

Board Members

Brian White, Chair
Gibb Phenegar, Vice Chair
Christina Oster, Clerk
Joe Barresi, Member
Tom Emero, 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
67 VILLAGE STREET

Applicant(s): Kent Leung/Boston Dog Hotel, LLC

Location of Property: 67 Village Street (Assessors' Parcel ID: 60-046).

Approval Requested: The application is for the 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.

Members Participating: Brian White (Chair), Gibb Phenegar (Vice Chair), Christina Oster (Clerk), Joe Barresi (Member).

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

Date of Decision: June 9, 2023

Decision: GRANTED WITH CONDITIONS

I. PROCEDURAL HISTORY

1. On April 19, 2023, the Applicant filed for the issuance of 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.
2. Notice of the public hearing was published in the Milford Daily News on May 3, 2023, and May 10, 2023, 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 May 17, 2023, and continued to June 7, 2023, and June 9, 2023. The hearing was closed on June 9th. Member Tom Emero recused himself from the hearing.

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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 square feet and the minimum lot frontage requirement is 150 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.
7. Applicant also applied on May 2, 2023, for a special permit for this same property to change the pre-existing nonconforming use to a mixed use including an office for a nonprofit organization that provides counseling and other services to veterans.
8. Member Joe Barresi was not at the June 7th public hearing, but filed a certification pursuant to G.L. c. 39, §23D that he reviewed all the evidence from that public hearing session, including the video recording, prior to voting on the application on June 9th.

II. TESTIMONY

Attorney Steve Kenney for the applicant explained 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 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. Filipe Cotas, the tenant and personal trainer, was present and stated that on an average day there would likely be a maximum of about 6 people using the facility at a time.

Attorney Kenney asked the Board for a determination of a legally pre-existing nonconforming use of the premises as an office use. Attorney Kenney stated that the businesses that have operated out of the building have always included an office space, and that the building has been marketed and rented as an office use in the past without coming to the Board for a special permit. It was noted that Jon Ackley, Building Commissioner, issued a determination that the only legally existing, pre-existing nonconforming use of this property is industrial storage warehouse. 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. There was a special permit issued in 2011 in which the Board determined that there was a legal pre-existing nonconforming industrial use of the site. The members noted that the main use of the property was industrial, and the office is ancillary. It was noted that it is the burden of the applicant to establish the use of the building in 1951 when the Zoning Bylaw was established. Attorney Kenney stated it was a warehouse with an office at that time.

The Board reviewed whether the proposed use will be substantially more detrimental to the neighborhood. The members stated that a personal trainer facility is a better use than industrial. Mr. Kenney stated there are 19 parking spaces. 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. 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.

At the continued public hearing on June 7, 2023, attorney Kenney asked that the Board find that the preexisting non-conforming use is an industrial use, rather than an industrial storage warehouse use. Ms. Saint Andre noted that on April 26th, the Building Commissioner issued a finding that the preexisting nonconforming use is an industrial storage warehouse, the applicant did not appeal that determination. There is no specific definition of industrial storage warehouse in the Zoning Bylaw, but a preexisting non-conforming use does not have to fit a definition in the bylaw. Mr. White stated he believes the Board should move forward with the Building Commissioner’s finding and add language that broadens the definition.

At the continued public hearing on June 9, 2023, Ms. Saint Andre explained that, since the building is in a residential zone, none of the proposed uses are allowed, and the applicant has the burden to prove any pre-existing nonconforming use. The evidence shows that in 1951 the use of the building was by Castronics, which established the nonconforming use. Any uses since then are only relevant to show the nonconforming use has not been abandoned.

There was a review of floor plans provided by the applicant, showing three units on the first floor, and it was determined to add a condition that the personal fitness facility will not be expanded beyond Unit 1 on the first floor as shown on the floor plan. Mr. Leung stated that Unit 2 will be occupied by him, and Unit 3 will be for a future tenant. Mr. Leung stated the entire second floor will be for 22Mohawk, and that all of the units in the building were existing when he purchased it.

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.

Section 5.5 Special Permit Decision Criteria

The Building Commissioner issued a determination that the property contains a legally pre-existing, nonconforming use as an industrial storage warehouse, and the Board agreed with this determination. The Board noted that the Town adopted zoning in 1951, and at that time the

property was being used by Castronics, Inc., which used the site to cast ball bearings and the small covers used by municipalities for water line access points. Castronics stored the products at the site and also shipped the products from the site. The Board further found that the application does meet the required Special Permit Decision Criteria for Section 5.5, that the change of the nonconforming use by allowing a personal trainer facility with the conditions included in this decision will not be substantially more detrimental than the existing nonconforming use to the neighborhood. There will be no addition to or exterior changes to the building other than providing an accessible entrance in order to create the personal trainer use. There is sufficient parking for this use, and there will be no increase in impervious surface. The building has sewer and water service already provided to it.

The Board finds that the Applicant has demonstrated through evidence submitted, including the plan, as well as testimony from the Applicant, that they have met the required Special Permit Decision Criteria under Section 5.5 of the Zoning Bylaw.

IV. CONDITIONS OF APPROVAL

1. Smoke, heat and carbon monoxide detectors must be installed in accordance with the Massachusetts Fire and Building Codes.
2. 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 new request.
3. 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

4. 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.

5. All site work shall be in compliance with the documents submitted to the Board as listed in Section V of this Decision, including the Plans, provided, however, that the Building Commissioner may approve minor changes in the course of construction that are of such a nature as are usually approved as “field changes” that do not require further review by the Board.

6. The owner must affirm that there is no connection whether direct or indirect to the Town storm water system from the site, including any drainage sump pump, perimeter drains, roof drains, or any other source.

7. The change of the prior nonconforming use is limited to that of a personal trainer facility which provides fitness training to its members during hours of operation only, primarily through fitness classes and other appointment-based instruction. Other types of fitness facilities or service establishment would require further approval from the Board. The location of the personal trainer facility is limited to Unit 3 on the first floor of the building, along with access to common areas, as shown on the attached floor plan (Exhibit A).

8. This property is located in Groundwater Protection Overlay District and is also in a floodplain and subject to the Wetlands Protection Act and Riverfront regulations. Accordingly, there shall be no additional impervious surface added to the property, and no alterations to the outside of the building except those required by building or other codes. Any maintenance to the existing impervious surface, or tree removal, shall be reviewed by the Conservation Commission.

9. The applicant has depicted 19 parking spaces on the plot plan, these spaces must be properly striped within 30 days of the issuance date of this special permit to ensure that there is adequate parking and that vehicles are parked in an orderly fashion. One of the spaces shall be an accessible parking space in compliance with state code requirements. Parking shall not interfere with loading areas, and the area in front of the loading area shall be marked by painting on the pavement: “No Parking – Loading Area Only” and placing a sign on the building with the same statement. There shall be no parking on the adjacent streets or on unpaved surfaces within the site.

10. To mitigate any potential impacts of noise to the neighboring residential homes, the hours of operation of the fitness facility are limited to between 5:00 a.m. and 8:00 p.m.

11. There shall be an accessible entrance provided in accordance with the State Building Code per the Building Commissioner’s letter of April 26, 2023. A building permit shall be obtained for

the creation of the accessible entrance. The use of the building for a personal trainer is not to commence prior to the issuance of a certificate of occupancy by the Building Commissioner for this use.

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 showing existing conditions
2. Unofficial Property Record Card

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

1. Notice of Zoning Violation and Order to Cease and Desist for 67 Village Street, from Jonathan Ackley, Building Commissioner, dated April 26, 2023, with attachments.
2. Email thread from September 2022, between Jack Mee, former Building Commissioner, and Kent Leung.
3. Letter to the Building Commissioner from Attorney Stephen Kenney, dated October 4, 2022.
4. Email to the Building Commissioner from Attorney Stephen Kenney, dated March 29, 2023.
5. Email from Michael Edwards of Morrison Mahoney, LLP, dated May 5, 2023.
6. Emails from John Ackley dated May 17, 2023.
7. Email to Attorney Stephen Kenney from Barbara Saint Andre, dated May 17, 2023.
8. Email from John Ackley to Stephen Kenney and Kent Leung, dated June 2, 2023.
9. Email from Attorney Stephen Kenney dated June 5, 2023.
10. Email from Barbara Saint Andre to Attorney Stephen Kenney, dated June 5, 2023.
11. Floor plan of first floor of 67 Village Street
12. Sketch of second floor of 67 Village Street

C. Comments from Town officials:

1. Email from Derek Kwok, Health Director, dated April 24, 2023.
2. Email from Bridget Graziano, Conservation Agent, dated April 25, 2023.
3. Letter from Jonathan Ackley, Building Commissioner, dated April 25, 2023.

VI. VOTE OF THE BOARD

By a vote of 4 to 0 the Zoning Board of Appeals hereby **GRANTS** the Applicants Boston Dog Hotel, LLC and Kent Leung a **SPECIAL PERMIT** under Section 5.5 of the Zoning Bylaw to allow a personal trainer's facility to operate at 67 Village Street (Assessors' Parcel ID: 61-046), in accordance with the application, the floor plan attached hereto as Exhibit A, and subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Brian White	Aye	_____
Gibb Phenegar	Aye	_____
Christina Oster	Aye	_____
Joe Barresi	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.

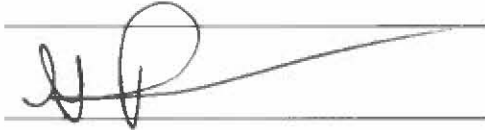
Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, chapter 40A, section 17, and shall be filed within 20 days after the filing of this notice in the office of the Medway Town Clerk.

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 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 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.

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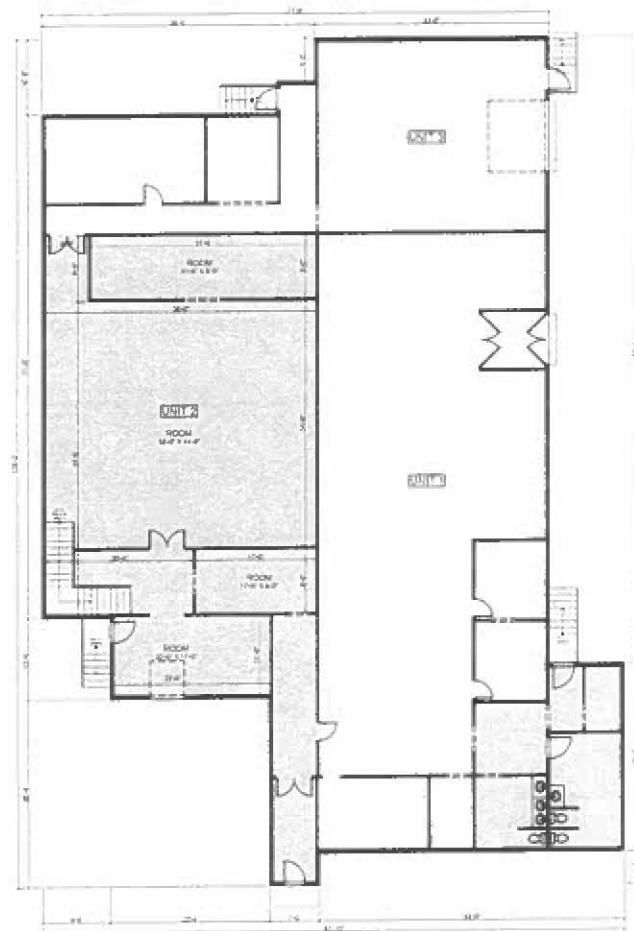
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2 **FIRST FLOOR PLAN**
SCALE: 1/8" = 1'-0"

COMMERCIAL AREA: 
COMMON AREA: 

PROPERTY ADDRESS

67 VILLAGE ST MEDWAY, MA

Exhibit 4