Applicant of the Montessori School parking spaces would impact the operation of the school. Mr. Giunta did not expect there to be any problems as their hours of operation do not overlap. The Montessori School’s parking peak hours are early in the morning, while the Applicant’s hours of operation begin at 11:00 a.m.

The proposed restaurant falls within Section 5.1.2 (9) of the By-Law - *Required Parking for Restaurant* - of one space for three seats, plus ten spaces per take-out service station. A 20-seat restaurant would require 7 parking spaces. The calculation ($7 + 10 = 17$) results in a parking demand of seventeen spaces. Mr. Giunta argued that the By-Law requirement of 10 spaces for take-out is more than the actual parking use. Though the applicant will have a 20-seat restaurant only 35% of their business is sit-down business. Mr. Goldman inquired if there was any on-street parking. Mr. Giunta noted that there is on-street parking within walking distance on Cabot Street.

Ms. Peng, interpreting for Mrs. Lee, said that she expects her customers will follow her to the Needham location because of the close proximity to their current location.

The meeting was open to comments from the public.

John Bulian, 86 Peacedale Road, reported he was a former patron of Mighty Sub and a current patron of Jean and Lee Kitchen and Mandarin Cuisine. He thought that the Applicant’s use would be less intense than that of Mighty Sub. He was in support of the Applicant as a customer and as a new Needham business. Mr. Bulian supported that the Applicant’s parking spaces be

designated with signage as well as those assigned to the Montessori School and Mandarin Cuisine to eliminate confusion. It was noted that the new business will have an entrance facing the parking lot, a change from the entrance location for Mighty Sub on First Avenue.

Mr. Goldman asked about how the Taiwanese cooking style differs from Chinese cooking style. Mrs. Lee said it was simpler, lighter and milder.

Eric Freeman, Chief Operating Officer of RK Centers, reported that RK Centers is the owner of 50 Cabot Street, a two-story office building, abutting the Premises and 238 Highland Avenue attached to the Premises. Both the Montessori School and the Mandarin Cuisine are their tenants. He was unaware of the Montessori School letter regarding the usage of the parking by Applicant. As the owner, they would need to review and consent to the proposed arrangement.

Mr. Goldman asked if the Montessori School had authority to allow their eleven parking spaces to be used by the Applicant. Mr. Freeman responded that they were not agreeable to the parking spaces being used by the Applicant.

Mr. Ligris thought the letter from the Montessori School was irrelevant and any alteration to prior special permit decisions needed to be reviewed by the Board. His deliberations would be limited to the available five parking spaces on the Premises only.

Ms. Elzon was familiar with the site and acknowledged that parking was challenging at the lot. She reported that she live-parked when patronizing Mighty Sub. She asked if live take-out services had been considered. Mr. Giunta was agreeable to considering that option and that one space could be designated for pick-up only.

Mr. Freeman said that he spoke to Roy Cramer, an attorney, for advice. They identified four areas of concern: traffic, parking, safety and trespassing.

Traffic - The peak traffic time is during work rush hour. He believed the proposed business would exacerbate the problem.

Parking - The parking in the area is chaotic. Mr. Freeman noted that when Mighty Sub was in operation patrons would park in the parking lot of 50 Cabot Street, on the sidewalks of First Avenue, in private spaces on 238 Highland Avenue and on Cabot Street. He was also concerned about the Applicant using one of the five parking spaces for the business owner, thereby eliminating 20% of their available parking.

Safety - Mr. Freeman identified that the approach to First Avenue is difficult as it is a blind turn, especially challenging for trucks. Mr. Freeman was concerned about the delivery at the site. Deliveries for Mighty Sub sometimes blocked traffic. In addition, he thought there might be a safety issue with a school in such close proximity to a restaurant. Mr. Freeman challenged the Applicant's description of the previous business owner as having no incidents in the area. He personally witnessed incidents every day with respect to parking violations and accidents. He suggested that police records be gathered. He thought a full-service restaurant at the site was inappropriate and suggested that a traffic and parking study be conducted by a professional traffic engineer.

Trespassing - Mr. Freeman was concerned about trespassers who would use the parking lot at 50 Cabot Street and 238 Highland Avenue to patronize the business, as was done when Mighty Sub

was in operation.

Mr. Freeman noted that the area has undergone many changes with more users than during Mighty Sub's tenure. New large commercial/office users include Trip Advisors, Universal NBC, Shark Ninja, two hotels and Children's Hospital (to open in 2025). He felt that the application needed to consider these changes with respect to traffic.

Allen Douglass, Director of Needham Montessori School, reported that he had a good working relationship with Mighty Sub and Mandarin Cuisine. He agreed that the traffic and parking was not ideal. The parking lot peak demand period is at 2:30 p.m. when the Montessori School is dismissing 60% of their students and Mandarin Cuisine is in operation. He was concerned about adding parking to the lot during that period.

Joan Low, owner of the Mandarin Cuisine, noted that as the last left-hand turn into the parking lot heading south on Highland Avenue traffic back-ups are created especially on snow days when Mighty Sub was opened. She expects this problem will reoccur with the Applicant.

Comments received:

- The Building Commissioner recommended that permanent signage be installed at the head of each of the five on-site parking spaces limiting their use exclusively to the Applicant's business.
- The Fire Department had no issues.
- The Police Department had no concerns.
- The Health Department requires that the Applicant submit an online Public Health Division Food Permit Plan with all the required documentation. Sufficient parking must be available to allow two full-size dumpsters, one for trash and one for recycling with approved pick-up services to prevent pest and unsanitary conditions. There must be sufficient space on asphalt/concrete for trash, recycling and waste cooking oil/grease disposal.
- The Engineering Department had no comment or objection.
- The Planning Board had no comment.

Ms. Elzon asked about the status of the weekend parking. Ms. Low said there would be an overlap with the Applicant as they are open for lunch and dinner on Saturday and Sunday. The parking lot is full on Saturday and Sunday nights for dinner. She urged that the Applicant not park in their parking lot then.

Mr. Ligris limited his review to a 20-seat restaurant with five on-site parking spaces. He thought it illogical to have only four parking spaces for patrons of a 20-seat restaurant and stipulated that the owner find parking elsewhere for themselves and employees. He continued to have misgivings for a 20-seat restaurant with only five parking spaces. He held that the landlord controls the parking spaces and the Applicant had no right to the parking spaces in the parking lot designated for Mandarin Cuisine and the Montessori School. He supported the Building Commissioner's recommendation to install signs identifying the parking spaces to the Applicant. Without the Police raising safety concerns, Mr. Ligris would not weigh in either.

Mr. Friedenberg was concerned about the parking spaces required by the Health Department for the two dumpsters. He thought a traffic study was not necessary but he did think a parking study would be germane and helpful to address the issues raised at the Premises. He did have concerns about the high volume of pick-up traffic in the parking lot generated by the Montessori School and its proximity to the Applicant and requested to review the Board's Decisions at 258 Highland Avenue. He also requested accident incident reports at the corner of Highland and First Avenue from the Police Department.

Mr. Goldman asked why not require a traffic study as well. Mr. Friedenberg argued that the traffic problem on Highland Avenue is well documented and there is nothing the Applicant can do to alleviate it. In contrast a parking study will determine if the parking lot will work for the business to succeed.

Mr. Ligris asked Mr. Giunta to identify the shaded area in the Plot Plan submitted. Mr. Giunta responded that the shaded area is for the location of the dumpsters. Mr. Goldman asked if the dumpsters illustrated were half-size dumpsters. Mr. Giunta responded that the two dumpsters requirement is a Health Department boilerplate. The Health Department does approve smaller dumpsters if they are maintained more frequently and meets their requirements. Mr. Ligris suggested that there might be an opportunity to redesign the spaces to accommodate additional spaces.

The Board agreed to continue the meeting to December 19, 2024.

The meeting adjourned at 9:33p.m.

December 19, 2024

The Board included Jonathan D. Tamkin, Chair; Howard S. Goldman, Vice-Chair; and Peter Friedenberg, Associate Member. Mr. Tamkin opened the hearing at 7:35 p.m. by reading the public notice.

Mr. Giunta requested a Continuance to the Wednesday, January 29, 2025 meeting to allow for the requested Parking Study to be completed. Mr. Tamkin asked that the Parking Study be submitted well before the meeting. Staff will provide the Applicant with the deadline date for submittal.

Mr. Goldman move to continue the meeting to Wednesday, January 29, 2025 meeting. Mr. Friedenberg seconded the motion. The motion was unanimously approved.

The meeting adjourned at 7:36 p.m.

January 29, 2025

The Board included Jonathan D. Tamkin, Chair; Howard S. Goldman, Vice-Chair; and Nik Ligris, Member. Also participating was Peter Friedenberg, Associate Member; and Valentina

Elzon, Associate Member. Mr. Tamkin opened the hearing at 7:52 p.m. by reading the public notice. Mr. Tamkin selected Mr. Goldman, Mr. Ligris and Mr. Friedenberg to serve as the Board voting panel.

Mr. Giunta introduced Robert Michaud P.E., Principal of MDM Transportation, who was hired to conduct a parking study.

Mr. Michaud presented the parking study. He noted that the Premises is located on a lot with shared access with the Montessori School. Currently there are five marked angled parking spaces, historically there have been six spaces. His analysis determined that the Applicant will have a projected peak parking demand of 6 spaces based on the proposed 20-seat capacity (a reduction from the 60 seats of Mighty Sub, the prior tenant); the high rate of online ordering and take-out of the Applicant; comparison to data collected from current similar businesses Sushi Man, 34 Jackson Street, Newton, and the current location of the Applicant Jean & Lee Kitchen, 108 Oak Street, Newton, who have a peak demand of 4 and 5 cars respectively; and Industry (ITE) Estimates for high turnover restaurants of 6 to 8 average spaces at peak demand inclusive of employees.

To collect empirical data, Sushi Man was selected as it was nearly identical to the Applicant as an 18 seat, take-out operation serving lunch and dinner. They have 4 parking spaces and some curbside parking. They are located on Route 9 and Langley Road, a high traffic intersection. Data was also collected from Jean & Lee Kitchen, the Applicant's current location, whose operation is consistent with the proposed operations at the Premises. This 4,200 square foot location with 83 occupancy capacity has 15 parking spaces and some on-street parking with two to three employees. Peak parking was at 7 p.m. Parking was of a short duration and a not a lot of parking was needed.

Mr. Michaud recommended that the area be restriped to accommodate an additional parking space for a total of 6 spaces at a 90 degree alignment, outside the dumpster zone. These spaces would be 9 feet wide by 18 feet deep which would allow proper maneuverability to access the space. A diagram demonstrated that even the first space which is the most difficult space to access had sufficient maneuverability.

Mr. Ligris asked if the additional parking space affected the dumpster space. Mr. Giunta said that the dumpster space was unaffected by the additional parking space. Mr. Michaud recommended that the dumpsters be maintained and managed on the off-hours so that access is free and clear for the refuse vehicles.

Mr. Michaud concluded that six spaces would be sufficient to provide for the Applicant's peak parking demand if staff parks off-site at Restaurant Depot and for the dumpsters to be managed outside the Applicant's business hours.

Comments received:

- The Building Commissioner had no additional comments.

Mr. Goldman noted that the area was busier with the Montessori School, the residential hotels

and the commercial development in the area since Mighty Sub closed and inquired about the observations for the site itself. Mr. Michaud said that the busiest times and site is the upper parking lot serving the Mandarin Cuisine and the Montessori School. They also observed the lot with 16 spaces that serves the Montessori School (11 spaces) and the Applicant (5 spaces). The peak parking demand period for the total 16 spaces in that parking lot was 5 parking spots on Friday and there were no vehicles observed on Saturday. However, the Applicant's spaces were occupied during the study periods which Mr. Michaud determined were occupied for an adjoining use. Mr. Michaud concluded that there is no constraint of parking on the site or proximate to the site during the hours the restaurant would be in use. He suggested that signs be installed saying: "Patron Parking Only."

Mr. Giunta noted that the restaurant hours do not overlap with the Montessori School and the study observations substantiate that.

Mr. Friedenbergl asked for more information on the referenced easement. Mr. Michaud clarified there have been surveys of the property that indicate a 20 foot wide access easement in the middle of the parking lot for mutual benefit of the properties.

Mr. Giunta noted that the First and Highland Avenues historically has been a challenging intersection but it has been improved with the installation of a traffic light.

Mr. Freeman clarified that as owner of 238 Highland Avenue they have control over the use of the 11 spaces in the shared parking lot, and the Montessori School, as a tenant, does not have authority over their use.

He supported Mr. Michaud's recommendation to create six parking spaces.

Mr. Freeman challenged the Applicant representing that they had secured off-site parking. He understood that the Restaurant Depot is unaware of an existing agreement for shared parking with the Applicant. Mr. Freeman wanted certainty that off-site parking is secured for the Applicant's employees. Mr. Giunta responded that there have been conversations with Restaurant Depot and they conveyed they had no issues with it.

Mr. Freeman sought clarification about the Vehicle Turning Template diagrams which were footnoted "not to scale." Mr. Michaud responded that the modeling is done to scale but the diagrams were illustrative only of the modeling.

Mr. Freeman sought clarification regarding dumpster access. Mr. Michaud responded that the dumpsters are mechanically lifted by the maintenance refuse truck which require that the six parking spaces not be occupied. His recommendation is that the dumpsters be maintained before 11:00 a.m. on weekdays and weekends.

Mr. Freeman asked when would the Applicant's deliveries occur. Mr. Giunta responded that deliveries will occur early in the day prior to opening at 11:00 a.m.

Mr. Freeman inquired about third party take-out delivery services and whether a parking space would be available for them.

In summary, Mr. Freeman requested that the Board consider: confirming the off-site parking for employees; installing "Patrons of Rainbow Angel Only" signs for each parking space; assigning a non-exclusive use space for take-out delivery services; confirming the management protocols of delivery services; clarifying the dumpster access; and insuring code compliance for door clearance.

Sylvia Makarios, property owner, said she can arrange for early dumpster pick-up; and the installation of identity parking space signage. She thought the Applicant would be an asset to the Town. She felt that the smaller table capacity size would eliminate the issues associated with Mighty Sub. Mr. Tamkin asked her opinion on a parking space for delivery services. She responded that none of her restaurants have a dedicated parking space for delivery services as they are quick-turn around parking users. However, if the Board wants one she was agreeable to install one.

Mr. Giunta was supportive of an assigned short-term pick-up space as 65% of the business is take-out. Ms. Markarios concurred.

Mr. Bulian supports the business as both a patron and a Town official. He welcomed the business and the associated tax revenue to the Town.

Mr. Goldman asked about the hours of operation. Mr. Giunta stated that the hours of operation will be 11:00 a.m. to 9:00 p.m.; 7 days a week.

Mr. Goldman asked if there was curbside services to facilitate the exchange of prepaid pick-up orders similar to child pick-up services offered at schools. He thought such services could alleviate the traffic congestion issues at the location. Mr. Giunta was hesitant to advocate for such services as there can be issues with delivery services if not managed properly and if adopted should be customized by the business.

Mr. Tamkin noted that the off-site parking for employees must be addressed and will be a condition of the permit. Mr. Giunta affirmed that there had been discussions with Restaurant Depot and there were no issues; though more formal work needs to be done to finalize the arrangement. Mr. Giunta requested that the condition state that no employees park on site and that the Applicant provides sufficient parking off-site. This would allow the Applicant to have the flexibility to find

alternative means of transportation for the employees. Mr. Tamkin was firm about providing off-site parking for employees.

Ms. Makarios said she can work with Restaurant Depot to secure the parking. She offered to provide a parking space at her property on Blue on Highland for the Applicant's employees. The Board dismissed the offer as it was too far away.

Mr. Goldman thought off-site parking needed to be secured with a written agreement and no employees shall be allowed to park on-site.

Mr. Ligris moved to grant a Special Permit to allow for a dine-in restaurant with accessory take-out under Section 3.2.5.2 and to waive strict adherence to the number of required parking and the parking plan and design requirements under Sections 5.1.1.5, 5.1.2, and 5.1.3 of the Zoning By-Law per the plans and parking study submitted as part of the application with the following conditions:

- There will be six dedicated parking spaces on the Premises for customers and/or take-out; to be laid out dimensionally in conformance to the By-Law
- There shall be no parking for employees on the Premises and the Applicant shall provide evidence of a written agreement for off-site employee parking and shall maintain an agreement for such parking at reasonable locations;
- The hours of operation of the business will be from 11:00 a.m. to 9:00 p.m., seven (7) days a week;
- The Applicant will install and maintain such equipment, including exhaust fans, as is necessary to prevent the emission of odors from the premises and the dumpsters.
- All waste generated by Applicant's business will be controlled and stored in dumpsters on the premises. The dumpsters shall be maintained in compliance with regulations of the Board of Health. No dumpster maintenance, removal or replacement shall be allowed between 7:00 a.m. to 9:00 a.m.;
- No deliveries to the Premises shall be allowed between 7:00 a.m. to 9:00 a.m.;
- The outside area and surrounding neighborhood will be kept free of trash
- The Applicant will cause snow and ice to be removed from the Premises to allow for on-site customer parking.
The Applicant will have periodic inspection for pests and vermin and provide any treatment needed to control pests and vermin.
- 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.
- 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.

- shall be laid out dimensionally in conformance with the By-Law

Findings:

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

1. The Premises is a 5,541 square foot lot with frontage on Highland Avenue and First Avenue with 55.78 feet of frontage on Highland Avenue and 86.42 feet of frontage of First Avenue. The Premises is improved by a 1,584 square foot, one-story commercial building built in the 1960s. The premises is known and numbered as 250 Highland and 254 Highland Avenue. The property is located in the Highland Commercial -128 Zoning District.
2. The Applicant seeks zoning relief under Section 3.2.5.2 (h) for a restaurant serving meals for consumption on the premises and at tables with service and provided by waitress or waiters; and Section 3.2.5.2 (i) for take-out operation accessory to the restaurant.
3. The Premises has been used as a dine-in/take out restaurant, originally in 1964 by Redd's Deli, a 74-seat capacity restaurant, followed in 1989 by Mighty Sub, a 62-seat restaurant. Mighty Sub closed in July 2023. The location is currently vacant.
4. Since 2014, the Applicant has been operating Jean and Lee Kitchen, a Taiwanese restaurant, located at 108 Oak Street in Newton. 65% of the business is take-out orders with some dine-in.
5. The Applicant proposes to relocate to the Premises and operate a 20-seat dine-in offering lunch and dinner. Over 50 % of the business is expected to be take-out. The restaurant will be open between 11:00 a.m. to 9:00 p.m., six days a week, closed on Tuesday. Operations may expand to seven days a week depending on business and staffing. There will be a maximum of five staff on site (owner/manager, chef, and two to three support staff).
6. The existing Premises are to be renovated to accommodate the Applicant as shown on the plan submitted to the Board containing a main dining area, wait station, kitchen, bathroom and mechanicals. There will be an entrance facing the parking spaces along the north side.
7. The Applicant has requested a Special Permit pursuant to Section 5.1.1.5 of the By-Law to waive strict adherence under Section 5.1.2 (9), *Required Parking – Restaurant*, of the By-Law. The total parking required as calculated based on one parking space per 3 seats spaces ($20 \text{ seats} / 3 = 7 \text{ spaces}$) plus 10 spaces per take-out station is 17 parking spaces ($7 + 10 = 17 \text{ spaces}$).
8. Currently there are five angled parking spaces located along the north side of the Premises with an adjacent area for dumpsters. These spaces are accessed by the shared driveway and associated easement with the adjacent property at 238 Highland Avenue, owned by RK Centers. 238 Highland Avenue has eleven spaces serving the Needham Montessori

School, tenant of the RK Centers, and the holder of numerous Decisions by the Board.

9. Based on the By-Law requirement of 17 parking spaces, the current on-site parking of five spaces, leaves a shortfall of 12 spaces.
10. According to a parking study conducted by MDM Transportation Consultants Inc. (“MDM”), dated January 21, 2025 based on observed parking demand of the Premises and the adjacent lot at 238 Highland Avenue; Jean and Lee Kitchen, the Applicant’s current business; Sushi Man, a similar business; and the ITE Parking Manual Land Use Code 932 High Turnover (Sit Down) Restaurant, which indicated an average peak parking demand of 5 to 6 spaces.
11. MDM identified improvements to the parking lot and management to insure peak parking demand is reasonably accommodated: 1) the parking spaces be restriped to be six spaces with a perpendicular orientation with wheel stops; 2) these six spaces should be designated for patron use with appropriate signs; 3) dumpster units should be actively managed to ensure operations outside business hours; and 4) employee parking will be accommodated through agreements off-site.
12. Highland Avenue and First Avenue is a high-volume intersection. The intersection, however, has undergone recent improvements under the recent MassDOT Highland Avenue/Needham Street project with new street lighting and curbing. In addition, the Applicant is proposing a less intensive restaurant with a seating capacity of 20 seats compared to the former restaurant, Mighty Sub, with 62 seats.
13. The Board finds the existing parking at the property as modified to reflect the recommendations by MDM will be adequate and that special circumstances exist to waive the required number of parking spaces with respect to eleven spaces pursuant to Sections 5.1.1.5 and 5.1.2 (9) of the By-Law.
14. The parking lot has been in existence since prior to the adoption of the off-street parking requirements and does not comply with the current design requirements of Section 5.1.3 of the By-Law relative to a) parking illumination; c) handicapped parking; d) driveway openings; h) parking space layout; i) width of maneuvering aisle; j) parking setbacks; k) landscaping areas; l) trees; and n) bicycle racks. As it would not be possible to comply with design requirements without reductions in the number of spaces the Board finds there are special circumstances that justify the waiver of the By-Law’s design requirements.
15. The proposed use is consistent with the general purpose of the Zoning By-Law, is compatible with the characteristics of the surrounding area, is not detrimental to the other uses at the Premises and is in harmony with the general intent and purposes of the By-Law pursuant to the requirements of Section 7.5 of the By-Law.

Decision:

On the basis of the foregoing findings, following due and open deliberation, upon motion duly

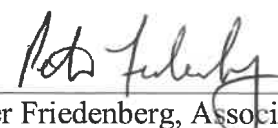
made and seconded, the Board, by unanimous vote, grants the Applicant (1) a Special Permit under Sections 3.2.5.2 (h) of the By-Law for Restaurant serving meals for consumption on the premises and at tables with service provided by waitress or waiter and 3.2.5.2 (i) Take-out operation accessory the restaurant, 2) a Special Permit under Section 5.1.1.5 of the By-Law waiving strict adherence with the requirements of Section 5.1.2 (Required Parking) with respect to eleven parking spaces, and 3) a Special Permit under Section 5.1.3 (Parking Plan and Design Requirements) of the By-Law, all subject to the following conditions:

- A. There will be six dedicated parking spaces on the Premises for customers and/or take-out; to be laid out dimensionally in conformance to the By-Law;
- B. There shall be no parking for employees on the Premises and the Applicant shall provide evidence of a written agreement for off-site employee parking prior to commencement of operations and shall maintain an agreement for such parking at reasonable locations;
- C. The hours of operation of the business will be from 11:00 a.m. to 9:00 p.m. seven (7) days a week;
- D. The Applicant will install and maintain such equipment, including exhaust fans, as is necessary to prevent the emission of odors from the premises and the dumpsters;
- E. All waste generated by applicant's business will be controlled and stored in dumpsters on the premises. The dumpsters shall be maintained in compliance with regulations of the Board of Health. No dumpster maintenance, removal or replacement shall be allowed between 7:00 a.m. to 9:00 a.m.;
- F. No deliveries to the Premises shall be allowed between 7:00 a.m. to 9:00 a.m.;
- G. The outside area and surrounding neighborhood will be kept free of trash;
- H. The Applicant will cause snow and ice to be removed from the Premises to allow for on site customer parking;
- I. The Applicant will have periodic inspection for pests and vermin and provide any treatment needed to control pests and vermin;
- J. 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; and
- K. 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.

Signature Page


Howard S. Goldman, Vice-Chair


Nikolaos M. Ligris, Member


Peter Friedenberg, Associate Member

Twenty-Day Appeal Certification

I certify that the 20-day statutory appeal period for this Decision by the Needham Zoning Board of Appeals has passed,

☐ *and there have been no appeals filed in the Office of the Needham Town Clerk or*

☐ *there has been an appeal filed.*

Date

Louise Miller, Town Clerk