

**BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT
REGULAR & REORGANIZATION MEETING
JANUARY 5, 2023**

The meeting was opened by Chairman Battista at 7:35 PM.

Chairman Battista read a statement of compliance with the *New Jersey Open Public Meetings Law* as follows:

This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the Coaster and the Asbury Park Press.

Chairman Battista then led the meeting in a salute to the flag.

Ms. Acken took roll call.

Present: Chairman Battista, Mr. Palmieri, William Kuzmin, Charles Lomangino, Steven Porzio, Sheila Hatami, Emily DeMaio, Scott Provines

Absent: Marc McKinley

Also Present: Ms. Regina Acken, Board Secretary
Mr. Thomas Neff, Board Engineer
Ms. Christine Bell, Board Planner
Mr. Thomas Hirsch, Esq., Board Attorney

Chairman Battista read the Statement of Procedural Guidelines for Public Hearing.

MINUTES

Chairman Battista indicated that the minutes of the regular meeting held on December 1, 2022, have been previously distributed via email for the Board Members to review.

Mr. Lomangino offered a motion to approve the minutes of the December 1, 2022, meeting. The motion was seconded by Mr. Palmieri.

ROLL CALL

AYES: Mr. Lomangino, Mr. Palmieri, Chairman Battista, Vice-Chairman Kuzmin, Mr. Porzio, Ms. Hatami, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Mr. McKinley

INELIGIBLE: None

REORGANIZATION

Chairman Battista stated the following member is up for reappointment:

-Mr. Scott Provines

Mr. Hirsch administered the Oath of Office to Mr. Provines.

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Appointment of Chairman for 2023

Mr. Porzio offered a motion to nominate Ronald Battista for the office of Chairman of the Zoning Board for the 2023 calendar year. The motion was seconded by Mr. Palmieri.

Chairman Battista asked if there were any other nominations? Hearing none, the Board appointed Ronald Battista as Zoning Board Chairman for the year 2023. The vote is unanimous by all Board members present.

Appointment of Vice-Chairman for 2023

Mr. Palmieri offered a motion to nominate William Kuzmin for the office of Vice-Chairman of the Zoning Board for the 2023 calendar year. The motion was seconded by Mr. Porzio.

Chairman Battista asked if there were any other nominations? Hearing none, the Board appointed William Kuzmin as Zoning Board Vice-Chairman for the year 2023. The vote is unanimous by all Board members present.

Board Nominations

Chairman Battista offered a motion to nominate Regina Acken as Board Secretary for 2023. The motion is seconded by Mr. Porzio. All Board Members present voted in favor.

Mr. Hirsch gave a brief explanation of the process in which the Board's professionals are appointed. Mr. Hirsch reviewed each of the accepted proposals before the Board members prior to each vote.

Zoning Board Planner

Mr. Palmieri offered a motion to re-appoint the Leon S. Avakian, Inc. 788 Wayside Rd., Neptune City, NJ 07753, as the Board's Planner. The motion was seconded by Mr. Lomangino. All Board Members present voted in favor.

Zoning Board Engineer

Mr. Porzio offered a motion to re-appoint T&M Associates, 11 Tindall Road, Middletown, NJ 07748 as the Board's Engineering Firm. The motion was seconded by Vice-Chairman Kuzmin. All Board Members present voted in favor.

Zoning Board Attorney

Mr. Palmieri offered a motion to re-appoint Mr. Thomas J. Hirsch Esq., 3350 Route 138, Bldg. 1, Suite 214, Wall, NJ, 07719 as the Board's Attorney. The motion was seconded by Mr. Porzio. All Board Members present voted in favor.

Resolution Designating Meeting Dates of the Zoning Board of Adjustment for the Year 2023

Chairman Battista indicated that the Board has received a Resolution to approve the meeting dates for the Zoning Board of Adjustment for 2023.

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Chairman Battista asked if the Board had any questions or comments on said Resolution? Hearing none, he asked for a motion.

Vice-Chairman Kuzmin offered a motion to accept the Resolution designating the meeting dates for the year 2023, the motion was seconded by Mr. Palmieri. All Board Members present voted in favor.

Resolution Designating the Official Newspapers of the Zoning Board of Adjustment for the Year 2023

Chairman Battista indicated that the Board has received a Resolution to approve the official newspapers of the Zoning Board of Adjustment for 2023.

Chairman Battista asked if the Board had any questions or comments on said Resolution? Hearing none, he asked for a motion.

Mr. Porzio offered a motion to accept the Resolution designating the official newspapers of the Zoning Board for the year 2023. The motion was seconded by Ms. Hatami. All Board Members present voted in favor.

BA2022-18 Resolution in the Matter of David and Margaret Tripold

Chairman Battista advised that the proposed Resolution in this matter has been previously distributed to the Board Members prior to tonight's meeting. The Board previously approved this application on December 1, 2022.

Chairman Battista asked if any Board Members have any comment on said Resolution? Hearing none, Chairman Battista asked for a motion to memorialize BA2022-18.

Mr. Lomangino offered a motion to memorialize Resolution BA2022-18. The motion was seconded by Mr. Palmieri.

NEW AND CONTINUED BUSINESS

BA2021-09

7th Day, LLC
4045 NJ Route 33
Block 146, Lots 6.01 & 7
Site Plan Approval, Bulk & Use Variance

Attorney Hirsch stated for the record that he has reviewed the proofs and affidavit of service from the Applicant. He stated that all is in order as to form and that the Board has jurisdiction to hear this matter.

Mr. Porzio offered a motion to accept service. The motion was seconded by Mr. Palmieri. All present voted in favor. It was noted for the record that Mr. Lomangino stepped down from the Board for the hearing of this application.

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Jennifer Krimko, Esq., Ansell, Grimm & Aaron, Ocean, NJ, Attorney for the Applicant

Ms. Krimko stated that there have been some changes made to the application based upon feedback from the last hearing. Of primary concern is providing the Applicant with the approval to convert any space abandoned by Jughandle Brewery to flex space. Referencing Exhibit A-3, entitled Tenant/Building Utilization Parking Requirements Analysis for Current Space Allocation, Ms. Krimko detailed the current tenants and their respective parking demand. Ms. Krimko submitted Exhibit A-4 which is the revised plan sheet for the proposed signs.

Attorney Hirsch swore in the following witness.

Matt Dubois, LLA Nelson Engineering Associates, Inc. Neptune, NJ

Mr. Dubois presented his credentials, and the Board accepted him as an expert in Engineering.

Mr. Dubois confirmed that, under current operations, the Applicant's parking requirement is 48 parking spaces. Ms. Krimko explained that the Applicant may need to impose a mandatory reduction in the operation of their tenant, Jughandle Brewery, due to non-payment of financial obligations. Ms. Krimko submitted Exhibit A-4, which depicts several potential scenarios under which the Applicant is seeking permission to lease the space made available. Mr. Dubois confirmed that under none of the potential circumstances will the need for more parking spaces exist.

Ms. Bell asked if the Applicant would lease to a different brewery if Jughandle Brewery vacates? Ms. Krimko responded that yes, the Applicant would be amenable to leasing to a new brewery or to revert to flex space if the Board approves the application.

Vice-Chairman Kuzmin asked if the brewery has begun to reduce operations? Ms. Krimko confirmed that they have. She stated that the Applicant is hopeful that the brewery will stay in operation, however, they need the option to revert to flex space to protect their interests. Vice-Chairman Kuzmin asked how long the Applicant would pursue a brewery to replace Jughandle Brewery before wanting the space to revert to flex? Ms. Krimko stated that they are only interested in reverting to flex space through this application and that if a brewery did want to lease the space vacated by Jughandle, then Ms. Krimko stated they would have to apply for a use variance.

Chairman Battista asked for clarification regarding the Applicant's willingness to lease to a brewery. Ms. Krimko stated that they would like to be approved to replace Jughandle Brewery with either a new brewery or with flex space. Ms. Hatami interjected that the Applicant is asking to maintain both approvals and suggested that the Applicant choose one or the other. Mr. Palmieri countered that as Jughandle Brewery shrinks, the available space reverts to flex. Once the brewery vacates completely, all vacated units revert to flex. He explained that the Applicant wants the option to let another brewery replace Jughandle, which could be done legally by assuming their lease or by permission of the Board. Mr. Hirsch asked if there a timeframe in which the Applicant is proposing the right to replace Jughandle brewery with another? Ms. Krimko replied that whomever they can lease it to first would be the tenant. Ms. Hatami reiterated that the Applicant is seeking to maintain two approvals. Chairman Battista expressed his dissatisfaction with the brewery staying in operation along with any released units being designated as flex. Mr. Porzio supported Ms. Hatami's assertion.

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Ms. Bell expressed concern that there is no timeline for the Applicant's proposal. Mr. Neff added that approving the application without knowing who the tenants are causes concern and that the Applicant's violation of the parking requirement could be exacerbated by potential tenants. Ms. Krimko stated that, in the event they revert to all flex space, the Applicant is only in violation by two parking spaces.

Mr. Hirsch advised the Board to consider if they want any available space to be designated flex space as a rule or to be addressed individually with a new application. Chairman Battista interjected that page 5 of Exhibit A-3, which illustrates a brewery and multiple flex spaces depicts a scenario that, in 2018, the Board was strongly opposed to. He stated that he has no objection to reverting to flex space, however, he is against a new brewery becoming a tenant. Mr. Neff added that the brewery is considered manufacturing, not flex, if there is no sampling or tasting occurring.

Ms. Bell explained to the Applicant that she is struggling with the fact that there are so many potential scenarios being presented along with the fact that there is no timeline. Ms. Krimko stated that the flex tenants may change as they are market-driven. She stated that the traffic and parking at the site are working efficiently. Mr. Neff countered that the tenants do not have many vehicles, but the potential new tenants may have more and/or need overnight parking which would prohibit overflow parking from the brewery.

Ms. Krimko asked for a short break to consult with the Applicant.

At 8:32pm the Board took a break, resuming at 8:38pm.

Ms. Krimko stated that, in the event the brewery relinquishes all tenant space, the Applicant will not replace it with another brewery. She added that if the brewery shrinks in size, the seating capacity will diminish which will affect the parking requirements and overall operations. Chairman Battista countered that a tasting room's capacity is not limited to the number of seats provided.

Ms. Krimko again emphasized that as the brewery vacates, the space automatically becomes flex space. Mr. Hirsch questioned what the Applicant is proposing the space be considered upon the premises being vacated? Ms. Krimko said that determination would be made upon a new tenant signing the lease and that it will be either a brewery or flex space.

Chairman Battista stated that he is conflicted with the lack of specifics for the future occupants of the building.

Mr. Lomangino claimed that Covid laws and regulations regarding rent and tenants prohibits him from being precise in the plan. He stated that he cannot evict the brewery because he doesn't have approval to rent the space as flex. Chairman Battista argued that if the Applicant proposed eviction of the brewery and wanted to have the space revert to flex, the Board would most likely approve immediately.

Vice-Chairman Kuzmin asked if the Applicant has a deadline to which they would sign a lease with a new brewery. Ms. Krimko said that if another brewery wants to take the space vacated by Jughandle Brewery in the months following its closure, they would be open to that opportunity, however, the Applicant anticipates using any available the space for flex purposes and not for a brewery.

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Ms. Krimko to confirm that if Jughandle Brewery vacates, there will not be another brewery coming in. Ms. Krimko did not confirm, but rather stated that if the brewery leaves and another brewery concern wants to occupy the space, that would be allowed if approved by the Board. She stated that once another occupant takes the space, the Applicant forfeits the brewery use.

Mr. Lomangino pointed out that reverting to flex diminishes the use. Chairman Battista repeated that reducing the size of the brewery does not reduce the intensity especially when the brewery is attempting to be more profitable. Mr. Lomangino rebutted that the bulk of the operation of the brewery is distribution.

Ms. Krimko referenced sheet 2 of Exhibit A-4 which includes photos of the current and proposed signs on the site. She highlighted the changes being made to the signage as a result of feedback from the last hearing.

Ms. Krimko pointed out Sheet 2 of Exhibit A-4 which depicts the signs on the site as motorist would encounter them. Mr. Lomangino stated that a passerby cannot see the signs for the car wash because they are in the "shadow of the Motel 6" and that the advertisement signs on the car wash drive aisle are not visible from the highway due to the buffer. He continued detailing the signage on the property explaining the importance of each.

Ms. Hatami stated that she doesn't like the digital sign. Mr. Lomangino responded that when the weather is changeable, it is vital to be able to advertise when the business is open. Attorney Hirsch asked what the digital sign will be used for. Ms. Krimko responded that it will be used for any on-site purposes. Mr. Palmieri expressed support of the digital signage.

Ms. Hatami asked about the parking for the employee of the car wash. Ms. Krimko responded that the employee would park at Unit J.

Chairman Battista asked if any member of the public has a question for the Applicant's Engineer, Mr. Dubois. Hearing none, Chairman Battista called for a 5-minute break.

Back on the record at 9:45pm.

Attorney Hirsch swore in the following witness.

Andrew Janiw, Beacon Planning & Consulting Svs, 315 Highway 34, Colts Neck, NJ

Mr. Janiw presented his credentials, and the Board accepted him as an expert in Planning.

Mr. Janiw detailed the variance relief being sought to facilitate planning for the Applicant as their tenant, Jughandle Brewery, diminishes or ceases their operation. The two d(1) variances are being sought in order to permit the car detailing operation and the electrical contractor currently to remain in operation at the site. Ms. Krimko interjected that the d(1) variance is being sought to bring all the space back to flex including the car detailer should he vacate. Mr. Janiw explained that the use variance is also being sought to permit multiple principal uses on the site. A d(3) variance is required to add an employee as well as adding two additional vacuum stations which are within 32 feet of a residential zone boundary, whereas a minimum of 50 feet is required. He detailed the bulk variance relief as follows: lack of 40 foot buffer between commercial and

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residential uses; providing 35 parking spaces whereas a minimum of 49 is required; and multiple signage concerns which have been detailed in prior testimony. Mr. Janiw referenced the Master Plan of the Borough and stated, through thorough testimony, that the Applicant meets and expands upon the goals and objectives of the Plan. He cited the relief requested supports a balanced development pattern which will enhance long term economic and social interest of the residents, promotes growth and development of the economic base and strengthens the tax base. The HCC Zone designation supports the Applicant's proposal of reverting to flex space. He stated the application meets public purpose of the Master Plan in that the site is located in an appropriate location and that the potential departure or Jughandle Brewery provides the Applicant with the opportunity to revitalize the space. Mr. Janiw stated that the Applicant will be operating within the guideline or with even less intensity than the HCC Zone permits. Regarding the d(3) variance, which is being sought, Mr. Janiw asserted that the site can accommodate the use which is permits one employee and two new vacuum stations. Mr. Janiw submitted Exhibit A-5, which is an aerial view of the site. He reminded the Board that there would be no significant increase in the noise affecting the adjacent residential properties because the motor to the vacuums is housed inside the car wash.

Regarding the bulk variances, Mr. Janiw reiterated that the car wash does not currently have effective signage. He stated that the existing configuration and the circulation pattern creates a hardship in terms of properly directing traffic safely.

Mr. Janiw stated that there is a lack of negative criteria as the building is functioning as it was intended. He asserts that there will be a lessening of intensity as the building reverts to flex if permitted. In his professional opinion, Mr. Janiw testified that the positive impact outweighs the negative as it relates to the d(1), D(3) and the c(1)/c(2) variances.

Vice-Chairman Kuzmin asked the Planner to explain his conclusion that the site will not be intensified with new tenants considering their use is currently unknown. Ms. Krimko interjected that their use is flex. Mr. Janiw agreed with Ms. Krimko and said that the site can accommodate the anticipated parking demand, which is potentially less than it is currently.

Mr. Palmieri asked how the potential conversion of the released space by Jughandle Brewery will be managed? Mr. Janiw responded that would be incorporated into the Resolution. He reminded the Board that the site can handle the transition to flex, whether it occurs in a step-by-step process or all at once.

Chairman Battista asked if any member of the public has a question for the Planner, Mr. Janiw. Upon hearing none, he thanked Mr. Janiw for his testimony.

Ms. Krimko closed by reiterating the testimony given by the professionals and the Applicant. In her summary, she stated that the Board's biggest concern seems to be the "step-down" process of Jughandle Brewery relinquishing space incrementally. She reminded the Board that, although the flex space future tenants are unknown, the same is true when a shopping center is built before securing tenants. The parking requirements are not based on the specific tenant. She stated that the intensity of the site will not be increasing.

Chairman Battista asked if any member of the public has a statement for the Applicant.

Attorney Hirsch swore in the following witness.

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Leo Lomangino, (address unintelligible), Applicant

Mr. Leo Lomangino thanked the Board for their time and energy.

Mr. Palmieri asked Mr. Neff to identify specific examples of flex. Mr. Neff explained that there is not a specific list but that flex space is primarily used for contractors, storage and small office space.

Ms. Krimko asked Mr. Neff if he would have the ability to keep track of changes made to the tenants of the Applicant. He agreed that he would be able to.

Chairman Battista made a motion to close the public portion. Vice-Chairman seconded.

Attorney Hirsch detailed the process upon which the voting will occur. Ms. Krimko requested two separate votes for the space made available by Jughandle Brewery shrinking or vacating; one if the entire space becomes available at once and another if the space becomes available in parts, which she dubbed "step-down".

Chairman Battista asked for feedback from the Board. Vice-Chairman Kuzmin expressed his most pressing concern to be the potential to have a brewery and flex space combined. He is not in favor of the step-down scenario. Mr. Palmieri agreed with Vice-Chairman Kuzmin and expressed concern about policing incoming tenants in that eventuality. Ms. Hatami stated that the circulation regarding the new vacuums wasn't adequately addressed and that she is still questioning if there is sufficient parking. She does not like the mixed and intensity of uses if the brewery stays. Mr. Porzio stated that he is comfortable with the proposed step down on the condition that the Borough is aware of the changes as they happen. Chairman Battista commented that the Applicant is in violation of the ordinance by having two tenants currently which is providing some financial relief to the Applicant. He denies the claim of hardship of the tenant. He is in favor of returning the space to flex, however, he is not in favor of the step-down scenario. Ms. Hatami asked if there are any consequences for the violation of the Applicant in having two tenants? Attorney Hirsch responded that the Applicant should be viewed as having had no offense, but rather, as if they are coming to the Board with the relief request for the first time.

Chairman Battista made a motion to approve d(1) variance allowing the auto detailer to operate in the zone. Mr. Porzio seconded the motion.

ROLL CALL

AYES: Chairman Battista, Mr. Porzio, Vice-Chairman Kuzmin, Mr. Palmieri, Ms. Hatami, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Mr. McKinley

RECUSED: Mr. Lomangino

INELIGIBLE: None

The motion was APPROVED.

Vice-Chairman Kuzmin made a motion to approve d(1) variance allowing the electrician to operate in the zone. Mr. Palmieri seconded the motion.

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ROLL CALL

AYES: Vice-Chairman Kuzmin, Mr. Palmieri, Chairman Battista, Mr. Porzio, Ms. Hatami, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Mr. McKinley

RECUSED: Mr. Lomangino

INELIGIBLE: None

The motion was APPROVED.

Mr. Palmieri made a motion to approve d(1) variance permitting multiple principal uses in one lot. Mr. Porzio seconded the motion.

ROLL CALL

AYES: Mr. Palmieri, Mr. Porzio, Chairman Battista, Vice-Chairman Kuzmin, Ms. Hatami, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Mr. McKinley

RECUSED: Mr. Lomangino

INELIGIBLE: None

The motion was APPROVED.

Vice-Chairman Kuzmin made a motion to approve d(3) variance allowing one additional employee. Mr. Palmieri seconded the motion.

ROLL CALL

AYES: Vice-Chairman Kuzmin, Mr. Palmieri, Chairman Battista, Mr. Porzio, Ms. Hatami, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Mr. McKinley

RECUSED: Mr. Lomangino

INELIGIBLE: None

The motion was APPROVED.

Mr. Palmieri made a motion to approve d(3) variance allowing two additional vacuum stations. Mr. Porzio seconded the motion.

ROLL CALL

AYES: Mr. Palmieri, Mr. Porzio, Chairman Battista, Vice-Chairman Kuzmin, Ms. DeMaio, Mr. Provines

NAYES: Ms. Hatami

ABSENT: Mr. McKinley

RECUSED: Mr. Lomangino

INELIGIBLE: None

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The motion was APPROVED.

Mr. Palmieri made a motion to approve d(3) variance allowing the car wash operation to be located within fifty feet of a residential zone. Vice-Chairman Kuzmin seconded the motion.

ROLL CALL

AYES: Mr. Palmieri, Vice-Chairman Kuzmin, Chairman Battista, Mr. Porzio, Ms. DeMaio, Mr. Provines

NAYES: Ms. Hatami

ABSENT: Mr. McKinley

RECUSED: Mr. Lomangino

INELIGIBLE: None

The motion was APPROVED.

Mr. Palmieri made a motion to approve various parking variances. Mr. Porzio seconded the motion.

ROLL CALL

AYES: Mr. Palmieri, Mr. Porzio, Chairman Battista, Vice-Chairman Kuzmin, Ms. DeMaio, Mr. Provines

NAYES: Ms. Hatami

ABSENT: Mr. McKinley

RECUSED: Mr. Lomangino

INELIGIBLE: None

The motion was APPROVED.

Chairman Battista made a motion to approve variance allowing the proposed signage. Mr. Palmieri seconded the motion.

ROLL CALL

AYES: Chairman Battista, Mr. Palmieri, Vice-Chairman Kuzmin, Mr. Porzio, Ms. Hatami, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Mr. McKinley

RECUSED: Mr. Lomangino

INELIGIBLE: None

The motion was APPROVED.

Mr. Palmieri made a motion to approve the site plan and all waivers set forth in the Application. Vice-Chairman Kuzmin seconded the motion.

ROLL CALL

AYES: Mr. Palmieri, Vice-Chairman Kuzmin, Chairman Battista, Mr. Porzio, Ms. Hatami, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Mr. McKinley

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RECUSED: Mr. Lomangino

INELIGIBLE: None

Mr. Palmieri made a motion to grant use variance allowing the Applicant to convert the entirety of the brewery space and/or auto detailer into flex space. Mr. Porzio seconded the motion.

ROLL CALL

AYES: Mr. Palmieri, Mr. Porzio, Chairman Battista, Vice-Chairman Kuzmin, Ms. Hatami, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Mr. McKinley

RECUSED: Mr. Lomangino

INELIGIBLE: None

The motion was APPROVED.

Mr. Palmieri made a motion to grant use variance allowing the Applicant to convert the brewery space into flex space as each unit (previously referred to as "step-down") of the brewery is vacated. Mr. Porzio seconded the motion.

ROLL CALL

AYES: Mr. Palmieri, Mr. Porzio, Ms. Hatami, Mr. Provines

NAYES: Chairman Battista, Vice-Chairman Kuzmin, Ms. DeMaio,

ABSENT: Mr. McKinley

RECUSED: Mr. Lomangino

INELIGIBLE: None

The motion was DENIED.

Chairman Battista made a motion to Adjourn. Ms. Hatami seconded the motion. All present voted in favor.

Time: 11:16 PM

Respectfully submitted,



Regina Acken
Zoning Board Secretary

APPROVED AT A BOARD OF ADJUSTMENT MEETING ON: February 2, 2023