

Board Members  
Brian White, Chair  
Gibb Phenegar, Vice Chair  
Christina Oster, Clerk  
Joe Barresi, Member  
Tom Emero, Member



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**TOWN OF MEDWAY**  
**COMMONWEALTH OF MASSACHUSETTS**  
**ZONING BOARD OF APPEALS**

**Wednesday, May 17, 2023, at 7:30 p.m.**

**Sanford Hall**

**Medway Town Hall**

**155 Village Street Medway, MA**

**MINUTES**

**Members Present:** Brian White, Chair; Gibb Phenegar, Vice Chair; Christina Oster, Clerk; Joe Barresi, Member; Tom Emero, Member

**Members Participating Remotely:** none

**Members Absent:** none

**Also Present:** Barbara Saint Andre, Director, Community and Economic Development; Anna Rice, Administrative Assistant, Community and Economic Development

**Call to Order**

Mr. White called the meeting to order at 7:30 p.m. and stated that this meeting is being recorded by Medway Cable Access.

**Public hearings**

**67 Village Street** – The application is for a determination of a pre-existing nonconforming use of the property, and the issuance of a **special permit** under Section 5.5 D to allow a personal trainer's office.

Tom Emero recused himself from this public hearing.

Attorney Steve Kenney was present to discuss the application. Attorney Kenney gave background on the property, stating that the building was constructed in 1940, and was operated as a factory and warehouse until 2004. In 2004, the previous owner applied for a special permit for an industrial use, which was denied by the Zoning Board of Appeals as it was deemed that the use would remain the same. Attorney Kenney noted that in 2018 the ZBA issued a kennel special permit for the property, which was not used. Attorney Kenney stated that the proposed use for a personal trainer's office would be a quiet use with no outdoor space utilized and would fit the location well as it would operate by appointment only, there is adequate space and parking, and there will be no hazard to abutters or environment or change in structure.

Ms. Oster asked how many people would be present at one time. Filipe Cotas, the tenant and personal trainer, stated that on an average day there would likely be about 6 people at a time.

Mr. White suggested the Board discuss whether the use of an office space is pre-existing nonconforming.

Ms. Saint Andre stated that Jon Ackley, Building Commissioner, noted that the only legal pre-existing nonconforming use approved for this property is industrial warehouse. Ms. Saint Andre noted that when there is a particular use for a building, which also has an office for administrative work, that does not necessarily make it an office use. Mr. Barresi asked if there are any prior special permits, Ms. Saint Andre stated there was a special permit issued in 2011 for a company called Castronics Inc., in which the ZBA determined there is a pre-existing use as a warehouse on this site. Mr. Phenegar noted that the main use of the property was industrial, and the office is a tertiary use. Mr. Phenegar stated that it seems the property was used as one use for 40 years, and it is not an office space.

Attorney Kenney stated that the businesses that have operated out of the building have always included an office space and would like the Board to determine that there is a pre-existing nonconforming use as such. He stated that in the past, the building has been marketed and rented as an office use without coming to the Board for a special permit. Mr. White stated that there is a difference between an industrial use and an office use. Ms. Oster stated that she would be in favor of issuing a special permit for an office use, Mr. Barresi agreed and stated the current office use is not pre-existing nonconforming.

Mr. Phenegar noted that there is a path the Board can take to make it an office space, and Mr. White stated the office space is currently the ancillary use, not the primary use. Mr. Leung, the property owner, stated that most of the building is office space, with offices on the 2<sup>nd</sup> floor and in the rear of the building. Ms. Saint Andre asked what the use of the building was in 1951 when the Zoning Bylaw was established, Attorney Kenney stated it was a warehouse with an office.

Mr. White suggested the Board vote on the Special Permit decision criteria for Section 5.5: that the extension or change of the nonconforming use will not be substantially more detrimental than the existing nonconforming use to the neighborhood.

With a motion made by Gibb Phenegar, seconded by Christina Oster, the Board finds that the Applicant has established a legally pre-existing, nonconforming use of the premises as an industrial warehouse use, by a vote of 4-0.

The Board discussed the criteria for issuing a special permit for the office use, whether the use will be substantially more detrimental to the neighborhood. Mr. Phenegar stated he believes a personal trainer office is a better use than manufacturing, and asked how much space there is for cars. Mr. Kenney stated there are 19 parking spaces. Mr. White stated he would have no issue allowing the office use, Mr. Phenegar stated that noise would likely not be an issue, and there would be less of an impact on the neighborhood than an industrial use. Mr. White asked if it would be a drop-in gym, Mr. Cotas stated it is by appointment, and on average there would be 6-7 clients at a time. He stated that the morning and night classes are proctored by staff, though clients can drop in during open gym hours in the middle of the day while staff are present. Mr. Cotas' attorney, Michael Edwards, stated that Mr. Cotas is selective with clientele, and the business design does not allow for many people to join/attend all at once.

Mr. White noted the emails from the Building Commissioner regarding violations and lack of permits for the property, Attorney Kenney stated the required plumbing permits were applied for earlier that day. Mr. Leung stated that he was informed by his contractor that the permits were applied for 2 weeks prior,

but had been held up by the Town. Attorney Kenney stated that outstanding bills had been paid the day before, which may have been the cause. Ms. Saint Andre noted that the information from the Building Commissioner is that no permits have been applied for, other than the plumbing permit applied for this morning. Mr. Leung noted that there is a second office use in the building, as he was not aware that the office use was not allowed. Mr. Leung stated he wants to establish the office uses to make sure that the property has a low impact on the neighborhood.

Attorney Edwards, representing Mr. Cotas, alleged that there has been a breach of contract and misrepresentation between the owner and the tenant, but that it is in the tenant's best interest that the special permit be granted. Attorney Edwards stated that he had spoken to the Building Commissioner, who suggested conditions be added to the special permit to ensure that the building not be leased until it is brought up to code. Mr. White noted that building and occupancy permits are issued by the Building Department, so the code issues will be addressed during that process. Attorney Edwards stated that Mr. Ackley recommended the special permit included conditions regarding the installation of an ADA ramp, involvement of an architect to correct code violations, and striping of the parking spaces.

Mr. White stated he felt that the term "personal trainer's office" is narrow and suggested "personal trainer's facility" instead. He also mentioned that he would like to see a condition that prevents this location from becoming a large commercial gym. Ms. Saint Andre suggested the Board add conditions regarding hours of operation, no street parking allowed, and that the gym is for members only by appointment. Ms. Saint Andre suggested continuing the public hearing to the next meeting, so she can draft the conditions of the decision and review them with Attorney Kenney and Attorney Edwards before approval from the Board. Ms. Saint Andre and the Board then reviewed the boiler plate conditions that would also be added to the decision, and asked the applicant for any comments on the conditions.

**Motion to continue the public hearing to June 7, 2023, at 7:30 p.m., made by Gibb Phenegar, seconded by Christina Oster, passed by a vote of 4-0.**

### **3. Other Business**

### **4. Approval of Minutes**

- April 5, 2023

**Motion to approve the minutes for April 5, 2023, as presented, made by Gibb Phenegar, seconded by Christina Oster, passed by a vote of: 5-0.**

### **5. Upcoming Meetings**

- June 7<sup>th</sup>

The Board discussed adding a special meeting for Friday, June 9<sup>th</sup>, at 11:30 a.m. to vote on the decisions for 67 Village Street, as Mr. Barresi is unable to attend on June 7<sup>th</sup>.

- June 21<sup>st</sup>

### **6. Adjournment**

**Mr. White adjourned the meeting at 8:57 p.m.**

Respectfully submitted,  
Anna Rice  
Administrative Assistant, Community and Economic Development

Edited by  
Barbara J. Saint Andre,  
Director, Community and Economic Development

List of Documents Reviewed at Meeting

1. Plan titled "Parking for existing structure commercial building" by HH Design Group Architects, dated March 1, 2020.