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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

**SPECIAL PERMIT
&
VARIANCE**

***Spiga, LLC, applicant
18 Highland Circle
Map 74, Parcels 7 & 8***

(Filed during the Municipal Relief Legislation, Chapter 53 of the Acts 2020)

June 18, 2020

Spiga LLC, applicant, made an application to the Board of Appeals for a Special Permit, Special Permit Amendment and Variance under Sections 1.4.6, 3.2.5.2, 3.2.6.2, 4.2.1, 5.1.1.5, 5.1.2, 5.1.3, 7.5.3, 7.5.2, and any other applicable Sections of the By-Law to permit the replacement of the existing outdoor patio and seats with a permanent tent structure containing 32 total seats, for a total of 86 seats; to waive the strict adherence to the required parking and parking plan and design requirements; to construct a vestibule addition near the existing building entry; and to allow a 5.5 foot encroachment into the setback at 18 Highland Circle, Needham, MA in the Mixed-Use 128 and Highland-Commercial 128 Districts. The relief sought is in association with the continued use of the building as an eat-in restaurant - Spiga Ristorante. A public hearing was held remotely on Zoom, Meeting ID Number 869-6475-7241, on Thursday, June 18, 2020 at 7:45 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped May 21, 2020.
- Cover Letter prepared by George Giunta, Jr., dated May 21, 2020.
- Letter Authorizing application, prepared by the Manager of Spiga LLC, dated May 8, 2020.
- Memorandum in Support of Application of Spiga, LLC, prepared by George Giunta, Jr.
- Proposed Vestibule Structure, A1.0, Nunea Trabucco Architects.
- Site Plan of Land, prepared by Site Design Consultants, stamped and dated by professional land surveyor, dated April 23, 2015, updated May 14, 2020.
- Email from Dennis Condon, Chief of Fire Department, June 1, 2020.
- Email from Tara Gurge, Assistant Public Health Director, June 10, 2020.
- Email from Chief John Schlittler, Needham Police Department, June 1, 2020.
- Email from David A. Roche, Building Commissioner, June 11, 2020.

- Letter from Lee Newman, Director of Planning and Community Development, June 9, 2020.
- Email from Alex Clee, Assistant Town Planner, June 16, 2020.
- Letter from Thomas A. Ryder, Assistant Town Engineer, June 10, 2020.
- 18 Highland Circle, ZBA Special Permit, May 19, 2005.
- Certificate of Granting Special Permit in reference to the 18 Highland Circle ZBA Special Permit, May 19, 2005.
- 18 Highland Circle, ZBA Special Permit Amendment, April 17, 2008.
- 18 Highland Circle, ZBA Special Permit Amendment, June 18, 2015.

Documents received after June 18, 2020

- 18 Highland Circle, Planning Department Memo, Outdoor Seating Permit, August 10, 2018.
- Email from George Giunta Jr., Change in Ownership, June 18, 2020.

June 18, 2020

The Board held this meeting virtually on Zoom as allowed under “Order Suspending Certain Provisions of the Open Meeting Law G.L. c. 30A, S20”.

The Board included Jon D. Schneider, Chair; Jonathan D. Tamkin, Vice-Chair; and Howard S. Goldman, Member. Also participating were Kathy Lind Berardi, Associate Member and Peter Friedenbergl, Associate Member. Mr. Schneider opened the hearing at 7:50 p.m. by reading the public notice.

Mr. Giunta, the applicant’s attorney, reported that the property associated with Spiga Ristorante has been issued numerous permits: ZBA Special Permit, May 19, 2005 subsequently transferred to Spiga LLC; ZBA Special Permit Amendment, April 17, 2008 which did not become effective; and ZBA Special Permit Amendment, June 18, 2015 with a concurrent Special Permit from the Planning Board.

Mr. Schneider noted that he had observed unauthorized outdoor seating at the location. Mr. Giunta responded that in 2018 eighteen outdoor seats were authorized under the Seasonal Outdoor Seating proviso.

Mr. Giunta stated that the applicant was seeking to increase seating, to provide shelter for the additional seating, to add a vestibule to provide shelter for patrons, and to waive the strict adherence to the number of parking spaces required and to the parking plan and design requirements.

Mr. Giunta reported that property was comprised of two lots – Lot A on the east and Lot B on the west. Lot A contains most of the parking with minimal landscaping; Lot B contains the building structure and some parking along the front. Lots A and B are owned by different owners. The owner of Lot B controls a 99-year lease for Lot A which expires in 2081. Spiga, LLC leases the property from the owner of Lot B. Because of the long-term lease, the property functions as single property.

Both properties are irregular shaped and non-conforming. Lot A is non-conforming as to area. Lot B is non-conforming as to area, frontage, and rear and side set-backs. Lot B has a 1.4' rear setback and a .09' side setback.

The applicant is proposing a permanent three-season tent and vestibule addition. The three-season tent will accommodate 34 seats and provide needed flexibility. It will be open during the nice weather and closed during the winter to provide near year-round seating with heaters.

The vestibule addition is to provide a permanent waiting area. Presently, there is no shelter for patrons during inclement weather. The vestibule will be an odd shape to connect the existing building and tent and must be extended to comply with handicapped access needs.

Mr. Giunta informed that the side setback for the district is 10 feet. On June 16, 2020, the Planning Board issued a Special Permit under Section 4.9.1 of the By-Law to allow the applicable side setback to be 7.5 feet. With this relief, the proposed tent will meet all applicable setbacks.

The proposed vestibule does not comply with the applicable setbacks. Approximately 33 square feet of the vestibule will intrude into the setback area; and 1.2 square feet of the vestibule will be within the building's current three-foot side setback. Mr. Giunta seeks a Variance for this intrusion to make the vestibule work.

Lucio Trabucco, project architect, reported that the intrusion into the setback was necessary because of the 7.3 feet clearance needed for handicapped access.

Mr. Giunta reported that the application includes the following relief requests:

- a special permit for the tent addition;
- a special permit for additional seats resulting from the tent addition;
- a special permit for the parking waivers resulting from the additional seats; and
- a variance to allow the vestibule addition.

The rationale for a request for a variance is the unusual shaped lot and building which limits the location of the vestibule. In addition, the size of the vestibule is bound by handicapped access requirements. Not having a vestibule poses a hardship for the restaurant by limiting their ability to shelter their able and disabled patrons comfortably and safely during inclement weather.

Mr. Giunta concluded that under the 99-year lease the two lots acts as one property making the lot line illusory and that a variance would not nullify or substantially derogate the intent or purpose of the By-Law. He offered that since there are no adjacent neighbors affected by the relief, a variance would not be a detriment to the public good either.

The applicant is proposing to increase the 54-seat restaurant by 32 seats for a total of 86 seats. Restaurant parking requirements require one parking space for every 3 seats – a total demand of 29 parking spaces. Presently there are 28 existing spaces at the premises, 1 space short of required. The By-Law also requires 10 additional parking spaces per cash register for take-out. As a traditional sit-down restaurant, the applicant seeks a waiver of the 10 spaces required for take-out, as well as for the 1 space shortfall under the seating requirement.

The landlord owns two properties across the street which provides an additional parking space.

Comments received:

- The Fire Department requested concrete barriers between parking and tent side walls.
- The Health Department requested that the applicant fill out the new online outdoor seating form; follow Covid19 outdoor seating guidelines; install concrete planters or concrete barriers between parking and outdoor seating; provide enough handicapped access to restroom and remove all indoor mobility impediments; and provide a Covid19 checklist to the Health Department.
- The Police Department requested concrete barriers or bollards to stop a motor vehicle.
- The Building Commissioner will require a protection barrier in the plan when seeking a building permit.
- The Engineering Department supports barriers as identified by the Fire Department.
- The Planning Board offered the setback relief requested and that a revised plan be provided showing the concrete barrier between the parking and seating.

The applicant proposes to install concrete bollards along the strip between the parking and the tent within the 7.5 setback. Mr. Trabucco spoke to the Police Department about his plans and the Police Department was satisfied. Mr. Tamkin inquired if there would be any loss to parking spaces by the bollards. Mr. Trabucco responded that no spaces would be lost.

Mr. Schneider inquired whether the proposal would satisfy the Planning Boards. Mr. Giunta said that they would be satisfied by the installation of concrete bollards.

Mr. Goldman and Ms. Lind Berardi wanted details on the tent. Mr. Goldman asked if there were any similar tents in Needham. Mr. Trabucco responded that there were similar tents in Boston, but none in Needham. Mr. Goldman wondered about the tent's performance under snow conditions and its load capacity. Mr. Trabucco said that the permanent steel structure is designed for snow loads and snow drifts and will comply with the Building Department load requirements. Ms. Berardi and Mr. Tamkin requested to see a rendering. Ms. Berardi inquired about the color of the tent. Mr. Trabucco noted that the tent will be off-white.

Mr. Tamkin inquired about the hour of operations and parking design waivers. Mr. Giunta responded that the 2015 Special Permit allows the hours of operations from 10 a.m. to midnight, seven days a week; and that the parking has remained essentially the same since the 2005 Special Permit. Mr. Goldman inquired about the additional off-site parking as conditioned in the 2015 Special Permit. Mr. Giunta offered to provide an agreement for off-site parking.

Mr. Schneider requested parking agreements for the additional 11 off-site spaces. An aggregate of 39 spaces would comply with the By-law. He found the access and layout of the existing parking to be awkward. The applicant was agreeable to provide the additional parking.

Mr. Goldman requested that snow be removed when there's a snow occurrence of over 6". Mr. Trabucco stated that they have a contractor who removes snow off site for snow storms of over 6".

Mr. Schneider open the meeting to Public Comment.

Mr. Teague Dyer, Building Manager for Christian Gillani, property owner of 13 Highland Circle, wanted to know the name of the party providing additional parking. He reported that Spiga customers use his parking spaces after business hours without an agreement. He was concerned about the litter on his lot. Mr. Giunta responded that the agreements are with 21 and 35 Highland Circle who are associated with the owner of 18 Highland Circle.

Mr. Dyer was open to having a parking agreement with Spiga if there were compensation. Mr. Schneider did not know if the applicant is willing to enter into an agreement with Mr. Dyer's client. He suggested that Mr. Dyer could put up signs and tow cars illegally parked. Mr. Dyer did not want to tow Spiga customers. Mr. Tamkin noted that the 2005 Special Permit conditioned valet parking service for customers or the installation of prominent signage advising the availability of off-site parking.

Mr. Giunta was agreeable to installing signage instructing customers to available spaces and to require employees to park in the off-site parking.

Mr. Tamkin proposed applying similar parking conditions requirements addressed in the Special Condition for Three Squares – valet parking or prominent signage. Mr. Giunta reported that Spiga did not have valet parking and the numbers do not support it. He was open to signage.

Frank Holmes, property owner of 73 Highland Avenue and the location of Chef Mike's, is supportive of the application. He noted that there is a parking issue in the area. Chef Mike has been working with the applicant and they have resolved the situation.

Maria Irriti, owner of 21-35 Highland Circle, provides spaces to Spiga Ristorante for their employees and was supported of the application. She agreed there is a problem in the area with people parking in each other spaces. She questioned the need for signage if all the leased spots are for employee parking. Mr. Schneider said that the signage is to instruct Spiga's customers when the parking lot is crowded.

Mr. Goldman asked if there was a change in ownership and whether a transfer of ownership was being sought. Mr. Giunta responded that the entity is the same, but the control within the entity has changed. Mr. Schneider requested the names of the controlling parties. Mr. Giunta noted that the controlling parties of Spiga LLC are Marisa Iocci and Francesco Iacovitti.

Ms. Berardi requested a rendering of the proposed tent be submitted.

Mr. Freidenberg had no comment or questions.

Mr. Goldman requested that a copy of the lease for the off-site parking be submitted. He wanted conditions for snow removal and clean-up of the adjacent parking lots. Mr. Friedenbergh highlighted Condition 4 of the 2005 Special Permit which states: "The outside area and surrounding neighborhood will be kept free of trash and garbage."

There was a discussion on how to craft the Special Permit because of the long history of amendments. It was agreed to create a new special permit/variance which would refer and

recite the preexisting special permit and amendments.

Mr. Tamkin felt that the applicant met the Board's strict standards for the granting of a variance. He too would like to see a rendering of the tent. He urged the applicant to resolve the issue of seating, as this was the third request for additional seating. He appreciated the cooperation between businesses and property owners to resolve the area's parking issue. He was supportive of Spiga Ristorante application.

Francesco Iacovitti, owner, provided an image of the tent at Mare in the North End. It is the same tent being proposed. Ms. Berardi and Mr. Tamkin were satisfied with the tent.

Mr. Iacovitti reported that he and Chef Mike have worked out an agreeable cooperative parking agreement allowing the use of their respective lots on the off-hours.

Mr. Iacovitti requested that the hours be extended from 7:00 am to Midnight, seven days a week. The earlier opening hours will allow for breakfast.

The Board discussed the variance which are rarely granted. Due to the property's irregular lot and the need to accommodate for handicapped access requirements Mr. Schneider, Mr. Tamkin and Mr. Goldman concurred with the granting a variance.

Mr. Tamkin thought the variance granted for an elevator at Trader Joes was similar in complexity and rarity.

Mr. Goldman moved to grant a Special Permit, Special Permit Amendment and Variance to permit the replacement of the existing outdoor patio and seats with a permanent tent structure containing 32 seats, for a total of 86 seats; to waive the strict adherence to the required parking and parking plan and design requirements; to construct a vestibule addition near the existing building entry; to allow a 5.5 foot encroachment into the setback; and to approve the change of ownership to Marisa Iocci and Francesco Iacovitti conditioned that:

- a written lease agreement for eleven off-site parking spaces be submitted;
- employees will park in the leased off-site parking spaces;
- prominent signage will be installed which will specify the location of available parking;
- all applicable conditions from the prior Special Permit and Amendments will be included;
- snow will be removed off site for snow storm events of 6" or greater;
- the hours of operation are from 7:00 am to midnight, seven days a week.

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

The meeting adjourned at 9:06 p.m.

Findings:

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

1. The premises consist of two lots: one is used for parking and the second is used as a restaurant. The applicant leases both lots, Lot A contains 6505 square feet with 28

parking spaces (including 2 handicapped spaces). A portion of two spaces are on Lot B. Lot A is non-conforming because it contains less than the required lot size of 10,000 square feet. Lot A is not owned by the landlord but controlled under a lease expiring on November 23, 2081. Lot A is mostly in the Mixed Use-128 District with a small portion that could be in the Highland Commercial District. Parking is an allowed use in both Districts as a use incidental to a restaurant use. Lot B contains 5964 square feet with 94.45 feet of frontage and two existing buildings with a total of 2014 square feet. Lot B is non-conforming in that it contains less than the required lot size of 10,000 square feet and less than the required frontage of 100 feet. Lot B is owned by the landlord. Lot B is in the Mixed Use-128 District.

2. The restaurant operates under a Special Permit issued in a Decision dated May 19, 2005. This Special Permit was transferred to Spiga, LLC under a Decision dated April 26, 2006 which also authorized some interior changes. Further interior changes were authorized by a plan substitution approved by the Board on April 24, 2007.
3. In 2008 the applicant sought to add a small vestibule to the building. After acknowledging that the building exceeded the Floor Area Ratio ("FAR") allowed in the District and the addition would increase the non-conformity, the applicant withdrew the application.
4. According to a memorandum submitted with the application, the front portion of the building with a footprint of approximately 441 square feet was constructed in 1900 which predates zoning and the rear portion of the building with approximately 1,671 square feet was constructed in 1981 pursuant to a building permit that complied with the then existing zoning requirements. Lot B was later rezoned into the Mixed Use-128 District which has more limiting dimensional requirements. The front entrance to the restaurant is over the rear lot line. The existing building is only 1.4 feet from the rear lot line at its closest point as contrasted with a current requirement of 10 feet. The existing building is only 0.9 feet from the right sideline and 3 feet from the left sideline as contrasted with a current requirement of 5 feet. The buildings cover almost the entire lot and do not comply with the current requirement of 20% open space. In its 2018 Decision, the Board found that the two buildings are legal Non-Conforming Buildings.
5. According to the memorandum submitted with the application, the lots were created prior to 1938 when there was no frontage requirement. In its 2018 Decision the Board treated the lots as legal non-conforming lots.
6. At a hearing on April 17, 2008 the Board voted to allow the addition of 48 outdoor seats on Lot B based on a representation that the applicant would obtain a lease for 13 additional parking spaces on an adjacent parcel under common ownership. A satisfactory lease was never submitted. The Board never signed a Decision, so a Special Permit was never issued. Nevertheless, the applicant has been and currently is operating with some number of outdoors seats. The applicant represents that it has received authority for 18 outdoor seasonal seats under Section 6.9 of the By-law. In a 2018 Decision, the Board authorized two additions to the buildings that would have

expanded the seating from 54 to 90 seats. The expansion was conditioned on the applicant obtaining a lease for 12 parking spaces on a nearby parcel. The applicant never submitted a lease and never constructed the addition. The 2018 Decision also expanded the permitted operating hours to 10:00 am until Midnight seven days/week.

7. There has been a change in the management of the restaurant and a change in the ownership of Spiga, LLC. At the time of the 2018 Decision, the restaurant was managed by Spiga, LLC, which entity was controlled by Carmelo Iriti. The restaurant is still managed by the applicant, Spiga, LLC, but his entity is now controlled by Marisa Iocco and Francesco Iacovitti. The applicant requests permission for a transfer of the prior Special Permit or issuance of a new Special Permit recognizing the current ownership of the applicant.
8. The applicant also seeks to construct a permanent tent that will have 32 seats in place of the existing outdoor patio dining. This will raise the capacity to 86 seats. The tent will have a steel frame covered with fabric. In addition, the applicant seeks to construct a vestibule at the front entrance to the existing restaurant that will provide a waiting area and a connection to the tent.
9. The proposed tent will be located 7.5 feet from the rear line of Lot B which intrudes on the required 10-foot setback. However, the Planning Board has authority to reduce the side setback in the Mixed Use- 128 District and granted relief to the applicant at a hearing on June 16, 2020 subject to a requirement that the applicant install a vehicle barrier between the parking lot and the tent.
10. The proposed vestibule will extend 7 feet from the current building. It must be 7 feet in order to comply with handicap requirements. Most of the vestibule will be constructed within 10-foot rear setback. At its closest point, it will be approximately 2 feet from the rear lot line. The applicant seeks a special permit under Section 1.4.6 to expand a non-conforming building or a variance for the construction of the vestibule.
11. The Board prefers to address the applicant's proposal as a request for a variance. The lot on which the vestibule is to be constructed is irregular in shape and unlike other lots in the District. There is no practical way to construct the vestibule in compliance with handicap requirements without an incursion into the side setback. It would be a hardship to the applicant caused by the unusual size and shape of the lot to deny relief. The building with the vestibule will not be substantially more detrimental to the neighborhood than the existing non-conforming buildings.
12. With 86 seats and takeout, the restaurant is required to have 39 parking spaces under the By-law (one spaces for every three seats and ten for takeout). The applicant has 28 spaces on Lot a directly in front of the restaurant. The applicant has agreed to obtain a lease for 11 more spaces on a nearby property. With these additional spaces, no waiver of the number of spaces is required.
13. The existing spaces on Lot A do not comply with many design requirements for parking including size, width of maneuvering aisles, setbacks and landscaping. The restaurant has operated for 15 years with this parking. There is no practical way to comply with the design requirements without losing many spaces. The Board has

waived the design requirement in similar situations. Special circumstances exist that justify waiving the design requirements.

14. The applicant has requested an increase in permitted hours so that the restaurant can open at 7:00 am to serve breakfast. There are no nearby residences that would be impacted by additional hours.
15. The applicant has requested that the Board approve the change of control of Spiga, LLC.
16. The proposed use and construction are consistent with the general purposes of the By-law and Section 7.5.2.
17. The Board has determined to issue a new Special Permit for operation of the restaurant, superseding and replacing all prior Special Permits and their many amendments.

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 Variance to expand the existing non-conforming buildings by the addition of a handicap accessible vestibule intruding into the rear setback as set forth in the Plans filed with the application,
- b) a Special Permit under Section 3.2.5.2 and 3.2.6.2(g) to operate an 86-seat restaurant with takeout laid out in accordance with the plans filed with the application;
- c) a Special Permit under Section 5.1.1.5 waiving the parking design requirements with respect to the existing parking spaces and those on a nearby parcel to be leased by the applicant; and
- d) approval of the transfer of control of Spiga, LLC to Marisa Iocci and Francesco Iacovitti:

with the Special Permits subject to the following:

1. Installation of a barrier between the parking lot and the tent facility to prevent cars from entering the tent in a design and type acceptable to the Building Commissioner;
2. Submission of a lease for 11 parking spaces on a nearby parcel in a form satisfactory to the Chairman of the Board. Among other terms, the lease shall provide that no termination is effective until the Building Commissioner and Board receive written notice of termination.
3. In the event the lease for 11 parking spaces on a nearby parcel is terminated or expires, the number of permitted seats shall be reduced to 54 in the existing buildings (with no

outside seating or seating in the tent) unless and until this Board amends the Special Permit upon application filed by the applicant.

4. All employee parking shall be in the off-site spaces.
5. The applicant shall provide valet service for customer parking or install prominent signage advising customers of the availability of the 11 off-site parking spaces.
6. The 28 parking spaces on Lot A (with a small portion on Lot B) shall be maintained in accordance with the parking plan delivered in connection with the application. There shall be a minimum of two handicap spaces. If requested by the Building Commissioner, the lot will be re-striped to more prominently show the spaces.
7. The applicant shall remove snow from the parking lot anytime snowfall exceeds 6 inches.
8. Hours of operation shall not exceed 7:00 am until Midnight seven days per week.
9. Applicant will use diligence at all times to prevent the release of harmful chemicals or noxious or disturbing odors. Waste shall be stored in accordance with the regulations of the Board of Health and removed on a timely basis. The outside area and surrounding neighborhood will be kept free of trash and garbage.
10. The Special Permit to operate a restaurant is issued to Spiga, 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 following such hearing and notice, if any, the Board shall deem due and sufficient. A transfer of a controlling interest of Spiga, LLC or any other transfer directly or indirectly or by operation of law shall be a transfer requiring approval of the Board.
11. Failure to comply with each or any of the foregoing conditions at any time may constitute cause for the revocation of the special permits by the Board after hearing with notice to the applicant and such other persons as the Board in its discretion shall deem due and sufficient.

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Jon D. Schneider, Chair

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Jonathan D. Tamkin, Vice-Chair

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A handwritten signature in blue ink, appearing to read 'H. S. Goldman', is written over a horizontal line.

Howard S. Goldman, Member