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MEETING HELD REMOTELY VIA ZOOM

STATE OF NEW YORK : COUNTY OF ORANGE  
TOWN OF NEWBURGH ZONING BOARD OF APPEALS

----- X

In the Matter of

N&N UNION, LLC  
(SMOOTHIE KING)

1221 Route 300, Newburgh  
Section 96; Block 1; Lot 6.2  
IB Zone

----- X

Date: April 23, 2020  
Time: 7:04 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
RICHARD LEVIN  
ANTHONY MARINO  
DARRELL BELL  
PETER OLYMPIA

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: NANCY FORREST

----- X

MICHELLE L. CONERO  
3 Francis Street  
Newburgh, New York 12550  
(845)541-4163

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CHAIRMAN SCALZO: I'd like to call the meeting of the ZBA to order. The first order of business are the public hearings scheduled for this evening. The procedure of the Board is that the applicant will be called upon, they'll state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. After all of the public hearings have been completed, sometimes the Board may adjourn to confer with counsel regarding any legal questions it may have, although I doubt that's going to happen this evening. The Board will then consider the applications in the order heard. We'll try to render a decision this evening but may take up to 62 days to reach a determination. When speaking, please identify yourself as this is being recorded by a video and audio.

Roll call please, Siobhan.

MS. JABLESNIK: Darrell Bell.

MR. BELL: Here.

MS. JABLESNIK: Richard Levin.

I think he's here.

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N&N UNION, LLC

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CHAIRMAN SCALZO: He's muted.

MS. JABLESNIK: And I think I froze.

There we go.

Richard Levin.

MR. CORDISCO: He is muted.

MS. JABLESNIK: Anthony Marino. Are we muted?

John Masten is absent.

John McKelvey is absent as well.

Peter Olympia.

MR. OLYMPIA: Here.

MS. JABLESNIK: And Darrin Scalzo.

CHAIRMAN SCALZO: Present. Thank you very much.

All right. You know what, I did not notice the other night, typically we'll stand for the Pledge of Allegiance. I think in this case we'll all just salute later.

Our first applicant this evening, we have heard this applicant before, N&N Union, LLC, which is 1221 Route 300, Newburgh, seeking area variances to install a (A) 35.95 square foot 10 by 6 ground-mounted menu board, and (B) a 21 square foot wall sign on the side of the building

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N&N UNION, LLC

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where there is an existing 92.5 square feet.

This has already been noticed. What we were waiting for for this meeting was the GML 239 responses back from the County.

Siobhan, have we received those responses back?

MS. JABLESNIK: Yes, we have.

CHAIRMAN SCALZO: It's been well over 30 days by now. That's for sure.

Do we have anyone here from the applicant to represent?

MR. CORDISCO: Do you happen to see anyone that's on the attendee list or participant list that I should unmute at this time? Unfortunately we have somebody that dialed in with a telephone number, and then there's someone else that's identified themselves as FJS217, and that looks like they have video. I'm happy to unmute everybody and see what happens, but I just don't know if there's someone in particular.

CHAIRMAN SCALZO: Well, I would say start with the FJS217. We'll see if that's someone representing the applicant.

FJS217: No, sir. It's not.

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N&N UNION, LLC

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CHAIRMAN SCALZO: Thank you very much.  
Dominic, mute them please.

MR. CORDISCO: Sure. I'll try the  
phone number next. This is not Ready Coffee;  
correct?

CHAIRMAN SCALZO: That's correct.

MR. CORDISCO: Hello?

MS. FORREST: Hello. This is Nancy  
Forrest with GNS Group. I'm sorry, I didn't put  
in my ID number and I didn't know how to get back  
to it.

CHAIRMAN SCALZO: That's okay. You are  
here representing N&N Union, LLC; correct?

MS. FORREST: Yes, that's correct.

CHAIRMAN SCALZO: Smoothie King. All  
right. I don't mean to put you on the spot, but  
because we are all new to this, if you happen to  
have your notes in front of you, if you could  
give a brief overview of what we're looking for  
and we will go from there.

MS. FORREST: Sure. The variances are  
for Smoothie King, who on their site plan clearly  
indicated there was a drive-up and an approval  
for a drive-up, unfortunately in the latest sign

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ordinance that was written there's nothing spelled out for drive-up signs, menu board signs, which are absolutely necessary for it. So we were told we had to go this way to get approval for it because there was nothing in the ordinance.

CHAIRMAN SCALZO: That is correct. Our sign code, we're probably going to look to revise that soon.

Okay. We had heard all comments on this before. I personally had no comments. We've all visited the site. We've all seen it.

At this point I'll look to any Members of the Board that wish to have any further comments on this.

Dominic, if you could unmute all Members of the Board in this case.

MR. DONOVAN: I think just Tony is muted.

MR. MARINO: Can you hear me now?

CHAIRMAN SCALZO: Yes, we can.

MR. MARINO: I'm good.

CHAIRMAN SCALZO: Richard, you can hear us?

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N&N UNION, LLC

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MR. LEVIN: I can hear you.

CHAIRMAN SCALZO: Very good. So any comments from any Members of the Board?

MR. BELL: I'm good.

CHAIRMAN SCALZO: So in this case I will look to the Board. Does the Board have any motions to make? Perhaps to close the public hearing?

MR. LEVIN: I'll make a motion to close the public hearing.

MR. BELL: I'll second.

CHAIRMAN SCALZO: All right. We have a motion from Mr. Levin, a second from Mr. Bell. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

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The public hearing is now closed,  
although we will accept comments for up to ten  
days.

Moving on.

MR. DONOVAN: Mr. Chairman, if I just  
could for a second. Did we indicate for the  
record what the determination of the Orange  
County Department of Planning was? I know we got  
the report. We should indicate what that  
report --

MS. JABLESNIK: It was a Local  
determination.

CHAIRMAN SCALZO: Local determination?

MS. JABLESNIK: Yes.

MR. DONOVAN: Thank you.

CHAIRMAN SCALZO: Actually Dave, just  
because we are in unusual circumstances here, do  
we need --

MR. DONOVAN: So I believe -- thank  
you. The two items for tonight, we determined  
not to have to wait for the ten days since these  
items were the subject of public hearings back in  
February. We actually segregated these two items  
so we could act this evening. The legal notice



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N&N UNION, LLC

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does not provide for the ten-day comment period. Per our prior conversations, there will be no ten-day comment period, unless you've changed your mind now.

CHAIRMAN SCALZO: No, I have not.

MR. DONOVAN: We'll proceed to be able to act on the two applications that are on the agenda this evening.

CHAIRMAN SCALZO: Very good. Thank you, Dave.

Okay. Moving on. Our -- actually Dave, do I need to move on or can we actually just close this one out right now?

MR. DONOVAN: If you prefer to do that. We are in uncharted territory. This is our Zoom meeting. We can go in unchartered territory. You can close this one out now if you choose, Mr. Chairman. I would just indicate for SEQRA purposes this is an Unlisted action, so it will require a negative declaration from the Board.

CHAIRMAN SCALZO: Okay. That being said, any Members of the Board, I'll look for a motion for a negative declaration.

MR. LEVIN: Motion to approve.

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CHAIRMAN SCALZO: Motion for a negative  
declaration from --

MR. LEVIN: I'm sorry.

CHAIRMAN SCALZO: -- Mr. Levin.

MR. OLYMPIA: I'll second that.

CHAIRMAN SCALZO: A second from Mr.  
Olympia. Roll call on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

We have a neg dec on that. Okay.

We're going to move through our  
variance criteria at this point, the first one  
being whether or not the benefit can be achieved  
by other means feasible to the applicant.

MR. MARINO: No.

CHAIRMAN SCALZO: It could have been

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smaller but in this case it's there.

Second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties.

My opinion is this is in a highly commercial area. It's really unnoticed.

MR. BELL: Yup.

The third, whether the request is substantial.

MR. BELL: No.

MR. OLYMPIA: No.

MR. MARINO: No.

CHAIRMAN SCALZO: I don't believe so either.

The fourth, whether the request will have adverse physical or environmental effects.

MR. BELL: No.

MR. OLYMPIA: No.

MR. MARINO: No.

CHAIRMAN SCALZO: I don't believe so either.

The fifth, whether the alleged difficulty is self-created. This is relevant but not determinative. Of course it's self-created.

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N&N UNION, LLC

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They did put it up there. However, it doesn't appear out of place.

MR. BELL: No.

CHAIRMAN SCALZO: Therefore, having gone through the balancing test of the area variance, what's the pleasure of the Board? Do we have a motion of some sort?

MR. BELL: I'll make a motion for approval.

MR. MARINO: I'll second that.

CHAIRMAN SCALZO: We have a motion to approve from Mr. Bell. We have a second from Mr. Marino. Roll call, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variances are

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N&N UNION, LLC

approved. N&N Union, LLC is completed for this evening.

(Time noted: 7:12 p.m.)

C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public for and within the State of New York, do hereby certify:

That hereinbefore set forth is a true record of the proceedings.

I further certify that I am not related to any of the parties to this proceeding by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of April 2020.

*Michelle Conero*

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MICHELLE CONERO

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MEETING HELD REMOTELY VIA ZOOM

STATE OF NEW YORK : COUNTY OF ORANGE  
TOWN OF NEWBURGH ZONING BOARD OF APPEALS

----- X

In the Matter of

PARKWAY COFFEE, LLC  
(READY COFFEE)

59 North Plank Road, Newburgh  
Section 76; Block 4; Lot 3  
B Zone

----- X

Date: April 23, 2020  
Time: 7:12 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
RICHARD LEVIN  
ANTHONY MARINO  
DARRELL BELL  
PETER OLYMPIA

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JED BONNEM

----- X

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3 Francis Street  
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CHAIRMAN SCALZO: The next applicant this evening is Parkway Coffee, LLC, 59 North Plank Road, Newburgh, seeking area variances for minimum front yard, minimum side yard and maximum surface coverage for this project.

This has already been noticed. We were only waiting for the GML 239 back from the County which has been longer than 30 days. From what I recall from the County, the paperwork I received, it is a Local determination.

Siobhan, can you confirm that, please?

MS. JABLESNIK: It is, yes.

CHAIRMAN SCALZO: Thank you. I'm going to give the Board one more opportunity to comment on this. I believe we hit everything we needed to during the last meeting.

This is the -- just to refresh everyone's memory, this is in the corner of the parking lot, very close to McDonald's, over by Big Lots and Auto Zone or --

MR. BELL: Yeah.

CHAIRMAN SCALZO: They're going to be removing part of the asphalt, the corner of the asphalt parking lot, to put this coffee -- Ready

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Coffee in there.

Is there anyone here from the applicant that's ready to speak on this application?

(No response.)

CHAIRMAN SCALZO: Siobhan, you had mentioned one of the applicants was coming in.

MS. JABLESNIK: Yes. Jed Bonnem is here.

MR. BONNEM: Hi, Siobhan. Hi, Darrin.

There's one other part to our application, which is a parking variance. There are 302 spaces required. Our development will reduce the actual number of spaces, so the proposed number of spaces is 274. So I wanted to add that piece of information to -- I believe that was in our original application.

MR. DONOVAN: That's correct, it is in the original application.

There are just two other items if I could, Mr. Chairman, that I want to talk about. One is signage. We just did the prior application with the free-standing menu sign. That application came through Code Compliance. This current application comes to us from the Planning



1 Board. I think the application does seek a sign  
2 variance. I don't know where they stand in terms  
3 of the square footage, but my suggestion is since  
4 the other application did require a variance, an  
5 area variance for the free-standing sign, and the  
6 Board is going to grant favorable on this  
7 application, is we also grant a variance for the  
8 free-standing sign since that seems to be a  
9 question from Code Compliance. I was not at the  
10 meeting in February. I just want to confirm  
11 they're in compliance so we don't need to  
12 consider a variance for that issue.

14 MR. BONNEM: Dave, you broke up a  
15 little bit. Was that question addressed to the  
16 applicant? To us?

17 MR. DONOVAN: Anyone who has the  
18 answer, that's who it's addressed to.

19 MR. BONNEM: You broke up. I didn't  
20 catch the full question. I think you were  
21 discussing both a free-standing sign and then the  
22 signs -- the compliance signs that are going to  
23 be on the building. I don't have an answer for  
24 that in front of me. We are going to have a menu  
25 board, so there will be a free-standing sign. I

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can't -- I wasn't prepared to address the signage today. I believe the signage on the building is compliant but I don't know for sure, so I don't want to answer that without first checking that information.

MR. DONOVAN: Understood. At some point in time you're going to finish your site plan with the Planning Board. I don't want you to go to Code Compliance and find out that you need a variance for square footage. I'd like to be able, if the Board is so inclined, to cover those two items tonight. And I do have one additional question.

Dominic, if you know, I'm going to pinch you in your capacity as Planning Board Attorney, is this an Unlisted action? I just want make sure --

MR. CORDISCO: Yes, it was an Unlisted action. As I recall, the Planning Board did not take any SEQRA action, did not try to coordinate so that the Zoning Board --

MR. DONOVAN: Perfect.

MR. CORDISCO: -- would be free to act in its own choosing.

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MR. DONOVAN: Great. Thank you,  
Dominic.

CHAIRMAN SCALZO: Thank you.

Also in addition to this we have side  
yard setbacks or rear yard setbacks on the  
existing structure on the lot. Correct?

MR. BONNEM: That's correct. The only  
-- there are existing non-conformities, and those  
are existing non-conformities.

CHAIRMAN SCALZO: Correct. I just  
wanted to get that on the record.

Okay. I had no other comments. Do any  
Members of the Board have any comments on this?

MR. BELL: I'm good.

MR. MARINO: Looks good.

CHAIRMAN SCALZO: Okay. Dave, as you  
mentioned, this is an Unlisted action under  
SEQRA.

MR. DONOVAN: That is correct, Mr.  
Chairman.

CHAIRMAN SCALZO: And we can continue  
even though the Planning Board is going to see  
this again?

MR. DONOVAN: The Planning Board

1 indicated -- their attorney, who is generously  
2 donating his time this evening, that this is an  
3 Unlisted action, proceeding with uncoordinated  
4 review. That means the Board is free to adopt a  
5 negative declaration tonight.  
6

7 CHAIRMAN SCALZO: Very good. Thank  
8 you, Dave.

9 Having said that, Dave, I'll look to  
10 the Members of the Board. Do you want to make a  
11 motion for a negative declaration for this  
12 application?

13 MR. BELL: I'll make a motion for a  
14 negative declaration.

15 MR. LEVIN: I'll second it.

16 CHAIRMAN SCALZO: We have a motion from  
17 Mr. Bell, a second from Mr. Levin. Roll call on  
18 that, Siobhan.

19 MS. JABLESNIK: Mr. Bell?

20 MR. BELL: Yes.

21 MS. JABLESNIK: Mr. Levin?

22 MR. LEVIN: Yes.

23 MS. JABLESNIK: Mr. Marino?

24 MR. MARINO: Yes.

25 MS. JABLESNIK: Mr. Olympia?

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MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

All right. We've adopted the negative declaration. It's going to get kicked back to the Planning Board for them to do their own. Very good.

Now we're going to move through our criteria, the first one being whether or not the benefit can be achieved by other means feasible to the applicant.

MR. BELL: Not for this location, no.

CHAIRMAN SCALZO: Second, whether there's an undesirable change in the neighborhood character or a detriment to nearby properties.

MR. OLYMPIA: I don't see any.

MR. MARINO: It fits right in.

CHAIRMAN SCALZO: Third, whether the request is substantial. I don't believe so.

MR. BELL: No.

MR. OLYMPIA: No.

MR. MARINO: No.

CHAIRMAN SCALZO: The fourth, whether the request will have adverse physical or

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environmental effects.

MR. BELL: No.

MR. OLYMPIA: No.

MR. MARINO: No.

CHAIRMAN SCALZO: No. The pre-existing nonconforming status of the structure that's already existing is unchanged.

The criteria is whether the alleged difficulty is self-created, relevant but not determinative.

MR. BELL: It's not relevant.

CHAIRMAN SCALZO: I believe it's really going to be an enhancement.

MR. BELL: Yup.

CHAIRMAN SCALZO: Having gone through the balancing test of the area variance, what's the pleasure of the Board? Do we have a motion?

MR. DONOVAN: Mr. Chairman, I just want to go back to the sign menu board for the time being. I would suggest that the resolution of approval, just so there's no question when this goes to the Planning Board or Code Compliance, that the free-standing menu board also be approved with the square footage of 38 by 26.

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MR. BELL: 38 by 26.

CHAIRMAN SCALZO: Thank you, Dave. I agree.

I'm looking to the Board for a motion.

MR. BELL: I'll make a motion for approval.

MR. MARINO: I'll second it.

CHAIRMAN SCALZO: Motion from Mr. Bell. Second from Mr. Marino. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The variances are approved.

That is it for the agenda this evening. Does anybody have any other Board business they'd like to discuss?

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It's like a John McKelvey meeting.

It's only been twenty minutes.

MR. LEVIN: Wasn't Feeney --

CHAIRMAN SCALZO: No. Richard, we were only hearing the two applications this evening that required -- we were waiting for the GML 239 determination on. Like I say, we were just running with training wheels tonight. For next month we're going to knock them off and really hit it hard.

MR. BELL: We're going to have the addition to these for May, next month, as well as these; correct?

CHAIRMAN SCALZO: It sounds that way.

MR. BELL: Okay.

MR. MARINO: We have two left over from the February hearing, don't we? Gasparini and there's another one.

CHAIRMAN SCALZO: Not for this meeting, gentlemen. I determined last week that we were -- just because this is a little unusual, we were going to hit, I'll call it the easy ones first.

MR. MARINO: They're not on the next month's agenda?



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CHAIRMAN SCALZO: They'll be.

MR. MARINO: They will be?

CHAIRMAN SCALZO: Yes.

MR. MARINO: The next meeting we're having will be early in the month of May? Two in May?

CHAIRMAN SCALZO: There's been no determination regarding us having two meetings a month. As far as I know, because we did not have to have the ten-day comment period for this meeting, there's no need for us to meet early May. Our next meeting is going to be regularly scheduled the fourth Thursday of May.

MR. MARINO: Sounds good.

MR. BELL: It will be a long one.

CHAIRMAN SCALZO: I'm not sure about public participation. I think it's a little less with the electronic meetings here.

MR. BELL: True.

CHAIRMAN SCALZO: It may go quickly. That will also give me -- we can all figure out a -- get a little more in tune with how to use the Zoom meeting format.

Before we roll, I want to thank Dominic

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Cordisco again. Thank you so much for being our IT guy for the evening.

MR. CORDISCO: My pleasure, really.

MR. DONOVAN: Multi-talented. Not only a fine attorney but a great IT guy too.

MR. CORDISCO: Let's not go so far. I'm one of those.

CHAIRMAN SCALZO: Thank you, Ken Wersted, for checking in on us.

Richard.

MR. LEVIN: The next meeting are we going to see all the sites we're required to?

CHAIRMAN SCALZO: We will be obligated to visit all the sites that are going to be -- the agenda will be formatted next week. Siobhan will send it out.

My offer to the members of the Board, I'm going to be looking at all the properties. I will gladly bring my camera with me. I will take multiple photos at each location and send them to each Board Member, that way if you don't get the chance to physically be on site you'll all have a personal familiarity with it by looking at the photos. I would suggest you create your own

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folder for each application, put those photos in those folders so as we're rolling through the meeting, if you split your screen you may be able to look at the photos at the same time.

MR. BELL: Yup. All right. Sounds good.

MR. MARINO: That's good.

CHAIRMAN SCALZO: In that case I'll look for a motion to adjourn.

MR. BELL: I'll make a motion to adjourn the meeting.

MR. MARINO: If you need a second, I'll give you mine.

CHAIRMAN SCALZO: All in favor?

MR. BELL: Aye.

MR. LEVIN: Aye.

MR. MARINO: Yes.

MR. OLYMPIA: Aye.

CHAIRMAN SCALZO: Aye.

We'll see you soon, folks.

(Time noted: 7:23 p.m.)

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C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public  
for and within the State of New York, do hereby  
certify:

That hereinbefore set forth is a  
true record of the proceedings.

I further certify that I am not  
related to any of the parties to this proceeding by  
blood or by marriage and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 28th day of April 2020.

*Michelle Conero*

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MICHELLE CONERO