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

[Zoning Board of Appeals]
Meeting Minutes

Date / Time / Location of Meeting	**Thursday, March 17, 2022/7:00 p.m./ Pursuant to Chapter 20 of the Acts of 2021, this meeting/public hearing was conducted via remote means (Zoom). No in-person attendance of members of the public was permitted, and public participation in any public hearing conducted during this meeting was by remote means only.**

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

Welcome – Call to Order **Time: 7:03 p.m. (by Mr.Olson)**

Approval of Previous Minutes **Minutes of 1/20/2022 and 2/17/2022**

Motion Originator:	**1/20/22: Mr. Rajeshkumar (as written)**	**2/17/22: Mr. Femia**
Motion Seconded:	**1/20/22: Mr. Femia (as amended)**	**2/17/22: Mr. Rajeshkumar**

Treasurer – Financial Report **N/A**

Motion to Accept **N/A**

Seconded **N/A**

At 7:03 p.m., Mr. Olson called the meeting to order. Mr. Olson welcomed everyone present, read aloud the names of members present, and Mr. Olson verified that Ms. Goldstein had the names of members of the public who were in attendance.

Minutes of 1/20/22 Meeting:

After review of the draft minutes by the ZBA members, Mr. Rajeshkumar made a motion to approve the minutes as written. Mr. Femia seconded. Mr. Olson took a voice vote:

Mr. Rajeshkumar – "yes"
Mr. Benson – "yes"
Mr. Wyatt – "yes"
Mr. Femia – "yes"
Mr. Olson – "yes"

The vote was 5 "yes" to 0 "no", therefore the minutes were approved as written.

Minutes of 2/17/2022 Meeting:

After review of the draft minutes by the ZBA members, Mr. Olson noted two changes that needed to be made. Mr. Femia then made a motion to approve the minutes as amended. Mr. Rajeshkumar seconded. Mr. Olson took a voice vote:

Mr. Femia – "yes"
Mr. Wyatt – "yes"
Mr. Benson – "yes"
Mr. Rajeshkumar – "yes"
Mr. Olson – "yes"

The vote was 5 "yes" to 0 "no", therefore the minutes were approved as amended.

Continued Public Hearing, WB General 1 LLC, owner of land at 45 and 49 Central Street, for Special Permit, for the conversion of two non-conforming structures previously used for commercial purposes to single family residential use in the General Residence district pursuant to Section 1.4.B of the zoning bylaws.

Continued Public Hearing, WB General 1 LLC, owner of land at 45 and 49 Central Street, for Administrative Appeal, regarding the decision of the Building Inspector denying the allowance of the conversion of two non-conforming structures previously used for commercial purposes to single family residential use in the General Residence district:

(Representing was Brian Grossman). Mr. Olson began by stating that he wanted to discuss a couple of items. Referring to a question from Mr. Femia, he explained that the filings for Special Permit and Administrative Appeal are being treated as two independent requests and that he mentioned that for continuity. He explained that he understood the Administrative Appeal to be with respect to the Building Inspector's refusal to issue a building permit for the two single-family structures where he has the authority to do so in the case of single and two-family residential structures. (Mr. Olson reminded those present to mute their lines unless they ask to be acknowledged by the Chair). Mr. Olson asked Mr. Grossman if it was the case that appealing the Building Inspector's refusal to grant the aforementioned building permit was pursuant to Sec. 1.4D of the zoning bylaws? Mr. Grossman replied that this was part of it; he explained that, in general, it was not 100% clear if the Building Inspector initially determined that the lots were merged from the Zoning Interpretation Form. Mr. Olson responded that on one hand he interpreted that, according to Sec. 1.4D, the Building Inspector has the authority in certain situations to approve changes to nonconforming structures. Mr. Olson said that he would agree with the Building Inspector that the applicant's relief does not fall in that category because the existing use is not as residential structures. Also Mr. Olson asserted that the Building Inspector seemed to make it clear that he did not think that the two lots were merged. Mr. Olson suggested to Mr. Grossman that they may want to consider

withdrawing the Administrative Appeal in view of the results of the Special Permit. Mr. Olson explained that, for him, more relevant is Sec. 1.4B; they are not residential structures so the Building Inspector doesn't have authority, but the ZBA can grant a Special Permit to allow the petitioner to change the use to residential. Mr. Grossman agreed that they should resolve Sec. 1.4B first, and that might make it unnecessary to deal with 1.4D and dictate whether or not to withdraw the Administrative Appeal without prejudice.

Mr. Olson then informed everyone that the board had received more information since the last meeting; one was the perspective of Planning Board on this filing, and then the advice of Town Counsel regarding the merger issue. In response to Mr. Olson, Mr. Grossman replied that he did receive Planning Board's letter, but not Town Counsel's correspondence. Mr. Olson responded that Town Counsel's letter gave a helpful background of how they got to where they are, but most important he thought was that, regarding merger, Town Counsel did not give a position on that. Mr. Grossman agreed, opining that it seems as if they did not actually oppose the proposal, pending the answer to the questions. Mr. Olson opined that the letter was helpful but did not necessarily help the decision this evening. Mr. Grossman asserted that the feedback from Planning Board and Town Counsel on merger did not address their (the applicant's) comments. Mr. Olson responded that he spoke individually with Town Counsel by phone, and he asked Town Counsel to provide the board with a brief written summary of her advice relative to this situation; she provided it and Mr. Olson shared it with the board and Building Inspector, and he said that he'll give a summary of her advice and invited anyone to add to it. Mr. Olson explained that it was his understanding that Town Counsel largely agreed with Mr. Grossman's assessment that there was no example of case law in Massachusetts with a similar scenario involving merger of two adjacent lots being improved, only none or one, with one being basically a vacant lot; no cases address a situation where the owner has merger if it potentially adds new nonconformity. Mr. Olson opined that the board was put in a situation of first impression regarding merger as they could not rely on anything else. He also asserted that there is no case law prohibiting the application of the merger doctrine where a new nonconformity would be created. Mr. Olson's view is that this is at the board's discretion to the extent that they are targeting the policy goal of the merger doctrine.

Mr. Grossman responded, referring to researching of another unrelated client, opining that it seemed the trend in case law would be that creating new nonconformity would be against the policy of the merger doctrine. Also, he asked if they withdraw the Administrative Appeal now, would that resolve the issue? He asked if the board needed to resolve that question if the Building Inspector already answered it? Mr. Olson responded that, at the last meeting, they decided that they needed to determine if there was merger in order to make a decision, and asserted that, whether or not the Building Inspector made a decision, he opined that the board has the authority to take a second look at it since the petition has been filed and they are rightly hearing this case. He asked the board if they had any questions or comments?

Mr. Benson responded that he looked the information over since the last meeting and was less convinced that merger was an issue. He asserted that it seemed clear from the paperwork and history of the properties that they were treated as merged, perhaps wrongly, when the Town allowed the building of the garage and the connection between the properties, and thought that it seems as though the properties were treated as merged at least periodically by Town officials. But Mr. Benson was not sure that this question had to be fully resolved because it seems to be the trend of applying the merger doctrine when it does not create nonconformity and it seemed as if there would be nonconformities whichever way they decided. Mr. Olson responded that, given it has been an issue for greater than 20 years, it seemed prudent to try to address and resolve this for clarity so that the owner can decide what to do next, and he also thought that it seemed to be within the board's purview. Mr. Olson asserted that he counted at least six existing nonconformities if both lots are not merged legally; they are (2) regarding lot area, (2) regarding side yard setback, (1) regarding frontage on #49, and the sixth is the existing commercial use. He thought that they had two choices of paths to take. First, when dealing with the Special Permit, the board can treat this as not having addressed the merger issue, or decide that they are two

independent lots, and if they issue the special permit, eliminate one nonconformity (use) and the other five will remain (lot size, setback and frontage). Or, second, they can approve the change to residential properties but consider adding a condition that before any building permit or related permits are issued by the Building Inspector, they require a new ANR plan filed on the two lots, removing the common lot line and thereby merging the lots. This would remove five of the six nonconformities but adds the nonconformity of two dwellings on one lot. Mr. Olson responded to Mr. Benson that this issue of merger of the properties has been going on since 1999 when there was a strong presumption of the merger of the two lots by the Building Inspector when he issued the aforementioned building permit. So, two habitable dwellings on one lot would not be a new nonconformity.

Mr. Olson asked for comments regarding which direction to take. Mr. Grossman responded that he understood the balancing test that he opined that the board was advocating, but was not sure that the zoning bylaw and the standard works like that. He explained that none of the existing nonconformities are being changed or increased, asserting that the standard is whether or not what is proposed will cause greater detriment to the neighborhood than what is existing, and that removal of one nonconformity to convert the properties will not be more detrimental. He suggested that, despite the number of nonconformities that exist, that removal of one nonconformity to convert both structures to conforming residential uses will not be more detrimental to the neighborhood than leaving the two commercial uses, even in a merged lot. Also, in terms of the nonconformities remaining, he asserted that they will decrease from five to three and that this is not a balancing test. He asserted that the question was if they had merged the properties and, if the properties were not merged, would there be a greater detriment to the neighborhood?

Mr. Olson responded that he agreed the change to conforming use will not increase detriment to the neighborhood for purposes of the Special Permit standard, but, regarding the merger issue, even if they add one new nonconformity, they are still reducing and eliminating nonconformities and he did not think it unreasonable to consider this, especially due to lack of direction from the courts. Mr. Benson responded that he did not share the opinion that they should try to distill this down to a simple matter of whether or not it will be more detrimental and opined that, if they assume that the lots are not merged, and they should go with the theory that they cannot merge and create nonconformity. Mr. Benson opined that, in creating two separate lots, there are many ways that they will be nonconforming with the bylaws and that it will be detrimental to the neighborhood. He explained that the rest of the neighborhood conforms and asked why the board has to allow that in this situation? Mr. Benson was not sure that he shared the idea that if the merger doctrine does not apply, then it's alright and opined that the idea that they can change the use of a piece of property that is noncompliant in many ways is not simple. He saw problems in changing the use and creating nonconformity just because it's residential and in a residential neighborhood.

Mr. Grossman responded that they are nonconforming structures anyway and they are seeking relief to modify what he considers these legally preexisting nonconforming structures. Mr. Benson responded that they do not comply with residential purposes and he saw it as an issue to change the use of the properties and the nonconformities. Mr. Grossman asserted that the use issue is separate from the nonconformities and not allowing change of use doesn't eliminate nonconformities. He claimed that what Mr. Benson said is that any use of these properties, because they do not comply, is substantially detrimental to the neighborhood. He asserted that the zoning bylaws allow legally preexisting nonconforming structures to be modified for commercial and residential purposes and reiterated that the question is, when modified, is it more substantially detrimental? He asserted that the same nonconformities would exist with commercial use. In response to a question from Mr. Femia, Mr. Olson replied that a zoning district can be changed at Town Meeting, meaning that they can switch what property is used for and change it, but the underlying zoning districts are the same. Mr. Grossman responded to Mr. Femia that in General Residence district, residential use is allowed as is commercial use. Mr. Femia asked what would happen to the structure that occupies both properties? Mr. Grossman opined that nothing would happen and that it would be protected because it is legally preexisting nonconforming. Mr. Benson asserted that the use of the

structure is preexisting for the art gallery. Mr. Grossman responded that the structure was preexisting nonconforming and opined that there is no enforcement mechanism for the Town to require it to be removed. In response to Mr. Femia, Mr. Grossman responded that when the building permit was issued, they do not know if the property was considered merged, but either way, he opined that the building permit was a mistake and if the properties were merged there were still many preexisting nonconformities on the property and relief would have been needed under Sec. 1.4B but now, under Chapter 40A, they are considered legally preexisting nonconforming structures. Mr. Femia asked, if they allow two separate residences, do the structures not meet the setbacks? Mr. Grossman replied that they are legally preexisting nonconforming and do not meet the setbacks because both lots are undersized and suggested that the board not deny the special permit just because relief is needed from the zoning bylaws. Mr. Olson responded that if it is treated as one lot, the side yard nonconformity will disappear. (Mr. Femia and Mr. Olson then discussed that the property owner and Building Inspector should have come to the ZBA for relief before, or if the properties were merged they should have done that as well. Mr. Femia reiterated that, if merged, there would be more than one habitable building per lot. He mentioned that Town Counsel opined that ZBA had authority but the bylaw Sec. 4.3G existed since the 1970's so the matter shouldn't have come to this point; he reiterated that there was evidence in the record that the ZBA could conclude that the properties were merged in 1999. Mr. Olson agreed and noted that the Town is limited in what action it can take on action taken greater than ten years ago. Mr. Rajeshkumar then asked about the lot line if an ANR is done? Mr. Grossman asserted that they will not need an ANR but a subdivision which Planning Board can do, and he explained how they would create new lot lines; he asserted that a variance will be needed from ZBA to create a new lot that doesn't comply; then Planning Board could grant the subdivision to allow the lot lines to be moved. If they do not move the lot lines, they can solve this in the interim by easement from #49 to #45 to allow the #49 structure to continue to be occupied and used by #45, as the lots are now owned by the same owner. He thought that, in the short term, they will probably be leased out. Alternately, he opined that, if the lots are separate, they can probably do a variance and subdivision and opined that this would be a less certain path given the necessary requirements for variance. Mr. Grossman thought it was logical to first take the available relief and modify the preexisting nonconforming use. He suggested that this way at least the properties can be renovated and occupied, then they can see about variance. Mr. Benson then clarified with Mr. Grossman and Mr. Olson that they are mainly dealing with Sec. 1.4B, where ZBA has authority.

Mr. Femia then discussed the frontage of #49 and asked if the frontage of #49 was the same before and after the sale of #53, of which there was common ownership of #45 and #49? Mr. Grossman replied that #49 and #45 had their own deeds before and remained the same, did not have any changes in configuration and no frontage change. He asserted that having a common owner created the present situation but reiterated that the question was if these properties can be modified for residential use without changing the exterior footprint.

William Henry, the former owner of 53 Central Street, wanted from Mr. Grossman the names of the principals of the LLC. Mr. Grossman asked why this was relevant to the zoning question? Mr. Henry replied that he thought one of the principals owns the property at 62 Central Street and asked why he/she was not included as an abutter for this public hearing? He described the supposed history of the sales of #62, #45 and #49, claimed that there are a lot of issues involved and that the situation is unfair; he said that this is why principals in an LLC should be listed, so that all information is open to the public.

Mr. Grossman responded that #45 and #49 were legally preexisting nonconforming previously and noted that they would need to renovate the properties so they would be before the board anyway. He said that, if they change the use, the nonconformity will still be continued and opined that the proper focus is if the change will be substantially more detrimental to the neighborhood or not.

(Mr. Olson then asked the board is they had any questions)? In response to Mr. Femia, Mr. Olson said that if the board approves the Special Permit and there are two separate properties in the single residence, even though they do not meet lot size and setback criteria they will not need a variance but will be grandfathered. Mr.

Olson continued, reiterating that one decision that he saw was, with respect to the Special Permit and change of use to residential, that where the lots are not merged, which would remove one nonconformity. Or, the interpretation can be similar but because of the building permit history, there's evidence that the Building Inspector treated it as merged, and they would remove many nonconformities and bring in the issue of greater than one habitable dwelling on a lot. As there is no case law to go to (according to Town Counsel), it is a case of first impression and what the board is comfortable with. He explained the policy behind the merger doctrine, where two contiguous lots meet certain conditions and the merger applies to reduce or eliminate nonconformity. Mr. Olson opined that it reduces more nonconformity than the other view, which adds one, and he probably leaned towards applying the merger doctrine, treating the property as one lot, and decreasing nonconformity. He continued that if they approve the use change to residential, one lot will have two habitable dwellings on it; however, multi-family use is allowed and is a conforming use but it is usually multi-family with two apartments in the same structure. So, he explained, if they agree it's merged, there will be two independent structures but multi-family use is allowed. Mr. Olson said that he was inclined towards acting this way but asked the board for other opinions.

Mr. Benson had questions about the garage; he said that he agreed on the limitation on making changes over ten years after construction, but understood there was no limit on nonconforming use and noted that, under Sec. 3.2, the garage would not be considered accessory use if it's not on the same lot; he thought that the ten-year period doesn't apply to use so he thought that it is still an issue for enforcement. He questioned if merger resolves this because they are all on the same lot? He stated that Sec. 5.1 says that nonconforming accessory use is permitted on the same lot, but if there are separate lots it could not be allowed. Mr. Benson added that the 10-year limit applies to construction but not use and reiterated that the garage does not count as accessory use as it is not on the same lot. Mr. Grossman responded that they are integrated and not separate and they are asking for one principal use in a structure, but they have legally preexisting nonconforming structures so the question is if the property use is substantially more detrimental. He added that they are not asking for illegal use, just to modify preexisting nonconforming structures.

Mr. Olson responded that the issue that Mr. Benson raised was accessory use of the garage; if they treat #45 and #49 as two independent lots, then Sec. 1.1 states that they would add a new nonconformity if they keep it as two lots because the use of the garage is not protected by the ten-year limitation (Ch. 40A, Sec. 6) as it is on only one of the lots. Mr. Olson noted that for structures older than ten years, the same protection does not apply to uses, and this is relevant to accessory use of the garage as the garage is not on the same lot as the main structure, so this would be agreeing to an additional nonconformity. Mr. Grossman asserted that, since there was a building permit and the use was according to the building permit, that the use was protected (he gave an example) and reiterated that there were legally preexisting nonconformities and they were protected by the bylaws. Mr. Olson reiterated that the 1999 building permit was approved by the Building Inspector for a particular structure and use, but asked if they still have protection when the property changes use? Mr. Grossman asserted that they do because it is a Ch. 40A Sec. 6 issue, not Sec. 7. He asserted that legally preexisting nonconforming structures are not a basis to deny an application. He reiterated that the issue was if the proposal will cause greater detriment to the neighborhood. Mr. Olson then asked, where the garage is not on the same lot, is the use of the garage equally protected as the garage is not considered a structure? Mr. Grossman responded that this is one integrated structure and the garage is not accessory; if they were to build a detached garage, then it could be considered accessory. Mr. Olson responded, noting that the petitioner is looking to change the accessory use of the garage, and if they treat the property as two lots, they would be looking at an additional nonconformity and asked if there is still protection under Ch. 40A, Sec. 7? Mr. Grossman replied that there is still protection, but under Sec. 6. He asserted that if the lots are not merged, it creates a nonconformity that prevents it. He said that the client hopes that, whether or not the board agrees that it is merged, they will grant relief for modifications and will find a way to allow use and renovation of the two structures for single-family use.

Mr. Olson responded that it was his inclination to grant the special permit and allow the change of use, treat this as one merged lot and minimize a number of the nonconformities. He suggested that the board could grant the Special Permit with condition that, before a building permit is granted, an ANR plan must be completed with the Planning Board and registered to erase the common lot line; he said that the board could vote to require this as part of the Special Permit. Mr. Grossman opined that this would be improper delegation of authority to make the Planning Board do this. He opined that, if the board finds the properties merged, they would not need the ANR, and given the requirements of an ANR, if they want to move the lot line, they would need a subdivision and not an ANR so they might be dictating an incorrect process to the Planning Board. Mr. Olson responded that he did not so much view it as less than what the other board needs to do so much as more of perfecting the determination that the lots have been merged into one lot so that it becomes a matter of public record that those previous two lots would be one lot moving forward. He continued, as Town Counsel mentioned, that is the mechanics of doing so, having a new ANR and removing the shared lot line and having it recorded with the Registry of Deeds.

Mr. Grossman continued, opining that if the board finds the lots to be merged, they have to give the Building Inspector evidence that it is recorded and so their decision exists in a recorded form. He continued that he was not 100% sure that they can do an ANR, opining that it would be ineffective and create more legal problems than if the board makes the decision that the lots are merged. He opined that, if the board starts changing lot lines of nonconforming properties, they run into "infectious invalidity" and leaving it up to Planning Board's discretion would be improper delegation of authority. Mr. Olson responded that the Planning Board would be free to approve or deny the ANR and the board is not determining that ahead of time. Also, Town Counsel advised that the board could attach a condition to the Special Permit and deemed the aforementioned condition to be reasonable. Mr. Grossman asked, if they go to Planning Board and they do not grant the ANR, then where would they be? Mr. Olson replied that Planning Board will look at frontages and access (mentioning that he was on Planning Board for a number of years), and if the lots are merged, there would be proper frontage and opined that he did not think that they wouldn't issue an ANR and reiterated that Town Counsel thought that was reasonable.

Mr. Grossman responded that he did not think that Town Counsel was correct. He said that there is a body of law around ANR and nonconformity, even if they're only taking out the interior lot line, and he did not understand why Town Counsel thinks that they have to do that. He asserted that, if the board says that the lots are merged, that will be recorded in the chain of title of the property and as part of the decision, but they are being asked to take an extra step that will require Planning Board approval. He reiterated that the board cannot compel another board to give approval, this would make the petitioner come back and it creates a problem. He added that the decision will say the two lots are merged and there is no interior lot line and suggested that they could require a supplement stating that there is no interior lot line to address their concern. He also suggested that the board could require as a supplement to the application a copy of the plan with no interior lot line and attach it to the decision.

Mr. Olson responded that he understood, but again during the conversation with Town Counsel, he asked when merger occurs, how is that opinion of the law on the record so people know that merger has occurred going forward and that there are no longer two lots? She said to obtain the ANR without common shared lot line. Mr. Grossman responded, asking Mr. Olson to assume there are two lots, they are merged, there is one buildable lot, and the owner wants a single-family home; the lot conforms and he obtains a building permit; there is no need for relief and no need for ANR. If he redraws the lot lines for nonconforming lots, it creates additional issues and if Planning Board rejects this, the applicant has a problem. Mr. Olson responded that they are not suggesting merger leads to ANR in every case, but opined, in this case, in context of the Special Permit, the board is able to request it. Mr. Grossman opined that there was no reason to put a condition to get the board's approval because that is inherent and that the board's decision that the lots are merged is sufficient. He reiterated the opinion that

delegating the Planning Board the authority to grant the ANR is improper, problematic and unnecessary. (Mr. Olson asked the board for comments).

Mr. Benson commented that, according to Ch. 40A, Sec. 6, it is at the board's discretion that preexisting nonconforming structures may be altered by Special Permit unless they find it will be more detrimental. (Mr. Grossman responded to Mr. Benson that the other building had been a print studio). Mr. Grossman reiterated his claim that there was a question by the board if it can be used for any purpose. He noted that the structures need to be renovated. He asserted that they are legally preexisting nonconforming but to change the use they need to go through this process and claimed that the board would be saying they cannot be used for any purpose. He asserted that these are improper grounds to deny relief. He opined that, from a use perspective, the issue is that the board should allow two buildings to be redeveloped and improved so they can be used and generate taxes, and the issue is if the lots are merged or not, and the applicant wants to use them for residential purposes, consistent with a residential district and what path can they take to get to that point?

(There were no comments from the board at that point; members of the public asked to speak). First was Sue Grant, 14 Newton Street, who is an abutter. She discussed the history of her property; she had lived here one years, her parents 25 years, and grandparents 40 years, and she noted that there was always a dentist or gallery in the buildings, with no issues. She claimed that, since the properties were sold, they have been unkempt. She described one issue lately, where bushes were trimmed and part of a tree cut down, and the debris was stacked up in the parking area at #45 for several months. She said that those materials pushed on her fence and her experience there had not been great. She was concerned about what will be there especially with #45, as it is a small property and she claimed that there are holding tanks underground that cannot be moved. The Building Inspector (George Tignor) commented that he had no issues with the houses having residential use and that the object is that the property goes across that line. He opined that the building permit in 1999 probably should not have been issued and that he had a different idea of what to do with the property (he did not elaborate here) but it had nothing to do with what they were discussing here. Winthrop Handy, who spoke earlier, explained how he had paperwork showing that in 1998 he filed for a variance and commented that the abutters were concerned that he was too aggressive as a businessman and claimed that he would want a restaurant there so he withdrew the variance and applied for a special permit. He asserted that the attorney told him to approach this as one property merged. Also, on #45, he tried to rent to four professional people, but only allowed two. He commented that there were potential customers who went elsewhere because of that. He also noted that the gallery was operated at #45 as he was an artist in residence, and he complied with the ADA and Building Inspector and occupied #45 and the connector to #49 (he commented that the coffee shop never opened).

Mr. Olson then opined that there were many issues to consider. He did not know if the board had an opinion on the merger issue or not, but said that he was inclined, since 1999 it was treated as single, to do that today; or, if applying for special permit, change the use of at least one property from nonconforming to conforming use, would they want the condition that he talked about before? (Upon Mr. Femia's request, Mr. Femia made a motion to close the public hearing. Mr. Grossman specified the Special Permit public hearing. Mr. Femia then made a motion to withdraw the motion to close the public hearing. Mr. Rajeshkumar seconded. Mr. Olson took a voice vote:

Mr. Femia – "yes"
Mr. Rajeshkumar – "yes"
Mr. Benson – "yes"
Mr. Wyatt 0- "yes"
Mr. Olson – "yes"

The vote was 5 "yes", 0 "no", therefore the previous motion was withdrawn.

Mr. Femia then made a motion to close the Special Permit public hearing. Mr. Rajeshkumar seconded. Mr. Olson took a voice vote: Mr. Femia – "yes"

Mr. Rajeshkumar – "yes"
Mr. Benson – "yes"
Mr. Wyatt – "yes"
Mr. Olson – "yes"

The vote was 5 "yes", 0 "no", and the public hearing for the Special Permit was closed.

Mr. Olson asked the board for comments. In response to Mr. Rajeshkumar, Mr. Olson replied that a supermajority was required, with 4 "yes" votes to grant the permit. Mr. Femia asked, if the board does not approve the Special Permit, will they move along to the Administrative Appeal? Mr. Olson replied that, if they deny the Special Permit, he did not anticipate a meaningful path for the administrative appeal. Mr. Femia asked, if the board approves the Special Permit, will the Administrative Appeal not be continued? Mr. Olson replied, since the Building Inspector did not find the lots merged and neither did the petitioner, he was not sure what to appeal. Mr. Femia responded, noting that if the lots are considered merged when the building permit was issued, there were two habitable structures on one lot which violated the bylaw Sec. 4.3G. Town Counsel commented that she did not know if that was present in 1999 but Mr. Femia thought it was on the books since 1970's (he added that the Town Clerk agreed with him). He did not see how the lots could be considered merged, as it violated Sec. 4.3.G already. He noted that the setbacks were violated and they never came before the ZBA for a variance. Mr. Femia did not see how the board could approve the special permit. Mr. Olson responded that he understood Mr. Femia's points. He noted that certain things did not happen in 1999, whether there was one or two lots, but wanted to discuss what was before the board now. Mr. Olson reiterated that the applicant is not proposing changes to the external structure so there will be no increase in frontage. He said that the applicant is proposing use from permitted nonconforming use changing to conforming use, I view as a step in the right direction; it will make existing uses conform. Mr. Benson noted that, if the two lots are combined, the total area will still not meet the requirements for single residence area; Mr. Olson responded that the area will still not be 40,000 square feet. Mr. Olson then asked Mr. Grossman, with respect to the Administrative Appeal, if the board grants the special permit, with or without conditions, what will happen with the appeal? He said that he wanted to be clear on what will happen. Mr. Grossman replied that, if the board grants the Special Permit to allow the renovation of the two structures, they would request to withdraw the appeal without prejudice. Mr. Grossman opined that, as they requested to keep the appeal public hearing open, that they cannot request to withdraw it.

There were no further comments or questions from the board or applicant. Mr. Femia made a motion to approve the Special Permit for 45 and 49 Central Street with no conditions. The board discussed the addition of conditions that was mentioned earlier, and Mr. Olson explained that Town Counsel told him that the board had the right to add conditions, and he replied to Mr. Rajeshkumar that the condition would be to approve the special permit with the condition that the Building Inspector will not approve a building permit for the merged lot until the property owner obtains an ANR on the existing lot with the shared lot line removed, and the ANR is recorded with the Registry of Deeds. Mr. Femia asked, if the condition is put in and Planning Board denies the ANR, did that mean the Special Permit will not be valid? Mr. Olson replied that, if the condition is not met, the Special Permit will be imperfect so the owner can come back to the ZBA and ask for an amended Special Permit. He opined that it was unlikely that the ANR would be rejected because the merged lot has frontage and access and it will just really be an acknowledgement that this is one lot. (Mr. Femia stated that he withdrew his motion). Mr. Benson continued, that if the lots are not merged, they do not need two different dwellings on two different lots. Mr. Olson responded that this would be true in theory; they would be dealing with two properties, but it was treated as one petition regulating two lots. Mr. Olson opined that he could make it clear in the decision that it refers to the entire piece of land. (In response to Mr. Benson, Mr. Olson replied that any motion made needs to relate to both #45 and #49).

With no further questions, Mr. Femia made a motion to approve the special permit for 45 Central Street and 49 Central Street, under Sec. 1.4B of the zoning bylaws, for the request to allow residential use on the properties, with the condition that the Building Inspector will not approve a building permit or any other permits until the landowner/petitioner seeks and obtains an ANR plan for the entire lot with shared lot line removed and it must be registered with the Registry of Deeds. Mr. Rajeshkumar seconded. Mr. Olson took a voice vote:

Mr. Femia – "no"
Mr. Benson – "yes"
Mr. Rajeshkumar – "no"
Mr. Wyatt – "yes"
Mr. Olson – "yes"

The vote was 3 "yes" to 2 "no", therefore the special permit with condition was denied.

Mr. Olson then asked the board if they wanted to consider the Special Permit without conditions? No one responded, so Mr. Olson reiterated that the Special Permit was denied. He then moved on to the Administrative Appeal, and, given the Special Permit results, he asked Mr. Grossman what type of relief he requested? Mr. Grossman replied that, given the Building Inspector's opinion about the lots being merged, they conform with Sec. 1.4D, since the proposed use is single-family residential structures, neither requires special permit because the intended use is consistent with 1.4D and the Building Inspector can issue the building permit. Mr. Olson (noting that he had not closed this public hearing), responded that he read Sec. 1.4D and did not find that it applies because this case would involve single- or two-family structures and opined that Sec. 1.4B would be more appropriate. Mr. Grossman responded that the proposed work is not conversion to an office building. He asserted that the structures have facilities proper for residential use, such as kitchen and bathrooms and that they were residential structures utilized for commercial purposes and could be dwelling units. He opined that they did not need a Special Permit. Mr. Olson stated that the petitioner asked if the Building Inspector should allow change of use, rather than by Special Permit (Mr. Grossman verified this)? Mr. Benson disagreed with this, opining that Sec. 1.4D was not appropriate. With no further comments or questions, Mr. Olson asked for a motion to close the public hearing. Mr. Femia made a motion to close the public hearing. Mr. Rajeshkumar seconded. Mr. Olson took a voice vote:

Mr. Femia – "yes"
Mr. Rajeshkumar – "yes"
Mr. Benson – "yes"
Mr. Wyatt – "yes"
Mr. Olson – "yes"

The vote was 5 "yes" to 0 "no", therefore the public hearing was closed.

In response to Mr. Femia, Mr. Olson explained that a "yes" vote to grant the Administrative Appeal reverses the Building Inspector's decision not to grant a building permit and a supermajority would be needed. With no further comments or questions, Mr. Femia made a motion to approve the Administrative Appeal regarding 45 and 49 Central Street (Mr. Olson replied to Mr. Rajeshkumar that a "no" vote will leave the Building Inspector's decision to deny the building permit unchanged). Mr. Olson took a voice vote:

Mr. Femia – "no"
Mr. Rajeshkumar – "no"
Mr. Benson – "no"
Mr. Wyatt – "no"
Mr. Olson – "no"

The vote was 5 "no", 0 "yes", therefore the Administrative Appeal was not granted. (Mr. Olson announced that the hearings were closed, the votes were completed, and thanked all involved. He informed Mr. Grossman that decisions for both votes will be filed with the Town Clerk within 14 days, and there will be a 20-day appeal period).

Other Business:

Treasurer's/Financial Report: Mr. Olson reviewed the report himself prior to the meeting and informed the board members that everything looked in order.

Miscellaneous Mail and/or Paperwork: None was discussed at the meeting. (Mr. Femia informed the board that the State extended allowance of remote meetings to July 15, 2022; he informed the board that he will not be available for the April 21 meeting if it is not remote). Mr. Rajeshkumar commented that he would be fine meeting either way. Mr. Olson commented that he was not opposed to remote meetings, but noted that the board probably will not have an April 21 meeting as no public hearings have been filed and opined that they did not have to decide at this time about the May meeting.

Mr. Femia also commented that, as a future agenda item, he thought that the board's filing forms needed updating. Mr. Olson said that he was not opposed to looking at this, and if the board is interested, they would look for a volunteer to work on this. Mr. Rajeshkumar suggested that he could make them into PDF's. Mr. Olson wanted to add this to the May meeting agenda.

Next ZBA Meeting: The next ZBA meeting will be held on **Thursday, April 21, 2022**, at 7:00 p.m., and this will likely be a remote meeting but no final decision was made.

With no further discussion taking place, Mr. Rajeshkumar made a motion to adjourn the meeting at 9:52 p.m. Mr. Femia seconded. Mr. Olson took a roll call vote:

Mr. Femia – "yes"
Mr. Benson – "yes"
Mr. Rajeshkumar – "yes"
Mr. Wyatt – "yes"
Mr. Olson – "yes"

The vote was 5 "yes" to 0 "no", therefore the meeting was adjourned at 9:52 p.m.

Submitted by: _____

Date submitted: _____

Approved by: _____