

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

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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

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20 Day Appeal
June 30, 2021

DECISION
NONCONFORMING USE DETERMINATION/FINDING
305 VILLAGE STREET

Applicant(s): Julian, Inc.
305 Village Street
Medway, MA 02053

Location of Property: 305 Village Street (Assessors' Parcels ID: 58-111 and 58-112).

Approval Requested: The application is for the issuance of a **determination/finding** under Section 5.5.F of the Zoning Bylaw that the non-conforming status of the property is still in effect, and/or a **special permit** under Section 5.5.D to change or extend the use as an office and vehicle storage.

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

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

Date of Decision: June 2, 2021

Decision: **DETERMINATION/FINDING GRANTED; SPECIAL PERMIT APPLICATION WITHDRAWN**

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I. PROCEDURAL HISTORY

1. On May 4, 2021, the Applicant filed for a **determination/finding** under Section 5.5.F of the Zoning Bylaw that the non-conforming status of the property is still in effect, and/or a **special permit** under Section 5.5.D to change or extend the use as an office and vehicle storage.
2. Notice of the public hearing was published in the Milford Daily News on May 19, 2021 and May 26, 2021 and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A, §11. The notices included 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 Orders imposing strict limitations on the number of people that may gather in one place.
3. The public hearing was opened on June 2, 2021. The hearing was closed the same evening. At the June 2nd public hearing, the applicant's representative stated that the applicant wished to withdraw the special permit application without prejudice, and the Board voted to allow the withdrawal.
4. The Property is located in the Agricultural Residential II (AR-II) District. The front setback requirement is 35 feet, and the side and rear setback requirements are 15 feet. The minimum lot area requirement is 22,500 sq. ft. and the minimum frontage requirement is 150 feet.
5. The Board notified Town departments, boards, and committees of this application. The Board received comments from the Treasurer/Collector and the Department of Public Works.
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. SUMMARY OF TESTIMONY

The public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place, was held via Zoom platform. All persons participated remotely.

The representative for the applicant, attorney Stephen Kenney of Kenney and Kenney Law stated that the property at 305 Village Street contains a preexisting nonconforming structure and use. The property has been used as vehicle storage for 80 years. The applicant is seeking a determination/finding that the use has not been abandoned, changed, or not used for more than two years. Mr. Kenney stated that there is no buyer at this time, and that a buyer could come

before the Board at a later time if a specific use was sought. He explained the history of the property, being 1.689 acres with a building erected in 1940.

Attorney Kenney further explained that, starting in 1940, the property was owned by Mr. Bemis and was used for the storage of vehicles including school buses with an accessory office space. In 1964, the property was sold to Mr. Zide, who was granted a variance by the Zoning Board of Appeals on April 7, 1966 to build an addition for the storage of additional vehicles. The variance contains conditions prohibiting junk vehicles or equipment being stored outside but does allow a “reasonable number” of vehicles and equipment parked on the land. Julian’s, Inc., a corporation owned by the Mele family, purchased the property in 1984 and moved their business to the site, including use as storage for vehicles. In 2012, Julian’s sold its oil business to Devaney Oil, which continued to store vehicles on the property as well as deliver oil. In February of 2014, Julian’s and the Town of Medway entered into a license agreement to allow the Town Department of Public Works (DPW) vehicles to be stored on the property. This license agreement ended in November of 2020. Mr. Kenney noted that there were comments from the DPW stating that the Town used the property for the storage of vehicles but did not work on vehicles or use the office space. Mr. Kenney stated that the use has not been abandoned because the property has been used for vehicle storage for 80 years, up until November of 2020, which is within two years.

Mr. White stated that the 1966 decision from the Board was helpful to see that the use as vehicle storage has existed for some time. He believed that the use as storage has been continuous, including when used by the Town. Mr. Kenney clarified that the applicant is seeking a finding for the storage of vehicles with an accessory office use, but that the oil business has been discontinued and there will be no oil tanks on the property. Ms. Oster asked why the applicant is seeking a determination as to the potential abandonment of the use. Mr. Kenney stated that the Building Commissioner suggested he come before the Board, however the owners always intended that the use not be abandoned and have worked to ensure this. Mr. Phenegar questioned whether the office use had been abandoned. Mr. Kenney stated that when used by the oil company, the office was in use. He noted that most of the building is warehouse space with a small office up front. The Town may not have used the office, but the use is for vehicle storage with an accessory office space. Mr. White stated that since it is an office within another business, it has not fallen out of use.

There was discussion surrounding the differences on the two plot plans provided. The new plot plan, dated May 26, 2021 shows three parcels of land instead of two. Mr. Kenney stated that the smallest parcel was separate based on Assessor’s data and has a separate deed, but it is owned by Julian’s, Inc. also, and all parcels will be sold together. Ms. Saint Andre noted that municipal use is allowed by-right in the ARII zoning district. According to Section 5.5.G. of the zoning bylaw, a nonconforming use that is changed to a conforming use shall not revert to a nonconforming use without a variance. However, the definition of municipal use states property “owned or leased by and operated by”. The property was not leased to the Town, it was only licensed.

Wayne Carlson, a land surveyor speaking on behalf of Mr. and Ms. Graham, who live near the property, stated that from 2014 to the present the property reverted to a conforming use when used by the Town. He also believed the property was located in the floodplain. He stated that,

according to the bylaws, no nonconforming use is allowed in the floodplain district. Mr. Kenney stated that there was a license agreement, not a use or rental agreement. He also stated that while the Town used the property, the same use was continued. The Board spoke favorably regarding the preexisting nonconforming nature of the use. Mr. White brought up the scope of use and agreed that the office is part of the building. He stated that he would not want visible oil tanks on the property, or anything that had been removed to come back. The Board found that the preexisting nonconforming use, which includes storage of vehicles with an accessory office space, is still valid. There was discussion over a potential condition that no additional impervious surface would be added, with Mr. Kenney agreeing that this would be an expansion of the use that would require Board approval.

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 Zoning Bylaw. The Board also considered the application materials, evidence and testimony presented at the public hearing, and comments submitted and placed in the public record during the course of the hearing.

A. Section 5.5. Nonconforming Uses and Structures other than Single Family and Two-Family Structure Decision Criteria

1. Section 5.5.A.

The Board found that the applicant has established a pre-existing, nonconforming use, nonconforming as to the uses allowed in the zoning district. The nonconforming use is the storage of vehicles, both inside the building and outside the building, and a small accessory office space. The outside storage of vehicles is limited to the current parking area, parts of which are paved and parts of which are gravel. Junk vehicles and junk equipment are not allowed to be stored outside. Any expansion or extension of the outside parking area by paving or otherwise, or other change or extension of the nonconforming use, will require approval by the Board under Section 5.5. Further, the nonconforming use does not include vehicle repair. The Board found that the prior use of the property for storage of oil and fuels has been abandoned, and therefore such use is no longer allowed on the site.

Because the Board found that the applicant has established a preexisting, nonconforming use, the Board must now make a finding under Section 5.5.F.

2. Section 5.5.F.

Has the nonconforming use been substantially altered, changed, abandoned, or not used for more than two years, and therefore lost its protected nonconforming status?

The Board found that the pre-existing nonconforming use as described above has not been substantially altered, changed, abandoned or not used for more than two years, and is still valid, so there is no need for a special permit finding in the absence of a specific proposed use of the property. As noted above, the prior nonconforming use for the storage of oil and fuels has been abandoned, and not used for more than two years, and so that portion of the nonconforming use is no longer valid.

IV. CONDITIONS OF APPROVAL

1. 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

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. Plot Plan: "Plan of Land Medway Mass" October 21, 1963 prepared by B & E Engineering Associates, Inc., Norfolk County Registry of Deeds stamped April 10, 1964
2. License Agreement between Julian Inc. and the Town of Medway Department of Public Services dated January 21, 2014
3. Memo from Stephen Kenney titled "Memo as to Non-Abandonment and Continued Use Pursuant to Section 5.5.F. Regarding 305 Village Street"

B. During the course of the review, the following materials were submitted to the Board:

1. Email from Pete Pelletier, Medway Department of Public Works Deputy Director on May 6, 2021
2. Memo from Barbara Saint Andre, Director of Community and Economic Development, dated May 26, 2021
3. Plot Plan: “Julians, Inc. 305 Village Street” prepared by New England Land Survey dated May 26, 2021
4. Zoning Board of Appeals Variance Decision regarding 305 Village Street dated April 7, 1966

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VI. VOTE OF THE BOARD

By a vote of **4-0** on a motion made by Gibb Phenegar and seconded by Christina Oster, the Zoning Board of Appeals ***FINDS*** that there is a pre-existing nonconforming use of the property, as described in this decision, and that it has not been substantially altered, changed, abandoned, or not used for more than two years and is still valid. It further found that therefore there is no need for a special permit finding in the absence of a specific proposed use of the property.

Member:	Vote:	Signature:
Brian White	AYE	_____
Tom Emero	AYE	_____
Christina Oster	AYE	_____
Gibb Phenegar	AYE	_____

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms 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, §17, and shall be filed within 20 days after the filing of this notice in the office of the Medway Town Clerk.

The fee for recording or registering this decision in the Norfolk County Registry of Deeds, 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.

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