

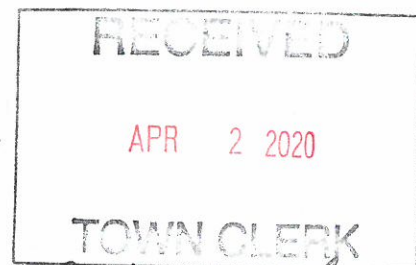
*Board Members*  
Rori Stumpf, Chairman  
Brian White, Vice Chair  
Gibb Phenegar, Clerk  
Christina Oster, Member  
Tom Emero, Member  
Carol Gould, Associate Member



Medway Town Hall  
155 Village Street  
Medway, MA 02053  
Telephone (508) 321-4890  
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**TOWN OF MEDWAY**  
**COMMONWEALTH OF MASSACHUSETTS**  
**ZONING BOARD OF APPEALS**

**DECISION**  
**SPECIAL PERMIT**  
**123 HOLLISTON STREET – MEDWAY VFW**



*30 day appeal*  
*April 23, 2020*

**Applicant(s):** John Larney for Medway VFW (the “Applicant”)  
123 Holliston Street  
Medway, MA 02053

**Owner:** Town of Medway

**Location of Property:** 123 Holliston Street (Assessors’ Parcel ID: 22-067)

**Approval Requested:** The application is for the issuance of a **special permit** under Section 5.5 of the Zoning Bylaw for the extension of a Non-Conforming Use to allow three small businesses to continue operation from the location, and to allow a fourth business to begin operation.

**Members Participating:** Rori Stumpf (Chair), Brian White (Vice Chair), Gibb Phenegar (Clerk), Christina Oster (Member), Tom Emero (Member)

**Members Voting:** Rori Stumpf (Chair), Brian White (Vice Chair), Gibb Phenegar (Clerk), Christina Oster (Member), Tom Emero (Member)

**Date Application Filed:** March 9, 2020

**Hearing Opened:** April 1, 2020

**Hearing Closed:** April 1, 2020

**Date of Decision:** April 2, 2020

**Decision:** **GRANTED**

*Board Members*  
Rori Stumpf, Chairman  
Brian White, Vice Chair  
Gibb Phenegar, Clerk  
Christina Oster, Member  
Tom Emero, Member  
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## **I. PROCEDURAL HISTORY**

1. On March 9, 2020, the applicant filed an application for the issuance of a special permit under Section 5.5 of the Zoning Bylaw for the extension of a Non-Conforming Use to allow three small businesses to continue operation from the location, and to allow a fourth business to begin operation.
2. Notice of the public hearing was published in the Milford Daily News on March 18, 2020, and March 25, 2020, and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A, §11. An additional notice was sent by mail to all interested parties and posted in Town Hall setting forth instructions for participating remotely in the public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place.
3. The public hearing was opened as a virtual meeting through the Zoom platform on April 1, 2020, it was closed on April 1, 2020.
4. The property is located in the Agricultural Residential I District. The front setback requirement is 35 feet and the side and rear setback requirements are 15 feet. The minimum lot area requirement is 44,000 sq. ft. and the minimum frontage requirement is 180 feet.
5. The Board notified Town departments, boards and committees of this application.
6. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section V. of this Decision.

## **II. TESTIMONY**

John Larney, the applicant stated that the VFW had 4 food business leases until recently, when it lost one of the leases (Bossy's Catering). The VFW is looking to add a proposed fourth food business (the Lobster Hub), which is a food truck, to bring them back up to four leases. There will be no retail sales at the VFW, just preparation and storage for the businesses. These business leases contribute to the continued operation of the VFW.

Mr. Phenegar stated that due to them being operating already out of this location they will just be formalizing another business which will not exceed four. No other Board members had comments.

Mr. Stumpf inquired whether the food trucks have designated parking spots, Mr. Larney stated that yes, there are certain spots for the trucks. Mr. Stumpf then inquired about the generator on the property, and Mr. Larney stated that it belongs to the town with ongoing discussion of it being removed soon.

Todd Nelson of 6 Birch Bark Road stated he has lived in Medway a very long time and that he has recently bought the food truck in collaboration with Cousins Lobster. He stated he inquired with the Town about a commissary space and was directed to the VFW where he met John Larney, and was told they could use the space for their business for food preparation and storage of the food truck. He stated that they are hoping to have this opportunity to utilize the space and have received a lot of positive feedback from the town.

Mr. Stumpf then reviewed the special permit criteria and noted that these types of businesses have been operating successfully at the site for some time, and the site is appropriate, and the businesses have not caused any detriment. The Board members agreed that the special permit criteria have been met.

The Board then found that the site is a lawful, pre-existing nonconforming use as a VFW post, including the use of the kitchen. The Board further found that the proposed use would not be substantially more detrimental to the neighborhood.

The Board then discussed potential conditions upon approval. Ms. Saint Andre reviewed the boiler plate conditions, noting that numbers 1, 5 and 6 were not applicable because no construction is contemplated. She discussed additional conditions specific to this property. She stated that the property is owned by the Town of Medway and leased to the applicant. The first condition focused on making sure that no retail sales or restaurant(s) would be conducted out of the VFW. Mr. Stumpf asked if this would prevent one of the businesses to set up on the property for special occasions. Ms. Saint Andre stated that it is not the intent to prohibit occasional retail sales, just not on a regular basis as this is a residential zone. She then proposed another condition that the permit is subject to the lease from the town and they would need to go to BOS for approval. The last condition was in regards to any alterations to the VFW or the kitchen in regards to complying with the codes, there are not any proposed alterations at this time. Mr. Larney and all Board members agreed to the additional conditions.

Andrea Crow, Medway VFW Senior Vice Commander inquired about the food trucks, in the event of having an “off week” meaning slow business, that one of them can set up there for more than 8 hours a day. Ms. Saint Andre clarified the intent of the businesses utilizing the VFW and use of the property and that they are not supposed to be serving the food there, or having the food trucks open for more than 1 day. Ms. Crow stated that per zoning she thought that they can do that. Ms. Saint Andre clarified that due to the zoning district being a residential zone they cannot have a business there, therefore these operations are pre-existing non-conforming.

It was concluded that the condition will be rewritten to reflect that occasional one day events are allowed.

Mr. Emero asked for clarification in regards to the condition on setting up at the VFW for events. Ms. Saint Andre clarified per the zoning district being residential, restaurant uses are not allowed, and these businesses are being allowed on a limited basis on the site, as an extension of the VFW Post.

### **III. FINDINGS**

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A, as amended, and by the Medway Zoning Bylaw. The Board also considered evidence and testimony presented at the public hearing.

**A. Section 5.5.D: Extension of Nonconforming Use Required Findings**

1. That the use of the premises is a lawful pre-existing, nonconforming use.

The property is currently owned by the Town of Medway and leased to the Medway VFW, which uses it as its Post. A “Lodge or club” is allowed in the AR-1 district by special permit, but there is no evidence that a special permit was ever issued for this use. The building has been in existence since 1961 and, based on the testimony and documents received from the applicant, has been used by the VFW as its Post (i.e. lodge or club) since that time. This has included kitchen facilities, with food services, and holding functions such as holiday gatherings, weddings, and other events.

Since the early 1960’s, the Post has had an in-house caterer and worked with outside caterers to ensure a quality experience for its members. Over recent years, the Post has rented the kitchen to small businesses who are not allowed to work from their homes due to Board of Health regulations. These included the pickle lady, the cake lady, and several others over the years, including a caterer using the premises for events and outside parties.

Currently, there are three small food businesses using the Post facilities: Confectionary Creations, Snow Stop, and Pangea Cuisine, which use the post for prep work, storage of food trucks, and related work, but not for retail sales. Pangea Cuisine also caters events at the Post. The Post would like to allow a fourth small food vendor, Lobster Hub, to use the facilities for food prep and parking its food truck, but again with no retail sales on site. The Building Commissioner has not received any complaints about the VFW Post

Accordingly, the Board finds that the use of the property as the VFW Post is a lawful pre-existing, nonconforming use as a “lodge or club”, including food service.

2. That the proposed extension of the nonconforming use will not be substantially more detrimental to the neighborhood than the existing nonconforming use.

The Board finds that the use of the property by the applicant to lease to up to four small food service businesses, which do not conduct their food sales at the property except for occasional events, would not be substantially more detrimental to the neighborhood. As noted above, three of these businesses, and other similar businesses in the past, have been operating from this location without causing substantial detriment to the neighborhood.

**B. Section 3.4 Special Permit Decision Criteria**

1. *The proposed site is an appropriate location for the proposed use.*

2. *Adequate and appropriate facilities will be provided for the operation of the proposed use.*
3. *The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.*
4. *The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*
5. *The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials, or other undesirable visual, site, or operational attributes of the proposed use.*
6. *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*
7. *The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.*
8. *The proposed use is consistent with the goals of the Medway Master Plan.*
9. *The proposed use will not be detrimental to the public good.*

The Board found that the application met all of the above criteria for the grant of a special permit. It noted that the premises have been used for similar purposes for a number of years, and it is an appropriate use of the existing facility; there are adequate and appropriate facilities at the site for these businesses; the uses do not create a hazard or undue traffic congestion, and are not detrimental to the adjoining properties; it is in harmony with the general purposes of the bylaw and Master Plan.

#### IV. CONDITIONS OF APPROVAL

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board **GRANTS** the Applicant, John Larney for the Medway VFW, a **SPECIAL PERMIT** for the extensions of a **NON-CONFORMING USE** under Section 5.5 of the Zoning Bylaw to allow three small businesses to continue operation from the location, and to allow a fourth business to begin operation, for the property located at 123 Holliston Street (Assessor's Parcel ID: 22-067) subject to the following conditions:

1. This special permit is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the special permit that may be required by the decisions of other Town boards, agencies or commissions shall be submitted to the Board for review as a modification.
2. Any work or use that deviates from this Decision may be a violation of the Medway Zoning Bylaw. All conditions imposed by this Decision are mandatory, and any violation of a condition imposed by this decision may be a violation of the Medway Zoning Bylaw. Any violations of this Decision may prevent the issuance of a building permit and/or occupancy permit, or result in the issuance of a cease and desist order, noncriminal penalties, or fines, as further provided in Section 3.1 of the Zoning Bylaw. Please note that Section 3.1.F of the Zoning Bylaw provides:

1. Anyone who violates a provision of this Zoning Bylaw, or any condition of a variance, site plan review decision or special permit, shall be punishable by a fine of not more than three hundred dollars for each offense. Each day during which any portion of a violation continues shall constitute a separate offense.
2. As an alternative means of enforcement, the Building Commissioner may impose noncriminal penalties pursuant to G.L. c. 40, § 21D and Article XX of the Town's General Bylaws, in accordance with the following schedule:
  - First offense: warning (verbal or written)
  - Second offense: one hundred dollars
  - Third offense: two hundred dollars
  - Fourth and each subsequent offense per violation: three hundred dollars
3. As provided in Section 3.4.E of the Zoning Bylaw, special permits shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under G.L. c. 40A, §17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or, in the case of a special permit for construction, if construction has not begun by such date, except for good cause. Upon receipt of a written request by the applicant filed at least 30 days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and also the length of time requested.
4. This special permit allows the premises, including the kitchen, to be used for no more than four small food service, catering, or food truck businesses for food preparation and storage, including parking of vehicles; however, this special permit does not allow these businesses to open a restaurant at this site, or to conduct retail sales of food to the public at this site on a regular basis. Occasional on-site retail sales from the four small food service, catering, or food truck businesses are allowed as has been customary, and subject to any required permits or any required approval from the Board of Selectmen as lessor.
5. This special permit is subject to the terms of the applicant's lease with the Town of Medway, and any restrictions imposed by the Board of Selectmen pursuant to the lease.
6. Any alterations to the premises, including the kitchen, must be in compliance with applicable state codes, including building, wiring, plumbing, and fire codes. The applicant shall contact the Building Department before making any modifications to the building, including any modifications to the kitchen, related to the businesses allowed pursuant to this special permit.

## **V. INDEX OF DOCUMENTS**

- A. The application for special permit included the following plans and information that were provided to the Board at the time the application for special permit was filed:

1. “Assessment and Sales Report” for 123 Holliston Street Medway, MA 02053 dated March 9, 2020
2. “Plan of Land in Medway, MA” belonging to Medway Veterans Building Assoc. dated March 30, 1984, Surveyor: Joseph Reilly Medway, MA

An additional submittal from the applicant was received March 31<sup>st</sup>:

3. Letter titled “Medway Veterans of Foreign War” from John Larney received March 31, 2020

**B.** During the course of the review, the following materials were submitted to the Board by Town departments and boards:

1. Email from Mike Fasolino, Medway Fire Dept. dated March 11, 2020.
2. Email from Joanne Russo, Medway Treasurer dated March 11, 2020.
3. Email from David D’Amico, Medway DPW Director on March 12, 2020.
4. Email from Bridget Graziano, Medway Conservation Agent dated March 13 2020.
5. Letter from Jack Mee, Building Commissioner dated March 16, 2020.
6. Email from Jack Mee, Building Commissioner dated March 31, 2020.



## VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Brian White and seconded by Gibb Phenegar, the Zoning Board of Appeals hereby **GRANTS** the Applicant, John Larney for Medway VFW, a ***SPECIAL PERMIT*** for an ***EXTENSION OF A NON-CONFORMING USE*** under Section 5.5 of the Zoning Bylaw to allow up to four small food service, catering, or food truck businesses operate from the location, for the property located at 123 Holliston Street (Assessor's Parcel ID: 22-067), in accordance with the conditions stated herein.

| Member:         | Vote: | Signature: |
|-----------------|-------|------------|
| Rori Stumpf     | Aye   | _____      |
| Brian White     | Aye   | _____      |
| Gibb Phenegar   | Aye   | _____      |
| Christina Oster | Aye   | _____      |
| Tom Emero       | Aye   | _____      |


The Board and the Applicant have complied with all statutory requirements for the issuance of this special permit on the terms hereinafter set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in General Laws chapter 40A, section 15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, chapter 40A, section 17, which shall be filed within twenty days after the filing of this decision in the office of the Medway Town Clerk.

In accordance with General Laws chapter 40A, section 11, no special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title, bearing the certification of the Town Clerk, that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. The fee for recording or registering shall be paid by the Applicant. A copy of the recorded Decision certified by the Registry, and notification by the Applicant of the recording, shall be furnished to the Board.

## VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Brian White and seconded by Gibb Phenegar, the Zoning Board of Appeals hereby **GRANTS** the Applicant, John Larney for Medway VFW, a ***SPECIAL PERMIT*** for an ***EXTENSION OF A NON-CONFORMING USE*** under Section 5.5 of the Zoning Bylaw to allow up to four small food service, catering, or food truck businesses operate from the location, for the property located at 123 Holliston Street (Assessor's Parcel ID: 22-067), in accordance with the conditions stated herein.

| Member:         | Vote: | Signature:  |
|-----------------|-------|---|
| Rori Stumpf     | Aye   | _____   |
| Brian White     | Aye   | _____   |
| Gibb Phenegar   | Aye   | _____   |
| Christina Oster | Aye   | _____   |
| Tom Emero       | Aye   | _____  |

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