



Town of West Boylston
140 Worcester Street, West Boylston, Massachusetts 01583

[Zoning Board of Appeals] Meeting Minutes

Date / Time / Location of Meeting	Thursday, November 19, 2020/7:00 p.m./ <u>NOTE: THIS MEETING WAS HELD REMOTELY (ZOOM), ACCORDING TO GOV. BAKER'S INSTRUCTIONS, DUE TO THE CORONAVIRUS AS TOWN HALL HAD REMAINED CLOSED. PUBLIC ACCESS TO THE MEETING WAS ALLOWED THROUGH ZOOM INSTRUCTIONS GIVEN ON THE POSTED MEETING AGENDA.</u>
--	---

Members Present	Chris Olson (Chair), Barur Rajeshkumar (Vice-Chair), David Femia (Clerk), John Benson, Nathaniel Orciani and Secretary Toby Goldstein
Members NOT Present	Andrew Feland, Mark Wyatt and Charles Witkus (all Associate Members)
Invited Guests	N/A

Welcome – Call to Order **Time: 7:06 p.m. (by Mr. Olson)**

Approval of Previous Minutes **Minutes of September 17, 2020 and minutes of October 15, 2020**

Motion Originator (9/17/2020) **Mr. Rajeshkumar – Approve as written;**
(10/15/2020) **Mr. Rajeshkumar – Approve as written**

Motion Seconded (9/17/2020) **Mr. Orciani** **(10/15/2020) Mr. Benson**

Treasurer – Financial Report **N/A**

Motion to Accept **N/A**

Seconded **N/A**

At 7:06 pm, Mr. Olson called the meeting to order. Mr. Olson then read aloud Governor Baker's statement regarding remote meetings, which was posted on the agenda, and reminded everyone that instructions for joining the Zoom meeting were posted on the agenda on the Town website 48 hours in advance of the meeting.

Minutes of September 17, 2020 Meeting:

After review of the draft minutes by the board, Mr. Rajeshkumar made a motion to approve the draft minutes as written. Mr. Orciani seconded. Mr. Olson took a roll call vote (Mr. Femia had not yet arrived):

Mr. Orciani – "yes"

Mr. Rajeshkumar – "yes"

Mr. Benson – "yes"

Mr. Olson – "yes"

The vote was 4 "yes", 0 "no", and 0 "abstain", therefore the minutes were approved as written.

Minutes of October 15, 2020 Meeting:

After review of the draft minutes by the board, Mr. Rajeshkumar made a motion to approve the draft minutes as written. Mr. Benson seconded. Mr. Olson took a roll call vote:

Mr. Rajeshkumar – "yes"

Mr. Orciani – "yes"

Mr. Benson -- "yes"

Mr. Olson – "yes"

The vote was 4 "yes", 0 "no" and 0 "abstain", therefore the minutes were approved as written.

Continued Public Hearing, Branded Realty Group II, LLC, for a Special Permit under Section 3.2.F.4 of the Zoning Bylaws for the construction of a new 2,400 square-foot food service building with drive-through window with a 180-foot drive-through lane at 262 and 264 West Boylston St., to replace the existing Dunkin' on the adjacent lot at 244 West Boylston Street:

Mr. Olson announced that the petitioner requested a continuance of the public hearing to the December 17, 2020 ZBA meeting. He stated that he had no particular concerns, noted that the board did receive a written request from the petitioner, and it was agreed that the decision would be submitted to the Town Clerk by 12/31/20. After asking the board for any comments, they were all in agreement to grant the continuance. Mr. Benson then made a motion to continued the public hearing to December 17, 2020 at 7:05 p.m. Mr. Femia seconded. Mr. Olson then took a roll call vote:

Mr. Rajeshkumar – "yes"

Mr. Orciani – "yes"

Mr. Benson – "yes"

Mr. Femia – "yes"

Mr. Olson – "yes"

The vote was 5 "yes", 0 "no" and 0 "abstain", therefore the public hearing was continued to December 17, 2020, at 7:05 p.m.

(At this point, the board took a brief recess as it was too early to begin the Public Hearing scheduled for 7:30. They also discussed some "Other Business").

Other Business:

Miscellaneous Mail and Paperwork Needing Signatures/Future Agenda Items/ZBA Reports:

Ms. Goldstein informed the board that there was an invoice in the mailbox that needed to be signed. Mr. Femia responded that he would sign that, along with the approved minutes from this meeting.

Next Scheduled ZBA Meeting – THURSDAY, DECEMBER 17, 2020 AT 7:00 P.M.

Discussion of Remote Meetings:

Mr. Olson then discussed with the board the possibility of remote meetings continuing going forward; he thought that December's meeting would be remote but was not sure beyond that. Board members did discuss the fact that the Board of Selectmen had been having meetings in Town Hall, but Planning Board's meetings were still remote. Mr. Femia opined that, because of the weather, meetings from January through March should be remote, especially for public hearings, but Mr. Rajeshkumar opined that maybe the board could reconsider this in January but have December's meeting be remote. Mr. Olson said that he would reach out to Nancy Lucier later in December to assess the situation. Chris Rucho of the Board of Selectmen (who was present to operate the Zoom meeting) suggested that the board wait and see, as there might be amendments to the Open Meeting Law and thought that there might be too many people that would attend a ZBA meeting in order to have the meeting at Town Hall. Ms. Goldstein added that she will send out tentative dates for 2021 meetings for the board to vote on in December.

Regarding 241 Woodland Street:

Mr. Olson stated for the record that, regarding the Administrative Appeal for the above address, the ZBA's decision (vote was taken at October 15, 2020 meeting) was being appealed, and informed everyone that Town Counsel was aware of this and doing what needed to be done regarding filings with the court. (At this point, before proceeding with the public hearing, Ms. Goldstein and Mr. Olson asked those present for the meeting to state their names and addresses for the "Sign-In Sheet").

Continued Public Hearing, Wallace E. Baldarelli, Jr., for Administrative Appeal of a decision by the Building Inspector denying a request to resume use of the prior non-conforming use on the property at 301 Sterling Street, such use being sand, gravel, rock-crushing and materials handling, as in violation of Section 1.4.A of the West Boylston Zoning Bylaws:

(Mr. Rajeshkumar read aloud the public hearing notice). (Thomas Falwell, John Farnsworth and Wallace Baldarelli, Jr. represented). Mr. Olson then explained the public hearing procedure; he discussed how the petitioner discusses the petition and relief that is being requested, then the board asks questions and gives comments, and then the public has an opportunity to ask questions and give comments, including written ones; he noted that everyone will have the opportunity to give their positions. Mr. Olson added that he will also give the Building Inspector, George Tignor, the opportunity to explain his decision which was being appealed.

Atty. Thomas Falwell introduced himself, and explained that he was representing Wallace E. Baldarelli, Jr. for the appeal this evening, along with engineer John Farnsworth, who had been involved with the property for decades with Wallace Baldarelli, Sr. and Jr., and added that Wallace Baldarelli, Jr. (to be referred to going forward as "Eddie") and his wife were also attending the meeting. Mr. Falwell explained that he had remarks to make and offered to send them to Ms. Goldstein for the record. He suggested that the board had time to review the documentation that he submitted previously, and explained that Mr. Farnsworth had secured the permits and approvals from federal, state and local authorities for Mr. Baldarelli to reconstruct physical access to 301 Sterling St. from Route 12. He noted that a partial listing of these authorities is on page two of a memo submitted by Mr. Farnsworth titled, "To Whom It Might Concern" submitted with their request. Mr. Falwell read aloud the opinion of the Conservation Commission, who supported the Eddie's request. Mr. Falwell explained that the property did

have access from Route 12 at one time, but due to flooding Wallace Sr. closed off that entrance voluntarily and if he did not, Mr. Falwell opined that they would not be here this evening.

Mr. Falwell then gave a history of the property's situation. He said that, for several decades, 301 Sterling St., the property of Wallace Sr. (later Wallace Jr., passed down to him after his father's death), had access through 277 Sterling St. that was subject to a lease agreement. Mr. Falwell explained that Wallace Baldarelli Sr. had owned Baldarelli Bros., which upon his death was passed down to Richard, and when he died it was passed down to his wife and family. Prior to the expiration of the aforementioned lease agreement in 2015, the owners of Baldarelli Bros. and Eddie could not agree on a new lease. Mr. Falwell explained that, in the past, Baldarelli Bros. leased the property after Wallace Sr.'s death in 2003 and substantially paid the property taxes, up until the lease expired in 2015. That included physical access to the property at 301 by Eddie through 277 (this was covered in the memo on file from Mr. Falwell, in response to the Baldarelli Brothers' memo of 10/15/20).

Mr. Falwell continued that Mr. Farnsworth was involved with the property since before Wallace Sr.'s death, and before Wallace Sr.'s death they looked into re-establishing physical access to 301 from Route 12 but ran into regulatory problems. Before 2015, Mr. Farnsworth began the process of filing permits to construct a culvert in the area where access had been and to construct a roadway in the area where it had been to allow the previous sand and gravel activity at 301. Mr. Falwell noted that, in the lease extension that took place from 2014 to 2015, it was recognized that Eddie had the option to "peacefully" install crossing access to Route 12, and that this attempt at access began before the lease expired in 2015. He noted that after a large number of permits and approvals, construction was completed in 2020, and emphasized that most important and meaningful was that Eddie worked diligently to regain access to his property that was lost from Route 12 due to the Town and then stopped through 277 when they couldn't agree on terms for a new lease. Referring to Page 2 of the original petition's narrative, Mr. Falwell asserted that one of the reasons for Mr. Tignor's denial was incorrect as a matter of law; Mr. Falwell explained that the question of the transferred property (301, from Wallace Sr. to Eddie) being grandfathered he did not believe was correct, as other properties that were nonconforming had been passed down and the activity continues. Also, regarding the second reason for denial, which Mr. Falwell noted was that there was no record of any permits for use of the property for a sand and gravel site, he asserted that there wouldn't be any for legal nonconforming use and the activity was conducted before permits were required. Therefore, Mr. Falwell opined that Eddie should be allowed to resume the previous nonconforming use of the land and therefore his business. He added that Planning Board agreed that the activity was grandfathered and should be allowed to resume. Mr. Falwell continued that, in the meantime, Eddie had maintained the property, hoping to resume the grandfathered activity. He noted that a memo from Baldarelli Bros. in opposition to Eddie's opposition letter (to their memo of 10/15/20) was only received this evening, and opined that no lying took place from his client and he said that he was sorry to see this said. Mr. Falwell added that, regarding his original letter, it was not dated 10/12/20 as was stated in Baldarelli Bros. letter of this evening, but 9/12/20. Mr. Falwell then asked for any questions, and asserted that he reserved the right to answer any questions or statements by the opposition.

Mr. Olson thanked Mr. Falwell, then began by stating that it was his understanding that Eddie was forced to involuntarily curtail the use of 301 Sterling St. in 2017 because he no longer had access from 277 Sterling St. Mr. Falwell agreed; he added that they also could not agree on a reasonable lease with Baldarelli Bros., and noted that the existing lease expired and was not terminated. He noted that, if Eddie was allowed to continue access and Baldarelli Bros. allowed to continue to use his property, they wouldn't be here this evening, and he considered it somewhat "disingenuous" because he asserted that they would be using his property for the same purpose. Mr. Olson then clarified that when the lease expired in 2015, that was two years before his access was terminated in 2017. Mr. Falwell responded that it was his understanding that once the parties could not agree on a new lease, the access was terminated, or it might have continued for a short time after that. To try to clarify, Mr. Olson discussed that at 2015 there were two parties involved, the petitioner, who owns 301 Sterling St., and Baldarelli Bros., who owns 277, and that the lease that allowed Baldarelli Bros. access to 301 Sterling terminated in 2015.

But, he continued, in 2017, access from 277 to 301 was curtailed for Eddie, and he asked what took place in the interim (2015-2017)? Mr. Falwell replied that Eddie was pursuing permits for access, even several years before 2015, but noted that he was not involved in that and he deferred to John Farnsworth for insight. Mr. Farnsworth continued, that he believed that access for Eddie was curtailed when the lease was terminated in 2015 or before that, and explained that the gate for access to 301 was chained and locked by 277 Sterling. Mr. Rajeshkumar asked if there are any lease documents existing, as they were all assuming dates? Mr. Falwell replied that there are unsigned copies, including the original lease (for 11 years, from 2003 to 2014, then extended for a year) and rental documents. He explained that he did not have signed copies but could provide them if needed. He added that Baldarelli Bros. agreed to pay the real estate taxes as rent in return for use of the property, and noted that all parties were satisfied with the arrangements when Wallace Sr. was alive and he was part owner of Baldarelli Bros., but when the lease expired and Wallace Sr. had died, the parties couldn't reach a reasonable new lease so that Eddie could use his land. In response to a question from Mr. Rajeshkumar, Mr. Falwell replied that Baldarelli Bros. did pay the real estate taxes for 301 Sterling during the lease period; Baldarelli Bros. paid the real estate taxes for 301 as the sole renter for the use of the land. He said that Baldarelli Bros. used 301 Sterling for the sand and gravel business and without the lease, 277 was not obligated to pay taxes on 301. In response to Mr. Orciani, Chris Muello (who was in attendance this evening) replied that 277 Sterling is used by Baldarelli Bros., with grandfathered use. In explanation to Mr. Femia, Mr. Falwell described how Eddie did not gain access to his property until 2019 or 2020 and that between 2015 and 2019 Mr. Falwell did not think the sand and gravel activity took place at 301 as Eddie did not have access to his property. In response to Mr. Rajeshkumar, Mr. Falwell replied that they essentially restored the entrance to 301 from Route 12 that was lost in the 1950's due to flooding. In response to Mr. Femia, Mr. Falwell replied that Eddie was not running his business as Mr. Tignor said that he couldn't because he lost the grandfathered use of it, but reiterated that Eddie couldn't get access to it and that was beyond his control. He reiterated that it took years for Eddie to obtain his permits, so he opined that Eddie did not abandon the use of the property. Mr. Femia then verified with Mr. Falwell that Baldarelli Bros. sent an emailed memo to the board this evening in opposition to the comments from Eddie Baldarelli sent on November 18 regarding their previous opinion letter. In response to Mr. Rajeshkumar, Mr. Falwell then explained the chain of ownership of the two properties. He explained that 277 and 301 were never under one ownership; he said that Baldarelli Bros. owned 277 and Wallace Sr. owned 301. Mr. Rajeshkumar verified, that before the lease expired, 277 leased 301, but the lease was not renewed and verified that Eddie Baldarelli owns 301. Mr. Falwell added that the properties are two different entities, 277 (owned by Baldarelli Bros., of which Wallace Sr. had been a part) and 301 (owned by Wallace Sr., now by Eddie). In response to Mr. Rajeshkumar's question regarding grandfathering, Mr. Falwell asserted that grandfathering goes with the activity, not the owner. In response to Mr. Rajeshkumar's comments that there were no activities since 2015, Mr. Falwell replied that this was because Eddie lacked access to 301.

Mr. Femia and Mr. Olson then discussed the fact that they received information (the aforementioned letter from Baldarelli Bros. opposing Ed's response letter dated 11/17) only this evening, and Mr. Femia mentioned that, at the last ZBA meeting, the board decided that they would not accept something that late. Mr. Olson responded that they discussed a 10-day deadline for information only for the 24 Sterling St. petition for special permit that evening, not this evening's topic. Second, they did not mention the details of the document received this evening. But Mr. Olson agreed that, going forward, any additional information from either party must be received at a minimum of 7-10 days prior to the meeting at which it will be discussed. Mr. Femia suggested that the board review their policies, and noted that he will not consider the letter received this evening from Baldarelli Bros. in his decisions this evening. Mr. Muello from Baldarelli Bros. wanted the board to also disregard Eddie Baldarelli's letter dated 11/17; Mr. Femia replied that they would not do that, only the letter received this evening.

In response to a question from Mr. Orciani, Mr. Falwell responded that Eddie Baldarelli did try to regain operation of 301, but the Building Inspector said that he could not in his July 15, 2020 letter (on file). Mr. Benson

then clarified with Mr. Falwell that the sand and gravel business was on both parcels, but has continued out of 277, and that Eddie wants to restore the rights to conduct the business at 301. Mr. Falwell reiterated that, in the 1950's, the Town terminated access from 301 to Route 12, but that access was obtained through 277 until the lease expired. Mr. Falwell also verified ownership of the two properties with Mr. Benson. (At that point, Mr. Orciani suggested to Mr. Olson that they try to put up a map showing the properties).

In response to Mr. Rajeshkumar, Mr. Falwell explained why the Town terminated access to 301 from Route 12; he explained that there were flooding problems on Sterling Street and the Town asked Wallace Sr. to discontinue that access road. Mr. Olson opined that this access was cut off in the 1980's. Pointing to the map on the screen, Mr. Olson pointed out the lots for 277 and 301, and noted that it appeared that access to 301 from 277 took place since the 1980's.

In response to Mr. Rajeshkumar, Mr. Falwell replied that, currently, there is a new culvert and new road, both installed 2019-2020, following six years of permitting procedures (he pointed out where those are located on the aforementioned map). Mr. Benson then verified with Mr. Falwell the fact that the sand and gravel business continued to operate at 301 through the 11-year lease, during which 301 was accessed through 277. He verified that 301 is owned by Eddie after being left to him in Wallace Sr.'s estate, but that this had nothing to do with stock redemption (which was how Baldarelli Bros. obtained Wallace Sr.'s stocks after he died), and that at one time Baldarelli Bros. operated at 301, but they had ceased to operate the sand and gravel business at 301. Mr. Falwell noted that Eddie was an employee of Baldarelli Bros. Mr. Benson verified that Eddie wants to resume the business at 301, that access to Route 12 ceased way back pursuant to a request from the Town, 277 provided access to 301 for the 11 years of the lease which took place after Wallace Sr.'s death, but the parties parted ways in 2015 (after the last lease extension, according to Mr. Falwell). Mr. Benson verified that 301 was part of a collective enterprise at one time, working in conjunction with Baldarelli Bros. Mr. Falwell noted that Eddie looked into re-establishing access from Route 12 in 2014 before the lease was up, and asserted that Baldarelli Bros. knew that he was doing that as the extension to 2015 recognizes that (it states that Wallace Jr. could peacefully re-establish access from Route 12). He noted that Wallace Sr. looked into it before he died. Mr. Benson verified that Wallace Jr. had no access to 301 after the lease expired as the permitting was not finalized and that no actual sand and gravel business was operating on 301, except that materials were moved around (Mr. Falwell noted that he did not have an exact answer as to what activities took place there). Mr. Falwell asserted to Mr. Benson that none of this required Earth Removal permission and that Eddie maintained the property in anticipation of being able to start business again, but with no physical access, no business was conducted on 301. Mr. Benson then verified that the permitting was completed around 2019, construction of the access was begun and it was completed in 2020 (Mr. Falwell added that it was January, 2020), but the Building Inspector denied the use of the property for the sand and gravel business and therefore the administrative appeal is taking place now. Mr. Falwell added that approximately 14 different permits were required from various agencies. Mr. Benson then explained that he wanted to understand the basic timeline of activities, but explained that he had legal questions. He wanted to verify that his decision would be based on the law and that the transfer of ownership did not terminate the rights to nonconforming use. He verified that Mr. Falwell said that the property was transferred by estate and was not sold. He asked if the entity that was going to operate the sand and gravel business, if approved, was going to be a different one that operated it in 2014? Mr. Falwell replied that the entity was Baldarelli Bros. in 2014, but if allowed now, Eddie Baldarelli will operate his own business. Mr. Falwell asserted that it does not matter who the entity is, and that the use is protected, and reiterated his opinion that the use does not go by who operates it. He asserted that properties are transferred all the time and operate the same way, and said that he could do some research and provide cases. Mr. Benson responded that he would like to see that, and posed a question of a possible analogy which asks, if a nonconforming use building burns and takes two years to be rebuilt, does the nonconforming use continue? Mr. Falwell replied, asserting that there has to be a question of intent, and if for some reason someone is prevented from conducting that activity for matters outside of one's control, one should

not lose the ability to do the activity. Mr. Benson responded that he would like to see some authority on that because he believes that there may be other situations not related to nonconforming use of a business but regarding structures, where there may be a rule where nonconforming use of the structure, if destroyed, can't be resumed if it's rebuilt. Mr. Falwell responded that, after a period of time (1 year in the Town's bylaws, 2 years according to the State) of non-use, the question here is frustration of the purpose, and if the owner is prohibited from doing his activity, such as because of trying to obtain permits, it's inequitable and he argued is illegal, that he is not able to continue it when he had no intention to abandon it. Mr. Benson responded that he would like to see the legal authority to back up these arguments before he votes, and Mr. Falwell said that he will have his associate do research. Mr. Benson opined that, if there is equitable relief, then there must be a decent chance that it found its way into the courts or something closely analogous. Mr. Rajeshkumar responded to Mr. Benson, opining that Mr. Falwell was correct regarding nonconforming use and noted that, in another case before the board, the Town's bylaws stated 1 year and the State 2 years as deadlines for discontinued nonconforming use, and the Town went with the State's regulation. Mr. Olson responded that it was his understanding that, before 1975, State law was largely aligned with what town bylaws stated, allowing the towns to prohibit continuance of nonconforming use if it was discontinued for 1 year; then, after the modern zoning act, the time increased to 2 years, and he commented that West Boylston's bylaws were not updated for some reason to show the increase from one year to two years. Mr. Rajeshkumar reiterated that, in the past, in action taken by the ZBA they followed the two-year deadline. Mr. Olson added that it seems consistent with current law on abandoned nonconforming use. Mr. Benson noted that, in this case, the time of discontinuation exceeds two years, so whether the time limit is one or two years does not matter.

John Farnsworth then spoke, and he opined that he did not believe that even 1 year of discontinued use lapsed, as Eddie was pursuing access actively to his property. He then gave a history of his work with the properties. Mr. Farnsworth explained that his first interaction with Baldarelli Bros. was in 1986. He said that Wallace Sr. first had him to Route 12 to obtain access from the property in 2002. He explained that the stream that they gained access through with a culvert is a tributary to the Wachusett Reservoir. He said that DCR told him in 2002 that, according to the Cohen Bill, they would never allow a culvert to cross this tributary again. Mr. Farnsworth continued that they worked through the process and went to all the necessary entities, making a filing with MEPA for example, and after obtaining the necessary permits constructed the crossing, but then Eddie approached the Building Inspector and was denied a permit. Mr. Farnsworth asserted that they never interrupted the desire or intent to accomplish this, and he suggested that, even though he would like to see a decision this evening, perhaps the board members should look at the area itself as he thought that this might answer a lot of questions.

Mr. Olson asked the board if they had any more comments before he asked the Building Inspector for his input? Mr. Benson replied that he needed more information, which he had discussed previously, before he would be comfortable voting; possibly after further comments he would be comfortable. Mr. Olson replied that this comment was noted, and agreed that he wanted to see legal precedent and obtain more information from Mr. Tignor and the owners of 277 Sterling St. Mr. Benson responded that he would note the additional documents that he would need to feel comfortable for voting after hearing the comments.

Mr. Femia requested that the board hear comments from Baldarelli Bros. before Mr. Tignor. Mr. Rajeshkumar responded that, at this point, his understanding was that grandfathering of the nonconforming use has two years after it discontinues. Mr. Olson noted that most of the lot is zoned single residence and explained that this was why they were considering it nonconforming use. Mr. Rajeshkumar verified that Eddie asserted that discontinuation of the sand and gravel operations was due to obtaining permits from entities, but there were no operations for greater than two years. Mr. Falwell responded that, from their perspective, the two-year period tolled during the two-year period of time because of matters beyond the control of the owner during that period. Mr. Femia summarized the situation of the two properties, the lease, and the attempts at access, and asked how

the board could ask why Eddie didn't run his business.? He then said that he wanted to hear Baldarelli Brothers' comments and find out why they denied Eddie access to 301.

Mr. Olson asked for comment from Baldarelli Bros. Chris Muello spoke, asserting that they were conflicted. He explained that Baldarelli Bros. was an entity all its own, always involved in sand and gravel and noted that they operated on both parcels, 277 and 301. He mentioned that 277 was comprised of several different properties that were consolidated under the corporation. He asserted that Eddie was never denied access to 301, and that Eddie sent them a certified letter informing them that the lease was terminating and giving them notice that they needed to vacate their materials off his property within 60 days, with copies of this letter going to his and their lawyers. He maintained that Eddie had access in good faith through 2017 through 277 off of Route 12, and that Eddie was given opportunities to come to agreement with Baldarelli Bros. to continue access. Mr. Muello asserted that there was no immediate lock out. He noted that it was important to know that Eddie was an employee of Baldarelli Bros., and that he was in the sand and gravel business from 2012. He added that Baldarelli Bros. is still operating out of the 277 Sterling St. address, and that 277 still has the materials to run the sand and gravel business and has the required permits in good standing, and he asserted that they have time frames of when things got discontinued or changed. (He showed those present the map again to clarify access points).

Mr. Muello continued, correcting the statement that the Town discontinued 301's access to Route 12; he said that it was an agreement with MDC (now DCR). He explained that Baldarelli Bros. owned parcels 3 and 4, which were north of Eddie's property, and sold them back to MDC. Wallace Sr. and his two brothers had an agreement with MDC to remove the crossing because of the buffer zone being a sensitive area, so MDC requested that. He mentioned that #20 Western Ave. is MDC property which was owned by Baldarelli Bros. at one time. Mr. Muello then discussed how there were other parcels of land owned by the different Baldarelli Bros., which were sold back to the company, except for 301 Sterling. Mr. Muello mentioned land on Prescott St., parcel 13, owned by Baldarelli Bros. also, that goes from Prescott St. into Eddie's land, which would have offered him a mutual right of way from 2015-2017 from Prescott St. But he explained that Baldarelli Bros. also wanted to use it to get to Parcel 72. Also, Mr. Muello explained (but noted that he could not be certain) that Iqbal Ali, a developer, offered Lot 10 to Eddie to get from Prescott St. to his property. Mr. Muello asserted that Eddie chose not to make a deal and that he ceased operation of his business. He claimed that the grandfathering clause belonged to Baldarelli Bros., Corp. He claimed that the grandfathered nonconforming use belonged to Baldarelli Bros., and noted that the 11-year lease was executed, agreed to and signed by Eddie after Wallace Sr. died, and that Eddie was employed at the company at that time. In response to Mr. Rajeshkumar, Mr. Muello replied that the lease, which was extended, expired 4/30/15, and on 7/8/15, he asserted that Eddie sent the letter which stated that the lease was terminated, and gave 277 60-days to remove everything from 301 and vacate the land.

Mr. Femia, pointing to the aforementioned map, verified with Mr. Falwell that parcel 11 (301 Sterling) was personally owned by Wallace Sr. and it went to Eddie through his estate. Mr. Femia then discussed with Mr. Falwell the ownership of the other land parcels. Mr. Falwell replied that all the parcels around 277 belonged to the corporation, including off Prescott St. Mr. Femia asked if Eddie had the opportunity to use Parcels 13 or 10, both of which abutted Eddie's property, for access to 301? Mr. Falwell replied that he did not know, but asserted that they all involved renewal of a lease for Baldarelli Bros. to continue to use Eddie's parcel; the parties couldn't agree so no access through parcel 13 was allowed and he did not know about Parcel 10. Mr. Falwell reiterated that the original 11-year contract was extended to 4/30/2015, and asserted that part of the extension recognized that Eddie was in the process of obtaining access to his property, and that Mr. Muello stated that Eddie was still active on the property until 2017. However, Mr. Muello claimed that he did not say that, and that they allowed Eddie access to maintain his property while negotiating, but that after 4/2015 nothing happened on the property. Mr. Femia then asked Mr. Falwell if parcel #13 is a natural access to 301, and if so asked why Eddie did not choose to use it when Baldarelli Bros. closed off access through 277? Mr. Orciani suggested guessed that parcel 13 was small. Mr. Falwell thought that perhaps it was not appropriate to use that strip because of where the operations

took place, as it would impact residents whereas Sterling St. access would not. In response to Mr. Femia, Mr. Falwell replied that there are houses on Lot 10, but Mr. Muello responded that there were no houses on Lot 10 in 2015 to his knowledge. Mr. Falwell added that they were owned by a third party. Mr. Muello added that a developer (Iqbal Ali) supposedly offered Eddie this property, which belonged to CK Smith years ago. Mr. Falwell thought that this was not related to the matter at hand.

Mr. Femia then suggested to Mr. Olson that, if the hearing is continued, he would like to have Eddie attend to answer questions on both sides. Eddie then joined the meeting. In response to Mr. Femia, he explained the history of the lease and properties and gave a brief explanation of how the parties came to this point. Eddie explained that his father passed on 301 to him. He said that he was working for Baldarelli Bros. at that time; he explained that they honored the 11-year lease, and Eddie hoped to come into the business for ownership or make some kind of deal, for tax purposes only. Then, he said that the lease ran out and he claimed that he read the fine print of the lease so he gave a notice of termination to them (Mr. Falwell added that this notice was in July of 2015, and that this was not a termination but stated that the lease was terminated). Eddie continued, that upon termination, they had another 60 days to remove their materials from 301. He asserted that, with no prior conversation, one day there was a different lock on the gate to access his property. He said that Baldarelli Bros. did mention the use of parcel #13 to him. He said that he asked if he allowed them to come in, would they allow him to use 277, and that they said "no", so Eddie said that he concentrated on getting the new crossing. Eddie told Mr. Femia that he began the process for new access in 2014, but that it actually began with Wallace Sr. He explained that he realized that he wouldn't come into Baldarelli Bros. and he had an injury so he pursued a new entrance, noting that it was a 7-year process. Eddie replied to Mr. Femia that he is not currently running a business through 301, and wants to start something low key, such as handling materials; he described that there is a pile of top soil, no actual mining, and rehandling of materials.

Mr. Femia asked Mr. Olson or Mr. Benson, if a property is grandfathered and passed down, inherited and not purchased, does the grandfathering still apply? Mr. Olson replied, referring to Mr. Benson's question of wanting legal precedent and Mr. Femia said that he agreed with that. Mr. Falwell responded that he will provide legal precedent, and said that his position is that the grandfathering goes with the property and it does not matter who owns it, and that the use is protected like a zoning variance.

Referring to the aforementioned map, Mr. Rajeshkumar asked about the ownership of Lots #13 and 10, and Mr. Falwell replied that Eddie did not own them. Mr. Rajeshkumar mentioned that it was said that 301 could be accessed through #13, and asked if there was a right-of-way? Mr. Orciani responded that #13 belonged to Baldarelli Bros. so Eddie could not go through it, and it would have had to be in an agreement but they could not come to one. In response to a question about Lot 10, Eddie claimed that he never talked to Mr. Ali about that and explained that Mr. Ali bought that entire area from CK Smith family.

Next, Mr. Benson asked several questions of Mr. Muello (who explained that Richard, Wallace Sr.'s brother, was his father). Mr. Muello verified that Baldarelli Bros. owns 277, and a sand and gravel business is conducted there today. He verified that, before the lease expired, Baldarelli Bros. was operating the sand and gravel business at 301 also. He verified that the lease terminated then Eddie instructed them to remove all the Baldarelli Bros equipment from 301, and that Eddie never independently operated a sand and gravel business at 301, but that Baldarelli Bros. was the only entity that had one at 301. They discussed and explained the access they had to their properties. Mr. Muello agreed when Mr. Benson summarized that, regarding alternative access to 301 through 277, Baldarelli Bros. attempted to negotiate separate access to 301 through a different piece of property owned by them by allowing Baldarelli Bros. an easement on 301 to access Parcel 13. Mr. Muello noted that it would be a mutual right of way. They agreed that this proposal fell through. Mr. Benson then mentioned the possible offer from Mr. Ali to sell Parcel 10, and Mr. Muello responded that Ali told him that but that he had no personal knowledge of the conversation. He explained that Baldarelli Bros. was offered to pay for an easement through Parcel 10 before Ali developed it, but 301 was still leased by them so it was not advantageous to them to

do that. Responding to Mr. Femia's concern that Eddie's ability to use 301 was thwarted by Baldarelli Brothers and he had no alternative, Mr. Muello asserted that negotiations on Parcel 13 broke down when Baldarelli Bros. was still at 301, and that Ali offered an easement on Parcel 10 but for business reasons they chose not to do that because Baldarelli Bros. didn't own 301 and they thought that Ali gave an offer to Eddie for that land. Mr. Olson then asked Mr. Muello when he discussed with Eddie access across Parcel 13? Mr. Muello replied that they discussed this prior to the lease expiring, he thought from 2013 forward, and asserted that they had several discussions about that.

Mr. Benson then verified the facts with Eddie. He verified that Baldarelli Bros. operated at least a portion of their sand and gravel business on 301 until the expiration of the lease; he verified that Eddie did not operate a sand and gravel business independently at 301; he verified that there was a discussion between him and Baldarelli Bros. regarding a right-of-way that would allow him to use Parcel 13, which was access through Prescott St. And regarding Mr. Ali, Eddie did not have a discussion regarding purchasing of an easement or other access on Parcel 10. Eddie asserted that the reason they couldn't get anywhere with that was that that Baldarelli Bros. wanted to use it for access coming off Prescott St., as it wasn't feasible to go down Prescott with the neighbors being so close and it being a small and narrow road.

Mr. Olson then asked Building Inspector George Tignor to give his understanding of the situation and reason for his decision. Mr. Tignor explained that when he was first involved in this matter he sat down with Mr. Farnsworth and Eddie and they asked him the possibility of re-establishing his property as a sand and gravel processing area. At the time it was under two years in which nothing was going on at 301. Mr. Tignor said that first, in order to do that, they would have to apply for a variance, or prove the property was grandfathered in. Mr. Tignor said that he was not comfortable with the grandfathering possibility because the reason for two years of inactivity was not proven to him at that time. He explained that there had been attempts but it would be up to the ZBA to decide if Eddie continued the attempts at running the business; he asserted that he could not make that decision at his level. Also, Mr. Tignor explained that there was a split zone on the property, where the front portion is business zone and the rest is residential. Mr. Tignor said that he had a problem with Lot 13, as some legal decisions have been made on accessing industrial property through a residential area. He did not think that Parcel 13 was a feasible way to get into the property because of trucks and equipment having to go up Prospect St., and that this is why it is not allowed to access a business district through residential property. He asserted that it is up to the board to decide if the attempt to access 301 from Route 12 had been continuous from 2014. In response to Mr. Olson, Mr. Tignor replied that he thought when he first wrote his denial letter that there was transfer of ownership, but as he looked further he could see that it seemed to be a continuation of the same family ownership. (Looking at the map of the properties, Mr. Femia and Mr. Olson discussed that, regarding 301, where the property abuts Sterling St. is the business zone and after that, the property is single residence, therefore it is a split lot). Mr. Femia opined that $\frac{3}{4}$ of the property was in single residence and only the front was in the business district. Eddie responded that this was why it's nonconforming, and he added that the entire site is an active site for stockpiling earth materials, with stone crushing in the back.

Mr. Olson then asked Eddie if the original business went back to the 1940's or '50's before zoning areas were established and that's where the nonconformity comes from? Eddie replied "yes", explaining that Wallace Sr. started the business in 1946 by himself when he purchased the property, and later on he went into business with his brothers. Mr. Tignor commented that this is why he is concerned because there was pre-existing nonconformity but ownership changed so he questioned if this would cause nonconformity again? He said that this is particularly because a gravel pit is not allowed in single residence, and that's why it is so important to decide if this has been continuous use. Mr. Falwell commented to Mr. Olson that it appeared that Mr. Tignor's first reason for denial was not his transfer of ownership, which he has reconsidered. Mr. Tignor responded that he did not say that, but that the question is that the transfer of ownership has to be determined. Mr. Falwell responded that he thought Mr. Tignor said that this was in error, but he guessed that he misunderstood.

Mr. Femia responded, by bringing up Planning Board's decision regarding the grandfathering under the Earth Removal section of the general bylaws. He mentioned that Mr. Benson asked about the legality of the grandfathering and opined that it was crucial whether or not inheritance is the same or different than purchasing of land. And he noted that the board was considering the process back to 2014 for access, and if Eddie was actively pursuing obtaining access when the lease expired in 2014. Mr. Tignor responded to Mr. Femia, asserted that the proving that grandfathering was actually grandfathered involved identifying how the land was transferred from one person to another. Mr. Falwell responded that it is their opinion that those things do not matter and that use is protected and goes with the land like a zoning variance. Mr. Femia disagreed, opining that it would be true if in play before 1978, but after that, when the zoning bylaws were in effect, if the property is purchased, he did not think that all the zoning goes with it. Mr. Falwell responded, asserting that nonconforming use, if legal, goes with the property, and said that he would supply cases demonstrating this. Mr. Femia suggested to Mr. Benson that Mr. Falwell present cases, which was one thing that Mr. Benson wanted to see. Mr. Benson opined that authority runs with the land, but that this situation was a quirk in that the entity operating changed. He noted that Eddie leased his property to a business that engaged in nonconforming use, and when they vacated, Eddie opined that the use remains and was passed to him and he could operate his own business. Mr. Benson thought that the two-year discontinued use was a separate issue, and if that is taken out, Baldarelli Bros. vacated 301, so could Eddie immediately start his own business there as if it's a grandfathered nonconforming use? If the business was run by Baldarelli Bros., if there was always independent access from Route 12, once Baldarelli Bros. vacated, could Eddie immediately start his own business, even though he was not previously engaged in the nonconforming use? Mr. Tignor replied, that it has to be approved; if it was owned by Baldarelli Bros. and Eddie takes over, it is a change of ownership. Mr. Benson responded that the business was Baldarelli Bros., but the parcel was owned by Eddie. Mr. Tignor responded that Eddie was not the owner during the sand and gravel operation. Mr. Benson responded that Eddie continued to operate a number of years and he owned the property. Mr. Tignor responded that this was why they need proof of the grandfathering and that the business was always run in that respect, so he could accept as use that Eddie could continue. He opined that a breaking point was when ownership went from Wallace Sr. to Wallace Jr.

Mr. Benson continued, verifying that Wallace Sr. died and transferred the property to Eddie, and there was no interruption of the sand and gravel business during the 11 years of the lease. Mr. Tignor responded that the equipment was taken off of 301 in 2014-2015, and as of then, nothing went on the property. Mr. Benson continued, opining that as of 2014-2015 all agreed that 301 ceased to conduct the sand and gravel operation for greater than two years on that property. Mr. Tignor responded that this is why he denied the building permit to allow for a new sand and gravel business at 301. Mr. Falwell asserted that this was not said in the denial letter.

Mr. Femia commented to Mr. Olson (for Mr. Tignor), referring to Planning Board's decision which Mr. Tignor said that he had read, where they stated that use this was grandfathered under Article 22, Earth Removal, of the general bylaws, according to past meetings of the earth Removal Board. He asked If Mr. Tignor was able to look at this to see if that was true? Mr. Tignor responded that one has to apply for an Earth Removal permit on a regular basis and that was not done. Mr. Falwell responded, asserting that, with legal nonconforming use, one does not need a permit from Earth Removal. Mr. Tignor responded that the use the petitioner applied for ceased for greater than two years. Mr. Falwell responded that no one disputed that.

Mr. Muello continued, asserting that they did not go before the Earth Removal board because Baldarelli Bros. as an entity was grandfathered since the 1940's, and that Mr. Falwell's narrative doesn't mention that. Mr. Muello asserted that Planning Board's decision, which was submitted in Mr. Falwell's narrative, misrepresents that application from Baldarelli Bros. as a continuous operation, and doesn't bring out that Eddie wanted to start a new sand and gravel business. Mr. Falwell claimed that he submitted nothing to the Planning Board. Mr. Muello responded, asserting that someone submitted a narrative to Planning Board, but regardless, asserted that it has been a continuous operation so they never had to do that.

Mr. Femia then asked Mr. Tignor, when Eddie and Mr. Farnsworth came to talk with him, was he aware that Eddie started in 2014 to obtain access to his property from Sterling St., and the lease was due to expire in 2015 and he would have no access to his property if they did not come to an agreement ? Mr. Tignor replied that the situation was not exactly like that, and said he told them that the two years kicked in and he could not approve the permit as there was no proof of anything going on in front of him, and that it would be up to the ZBA to see if there was continuity of the gravel pit. (Mr. Falwell and Mr. Tignor then discussed how they disagreed with what was put in Mr. Tignor's letter). Mr. Falwell asserted that these reasons for denial were not in Mr. Tignor's letter when they made the formal request.; Mr. Tignor asserted that he specifically indicated the zoning bylaw in the letter and that they had to prove they were grandfathered.

Mr. Femia then asked the board, as Ed had no access to his property from Sterling St. and was trying to obtain the permitting needed for the access, would the board have to look at the two-year period because he had no access to his property? Mr. Benson responded, explaining that he thought that this was the petitioner's argument, that either the effort to get access tolled that two years, or their ongoing attempts to obtain access was a continuation of the nonconforming use because he was attempting to operate the business. Mr. Falwell agreed. Mr. Benson opined that it was essential to decide this, unless you say anytime an owner is denied access the nonconforming use goes on indefinitely until they do obtain access. Mr. Farnsworth responded that Eddie applied for the permits, went through the application process and prevailed, and asserted that these were difficult circumstances. Mr. Femia added that he attended several Conservation Commission meetings when this matter was discussed, and opined that the applicant went through a lot to obtain the access. Mr. Benson asked in order to understand the facts, once Eddie's access was terminated, did he have no access anywhere such as driveways? Mr. Falwell replied "no".

(Mr. Olson then opened the hearing to public comment). First to speak was Marcia Cairns, of 208 Prescott St. She requested the map be shown as she wanted to explain something, and she pointed out that her property is parcel number 12, and parcel 13 discussed previously is a right-of-way that is no more than 25 feet from her side door and up to her driveway. She said that there is a spot approximately 30-feet wide, that her husband's family purchased the lot in the 1960's and that the lot is kept clean and she keeps it mowed. She opined that there is danger if any access goes through parcel 13 because of having to go onto Prescott St. and she commented that she did not know why there is any right-of-way there. Mr. Olson responded that he recalled that the Building Inspector called it industrial use of access and it seemed problematic to him (Mr. Orciani agreed). Mr. Falwell responded that he agreed and noted that there are cases that prohibit that. He added that, from Eddie's standpoint, it was impractical, not allowed, and cases cite that one cannot access more restrictive property through less restrictive property. In response to Mr. Femia, Ms. Cairns explained that she lived there since 2002, explaining that she and her husband bought the property from his father's estate, and commented that the noise from the gravel pit woke her up on weekends, and that it abuts her back yard. She noted that her father-in-law bought it as a new house, and that the gravel pit was there. Mr. Orciani asked her if she was only concerned with Parcel 13 and not the business itself? Ms. Cairns responded, suggesting that they could start working later on the weekends, and opining that nothing should be done with parcel 13 for the aforementioned reasons. Mr. Farnsworth commented, that in addition to access, he did not think that Eddie's father or brothers wanted to channel truck traffic on Prescott St., but that Eddie's concern was wanting to get back out to Route 12. Mr. Olson responded that it is definitely a residential area, not anything like the business that is being discussed and hence the nonconforming nature of use they discussed. Mr. Muello continued, when he discussed parcel 13 as a mutual right-of-way, it was also to negotiate 277 use, and the parties couldn't agree. He explained that parcel 13 use was never intended for truck traffic, merely to go into Eddie's property, and on the other side access to Baldarelli Bros. He continued that they also have an easement on top of Western Ave., 72, and this is an access point also on Baldarelli Brothers' property. In exchange for the mutual right-of-way through Eddie's property with the use of parcel 13 he opined that they could have negotiated on entry off of Route 12 to 301, but negotiations broke down,

and asserted that Eddie's access was still open two years after the operation ceased and claimed that Eddie was still able to go in and out of his property even after that.

With no further comments from the public, Mr. Olson noted that the board obtained a lot of information but there were still significant questions. He suggested that they needed legal precedents relative to the law around abandonment, and the 1 vs. 2 years issue. He asked if it might be helpful if Mr. Falwell looked into these and provided supplemental information? He asked the board if there were more issues? Mr. Femia suggested that Mr. Benson's aforementioned two questions were worthy to investigate. He also asked, if there is an extension to December, what would be the deadline, as it would be a second extension, and would they need to submit an agreement in case they would go past the 65 days required? Mr. Falwell responded that they would be agreeable to that and that this would not be an issue. Mr. Femia explained that the board needs any submitted information in enough time before the next meeting and said that he would like to get information from Mr. Falwell and Baldarelli Bros. to the board by Dec. 7; he made a motion to continue the public hearing for the Administrative Appeal to December 17, 2020. Mr. Benson responded that there were questions that needed to be clarified. First, the board is looking for the legal authority to enable access to the property where the nonconforming use was allowed and an answer to the question of would the two-year period of abandonment or discontinuation of use be tolled if the party actively was seeking to restore the ability to access the property? Second, the board wants to see paperwork showing when the permitting process to access Route 12 began, when the first permit was filed and if there was any cessation in the permitting process. That would establish when the actual attempts to restore the access to the property began. Mr. Falwell suggested a third point discussed earlier, that of grandfathering; Mr. Benson agreed that this should be included in case others wanted to know, therefore there were two legal issues and one factual issue. And Mr. Olson suggested the applicant needed to provide, along with evidence of when the permit was applied for to renew access to Route 12, from 2015 to now, evidence that there were not two-year gaps. Mr. Falwell suggested that that he would ask Mr. Farnsworth, and asked if they could provide an affidavit detailing it along with the initial applications? Mr. Olson replied that they need evidence and dates and a list of agencies for which permits were applied to see if there were gaps in time. Mr. Femia agreed that it was important to see if the process was continuous or if there were gaps. Mr. Benson added, that they need to see if there was a gap between the approval of the permits and the actual start of work on the access.

Mr. Olson then explained to Mr. Falwell that December 17 was the next meeting date, and that the board needed ten days to go through all the information; he asked him if December 7 would be enough time for him to get the information that he needed or should they continue to January (January 21, 2021)? Mr. Falwell thought January made sense, so Mr. Femia made a motion to continue the Administrative Appeal for Eddie Baldarelli to January 21, 2021, at 7:20 p.m., and instructed all present that they needed to have their information to the board by January 11. Mr. Muello responded, opining that there was a conflict of interest as Mr. Farnsworth worked for Baldarelli Bros. for many years, so he wanted to differentiate between documents prepared by Mr. Farnsworth for Baldarelli Bros. and those for only Eddie Baldarelli so there was no crossover of documentation. Mr. Farnsworth responded, asserting that the documents speak for themselves, and that he would summarize them with covers for each. Mr. Olson told him that they did not need hard copies of all the information. Mr. Olson told him that the board did not need hard copies of all the information and electronic copies would be fine. Mr. Falwell continued, that he would send the Ms. Goldstein a document stating the extension request and agreement, and noted that he is to have day surgery on January 19, so there could be a need to continue again, but at this point they will continue to January. Mr. Benson continued, regarding Baldarelli Bros. point, opining that they need to be clear as to who initiated the requests for permitting, as the applicant is seeking to toll their discontinued activity unless acts took place under Baldarelli Bros. Mr. Falwell responded that Baldarelli Bros. did not own the land, therefore the documentation should all be for Eddie. Mr. Benson continued that the board shouldn't need all the underlying support paperwork, just summaries and some pages showing when the requests for permits were made.

With no further comments, Mr. Rajeshkumar seconded Mr. Femia's motion. Mr. Olson instructed that, before the board votes, Mr. Falwell needs to send the board an email agreeing to continue to January 21, 2021, and allowing the board time to prepare a decision and file with the Town Clerk ten days after (January 31, 2021), and follow up with an email that the petitioner agrees. Mr. Falwell replied that he would do that Monday (November 23, 2020).

Mr. Olson then took a roll call vote:

Mr. Orciani – "yes"

Mr. Benson – "yes"

Mr. Femia – "yes"

Mr. Rajeshkumar – "yes"

Mr. Olson – "yes"

The vote was 5 "yes", 0 "no", and 0 "abstain", therefore the public hearing was continued to January 21, 2021, at 7:20 p.m.

With no further comments by anyone, Mr. Femia made a motion to adjourn at 10:38 p.m. Mr. Rajeshkumar seconded. The roll call vote was as follows:

Mr. Orciani – "yes"

Mr. Benson – "yes"

Mr. Femia – "yes"

Mr. Rajeshkumar – "yes"

Mr. Olson – "yes"

The vote was 5 "yes". 0 "no" and 0 "abstain", therefore the meeting was adjourned at 10:38 p.m.

Submitted by: _____

Date submitted: _____

Approved by: _____

