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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

SPECIAL PERMIT AMENDMENT

***Highland Avenue Donuts, Inc., applicant
ND Donuts, LLC, special permit amendment transfer recipient
1203 Highland Avenue
Map 226, Parcel 58***

November 21, 2019

Highland Avenue 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 July 16, 1996 and amended in May 15, 2014 to another Dunkin' Donuts franchisee, ND Donuts, LLC. The property is located at 1203 Highland Avenue, Needham, MA in the 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.
- 1201 Highland Avenue, ZBA Special Permit Amendment, May 15, 2014.
- 1201 Highland Avenue Plot of Land prepared by Cheney Engineering Co., Inc. stamped by Elliott J. Paturzo, Professional Land Surveyor, dated April 14, 2014.
- 1201 Highland Avenue, ZBA Special Permit, July 16, 1996.
- 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; Howard S. Goldman, Member. Also participating were Kathy Lind Berardi, Associate Member and Peter Friedenberg, 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 the current *Special*

Permit Amendment, 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. There will be onsite managers who 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.

Mr. Harrington clarified that the actual business is addressed at 1203 Highland Avenue. It is a suite located in the 1201 Highland Avenue building. The Special Permit of July 16, 1996 and current Special Permit Amendment of May 15, 2014 identified the business as 1201 Highland Avenue.

There are no planned changes to the operations or set up of the current stores.

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.
- The Police Department has no issues.
- The Building Commissioner has no concerns.
- The Planning Board made no comment.

Mr. Goldman moved to grant a Special Permit Amendment to allow the transfer of the business ownership from Highland Avenue Donuts Inc., to ND Donuts, LLC for the property located at 1203 Highland Avenue. 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 Highland Avenue Donuts, Inc., d/b/a Dunkin' Donuts, for an amendment to Zoning Board Appeals Special Permit dated July 16, 1996, and amended in May 15, 2014, to allow for the transfer of the ownership of the Dunkin Donuts business located in the Business District at 1203 Highland Avenue, from the applicant to ND Donuts LLC, the Board makes the following findings:

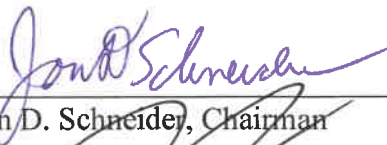
1. The premises is located at 1203 Highland Avenue, within the Business District.
2. The applicant intends to sell, and ND Donuts LLC intends to purchase, the existing Dunkin' Donuts franchise business operated by the applicant at the premises and to continue to operate a Dunkin' Donuts franchise at 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 with 32 seats, including two registers and take-out stations under a Special Permit dated July 16, 1996. Ownership was transferred to the applicant under an Amendment dated May 15, 2014. 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:

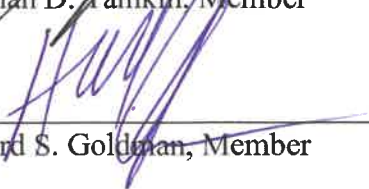
On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, approves the transfer of the Special Permit dated July 16, 1996, and amended in May 15, 2014 for the Dunkin Donuts at 1203 Highland Avenue, from Highland Avenue Donuts, Inc., to ND Donuts, LLC subject to:

1. Compliance with all the terms and conditions of the Special Permit, as amended.
2. 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.
3. 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