



RECEIVED TOWN CLERK
NEEDHAM, MA 02455

2019 AUG 19 AM 3:41

**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

SPECIAL PERMIT AMENDMENT

***Bakers' Best, Inc., applicant
150 Gould Street
Map 79, Parcel 10***

July 11, 2019

Bakers' Best Inc. made application to the Board of Appeals for a Special Permit Amendment under Sections 1.4.6, 3.2.1, 5.1.1.5, 5.1.2, 5.1.3, 7.5.2 and any other applicable Sections of the By-Law to permit the expansion of the existing commercial catering and commissary into the entire building at the premises; and to waive strict adherence with the off-street parking and parking design requirements at 150 Gould Street, Needham, MA in the Industrial-1 District. A public hearing was held in the Select Board Chambers, Needham Town Hall, 1471 Highland Avenue, Needham, MA, on Thursday, July 11, 2019 at 7:45 p.m.

Documents of Record:

- Application for Hearing, dated June 17, 2019, Clerk stamped June 17, 2019.
- Letter George Giunta, Jr., dated June 17, 2019.
- Site Plan, prepared by Jillson and Company, stamp by Todd P. Chapin, professional land surveyor and Jason B. Lavoie, professional engineer, dated June 11, 2019.
- Memorandum of Support of Application for Special Permit, prepared by George Giunta, Jr., July 2, 2019.
- Letter from David Roche, Building Commissioner, July 1, 2019.
- Letter from Planning Board, prepared by Lee Newman, Director of Planning and Community Development, July 3, 2019.
- Letter from Thomas Ryder, Assistant Town Engineer, July 3, 2019.
- Email from Tara Gurge, Assistant Public Health Director, July 1, 2019.
- Email from Dennis Condon, Chief of Department, Fire Department, June 26, 2019.
- Email from Doug Morris, Vice-President, James Campbell Company LLC, July 10, 2019.
- 150 Gould Street, ZBA Special Permit, March 23, 2006.
- 150 Gould Street, ZBA Special Permit Amendment, August 17, 2006.
- 150 Gould Street, ZBA Special Permit Amendment, October 19, 2006.
- 150 Gould Street, ZBA Special Permit Amendment, December 21, 2006.

July 11, 2019

The Board included Jon D. Schneider, Chairman; Howard S. Goldman, Member; and Peter Friedenberg, Associate Member. Mr. Schneider opened the hearing at 8:35 p.m. by reading the public notice.

George Giunta, Jr., representing the applicant, informed that the applicant proposes to expand into the space vacated by United Refrigeration and occupy the entire building. The applicant has occupied approximately half the space since 2006 using it for its commercial catering and commissary purposes. The additional space will be used for the administrative services of the business, employees' break room with lockers, and cold and dry storage. This space will provide an additional 10,000 square feet for their operations and to support the existing use. The plan is not to increase employees or expand the operations. The premises consist of a one-story building containing a total of 20,450 square feet.

Michael Baker, owner, reported that for the last seven years they have been subletting 1,500 square feet from United Refrigeration for administration space.

The applicant is a commercial food catering operation and makes deliveries to their corporate, school and college clients. All orders are made on-line, by fax or telephone; the orders are prepared and assembled on site and are delivered off-site. No customers are seen on site.

Mr. Giunta noted that the nature of the business is more similar to a manufacturing use (processing and assembling of raw materials into a finished product), but does not fit into any established category of the By-Law. Section 3.2.1 allows for a use which does not fit in any established category. Because the business is expanding into the whole building, the applicant is seeking an amendment to the Special Permit.

Over the years the applicant has grown and has added more employees. Its parking needs have increased as well. In the Special Permit issued March 23, 2006 the required parking was 69 spaces. There were only 37 spaces on site; and the Board granted a parking waiver of 32 spaces.

Currently there are only 33 spaces on site, two spaces in front were eliminated when a row of parking spaces were converted to parallel spaces and one in back when the compactor was installed.

According to Mr. Giunta, the parking requirement is calculated by square footage or by the number of employees which would result in required parking demand from 42 on the low end to 71 on the high end.

The applicant conducted a parking count and has determined that at the busiest hour on the busiest day of the week it needs no more than 60 parking spaces to accommodate employee vehicles, but on the average it needs less. The applicant keeps a record of its employees' method of transportation with a number of them using public transportation with shuttle services to the facility.

On site there are 33 spaces and 35 spaces off site. The applicant has a 5- and 10-year long-term lease with 140 Gould Street for 29 spaces. Six additional spaces have been secured on a

month to month lease. Mr. Baker reported that they lease 1,500 square feet from the building to secure the parking spaces for five years with a five-year option. This is the same duration as their lease for 150 Gould Street.

Mr. Goldman inquired about usage of 160 Gould Street. Mr. Baker said that two years ago they approached the management of the building about leasing spaces there. They were unable to accommodate them. He asserted that they have not use that facility for parking once they secured parking at 140 Gould Street.

Mr. Friedenberberg inquired if there were any plans to increase the employees beyond the 60 at peak time. Mr. Giunta replied that there were no current plans to change the number of employees or expand the operations.

Mr. Goldman thought that, with the doubling of space, it is reasonable to expect a business to expand. Mr. Giunta answered that no expansion is planned in connection with the expansion into the vacant space, but an organic gradual increase could occur over time. Mr. Goldman was concerned about securing additional parking for any increase in employees as the area is near or fully occupied.

Mr. Baker reported that this is his 36th year in operation. They operated a retail operation for 27 years in Newton Highlands. Because that location is served by public transportation, a fair number of their employees were in the habit of using public transportation. Now, they are shuttled to 150 Gould Street

Rob Muller of Bakers' Best reported that employees are incentivized and encouraged to use public transportation and to carpool. The applicant has a van to shuttle daily employees from the Newton Highlands MBTA stop.

Mr. Goldman inquired if they would submit copies of the parking leases. Mr. Giunta suggested the maximum allowable employee vehicles be tied to the number of available parking spaces. Mr. Friedenberberg argued that keeping track of the number of employee cars would be unworkable.

Mr. Schnieder suggested placing a limit on where employees are authorized to park. If the condition is violated, the applicant must come back to the Board. Mr. Giunta agreed to the condition.

Mr. Schneider was satisfied that 62 spaces (33 on-site spaces and 29 secured off-site spaces) handles the peak employee demand of 60. He did not think the Board should impose controls on the future size of the business.

Mr. Friedenberberg felt there was more unknown in this case. He was uneasy about the doubling in space with no business expansion. Mr. Goldman thought the securing of the 29 spaces long-term and providing a copy of the written parking leases would reassure him.

Comments received:

- The Fire Department had no concerns.
- The Health Department requires, prior to the building permit issuance, that a Food Establishment Plan Review be submitted and reviewed by the Needham Public Health

Department; sufficient trash and a separate recycling dumpster be provided; sufficient grease containment and ongoing pest control.

- The Building Commissioner requested that the parking be reconfigured to make the site safer and more accessible as most spaces do not meet parking requirements. Complaints have been received from abutters regarding truck traffic and noise during late hours. He recommends that the dumpsters be located to the rear away from residential properties and that specific hours of operation be incorporated as to building operation, shipping and receiving and trash pick-up.
- The Engineering Department had no comment.
- The Planning Board made no comment.
- Douglas C. Morris, Vice-President, James Campbell Company LLC was concerned about the increased cooking odors and the increase of employees adversely impacting the parking capacity of the tenants of 160 Gould Street.

Mr. Schneider spoke with the Building Commissioner regarding his concerns.

- The Building Commissioner was concerned that most of the parking spaces were not in compliance with design requirements and that there was backing-out onto Gould Street. Mr. Schneider conducted a site visit and observed that all the employees parked facing forward onto Gould Street so there was no need to back out.
- The Building Commissioner was concerned about the pick-up of trash and recommended that all trash operations be relocated to the back of the site and that the hours for trash be limited.
- The Building Commissioner wanted to see deliveries limited from 7:00 a.m. to 9:00 p.m.

Mr. Giunta said that relocating the trash to the back would make it more difficult for the removal and would lead to the elimination of two parking spaces. The applicant was open to strict limits to the hours of pick-up.

Mr. Giunta reported that noise complaints were made in 2017 and 2018 about an occurrence at 3:00 a.m. and 5:30 a.m. There was no way to verify that the noise problem was caused by the applicant since no deliveries are allowed prior to 7:00 a.m. It may have been a rogue delivery incident unaware of the time limits. In response to the complaint, the applicant blocks the delivery dock between 3:00 p.m. until 7:00 a.m. to ensure no delivery/noise violations occur. In addition, the applicant canvassed the neighborhood providing contact information if there are any noise concerns. Since the adoption of these prevention measures, no complaints have been made.

Tim Ferrarra, Business Manager, said that the loading dock and the dumpsters are blocked with cars from 3:00 p.m. to 7:00 a.m. Monday through Sunday. Trash pick-up occurs after 7:00 a.m., typically mid-morning. Mr. Giunta suggested limiting trash pick-up from 7:00 a.m. to 7:00 p.m. Mr. Ferrarra suggested fencing for noise mitigation.

The meeting was open to public comments.

Patrick Heck and Chia Chan, 141 Noanett Road, reported that grease generated by the applicant blocked the sewer and led to sewage flooding their basement and that of their neighbors. Ms. Chan said that items in their basement were still in storage and they were hesitant to use the basement after the incident. Mr. Heck said that, when the sewer is cleaned

by the Town's DPW, their home is disrupted and they have to flush the toilets of sewage and deal with odors for hours.

Mr. Schneider reported that he spoke with the Building Commissioner and that the applicant has installed a grease catching system to prevent further blockage of the sewer and the Town is satisfied.

Mr. Heck noted that the system was installed Spring of 2019 and there is no track record on the system. He requested a maintenance plan to insure the system is in good working order. Mr. Heck wanted to know if the applicant was cited and fined. He complained that the homeowners were not properly reimbursed for the true cost of the clean-up efforts. He was concerned that the new system has the capacity to handle the additional grease load. He requested an Engineering analysis of the system to see if the installed system is adequate for the current and future loads.

Mr. Baker extended his apologies to Mr. Heck and informed him that they have installed an upgraded system that is maintained and cleaned routinely every 4 weeks to prevent the problem from reoccurring. He reported that the grease traps were replaced as soon as they were made aware by the Town of the problem.

Mr. Muller reported that they did research, in consultation with the Building Department and grease management consultants. The applicant selected J. Hoffman to install a two-chamber monolithic concrete 1,500-gallon tank with a gasket seal which allows for expansion and heavy traffic. The system has a ventilation system that exhausts out through the roof to comply with the Town Ordinance. The grease volume is monitored and the system is adjusted depending on the need. Regular records are maintained and made available to the Town when requested. The applicant has also hired Windriver Environmental to proactively service their sewer system. The applicant has been working with the Building, Water and Sewer, and Health Departments to address these concerns and be a good neighbor. Mr. Muller noted that the municipal team did not identify them as the sole cause of the backup, but recommended that they upgrade their system to the new standards.

Mr. Heck wanted to know if the new system's capacity takes into account future expansion and whether the calculations are available to the public. Details of the system were approved by the Building Department and are available. Mr. Heck inquired if the Sewer Department reviewed the application. Mr. Schneider responded that the Town Building and Town Engineering reviewed the applications and said nothing about an ongoing sewer problem.

Mr. Heck requested that a condition be included that, if there is any grease overflow, the applicant will be found in violation of their Special Permit. Mr. Schneider was agreeable to a condition requiring the applicant to maintain their grease management system and if they don't, they will be in violation of the Special Permit.

Mr. Goldman and Mr. Freidenberg were in support of the application with conditions regarding the proper maintenance of the grease traps; the continued securing of the 29 parking spaces off-site; and setting hours for trash pick-up.

The Board discussed the Building Commissioner's request to relocate the trash dumpsters to the back. This request was made to mitigate neighborhood complaints about noise. The

Board thought there were two options to handle noise complaints – limit the hours of pick-up or relocate the dumpsters. Mr. Giunta preferred limiting the hours and surrounding the dumpsters with the proposed eight-foot fence. He thought that the noise created from the trucks backing up the narrow drive from the back would reverberating against the wall creating even more noise than the status quo.

Mr. Giunta informed that there have been no complaints regarding parking issues.

The Board discussed the parking conditions and agreed to require the 29 long-term parking off-site along with the 33 parking spaces on-site for a total of 62 spaces. The six spaces reserved on a month to month lease will not be part of the mix as they cannot be secured long term. The applicant will be required to manage their parking plan to ensure that their employees are not parking where they are not allowed.

Mr. Goldman moved to grant an amendment to the Special Permit to allow the applicant to expand the existing commercial catering and commissary business to occupy the entire building at 150 Gould Street and to waive strict adherence to parking and parking design requirements with the following conditions:

- deliveries will be permitted from 7:00 a.m. to 9:00 p.m.;
- trash pick-up is allowed between the hours of 7:00 a.m. to 7:00 p.m.;
- the applicant shall develop and maintain a plan for its sewer/grease trap system;
- the applicant shall maintain written signed leases for 29 off street parking spaces providing an executed lease copy to the Board (key financial terms may be redacted);
- the applicant shall develop and maintain a program for carpooling, public transportation incentives and van shuttle to reduce the parking demand;
- the applicant shall be responsible for their employees not parking where they are not allowed.

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

The meeting adjourned at 9:45 p.m.

Findings:

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

1. The premises are a one-story commercial building containing 20,450 square feet located in the Industrial-1 District.
2. The applicant conducts a food catering and commissary business servicing businesses and consumers. Orders are taken by phone, fax or internet. The applicant delivers all orders. Customers do not visit the location. The applicant's business has been successful and grown. They currently have employees working around the clock, although the late-night shift is small.
3. The applicant business is not a permitted use for the Industrial District, but may be allowed by special permit.
4. The applicant has conducted business at the location for thirteen years under a Special

Permit dated March 23, 2006 filed with the Town Clerk on April 14, 2006, as amended by decisions dated August 17, 2006, October 19, 2006 and December 21, 2006. This Decision replaces and restates the prior Special Permit and decisions.

5. The applicant has occupied 10,000 square feet of the building since 2006. The remainder of the building was occupied by United Refrigeration which conducted a combination retail and wholesale business. United Refrigeration has vacated the building and the applicant seeks to expand into the entire building.
6. The applicant represents that it does not currently intends to expand it production area. The space formerly occupied by United Refrigeration will be used for offices, an employee break room with lockers and bathrooms and a substantial amount of additional cold and dry storage. The space may be reconfigured to provide a better flow of product, but no material increase in the number of employees is currently planned or anticipated.
7. The Building Commissioner has previously approached the applicant about complaints from residents near the property about noise from trash pickup. The applicant responded by instructing the trash company to pick up after 7:00 am and before 4:00 pm. Their current practice is to park cars in front of the trash receptacles so there is no pick up outside the authorized hours.
8. The Building Commissioner suggested that two trash dumpsters be moved from the front of the building to the rear. The applicant explained that the trash was originally all in the rear, but new regulations required the separation of recyclables, garbage and dry trash. This mandated three dumpster. They constructed a trash compacter for garbage in the rear of the building which takes up more room than a traditional dumpster. If they were to move all the dumpsters to the rear, it would take away parking and create difficulty for loading their delivery trucks. It also might require trucks to back down a narrow driveway alongside of the building creating additional noise. The applicant proposed to erect a fence around the dumpsters in the front and to restrict the hours of pickup.
9. The Building Commissioner expressed concern about deliveries to the loading dock in front of the building with respect to noise bothering adjacent residents and trucks backing in from Gould Street. The current Special Permit limits deliveries to 7:00 am until 9:00 pm. The applicant enforces this restriction by parking cars in front of the loading dock. The Building Commissioner acknowledges that there have been no recent complaints about noise and that there is no practical way to relocate the loading dock.
10. There has been an issue over the past several years with sewer back up in the area. The Town needed to clean out the sewer lines which caused overflow and odors in nearby residences. Reportedly, a number of residents made claims against the Town's insurance policy. One resident complained about continuing problems with odors and the inadequacy of the insurance payments.
11. It is not clear as to whether the applicant's operations were the cause of the sewer problems, but the applicant has responded by installing a much larger and modern

grease trap to catch waste before it reaches the sewer lines. The applicant has a regular program to clean out and maintain the grease trap.

12. Parking is a substantial issue at the location. There is a total of 33 spaces on the premises as shown on a plan dated June 11, 2019 filed with the application. At the time of 2006 Special Permit there were 37 spaces. They lost a space in the rear due to the construction of the garbage compacter. They eliminated and reconfigured some spaces in the front to improve traffic flow.
13. According to the applicant, the By-Law requirement would be between 42 and 71 parking spaces depending on how the By-Law is applied. The variation is due to the requirement that a “Manufacturing or industrial establishment” must have one space per 400 square feet of floor area or one per two employees on the largest shift, whichever is greater. At the time of the 2006 Special Permit the applicant had an average of 22 employees per hour with a maximum of 45. Currently, the average is 35 with a maximum of 85.
14. The Building Commissioner did not provide a calculation as to the required number of spaces. Regardless of the By-Law requirements, the Board would want to be satisfied that there is adequate parking in connection with the issuance of a special permit.
15. The applicant monitors employee parking to keep the demand less than 60 spaces. A number of employees carpool. The applicant runs a shuttle service from the Newton MBTA station used by a number of employees.
16. The applicant has a long-term lease on an adjacent property at 140 Gould Street for a small amount of office spaces and 29 parking spaces. The applicant also has a month to month lease of 6 parking spaces on the adjacent property. As a result, the applicant currently has 68 spaces (33 on the premises and 35 on the adjacent property).
17. There was no complaint expressed at the hearing about employees parking in unauthorized locations.
18. None of the parking spaces on the premises and probably none of the spaces on the adjacent property meet the design requirements of the By-Law. They lack setbacks from the property line. In some cases, they are undersized and the maneuvering aisles are inadequate. They do not have landscaping or meet other requirements. This is a common situation with older buildings and the Board on a regular basis waives design requirements, particularly where there is expansion of the building. Meeting the design requirements would cause the elimination of many, if not most, of the parking spaces.
19. The proposed use of the expansion spaces by the applicant is appropriate in an Industrial District and the issuance of a Special Permit is consistent with the criteria of Section 7.5.2. Special circumstances make it appropriate to waive the requirements of the number of spaces and to waive the design requirements with respect to the existing parking spaces.

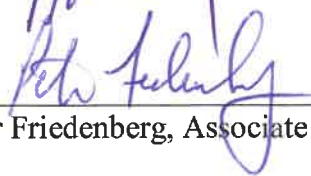
Decision:

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) a Special Permit under Section 3.2.1 to operate a food preparation, catering and food commissary business in the entire building, and (b) a Special Permit under Section 5.1.1.5 waiving adherence to the minimum number of parking spaces and parking design requirements, subject to the following conditions:

1. Pickup of waste from dumpsters shall be limited to the hours of 7:00 am to 7:00 pm. Deliveries shall be limited to the hours of 7:00 am to 9:00 pm.
2. The applicant shall install an 8-foot wooden fence around the dumpsters at the front of the building as shown on the plan submitted with the application.
3. The applicant shall maintain the new grease trap with regular cleanouts so as to prevent any blockage of sewer lines.
4. The applicant shall have a written lease for a minimum of 29 parking spaces at 140 Gould Street and shall provide the Board with a copy of the fully executed lease and any future amendment (with economic terms redacted if desired by the applicant).
5. The applicant shall continue an employee shuttle service from the Newton MBTA to the premises.
6. The applicant shall manage the transportation of employees so that the demand for parking does not exceed the available spaces.
7. The applicant shall prevent employees from parking on the street or in any unauthorized location.
8. Failure to comply with the above terms may result in the modification or revocation of this Special Permit after a hearing with notice to the applicant and such other notice as the Board deems appropriate.
9. This Special Permit is personal to the applicant and may not be transferred or assigned without the prior approval of the Board upon such notice as the Board deems appropriate. A transfer of a controlling interest in Baker's Best Inc. shall be considered a transfer requiring approval.


Jon D. Schneider, Chairman


Howard S. Goldman, Member


Peter Friedenber, Associate Member