

**MINUTES OF BOARD OF ZONING APPEALS
COUNCIL CHAMBERS & VIA ZOOM
CITY OF INDEPENDENCE
August 17, 2023**

New Business:

- 1. 8220 Hillside Road, Lisa Kemenyes** – Requesting a variance to 1163.04 of 30 feet to permit a new dwelling to have a 45-foot front setback (75 feet required, 45 feet requested).

The meeting was called to order by Chairman Mark Moreal at 5:32 p.m. and the following responded to Roll Call:

PRESENT: **Mark Moreal, Chairman
Pasquale Monteleone, Jr.
Charles Bredt
Carol Fortlage**

**ALSO
PRESENT:** **Michael Gero, Building Official**

ABSENT: **Councilperson Chris Walchanowicz**

Chairman Moreal stated Good Evening and welcome to this evening’s meeting of the Independence Board of Zoning of Appeals on August 17, 2023.

Chairman Moreal asked the Board if there were any corrections, changes or additions to the July 20, 2023, meeting.

A motion was made by Charles Bredt, seconded by Carol Fortlage, to approve the Minutes of the Board of Zoning Appeals meeting on July 20, 2023.

ROLL CALL: **Yeas: Bredt, Monteleone, Fortlage, Moreal
Nays: None
MOTION CARRIED**

Chairman Moreal stated before we get started with our one item, I’d like to read the Board of Zoning Appeals opening statement.

The Board of Zoning Appeals is a quasi-judicial body and, as such, its role is similar to a judge in a court case. The Board will hear evidence and testimony that is factual and will make decisions based upon the facts which are presented, and the rules as set forth in the Zoning Code principles of Ohio law.

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The City of Independence has adopted a Zoning Code and, per the City's Charter, has appointed a five-member Board of Zoning Appeals. This Board is empowered to hear and decide appeals and to authorize variances from the strict terms of the Zoning Code where the variance will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the Zoning Code will result in practical difficulty or undue hardship, depending on the type of variance requested.

With this being stated, the Board's proceedings are relatively informal; but, in order to conduct an orderly meeting and allow all parties of interest, mainly contiguous property owners (or their legal representatives), the opportunity to present the evidence, certain procedures need to be followed:

All interested parties must be sworn in. The applicant will be asked to present evidence to support the requested appeal, the Board will ask questions, and then all interested parties (contiguous property owners) may present evidence concerning the appeal and ask questions regarding previously presented evidence. Any party may ask questions to another party.

It is the applicant's burden to produce evidence to support the application. The Board will not make the applicant's case for them. In order to prepare appropriate meeting minutes, each person who speaks will need to state, for the record, his or her full name and address. The meeting may be continued by either the applicant or the Board. The Board must base their decision upon facts and not on expressions of concern or non-factual matters. The action of the BZA does not become final until 30 days after the date of the meeting that the minutes are approved by the BZA. Any appeal may be made to the Cuyahoga County Court of Common Pleas by an interested party within 30 days of the date the minutes are approved.

Chairman Moreal stated that the only business was New Business this evening.

8220 Hillside Road, Lisa Kemenyes – Homeowner Duane Kemenyes was in attendance and sworn in.

Chairman Moreal asked if there were any neighbors present or on Zoom. The Secretary stated that there were no neighbors present in person or on Zoom.

The Chairman stated that the Board received a memo from the City Engineer. He stated that Mr. Kemenyes was aware of what had transpired at the Architectural Board meeting this afternoon with regard to the steep slope. He stated that at that point, he wanted to ask Mr. Kemenyes why he would need the variance request.

Mrs. Fortlage stated that she wanted to discuss first the actual property address because she feels the Board needs to be clear about what property they were talking about. She stated that on the mailbox it was 8208, and then it's 8220.

Several people began speaking at once.

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Mr. Kemenyes stated that it was 8220 Hillside. He stated that there were two properties there, one was 8220 and one was 8308. They combined both properties, and it is 8220 Hillside.

Chairman Moreal stated that he would correct it then.

Mrs. Fortlage wanted to get it on the record.

Chairman Moreal asked Mr. Kemenyes his reason for the request, why he would need it.

Mr. Kemenyes stated that the request was the garage as you would be looking at the map on the right hand side. It should be the one closest to the street. He stated that the house would be 75 foot back. The garage comes out on the right hand side, and because of the terrain of the land in the back, to move the house back to move the garage in line with that, he would have bigger issues if they would move the house back to keep the garage in line with the front.

Building Official Gero stated that he would be further inside the steep slope.

Mr. Kemenyes agreed. So, in doing this, they were having two garages, one on the left hand side and one on the right hand side the way the house is designed.

The Chairman stated that was what the Board had. He asked about the green line on the rendering, that was the steep slope.

Building Official Gero referred to the rendering on the screen. He stated that there was the house. He stated that the line right there was the steep slope setback which was not indicated on the drawing that the Board has. He stated that the line right there was the actual steep slope. So, the issue would become that, and he was taking it from the City Engineer as he is the one that deals with this, if they encroach into the steep slope setback and that could be reviewed and administratively approved. He stated that once you go into the steep slope, it would have to go to the Planning Commission for any variance like that, and the Planning Commission would have to determine whether or not it would be an acceptable thing to do.

He stated that up there Mr. Kemenyes was 45 foot, so obviously he would need 75 foot setback, that was what the code would require. He stated that Mr. Kemenyes was requesting, based on the whole plan, a 30 foot reduction in the front setback to put him there.

Chairman Moreal stated that it was 45 foot right now.

Building Official Gero stated that the plan was to be 45 foot from the right-of-way to the front of the garage, to the closest part of the structure which happens to be the front of the garage. He stated that actually it was the side of the garage. The garage was a side load garage. He stated that it was the 45 foot from the right-of-way to the side of the garage, side of the structure. He stated

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that 75 foot was back in this area here, which would be the required setback. He stated that Mr. Kemenyes was looking for a 30 foot reduction in the front setback. So, that is what Mr. Kemenyes is here before this Board.

Building Official Gero stated that for the steep slope issue he would need to go before Planning Commission and get that approval.

Chairman Moreal stated that unless he would get himself out of the steep slope.

Building Official Gero agreed.

Chairman Moreal asked Mr. Kemenyes if that was possible.

Mr. Kemenyes stated through the design of the house as it was right now, that would be no.

Chairman Moreal stated that Mr. Kemenyes would have to get out of the steep slope.

Building Official Gero stated that this would be something that the City Engineer would have to say whether it could be approved or not; but Mr. Kemenyes was approximately, he scaled out on the other drawing, he was 15 to 18 feet inside of the steep slope.

Mr. Monteleone stated that the 45 foot wasn't bad, he didn't have a problem with that, but now you would be down to 30 foot.

Building Official Gero stated that if they would move the whole thing forward, he would be down to 30 foot.

Mrs. Fortlage asked if they were looking at the lot with the red outline which was already the combined lot.

Building Official Gero replied yes.

Mrs. Fortlage asked Mr. Kemenyes why wasn't he stretching it out toward the right.

Mr. Kemenyes stated that on the right hand side there was an existing garage which they were going to keep which was from the previous house.

Mrs. Fortlage stated that it was not on their drawings or up on the screen.

Chairman Moreal stated that he didn't think they could move it.

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Mrs. Fortlage stated that she meant change the shape. It would alleviate the problem if they would make a wider house.

The Chairman stated that if Mr. Kemenyes was to amend the request today and move it up and get himself out of that, but now it would change the front setback in line with the neighbor's house.

Building Official Gero stated that if Mr. Kemenyes were to amend his request, it would basically be withdrawing the request today, having his surveyor re-plot the house so they would know exactly where they were at to come up with the required setback.

Mr. Kemenyes stated that what they were trying to accomplish here was there are three trees in the front that they were trying to save. If they move the house up closer to the street, those three trees would be in the way. He stated that they already took four trees out of the back of the house, and they were very mature trees. They were 40 to 50 years old. He stated that they would hate to lose other trees, but they were against the old house as it was built. He stated that when they went to start building the new house, those four trees would not have survived.

Chairman Moreal stated that the house that was there, he didn't really look at the footprint, he asked if that house was in the steep slope at the time.

Mr. Kemenyes stated that the back half was. It was in the setback. He stated that the patio would have been in the steep slope. At the time it was built, there was no steep slope.

Mrs. Fortlage asked how can you have a patio in the steep slope unless if you would take the stairs down.

Mr. Kemenyes stated that there was a retaining wall built around the patio.

Chairman Moreal stated that prior to getting the memo and finding all of this out, he had no problem with the 45 foot setback, but now they have an issue that they have to somehow figure out.

Mr. Kemenyes stated that he would have an issue, but from what he understands, and correct him if he's wrong, the issue could be resolved if we put a retaining wall or some kind of embankment up there.

Building Official Gero stated that he could not confirm or deny that because he was not the Engineer.

Mr. Kemenyes stated that was the gist he got in a previous meeting.

Building Official Gero stated that he was not sure that a retaining wall was just the only solution.

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Chairman Moreal stated that whatever the Board would be subject conditioned upon the Planning Commission. They would make the final call.

Mr. Kemenyes stated that if they could get the approval for the setback on the garage for the house, and then he would go before the Planning Commission and talk about the variance.

Chairman Moreal asked Mr. Kemenyes what his schedule was.

Mr. Kemenyes stated that they were looking to get started at the end of September. He stated that right now they were a couple of months behind. He stated that he has all the time in the world.

Building Official Gero stated that the Architectural Board approved the design of the house, subject to receiving the variance for the setback from the Board of Zoning, and then any variances regarding the steep slope from the Planning Commission. Now should you not approve this 45 foot, then he would have to redesign the house and have to come back before the ARB. Should Planning Commission not approve the steep slope encroachment, he would have to redesign and come back before ARB and the Board of Zoning for whatever setback.

Mrs. Fortlage stated that it seems to her that there is enough issue about it that may lead to a redesign and a start over for us, that we should table it rather than conditionally approve it. It makes more sense to me.

Assistant Law Director Doyle stated that he tends to agree just because he could probably sit here and play with this conditional approval a little more, but a conditional right now would automatically contemplate going back to the Planning Commission, but it sounds like there's a possibility that the surveyor would get back involved in fixing something so that he would only need to come back before this Board.

Chairman Moreal asked Building Official Gero if the matter was tabled, and then it would go to Planning. He asked if the Board was to table it, would Mr. Kemenyes then go to Planning?

Building Official Gero replied yes.

Chairman Moreal stated that if Planning told him no or they have to redesign it, he would have to come back to the Zoning Board for a redesign.

Building Official Gero stated that if in fact the redesign includes a front setback or a side yard setback in some form, then yes. If Planning would say no, and the house was redesigned where he met the 75 foot setback and the required 15 foot side yard setback, then he would have no reason to have it come back before the Board of Zoning.

Mr. Bredt asked when was the next Planning meeting?

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Building Official Gero stated September 5th.

Mr. Monteleone asked how accurate was that green?

Building Official Gero stated as accurate as that computer image. He stated that a surveyor would have to lay it out specifically.

Mr. Monteleone stated that 15 foot wasn't all that much, but if it's in there, it's in there.

Mrs. Fortlage stated that it was not just into the setback area, it would be into the actual slope.

Several people began speaking at once again.

Chairman Moreal stated that it was already 10 foot into the setback.

Building Official Gero stated that the setback was a 25 foot area.

Several people began speaking at once again.

Mr. Monteleone stated that he would be allowed to build in the setback.

Building Official Gero stated that could be administratively reviewed and approved with conditions.

Mrs. Fortlage asked administratively by Zoning or the City?

Building Official Gero stated by Engineering.

Mrs. Fortlage stated without the Board voting on that.

Mr. Monteleone stated that if the Board would approve the 45 foot setback, he doesn't see why it would affect it.

Chairman Moreal stated that if it would get denied down the road, and he would have to come back to the Board.

Mr. Monteleone stated that you are talking September and then October.

Several people began speaking at once again.

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Building Official Gero stated that the City Engineer mentioned that the retaining wall would be inside the steep slope also, so how would that affect things too? It would be a much-involved process to determine what exactly, what the solution would be.

Mr. Bredt stated that plus a redesign using the 45 foot front setback as the basis of the potential variance, would then necessitate advising the neighbors what was going on. They would have to have a look at it at that point.

Mrs. Fortlage stated that one of the Board's big questions is always.

Building Official Gero asked Mr. Bredt what he meant.

Mr. Bredt stated that when you put something on the agenda, the neighbors are advised, and if they have an objection they can come. If you redesign the whole thing by saying we would approve a 45 foot.

Building Official Gero stated that if the Board would give Mr. Kemenyes a 45 foot setback, he could do anything he would want up to 45 foot; it wouldn't matter if he redesigned the house or anything. The neighbors are only advised that there is an agenda item affecting that address. They don't see the plans.

Several people began speaking at once again.

Chairman Moreal stated that his comment was he agrees, but also the Building Official stated that if they would give him 45 foot, he would redesign it. If he would redesign it, that would mean you are saying he could build over there at 25 feet. See, the neighbor would know this plan.

Building Official Gero asked how does the neighbor know that?

The Secretary stated that the neighbors would know there is a 45 variance request.

Mr. Kemenyes stated that the neighbors know the 75 foot back for the main house, and they know the 45 foot for the garage. He stated that they had the discussion about that.

Building Official Gero stated that was a discussion they had, but what he was saying was the City does not advise the neighbors of the plan.

Mr. Bredt stated for his clarification, if a neighbor would come in and asked to see the plan, they could.

The Secretary agreed.

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Mr. Monteleone asked Mr. Kemenyes if he would shorten up the back of the house if he had to.

Mr. Kemenyes stated that he would prefer not to. He stated that it would take a lot of space away from the house.

Chairman Moreal asked Mr. Kemenyes if he had plans already done.

Mr. Kemenyes replied yes.

Mrs. Fortlage stated that one of their questions was always could this be mitigated in a different way, and it could be. She stated that she understands that Mr. Kemenyes does not want to get rid of the garage, but there was a lot of space there to the east.

Chairman Moreal stated that Mrs. Fortlage was saying that if they would eliminate the garage, move the house up and get it out of there.

Mrs. Fortlage stated that they could turn the garage or whatever.

Mr. Kemenyes stated that the back of the house was the problem, not the front.

Mrs. Fortlage stated that she knew. He could move it up, but her point was that there was another way to do this. She stated that the preservation of an old building was not compelling to her.

Chairman Moreal stated that he saw the old garage, and he asked how that would come into play.

Mr. Kemenyes stated that it was still far away.

Chairman Moreal stated that would bring him into the higher (inaudible), and he doesn't think that would come into play, the garage.

Mr. Bredt asked wasn't the question if the Board would approve a 45 foot setback, regardless of the design.

Chairman Moreal stated that he would look at that, and approve that.

Mr. Bredt stated that the Board was not there to redesign anything.

Mrs. Fortlage stated that there were other ways to deal with sticking within the code.

Mr. Bredt agreed, and he could see Mrs. Fortlage's point that the garage could be turned. There was a building there, and that is what he was falling back on.

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Mrs. Fortlage asked what was the setback of the old building?

Mr. Kemenyes stated it was the same as it is right now. The original setback on the new house and old house were the same, 75 foot back.

Mrs. Fortlage stated that the 45 foot was a whole 30 foot more.

Mr. Kemenyes stated that one of the reasons for this design was for aesthetically pleasing.

Mr. Bredt stated that Mr. Kemenyes had a nice piece of property.

Mr. Kemenyes stated that he was assuming that someone had been out there looking at the lay of the land.

Mrs. Fortlage stated not walking it.

Mr. Kemenyes stated that there were two different levels back there. He stated that he was confused about the first level, the setback.

Building Official Gero stated that the steep slope setback was 25 foot. He stated that the setback was 25 foot from the edge of the steep slope, and the steep slope is determined. He stated that he didn't know exactly how that was determined.

Mr. Kemenyes asked if both slopes come into play.

Building Official Gero stated that they weren't talking about the two slopes that he was talking about. They were talking about the top edge of the slope.

Several people began speaking at once again.

Building Official Gero stated and then it would be 25 foot from there.

Several people began speaking at once again.

Assistant Law Director Doyle stated that they will have to decide if the Board will do the 45 foot.

Mrs. Fortlage stated that she was still suggesting to table the matter. She stated that there was a significant question here that will likely result in some other changes.

Mr. Kemenyes asked what were the significant other changes? He stated that if there was no problem with the 45 foot setback, and he goes before the Planning Commission and they decide okay here are my options, whether it would be a wall or some kind of blocks to improve it. He

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stated that if the Board would table it, and they go into the end of September for the next meeting, with them approving it, he would have to come back here before Zoning for approval for the setback.

Mrs. Fortlage stated that was an additional two weeks, and he would have to go to Planning regardless, and that was on the 5th.

Chairman Moreal stated that he heard Mrs. Fortlage, but he doesn't have an issue with the 45 foot. He stated that this all came to us, but the Board would not make a decision on the steep slope, that would be Planning. So, if it gets negated from Planning.

Assistant Law Director Doyle stated that even with a conditional granting, Mr. Kemenyes may have to come back anyway.

Mr. Bredt stated to Mrs. Fortlage's point, and he was supporting Mrs. Fortlage in what he was about to say. If the Board gives the 45 foot setback, which for a wing of a building, he was inclined to agree with, but the redesign would mean he would build a whole wall all the way across, he would not be in favor of that. He stated that he knows there are a lot of people talking, so to him the design would be important in understanding how much of that setback would be affected by the design. He stated that he would not be in favor of the entire home being, the whole elevation on the hillside side being straight across at 45 foot. He stated that he thinks if they start making approvals of a project without knowing the design itself, at least in concept, then they would be establishing a precedent that he doesn't want to do.

Chairman Moreal stated that it could be subject to the drawing, even though it would be 45 foot. He stated that it could be per the drawing. That was how he felt too.

Mr. Monteleone asked do they ask to table it.

Chairman Moreal stated that they just decide.

Mrs. Fortlage stated that she would move to table it.

Mr. Bredt stated that he would second it.

Mrs. Fortlage stated that by the way, before the Board would move to vote on that a 2-2 vote would be a fail.

Assistant Law Director Doyle asked who was missing?

The Secretary replied Councilperson Walchanowicz. So, it would be a failure for a 2-2 vote.

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Assistant Law Director Doyle stated that there was a member of the Zoning Board not in attendance.

Mrs. Fortlage stated that was something to note.

The Secretary stated that there was a motion and a second.

A motion was made by Carol Fortlage, seconded by Charles Bredt, to table the matter.

**ROLL CALL: Yeas: Fortlage, Bredt
 Nays: Monteleone, Moreal
 MOTION DENIED**

Mr. Bredt stated that now the Board has to vote on the application.

Building Official Gero stated that the applicant would have the right to withdraw.

Mrs. Fortlage stated that if it would fail, Mr. Kemenyes could not bring the same request back.

Mr. Kemenyes stated that if this would fail, he could not bring the same footprint back.

Chairman Moreal stated that it could be 44 foot.

Mr. Bredt stated just because he was curious as the discussion, he asked how much distance was there from the right-of-way to the edge of the road.

Mr. Kemenyes stated that was going to be his question because he knows right-of-ways in town vary from street to street.

Building Official Gero stated that there was a 60 foot right-of-way he thinks.

Mr. Bredt asked if it was 15 foot.
Building Official Gero agreed.

Mr. Bredt stated that they would run on that on Brecksville Road.

Chairman Moreal stated to the Secretary that the table failed. He stated that the Board was back to what was in front of them, and he stated that he was okay with the 45 foot per this drawing. So, how does he make a motion?

Building Official Gero stated that the Chairman should craft his motion.

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Assistant Law Director Doyle stated that he needed to revise it a little bit.

Several people began speaking at once again.

Mr. Bredt asked what was the depth of the designed garage, how wide was it parallel to Hillside, 30 feet?

Mr. Kemenyes stated it was 34 feet. He stated that it was designed for an F350.

Several people began speaking at once again.

Mr. Kemenyes stated that all these years he had to keep his plow outside, and he gets to have a garage. He stated that was one of the reasons for the garage.

Several people began speaking at once again.

Chairman Moreal asked Mr. Kemenyes if there was a garage on the one side.

Mr. Kemenyes stated that there was a two-car garage on this side, and there was a two-car garage on the right hand side. He stated that the one garage was a side entrance that would be facing west, and the one on the left hand side would be facing the street.

Mrs. Fortlage asked if there was an issue with the number of garages on the property.

Building Official Gero stated not on 3 acres plus.

Mr. Kemenyes stated that the one on the right would face west.

Assistant Law Director Doyle stated that he didn't have the application with the one rendering on it.

The Secretary stated that was the drawing from the Architectural Board this afternoon.

Building Official Gero stated that was created by the Engineering Department.

Mr. Monteleone stated that would go with the email they received.

Mr. Bredt stated at 5:00 p.m. today.

Assistant Law Director Doyle stated that this rendering was what the Board was considering approval subject to, the ultimate design that was submitted with the application. He stated that it would be the variance map that accompanied the application.

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Building Official Gero stated that he would say variance map for front building setback with address 8308 Hillside Road, dated July 28th.

Mr. Bredt stated that except the address was 8220 Hillside.

Building Official Gero stated that address on the map was 8308 Hillside. He stated that they could add the Permanent Parcel Number too.

He stated that it could be a variance for a front setback for Permanent Parcel Number 564-07-022, dated July 28, 2023 created by R.M. Kole and Associates.

Mr. Bredt stated that if the Board was to approve the 45 foot setback based on the design as submitted, he would like to add no more than 35 foot of that would encroach into the setback. He stated that would basically allow for the garage.

Building Official Gero stated that you don't want to go there.

Mr. Bredt stated that was fine. It would be based on the design provided.

Assistant Law Director Doyle stated that it would be as he understands it, for 8220 Hillside Road, a motion to grant a variance to 1163.04 of 30 feet to permit a new dwelling to have a 45 foot front setback, conditioned on (1) following the variance for front building setback for PPN 564-07-022 dated July 28, 2023, prepared by R.M. Kole and Associates that was submitted with the applicant's application, and (2) the City's Planning Commission granting a variance to Section 1383 for Protected Hillside Zones.

He stated that he could read that again.

Assistant Law Director Doyle stated that it was for Protected Hillside Zones.

He then read the motion again.

Mrs. Fortlage stated that she still didn't hear him say for variance map, etc. prepared by R.M. Kole.

Chairman Moreal stated that he did.

Assistant Law Director Doyle said map.

Mr. Bredt asked if it was understood that it was based on the design as presented.

Chairman Moreal replied yes.

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Assistant Law Director Doyle asked the Board if they wanted him to read it one last time.

They did.

Assistant Law Director Doyle read the motion for a third time.

Mrs. Fortlage stated that the Building Official had raised the question about the address and the way it was mentioned. She asked if his question was satisfied about 8220 versus 8308.

Mr. Brecht stated it was because of the Permanent Parcel Number.

Building Official Gero agreed.

A motion was made by Chairman Moreal, seconded by Pasquale Monteleone, for 8220 Hillside Road, to grant a variance to 1163.04 of 30 feet to permit a new dwelling to have a 45 foot front setback, conditioned on (1) following the variance map for the front building setback for Permanent Parcel Number 564-07-022 dated July 28, 2023, prepared by R.M. Kole and Associates and submitted with the applicant's application and (2) the City's Planning Commission granting a variance to Code Section 1383 for Protected Hillside Zones.

**ROLL CALL: Yeas: Moreal, Monteleone, Brecht
 Nays: Fortlage
 MOTION CARRIED**

Chairman Moreal stated to Mr. Kemenyes good luck.

Mr. Monteleone stated that he liked Mr. Kemenyes saving the trees.

Mr. Kemenyes stated he likes to save the trees. He hated taking them out.

A motion was made by Charles Brecht, seconded by Pasquale Monteleone, Jr., to adjourn the Board of Zoning of Appeals meeting of August 17, 2023.

**ROLL CALL: Yeas: Moreal, Monteleone, Brecht, Fortlage
 Nays: None
 MOTION CARRIED**

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There being no further business, the August 17, 2023, meeting of the Board of Zoning Appeals was adjourned at 6:08 p.m.

Chairman Mark Moreal

Debi Beal, Secretary

Minutes Unapproved at Time of Release 08/21/23