CALL TO ORDER – ZONING BOARD OF APPEALS

ROLL CALL for the Zoning Board of Appeals: Randy Mohr (Chair); Scott Cherry, Karen Clementi, Tom LeCuyer, Donna McKay, Dick Thompson and Dick Whitfield

MINUTES: Approval of minutes from the April 27, 2015 Zoning Board of Appeals meeting

PETITIONS:

1. **15-10 Frank Schmalz**
   Request: Variance
   Location: 23 Old Post Road, Montgomery
   Purpose: Request for a variance to allow a trailer to be parked in the front yard setback (missed the cut of to register them back in 2006)

REVIEW OF PETITIONS THAT WENT TO COUNTY BOARD
Petition 15-01 Nancy Austin- Annexed and zoned in Plattville
Petition 14-40 Subdivision Control Regulations- Letters of Credit- Approved by County Board on May 19, 2015
Petition 14-37 Home Occupations- Landscape Businesses- Denied by the County Board on June 16, 2015

NEW BUSINESS/ OLD BUSINESS

PUBLIC COMMENT

**ADJOURN ZONING BOARD OF APPEALS**- Next meeting on July 27, 2015
CALL TO ORDER
At 7:00 p.m., Chairman Randy Mohr called the Zoning Board of Appeals meeting to order.

ROLL CALL
Members present: Randy Mohr (Chairman), Scott Cherry, Karen Clementi, Tom LeCuyer, Donna McKay (Vice-Chair) and Dick Thompson
Also present was: Planning & Zoning Manager- Angela Zubko & Mike Hoffman-Teska & Associates
Absent: Dick Whitfield
In the audience: Greg Witek, Rob Kail & Greg and Nancy Austin

A quorum was present to conduct business.

MINUTES
Karen Clementi motioned to approve the January 5, 2015 ZBA meeting minutes as written. Dick Thompson seconded the motion. All were in favor and minutes were approved.

Chairman Mohr swore in anyone interested in talking at this meeting.

PETITIONS
#15-04 Greg Witek
Planner Zubko stated the property is located at 7196 Whitfield Road in the Village of Millbrook. The petitioner is requesting a variance to construct a detached garage that will be located in the 150’ front yard setback from the centerline of the roadway. The structure is proposed to be located 50’ from the centerline of the roadway (15’ from the right-of-way) requesting a 100’ variance. The reason he is requesting the variance is the steep slopes down to the river and floodplain. The other structures in the area are close as well. Planner Zubko has talked to the township and they were comfortable to allow the structure to match the northern property which is 30’ from the right-of-way (65’ from the centerline of the roadway). This will be moved onto the Village of Millbrook’s Board tomorrow night for final approval.

Chairman Mohr asked if another road cut will be requested. Planner Zubko stated no, they will use the existing road cuts. There was brief discussion on the other structures in the area and their distances.

Chairman Mohr opened the meeting for public testimony.

Greg Witek introduced himself and is available for questions. There was some discussion on the topography of the site. The petitioner stated he thinks the drop off from the centerline of the roadway to the river is about 90’.

With no further testimony made, Chairman Mohr closed the testimony.

The Findings of Fact were reviewed for a variance, they were approved as follows:
That the particular physical surroundings, shape, or topographical condition of the specific property involved would result in a particular hardship or practical difficulty upon the owner if the strict letter of the regulations were carried out. The property is heavily wooded and has a steep slope down to the river. The closer to the roadway the flatter the property is.

That the conditions upon which the requested variation is based would not be applicable, generally, to other property within the same zoning classification. Many A-1 properties have structures that are closer than the minimum 150’ setback including this home on the property. This property is more unique in that the steep topography on this property down to the river.

That the alleged difficulty or hardship has not been created by any person presently having an interest in the property. The hardship of mature oak trees and the topography has always existed on this site. The petitioner did not create this lot.

That the granting of the variation will not materially be detrimental to the public welfare or substantially injurious to other property or improvements in the neighborhood in which the property is located. The closest neighbors are over 400’ away and should not affect surrounding property owners.

That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets or increase the danger of fire, or endanger the public safety or substantially diminish or impair property values within the neighborhood. They will use the existing driveway and the closest neighbors are over 400’ away. This variation will not impair light or air to adjacent properties.

With no further discussion Tom Lecuyer made a motion, seconded by Donna McKay to approve the findings of fact and approve the variance of 65’ from the centerline of the roadway. With a roll call vote of 6-0 were in favor and the variance was approved.

#15-06 Village of Millbrook/Keller
Planner Zubko stated this is located at 19 Sherman Street, the petitioner is the Village of Millbrook with the County. Back in 2008 the Village rezoned this parcel but it didn’t go through our zoning process. The intergovernmental agreement was in effect at the time so they should have so this is corrected any errors made. This was discovered as this property is for sale and is contingent on rezoning of the property. They’re looking to rezone 0.22 acres of their 0.46 acre parcel from R-3 (Residential) to M-1 (Manufacturing District) to match the existing zoning on the property. There already is a building that exists on the M-1 side so looking to expand the zoning for the whole parcel across the vacated alley. They would like the whole parcel to be M-1.

There was some discussion on what is permitted in the M-1 district and possible future uses of this building. There was discussion and a lot of concern of the type of uses in the M-1 district and possibly a commercial district would be better suited there.

Plan Commission approved the M-1 zoning with caution that the Village of Millbrook examine what is permitted in the M-1 district and possibly revise text to make sure there are no undesirable effects.

There was a brief discussion on what Millbrook would like and why staff did not make a recommendation. Planner Zubko stated since this was approved before she didn’t want to make a recommendation and their comprehensive plan was drafted in 2009, after this rezoning and it reflects this property being residential and not business or manufacturing. Planner Zubko also explained the process since it’s in the Village of Millbrook
and we do all their zoning and building permits. She also explained the 1974 Countywide Zoning and suggests maybe doing a Village wide rezoning to match what’s existing and what they’d like in the future. If the do proceed they would need to go through this process.

Chairman Mohr opened the meeting for public testimony.

Bob Kaho lives northwest of this structure. This used to be the township building and used to be a storage building. He stated painting businesses can be in that zoning district. What type of signage will this use allow? He’s also worried about the septic field and well. It does not suit this area to have a body shop. He’s worried about the air quality and smell and if it will affect the property values.

Jackie Kowalski, Village President thanked Mr. Kaho for coming. This is new to them as well and that’s why she is in attendance to hear the comments. Mr. Mohr suggested Mr. Kaho attend the Village Board Meeting. There was discussion about the comprehensive plan and current zoning.

With no further testimony made, Chairman Mohr closed the testimony.

Ms. Clementi asked is there a way to not vote on this project till we hear from the Village and the residents? Planner Zubko stated no as the petition is before us.

The Findings of Fact were reviewed for a rezoning, they were approved as follows:

**Existing uses of property within the general area of the property in question.** About half the property is already zoned M-1 and the other portion is zoned R-3. A house could not be built on that property and most of it is actually a vacated alley. The uses within the general area are mixed with some residential homes and the fire station adjacent to this site.

**The Zoning classification of property within the general area of the property in question.** The zoning classifications within the general area are single family residential and businesses.

**The suitability of the property in question for the uses permitted under the existing zoning classification.** The petitioners would like to rezone part of their property to M-1 to match the other zoning on this lot. This lot would be too small to do most of the activities permitted in the M-1 district but still allow smaller, less intense uses.

**The trend of development, if any, in the general area of the property in question, including changes, if any, which may have taken place since the day the property in question was in its present zoning classification.** The Zoning Board of Appeals shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such an amendment is in the public interest and is not solely for the interest of the applicant. The Zoning Board of Appeals may recommend the adoption of an amendment changing the zoning classification of the property in question to any higher classification than that requested by the applicant. For the purpose of this paragraph the R-1 District shall be considered the highest classification and the M-2 District shall be considered the lowest classification. The trend of development in that area is residential mixed with businesses. Since this lot is smaller that will determine what type of uses the lot can handle therefore it would most likely have to be a less intense type of use.

**Consistency with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies.** Rezoning this lot to Manufacturing is not consistent with the
Village of Millbrook’s plan from 2009 but this property was rezoned before they adopted their future land use plan.

With no further discussion Karen Clementi made a motion, seconded by Scott Cherry to approve the findings of fact. With a roll call vote 6-0 in favor the findings of fact were approved.

Karen Clementi made a motion to approve the rezoning, Scott Cherry seconded it. Ms. McKay feels their job is to get it cleaned up and would like to see the town rezoned to match what exists. Mr. Lecuyer stated if they wanted to follow their comprehensive plan now is the time. With a vote of 5-1 the Zoning Board of Appeals approved the rezoning. This will be moved onto Millbrook tomorrow night. The one no vote, Karen Clementi voted no in hopes the Village of Millbrook look at their zoning and comprehensive plan.

#15-01 Nancy Austin
Planner Zubko stated Nancy Austin is requesting to rezone about 3 acres of the 6.4 acre property located on the east side of Ashley Road, about 300 feet south of Plattville Road in order to build a house. Currently 1.82 acres on the west side is unincorporated and 4.63 acres on the east side is incorporated into Plattville. Plattville plans to annex a majority of the property so the whole parcel will be located in Plattville. There is a court case that allows municipalities to annex to a certain distance of the roadway without taking ownership. Once we figure out that number, 20 or 30 feet from the right of way the legals and plat will be drawn up and then taken to Plattville for final approval. The comprehensive plan shows this property to be agricultural so staff could not approve rezoning in un-incorporated Kendall County. The Plattville comprehensive plan calls for this property to be residential. She also stated they’re looking to build 1 house at this time but could in the future could rezone the eastern portion to R-1 also in the Village of Plattville and have access off Plattville Road. Staff recommends approval of the rezoning.

The ZPAC Committee had no objections and recommended approval. They had the same basic concerns, needing a building and well and septic permit; also approval from the township for a culvert. The Plan Commission recommended approval understanding the plan.

Chairman Mohr opened the meeting for public testimony.

Nancy Austin introduced herself and was here for questions. There was discussion on what’s annexed now verse what is not annexed and exactly what the plan is. Ms. Austin stated she is looking to rezone to build 1 home and leave the rest of the property agricultural.

There was lots of discussion on how the lots work, what is annexed and not annexed and the next steps and the fact where the home will be is to be located in the Village of Plattville.

With no further testimony made, Chairman Mohr closed the testimony.

The Findings of Fact were reviewed for a rezoning, they were approved as follows:

Existing uses of property within the general area of the property in question. The existing uses of property within the area of this property are a single family home and agricultural farm land which would be consistent with this request.

The Zoning classification of property within the general area of the property in question. The zoning classifications within the general area are currently A-1 and R-1 with farms and farmhouses.
The suitability of the property in question for the uses permitted under the existing zoning classification. The petitioners would like to rezone part of their property to R-1 in order to build a house. The property must be rezoned to build a home.

The trend of development, if any, in the general area of the property in question, including changes, if any, which may have taken place since the day the property in question was in its present zoning classification. The Zoning Board of Appeals shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such an amendment is in the public interest and is not solely for the interest of the applicant. The Zoning Board of Appeals may recommend the adoption of an amendment changing the zoning classification of the property in question to any higher classification than that requested by the applicant. For the purpose of this paragraph the R-1 District shall be considered the highest classification and the M-2 District shall be considered the lowest classification. The trend of development in that area is agricultural with residential houses. The rezoning to R-1 should have little impact on further development with the area as it would be consistent with surrounding area and the Village of Plattville’s future plan.

Consistency with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies. Adding a residential home in the area is consistent with the area in Plattville.

With no further discussion Tom Lecuyer made a motion, seconded by Karen Clementi to approve the findings of fact and approve the rezoning. With a roll call vote of 6-0 were in favor and the rezoning was approved.

#14-40 Subdivision Control Regulations- Letters of Credit
Planner Zubko stated in trying to clean up some items the PBZ Department discovered in our revisions to the subdivision control regulations in 2011 we changed the language to only allow letters of credit. Per the County Code (55 ILCS 5/5-1123 and 55 ILCS 5/5-1041) as well as the Public Construction Bond Act (30 ILCS 550/3) we must accept bonds as well as letters of credit. This language will clean this item up for future subdivisions. The SAO has also looked over the language. All the committees have approved this text amendment.

Donna McKay made a motion to approve the text as presented, Scott Cherry seconded the motion. With a roll call vote all were in favor and this will be moved onto the next PBZ meeting.

#14-37 Home Occupations- Landscape Business
Planner Angela Zubko stated the PBZ staff has had some issues of having landscape businesses in residential districts and operating as a home occupation. She currently only knows of 2 operating legally with a home occupation so those would be grandfathered in. Planner Zubko has added two definitions to allow landscape business verse a landscape business for lawn care only. So anyone cutting their neighbors lawn will not be in violation. All the committees have approved this text amendment and Plan Commission made some changes to this.

Donna McKay asked about snow removal as there are many people in the County who have plows on their trucks. This was briefly discussed and decided snow removal is different than a landscape business.

Donna McKay made a motion with Claire’s recommendations, Scott Cherry seconded the motion. With a roll call vote all were in favor and this will be moved onto the next PBZ meeting.
REVIEW PBZ APPROVALS BY COUNTY BOARD & CHANGES
None- just variances in January

NEW BUSINESS/OLD BUSINESS –
Randy Mohr thanked Planner Zubko in all her efforts, all others did as well.

PUBLIC COMMENT: There were no members in the audience to comment.

ADJOURNMENT OF THE ZONING BOARD OF APPEALS- Next meeting will be on June 1, 2015
Tom LeCuyer made a motion to adjourn the ZBA meeting, Donna McKay seconded the motion. Chairman Randy Mohr adjourned the Zoning Board of Appeals meeting at 7:57 p.m.

Respectfully Submitted,
Angela L. Zubko
Planning & Zoning Manager & Recording Secretary
15-10
Frank Schmalz
VARIANCE- Front Yard Setback
For Trailer

SITE INFORMATION
PETITIONER Frank Schmalz
ADDRESS 23 Old Post Road, Montgomery
LOCATION Boulder Hill

TOWNSHIP Oswego
PARCEL # 03-08-227-036
LOT SIZE 9,700 sq. ft. (approximate)
EXITING LAND USE Single Family Home
ZONING R-6 Residential District
**LRMP**

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<td>Trails</td>
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**REQUESTED ACTION**
Request for a variance to allow a trailer to be located in the front yard.

**APPLICABLE REGULATIONS**

§11.05.A.1.b (trailers may not encroach into required front yard setback, and must be on paved surface. However, an exception is allowed for property owners with trailers that existed prior to 2006 if they filed for the exception prior to the end of 2006.)

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**SURROUNDING LAND USE**

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<th>Location</th>
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**REQUESTED ACTION**

General Request for a variance to allow a trailer within the front yard, and to allow that trailer to remain on an existing gravel pad. The trailer will be located 8’ from the right-of-way, for a total variance of 22’.

The County amended the zoning code to address trailers and recreational vehicle parking in 2006. At that time, a special exception was allowed for owners with existing trailers or R.V.’s located in a front yard, provided they registered with the PBZ office prior to the end of 2006. Mr. Schmalz has suggested that he has owned the property since 1995 and has had the trailer parked in this location since that time, but was unaware of the County's change in regulations in 2006 and missed the deadline to file for the exemption. Unlike a typical variation, the exception provision is for the existing property owner only, and does not transfer to future property owners.

Based on a complaint, the County notified Mr. Schmalz of the violation. Upon review by the PBZ, he was directed to file for a variation. The PBZ office has received one letter of support for the proposed variation from Thomas Petrella, a neighbor at One Somerset Road that did receive a notice of the hearing (attached).

**OSWEGO TWP.**

Staff is waiting to hear if they have any comments.
FINDINGS OF FACT

§ 13.04.2 of the Zoning Ordinance outlines findings that the Zoning Board of Appeals must make in order to grant variations. They are as follows:

That the particular physical surroundings, shape, or topographical condition of the specific property involved would result in a particular hardship or practical difficulty upon the owner if the strict letter of the regulations were carried out. The property slopes significantly up from the street. Re-locating the trailer out of the front yard would potentially require significant excavation, site grading, paving, and drainage work that could potentially impact both this home and the adjacent home. It would also place the trailer closer to the adjacent home.

That the conditions upon which the requested variation is based would not be applicable, generally, to other property within the same zoning classification. Kendall County amended zoning regulations regarding the parking of trailers in 2006, prohibiting them from being located in a front yard. To accommodate (grandfather) existing trailers, residents were allowed to request and exception by the end of 2006. If the owner had requested an exception at that time, he would have been permitted to keep the trailer in its current location for as long as he owned and occupied the home. The owner has testified that he was not aware of the ordinance approved in 2006, and thus was not aware that he needed to apply for an exception. Allowing a variation to permit the extension of the filling deadline for the exception will allow the variation to be removed once the home is sold, consistent with the intent of the zoning ordinance in Section 11.05.A.1.b.

That the alleged difficulty or hardship has not been created by any person presently having an interest in the property. The owner has stored his trailer within the front yard for over 20 years, long before the County amended the code to require a setback. The topographic issues with moving the trailer behind the front setback were not created by the property owner.

That the granting of the variation will not materially be detrimental to the public welfare or substantially injurious to other property or improvements in the neighborhood in which the property is located. The trailer has been stored in the same location for over 20 years. Allowing the trailer to remain in this location should have little impact on neighbors. In contrast, the earth work and paving required to move the trailer behind the front setback could increase run-off and potentially have an impact on adjacent properties.

That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets or increase the danger of fire, or endanger the public safety or substantially diminish or impair property values within the neighborhood. This variation will not impair light or air to adjacent properties. As the trailer has been in its current location for a number of years, allowing it to remain will not impact public safety.

RECOMMENDATION

Staff would recommend approval of the variance to grant an exception for a trailer in the front yard setback after the required filling date of December 29, 2006 as outlined in 11.05.A.1.b. to allow the trailer to remain in the front yard on a gravel pad. This exception would be non-transferable to any subsequent owner(s) and shall terminate upon either the sale of the property or change in occupancy of the dwelling unit should the owners chose to maintain it as a rental property.

ATTACHMENTS

1. Plat of Survey
2. Letter from Applicant
3. Letter of Support
To Whom it May Concern

We are writing to you regarding the trailer that is parked in our driveway, 23 Old Post Road, Montgomery, IL. We understand that it sticks out passed our house. According to a letter we received it states that we are in violation of a law that was enacted in 2006. We were not aware of this law until someone complained about our trailer.

The issues we have in moving the trailer is our house sits on a hill the slop of the yard next to the garage. If we were to landscape the yard to move the trailer it would be very expensive. We would have to dig it out so it would have to go down about 3 ½ feet. We have kids and neighbor kids playing. I do not want them hurt of fall in. It would interfere with our foundation and weeping tiles the drainage of the water, the water will come for my neighbor and where the trailer would be parked then it would go in the drive way and in my garage. For us to push the trailer back and on the side of the house it would be impossible because it would require black top or cement pad or gravel and this would be very expensive.
June 12, 2015

Thomas G. Petrella
One Somerset Road
Montgomery, IL 60538

Planning, Building and Zoning Department
Room 203
111 West Fox Street
Yorkville, IL 60560

I am in receipt of a Public Notice from the Kendall County Zoning Board of Appeals. The notice is relative to a public hearing scheduled for June 29, 2015 at 7: p.m. at the Kendall County Office Building. A determination is to be made regarding Petition #15-10 where by Frank Schmalz is seeking a variance for the allowance of a trailer to be parked within the front setback and for the location to be on a non-paved surface.

My property address is in very close proximity to that of 23 Old Post Road, being directly across the street. I wish to be on record that I have absolutely no objection to the parking and location of the trailer as proposed in the variance.

Very Truly Yours,

[Signature]

Thomas G. Petrella