



Town of Medway  
**ZONING BOARD OF APPEALS**  
155 Village Street, Medway, MA 02053

Eric Arbeene, Chair  
Brian White, Vice Chair  
Carol Gould, Clerk  
Bridgette Kelly, Member  
Rori Stumpf, Member  
Christina Oster, Assoc. Member

**DECISION**  
**SPECIAL PERMIT**  
**146 – 148 VILLAGE STREET**

**Date Application Filed:** March 28, 2018

**Applicant(s):** Judith A. Malmberg, Trustee  
Richard P. Malmberg II Revocable Trust (“the Applicants”)  
66 Tuscany Drive  
Franklin, MA 02038

**Location of Property:** The Property is located at 146 – 148 Village Street (Assessor Parcel ID: 60-227).

**Approval Requested:** Special Permit under Section 5.5 Nonconforming Uses & Structures Special Permit to change/extend the existing nonconforming first floor commercial salon unit in a mixed-used and multifamily building, to a one bedroom residential unit.

**Members Participating:** Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould, Rori Stumpf, and Christina Oster

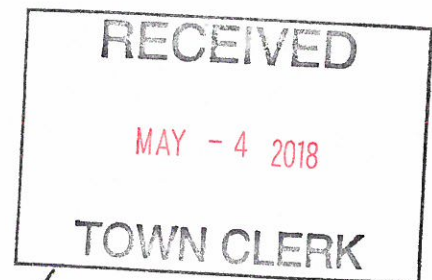
**Members Voting:** Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould, Rori Stumpf, and Christina Oster

**Hearing Opened:** April 18, 2018

**Hearing Closed:** May 2, 2018

**Date of Decision:** May 2, 2018

**Decision:** Granted with Conditions



*30 day appeal  
May 24, 2018*



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## **I. PROCEDURAL HISTORY**

1. On March 28, 2018, the Applicant's Representative filed a special permit under Section 5.5 Nonconforming Uses & Structures Special Permit to change/extend the existing nonconforming first floor commercial salon unit in a mixed-used multifamily building, to a one bedroom residential unit.
2. Notice of the public hearing was published in the Milford Daily News on April 4, 2018 and April 11, 2018, and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A §11.
3. The public hearing was opened on April 18, 2018. The public hearing was continued to May 2, 2018. The Board closed the public hearing that evening.
4. The Property is located in the Village Commercial (VC) District. The front setback requirement is 20 feet and the side and rear setback requirements are 10 feet. The minimum lot area requirement is 10,000 s.f.
5. The existing use of the property as a mixed-used and multifamily building is pre-existing nonconforming.
6. The Applicant was represented by Paul Kenney of Kenney & Kenney, 181 Village Street, Medway, MA 02053.
7. The Board notified Town departments, boards and committees of this application. The Board received comments from Fire Chief Jeff Lynch and the Administrative Site Plan Review Team (Building Commissioner Jack Mee and Planning and Economic Development Coordinator Susan Affleck-Childs).
8. 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**

At the April 18, 2018 meeting, the hearing was opened by the Board. The Applicant's Representative provided an overview of the property and existing building. 146 – 148 Village Street is located diagonally across the street from Town Hall. The building was built in the late 1800's. Existing are apartments units on the second floor, one apartment unit and a salon unit on the first floor. The building is connected to town water and sewer. There are ten parking spaces arranged on the plan provide to the Board, where the bylaw requirement is eight spaces. There are no exterior changes proposed for the building, except for façade, landscaping, and sidewalk improvements.

The lot is 6,181 square feet, which is typical of the old "village" area. The building, the use, and the lot all pre-date zoning.

The benefit of converting the salon to a residential dwelling unit would be the reduction in traffic, providing more affordable and alternative housing options.

The Applicant received the letter from the Administrative Site Plan Review Team and did not have an issue with the items proposed to the Board as conditions of a decision, except for the additional fencing on the property, both along the northern rear of the property and in the front yard.

The storefront windows would remain but would be “dressed up” with latticing and would not be removed. The concrete walkways would be replaced. Updated the existing storefront area for the new unit are all things that the applicant is proposing to complete.

All upgrades to the building would need to require with building and fire codes.

The Board members all stated that the proposed use was appropriate and would benefit the neighborhood and the Town.

### **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 and comments submitted by residents placed in the public record during the course of the hearings.

#### **A. 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 Applicant has demonstrated through testimony and written materials, specifically the Special Permit Form submitted with the application and attached hereto, that they have met all of the required Special Permit Decision Criteria.

## **B. Section 5.5 Nonconforming Uses & Structures Special Permit Criteria**

1. *Section 5.5.D of the Medway Zoning Bylaw requires the Board to determine that the proposed use is not substantially more detrimental to the neighborhood than the existing nonconforming use.*
  - a. The Board finds that the proposed use is not substantially more detrimental to the neighborhood because it will not increase traffic congestion and will not create any undesirable visual, site, or operational attributes to the property.
  - b. The conversion to a one bedroom dwelling unit is consistent with the Town's Master Plan by providing diversity in housing types, promoting pedestrian oriented development, and increasing the number of affordable housing units.
2. *Section 5.5.E of the Medway Zoning Bylaw requires the Board to determine that the proposed structure is not substantially more detrimental to the neighborhood than the existing nonconforming structure.*
  - a. The Board finds that the proposed structure is not substantially more detrimental to the neighborhood as there will be not exterior structural changes.
  - b. Façade improvements will greatly benefit the property as well as the surrounding the Village Commercial and Village Residential neighborhoods.

## **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 Applicants, Judith A. Malmberg, Trustee and Richard P. Malmberg II Revocable Trust, a **SPECIAL PERMIT** under Nonconforming Uses & Structures section 5.5.D and 5.5.E of the Medway Zoning Bylaw for the property located at 146 – 148 Village Street (Parcel ID: 60-227).

1. The “Salon,” as shown on the existing plan of land for 146 – 148 Village Street, prepared Colonial Engineering of 11 Awl Street, Medway, MA 02053, dated April 12, 2018, shall be converted to a one bedroom dwelling unit. The three existing dwelling units shall remain the same.
2. Wheel stops shall be installed for parking spaces 9 and 10, as shown on the existing plan

of land for 146 – 148 Village Street, prepared Colonial Engineering of 11 Awl Street, Medway, MA 02053, dated April 12, 2018, so as to provide enough space for entry to the “storage area” shown on the plan.

3. The large tree at the northern rear of the property shall be removed or, alternatively, the parking spaces shown as 4 and 5 on the existing plan of land for 146 – 148 Village Street, prepared Colonial Engineering of 11 Awl Street, Medway, MA 02053, dated April 12, 2018, shall be re-arranged and/or removed to reflect that those parking spaces are not viable parking spaces. A minimum of 8 parking spaces shall be provided. Any final plans shall reflect changes to the parking space arrangement.
4. All existing sidewalks and entrances to the building on the property shall be improved, repaired, and/or replaced.
5. A scope of work for grassing and landscaping improvements shall be submitted to the Building Inspector/Zoning Enforcement Officer for review. The scope of work shall, at a minimum, include seeding for the front lawn and improvements to the existing landscaping.
6. To maintain appropriate screening for the abutting property of 144 Village Street, the white vinyl fencing along the eastern side of the property shall not be removed, except for replacement or repair.
7. No parking shall be allowed except for where designated on the existing plan of land for 146 – 148 Village Street, prepared Colonial Engineering of 11 Awl Street, Medway, MA 02053, dated April 12, 2018, or as otherwise provided for in this decision. Parking on the front lawn area is explicitly prohibited.
8. All tenants shall park on the premises and shall not use adjacent properties. If the tenants are unable to park on the premises, the property owner shall provide a formal agreement to the Building Inspector/Zoning Enforcement Officer which allows for shared parking on a public or private parking lot within 400 feet of the property.
9. The existing parking area shall remain crushed stone gravel to promote on-site stormwater infiltration. Paving with impervious materials is explicitly prohibited.
10. Parking spaces shall be clearly delineated at all times, preferably with white or yellow parking paint or tape.
11. There shall be no outdoor storage, equipment, canoes, outdoor seating, or similar allowed within the arrangement of the parking spaces as shown the existing plan of land for 146 – 148 Village Street, prepared Colonial Engineering of 11 Awl Street, Medway, MA 02053, dated April 12, 2018.
12. All trash containers shall be located within one enclosed area, including a future dumpster if such is determined to be necessary. Such enclosure shall be of white vinyl fencing, or similar.
13. A scope of work for upgrades and improvements to the existing façade which fronts

Village Street shall be submitted to the Building Inspector/Zoning Enforcement Officer for review. The scope of work shall, at a minimum, include improvements to the “salon” storefront area where the proposed residential unit will be location. The configuration of the two storefront display areas and the central doorway shall be maintained and shall be improved upon with latticing, or similar features. Upgrades and improvements shall be compatible with the historic character of the building.

14. The building shall have a sprinkler and fire alarm system installed as required by Building and/or Fire code.
15. During construction and renovations of the dwelling unit, the construction vehicles shall only occupy two parking spaces, as would regularly be designated for the dwelling unit, between the hours of 6 pm and 7 am, as to ensure that there is adequate overnight parking for the existing dwelling units. No parking of construction and construction related vehicles shall take place on adjacent public or private ways or interfere with the safe movement of persons and vehicles on adjacent properties or roadways.
16. Construction shall begin no earlier than 7 am and shall cease no later than 6 pm Monday through Friday. On Saturdays, construction shall begin no earlier than 7 am and cease no later than 8 pm. No construction shall take place on Sundays or legal holidays without the advance approval of the Inspector of Buildings.
17. The applicant shall notify neighbors in the general area around the site when site work and construction are scheduled to begin and provide a phone number for them to use for questions and concerns that arise during construction.
18. Construction noise shall not exceed the noise standards as specified in the *Zoning Bylaw*, Section 7.3.C.2. Environmental Standards.
19. A final plan of land and a final set of as-built floor plans shall be provided to the Building Inspector/Zoning Enforcement Officer no later than 30 days following completion of the project. The final plan of land shall accurately represent all existing features, including, but not limited to, trees, landscaping, sidewalks, and wheel stops.
20. The 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.

Any work or use that deviates from this Decision shall be a violation of the *Medway Zoning Bylaw*.

21. 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. If no request for extension is filed and approved, the Special Permits shall lapse two years from the date of Decision, unless action is taken, or as may be otherwise specified herein, and may be reestablished only after a new filing, hearing, and decision.

## **V. INDEX OF DOCUMENTS**

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

1. General Special Permit Form
2. Plan of land 146 – 148 Village Street, prepared Colonial Engineering of 11 Awl Street, Medway, MA 02053, dated January 29, 2018
3. Plan of land 146 – 148 Village Street, prepared Colonial Engineering of 11 Awl Street, Medway, MA 02053, dated July 20, 2017
4. Building Sketch 146 – 148 Village Street
5. Addendum: citation of language from the Section(s) of the Zoning Bylaw in Question
6. Addendum: Evidence, legal or otherwise, supporting applicant's claim

**B.** During the course of the review, the following materials were submitted to the Board by Town Departments/Boards:

1. Comments: Fire Department, Chief Lynch, April 2, 2018
2. Comments: Building Department, Jack Mee, April 3, 2018
3. Comments: Administrative Site Plan Review Team, Jack Mee & Susy Affleck-Childs, April 18, 2018

**C.** During the course of the review, the following materials were submitted to the Board by the Applicant:

1. Plan of land 146 – 148 Village Street, prepared Colonial Engineering of 11 Awl Street, Medway, MA 02053, dated April 12, 2018



The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision 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 G.L. c. 40A §15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty days (20) after the filing of this notice in the Office of the Medway Town Clerk.


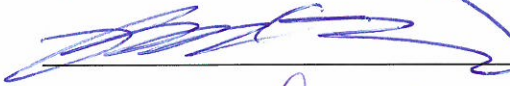


In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the Office of the Town Clerk and no appeal has been filed within said twenty day period or that any duly filed appeal has been dismissed or denied. 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.

The next page provides the signatures of the Board.

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## VI. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Brian White and seconded by Rori Stumpf, the Zoning Board of Appeals hereby **GRANTS** the Applicants, Judith A. Malmberg, Trustee and Richard P. Malmberg II Revocable Trust, a **SPECIAL PERMIT** under Nonconforming Uses & Structures section 5.5.D and 5.5.E of the Medway Zoning Bylaw for the property located at 146 – 148 Village Street (Parcel ID: 60-227), subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Eric Arbeene	<u>yes</u>	
Brian White	<u>yes</u>	
Carol Gould	<u>yes</u>	<u>Carol Gould</u>
Bridgette Kelly	--	
Rori Stumpf	<u>yes</u>	
Christina Oster	--	

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