1. CALL TO ORDER
   A. Please turn all beepers, pagers and cell phones "off" or to "vibrate" during the meeting

2. ROLL CALL

3. CHAIRMAN'S REMARKS

4. PUBLIC COMMENT
   A. Public comment is limited to three minutes per person, at the beginning of the meeting. Any comment on Zoning items must be limited to discussion of testimony and/or evidence presented in the Zoning Board of Appeals. No new testimony or evidence can be presented.

5. APPROVAL OF MINUTES
   A. Development Committee - Regular Meeting - Tuesday October 2nd, 2018

6. REGULATORY SERVICES
   A. DC-O-0071-18 ORDINANCE -- Z18-023 – Ostrowski: The Zoning Board of Appeals recommended to approve the following zoning relief: Conditional Use to increase sq. ft. of detached accessory buildings from 910 sq. ft. to 1,582 sq. ft. approximately. (Lisle/ District 2) (West of Belmont Road, South of Maple Avenue on Chase Avenue) ZBA VOTE (to Approve): 7 Ayes, 0 Nays, 0 Absent

   B. DC-O-0072-18 ORDINANCE -- Z18-043 – 8300 Kearney, LLC: The Zoning Board of Appeals recommended to approve the following zoning relief: 1. Conditional Use for a Planned Development. 2. Variation to reduce front yard setback from 30 feet to 25 feet. 3. Variation to reduce corner side yard setback from 30 feet to 25 feet. (Downers Grove N./ District 3) (Approximately 1,600 feet south of Plainfield Road and Kearney Road, southwest corner of Millbrook Drive and Kearney Road) ZBA VOTE (to Approve): 7 Ayes, 0 Nays, 0 Absent
C. DC-O-0073-18 ORDINANCE -- Z18-046 -Pogorzelski: The Zoning Board of Appeals recommended to approve the following zoning relief: Variation to reduce the side yard setback from 10 feet to approximately 7.6 feet (North side). (Bloomingdale/ District 1) (Northeast of Irving Park Road and Medinah Road, on Briargate Terrace) ZBA VOTE (to Approve): 6 Ayes, 0 Nays, 1 Absent

D. Action Item -- Zoning Board of Appeals to consider Text Amendments to add to the Performance Standards language relative to certain chemical and toxic substances: PART 3. PERFORMANCE STANDARDS. Add to Adult Business Uses relating to service provided to people age 21 years and above: 37-320: DEFINITIONS, add to ADULT BUSINESS USES section language relative to service provided to people age 21 years and above: Section: 37-416. ZBA VOTE to Approve: 7 Ayes, 0 Nays, 0 Absent

7. OLD BUSINESS

8. NEW BUSINESS

9. ADJOURNMENT
1. CALL TO ORDER

11:00 AM meeting was called to order by Chair Sam Tornatore at 11:10 AM.

A. Please turn all beepers, pagers and cell phones "off" or to "vibrate" during the meeting

2. ROLL CALL

PRESENT: Anderson, Chaplin, Eckhoff, Hart, Tornatore, Wiley

ABSENT:

3. CHAIRMAN'S REMARKS

Chairman Tornatore asked the committee to entertain a motion to amend agenda, moving Item B, Z18-052 Ordinance - Schramm first.

4. PUBLIC COMMENT

Erv Schramm spoke in favor of Z18-052 Schramm

A. Public comment is limited to three minutes per person, at the beginning of the meeting. Any comment on Zoning items must be limited to discussion of testimony and/or evidence presented in the Zoning Board of Appeals. No new testimony or evidence can be presented.

5. APPROVAL OF MINUTES

A. Development Committee - Regular Meeting - Sep 18, 2018 11:00 AM
6. BUDGET TRANSFERS

REGULATORY SERVICES

A. Action Item -- Request to proceed with a ZBA Public Hearing to consider proposed Text Amendments to the DuPage County Zoning Ordinance relative to the following: 1.) Add to the Business and Industrial Sections language relative to adult business uses; 2.) Add to the Residential and Business Sections language relative to accessory uses and structures; 3.) Add to the Performance Standards language relative to certain chemical and toxic substances.

Chair Tornatore discussed these 3 areas, the first being the adult business use, taking the category and essentially filling in the gaps for what some adult businesses are doing today that were not originally covered in the zoning code. We have current businesses that are considered an adult business, but new language would be added to the code, that if a business would submit itself to be providing a service to a person 21 years or older, it would be now categorized as an adult business. They would have to be located in an I-1 or I-2 district, then there are further restrictions, that the business cannot be located within 1000 feet of a school, a church, or day care center. This text amendment is prospective, but there are a few ideas that he might be able to talk about under new business. Relating to accessory uses and structures, this would now take into consideration things that are not a structure, but more of a use. Performance standards relative to certain chemical and toxic substances, current code would consider ethylene oxide to be covered in the current code, but now it would be specifically mentioned. Paul Hoss explained he is prepared to take these text amendments to the ZBA next Thursday, October 11th.

RESULT: APPROVED [UNANIMOUS]
MOVER: Elizabeth Chaplin, Vice Chair
SECONDER: Greg Hart, District 3
AYES: Anderson, Chaplin, Eckhoff, Hart, Tornatore, Wiley

B. DC-O-0067-18 ORDINANCE -- Z18-052 – ORDINANCE – Schramm: The Zoning Board of Appeals recommended to deny the following zoning relief: 1. Conditional Use for a Planned Development for 2 Uses on Property, to use as Self-Storage and with Continued Use as Landscape Contractor. (Downers Grove N./ District 3) (Southeast of I-55 and Clarendon Hills Road on Frontage Road) ZBA VOTE to Deny: 6 Ayes, 0 Nays, 1 Absent
Member Eckhoff requested some clarification on the surrounding properties. Paul Hoss explained that only five properties remain in that area that are zoned B-1, the other properties are zoned Residential. Member Eckhoff inquired if this would clean up the current commercial property. Paul Hoss stated that the planned storage is unconventional, it would be several freight trailers on the property which would be rented out to store personal items. Also, being requested is to have multiple uses on the property, as it is currently a landscaping business which would eventually be phased out. Chairman Tornatore called for a roll call vote, where each member voted no.

RESULT: DEFEATED [0 TO 6]
MOVER: Kevin Wiley, District 6
SECONDER: Janice Anderson, District 5
NAYS: Anderson, Chaplin, Eckhoff, Hart, Tornatore, Wiley

C. DC-O-0068-18 ORDINANCE -- Proposed updates to the DuPage County Building Code for adoption and re-codification of Chapter 8 of the DuPage County Code (Request to waive the 1st reading)

Paul Hoss spoke, explaining that the County wants to make sure the development community, architects, engineers, and planners, when looking at different code, whether it be zoning, building or fire would see consistency.

RESULT: APPROVED [UNANIMOUS]
MOVER: Janice Anderson, District 5
SECONDER: Elizabeth Chaplin, Vice Chair
AYES: Anderson, Chaplin, Eckhoff, Hart, Tornatore, Wiley

D. DC-R-0894-18 RESOLUTION -- DC-R-0894-18 : Building and Zoning Schedule of Fees Update

Jim Stran explained that the update to the fees is clarification for staff and the public. The Health Department fees, a dollar amount would not be listed, as they are subject to change. Instead it would refer people to check our website for current fees. Also, the performance bond fees would no longer be two tiered, one for residents, the other for contractors. It would become one fee for everyone.

RESULT: APPROVED [UNANIMOUS]
MOVER: Greg Hart, District 3
SECONDER: Elizabeth Chaplin, Vice Chair
AYES: Anderson, Chaplin, Eckhoff, Hart, Tornatore, Wiley

8. OLD BUSINESS
Chairman Tornatore asked Jim Stran if there were any changes to Chairman Cronin's budget request for Building and Zoning. Jim responded that there was a monetary difference, he was asked to reduce some line items, however these were fairly insignificant changes and won't effect the building fund or salaries.

9. NEW BUSINESS
Chairman Tornatore said if we could somehow license businesses with restrictions that are within our codes and regulations and we might be able to not only be able to better oversee the businesses, but make them conform. There may have been some concern in the past over what the appearance might be if we license adult businesses. Paul Hoss stated that we can license businesses. In a previous federal lawsuit the County was involved in, the courts ruled that adult businesses have the right to operate under the 1st amendment. The court also recognized that there are additional secondary unintended impacts. Adult businesses are put in certain zoning districts and also have distance restrictions on them. There would be certain exemptions from the adult business use standard in a commercial zoning district and that would be if they are already licensed. This means you have gone through a program, that you have gotten background checks, fingerprinting. This would not be a catch all license. However, this would cover a business that restricts services by age, either 18 or 21. This would help restrict possible types of businesses, that may not be mentioned directly in the code.

10. ADJOURNMENT
MEMORANDUM

TO: DuPage County Development Committee
FROM: DuPage County Zoning Board of Appeals
DATE: October 4, 2018
RE: Z18-023 Ostrowski (Lisle/ District 2)

Development Committee: October 16, 2018:

Zoning Board of Appeals Meeting: October 4, 2018: The Zoning Board of Appeals recommended to approve the following zoning relief:

Conditional Use to increase sq. ft. of detached accessory buildings from 910 sq. ft. to 1,582 sq. ft. approximately.

Subject to the following conditions:

1. That the property be developed in accordance with the petitioner’s site plan made part of Zoning Petition #Z18-023 Ostrowski dated September 20, 2018.
2. That petitioner is not permitted to operate a business out of the subject detached garage.
3. That the subject detached garage remains as a garage.
4. That petitioner shall not cause illumination in excess of one-half (1/2) foot-candle at property lines.
5. That the owner/developer is to apply for and receive a Building Permit for all construction and/or excavation that occurs on the property.
6. That in conjunction with the submittal of a building permit the developer provides a landscape plan showing partial landscape screens around the perimeter of the development.
7. That the property be developed in accordance with all other codes and Ordinances of DuPage County.

ZBA VOTE (to Approve): 7 Ayes, 0 Nays, 0 Absent

FINDINGS OF FACT:

1. That petitioner testified that he seeks the subject zoning relief to build an addition onto his existing detached garage, which will increase the size of all detached accessory buildings on the subject property from 910 sq. ft. to approximately 1,582 sq. ft.

2. That petitioner testified that subject property includes a principal building with an attached garage, a detached garage, and a shed.

3. That petitioner testified that in 2015, he was granted a Conditional Use to allow two (2) existing structures (a shed and garage) which have been on the property for a period greater than five (5) years to remain at the present cumulative area of 910 sq. ft. instead of the required 850 sq. ft, also known as Z18-005 Ostrowski.

   • That petitioner testified that he purchased the property in 2014 and that the storage space on the subject property has proved inadequate to safely store petitioner’s vehicles.

4. That petitioner testified that the garage storage (both the detached and attached garages) on the subject property does not adequately store all of his vehicles and household equipment, as he owns 3 classic cars in addition to his “everyday” vehicles.

5. That petitioner testified that the garage addition will extend only in the rear of the existing detached garage, and that the proposed detached garage addition will create a tandem-style garage layout.

   • As such, that petitioner testified that the driveway will remain in the same location and will not be altered.

6. That petitioner testified that he nor will anyone at the subject property run a business out of the subject detached garage.
7. That petitioner testified that the detached garage will not have any heat nor running water and will only have basic electrical outlets typically found in a residential garage.

STANDARDS FOR CONDITIONAL USES:

1. That the Zoning Board of Appeals finds that petitioner has demonstrated that the granting of the Conditional Use is in harmony with the general purpose and intent of the Zoning Ordinance, and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the County’s comprehensive plan for development; and specifically, that the granting of the Conditional Use will not:

   a. Impair an adequate supply of light and air to the adjacent property as petitioner has demonstrated that the proposed detached garage addition will extend only at the rear of the detached garage and will maintain the existing north side yard setback of approximately 10.3 feet.

   b. Increase the hazard from fire or other dangers to said property as petitioner has demonstrated that he will receive a building permit from the County for the proposed detached garage addition and that it will be built pursuant to the current building codes.

     • Furthermore, that petitioner testified that the proposed detached garage addition will improve safety on the subject property and will allow petitioner to properly and safely store all of his vehicles inside.

   c. Diminish the value of land and buildings throughout the County as petitioner has demonstrated that the proposed detached garage addition will be an added benefit to the neighborhood and will be built pursuant to all DuPage County codes.

   d. Unduly increase traffic congestion in the public streets and highways as petitioner has demonstrated that the proposed detached garage addition will be located behind the existing detached garage, which is set back behind the rear of the principal building and will not affect traffic because it will not be visible from the street.

   e. Increase the potential for flood damages to adjacent property as petitioner has demonstrated that the County’s Stormwater Department has no objections on the proposed detached garage and will review the building plans at the time of permit application.
f. Incur additional public expense for flood protection, rescue or relief as petitioner has demonstrated that the County’s Stormwater Department has no objections on the proposed detached garage and will review the building plans at the time of permit application.

g. Otherwise impair the public health, safety, comfort, morals or general welfare of the inhabitants of DuPage County as petitioner has demonstrated that adjacent property owners have signed a petition in support of the proposed detached garage addition and do not object to a Conditional Use to increase sq. ft. of detached accessory buildings from 910 sq. ft. to 1,582 sq. ft. approximately.

PETITIONER’S DEVELOPMENT FACT SHEET
GENERAL ZONING CASE INFORMATION

<table>
<thead>
<tr>
<th>CASE #/PETITIONER</th>
<th>Z18-023 Ostrowski</th>
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<tbody>
<tr>
<td>ZONING REQUEST</td>
<td>Conditional Use to increase sq. ft. of detached accessory buildings from 910 sq. ft. to 1,582 sq. ft. approximately.</td>
</tr>
<tr>
<td>OWNER</td>
<td>MAYNARD OSTROWSKI, 5620 CHASE AVENUE, DOWNERS GROVE, IL 60516</td>
</tr>
<tr>
<td>ADDRESS/LOCATION</td>
<td>5620 CHASE AVENUE, DOWNERS GROVE, IL 60516</td>
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<tr>
<td>PIN</td>
<td>08-13-205-007</td>
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<tr>
<td>TWSP./CTY. BD. DIST.</td>
<td>Lisle District 2</td>
</tr>
<tr>
<td>ZONING/LUP</td>
<td>R-4 SF RES 0-5 DU AC</td>
</tr>
<tr>
<td>AREA</td>
<td>0.92 (40,075 sq. ft.)</td>
</tr>
<tr>
<td>UTILITIES</td>
<td>Water and Sewer</td>
</tr>
<tr>
<td>PUBLICATION DATE</td>
<td>Daily Herald: August 28, 2018</td>
</tr>
<tr>
<td>PUBLIC HEARING</td>
<td>September 20, 2018</td>
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ADDITIONAL INFORMATION:

- Building: No Objections.
- DUDOT: No Comment.
- Health: No Objections.
- Stormwater: No Objections with the concept of the petition. Additional information may be required at time of permit application.
- Public Works: No Objections. “We do not provide sewer/water to that area.”

EXTERNAL:

- Village of Downers Grove: No Comment.
- Village of Woodridge: No Comment.
- Village of Lisle: No Comment.
- Lisle Township: No Comment.
**Lisle Township Highway:**  No Objections.

**Darien-Woodridge Fire Dist.:**  No Objections.

**Sch. Dist. 58:**  No Comment.

**Forest Preserve:**  No Comment.

### GENERAL BULK REQUIREMENTS:

<table>
<thead>
<tr>
<th>REQUIREMENTS</th>
<th>REQUIRED</th>
<th>EXISTING</th>
<th>PROPOSED</th>
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<tbody>
<tr>
<td>Front Yard:</td>
<td>Behind front wall</td>
<td>N/A</td>
<td>Approx. 122 feet</td>
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<tr>
<td>Int. Side Yard:</td>
<td>10 feet</td>
<td>N/A</td>
<td>Approx. 10 feet 3 inches</td>
</tr>
<tr>
<td>Int. Side Yard:</td>
<td>10 feet</td>
<td>N/A</td>
<td>Approx. 88 feet 4 inches</td>
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<tr>
<td>Rear Yard:</td>
<td>3 feet</td>
<td>N/A</td>
<td>Approx. 147 feet 7 inches</td>
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<tr>
<td>Height:</td>
<td>15 feet</td>
<td>N/A</td>
<td>Approx. 15 feet</td>
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<td>Floor Area Ratio:</td>
<td>910 sq. ft. (Total detached accessory buildings)</td>
<td>N/A</td>
<td>Approx. 1,582 sq. ft. (Total detached accessory buildings)</td>
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### LAND USE

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<tr>
<th>Location</th>
<th>Zoning</th>
<th>Existing Use</th>
<th>LUP</th>
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<tbody>
<tr>
<td>Subject</td>
<td>R-4 SF RES</td>
<td>House</td>
<td>0-5 DU AC</td>
</tr>
<tr>
<td>North</td>
<td>R-4 SF RES</td>
<td>House</td>
<td>0-5 DU AC</td>
</tr>
<tr>
<td>South</td>
<td>R-4 SF RES</td>
<td>House</td>
<td>0-5 DU AC</td>
</tr>
<tr>
<td>East</td>
<td>Chase Avenue and beyond R-4 SF RES</td>
<td>House</td>
<td>0-5 DU AC</td>
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<td>West</td>
<td>Village of Downers Grove</td>
<td>Multi-Family</td>
<td>Village of Downers Grove</td>
</tr>
</tbody>
</table>
AFFIDAVIT:
CASE NAME AND NUMBER: Z18-023 OSTROWSKI

I, Maynard Ostrowski, the owner of the property for which the attached survey has been submitted, do hereby certify that this survey is a correct representation of my property as of this 26 day of April 1, 2018.

Petitioner's Name:

Petitioner's Address:

NOTARY SEAL:
SUBSCRIBED AND SIGNED TO BEFORE ME THIS:

Maynard Ostrowski

Petitioner's Signature

Jack T. Knuepfer Administration Building, 421 N. County Farm Road, Wheaton, Illinois 60187
My name is Maynard Ostrowski. I live at 5620 Chase Ave, Downers Grove IL 60516.

I am asking the DuPage County Zoning Board for a conditional use and variation to allow me to build additional garage space for the detached garage on my property. The conditional use would allow the square footage of the existing space to increase from 910 square feet to approximately 1582 square feet.

The purpose of this petition is to have my immediate neighbors not to object the conditional use zoning request. If you do NOT object, please sign below.

<table>
<thead>
<tr>
<th>PRINT NAME</th>
<th>ADDRESS</th>
<th>SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tom Sisk</td>
<td>5217 Chase</td>
<td></td>
</tr>
<tr>
<td>Don Sirato</td>
<td>5101 Chase</td>
<td></td>
</tr>
<tr>
<td>Jeff Konetzki</td>
<td>5013 Chase</td>
<td></td>
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<tr>
<td>Don Shonko</td>
<td>5002 Chase</td>
<td></td>
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<tr>
<td>Eric Hansen</td>
<td>5626 Chase</td>
<td></td>
</tr>
<tr>
<td>William Holton</td>
<td>5606 Chase</td>
<td></td>
</tr>
<tr>
<td>John Huang</td>
<td>2206 CourtoM</td>
<td></td>
</tr>
<tr>
<td>Cynthia Pulek</td>
<td>5023 Durand</td>
<td></td>
</tr>
<tr>
<td>Bob Christo</td>
<td>3621 Durand</td>
<td></td>
</tr>
<tr>
<td>Tony Vitrac</td>
<td>5625 Durand</td>
<td></td>
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</tbody>
</table>

The signatures on this petition were signed in my presence within the last thirty days of this signed notary.

Maynard Ostrowski, Printed Signature of Owner
5620 Chase Ave
Downers Grove IL 60516

Subscribed and sworn to before me this:
10 Day of MAY, 2018
[Signature]
[Notary Public]

OFFICIAL SEAL
Jennifer Harvey
Notary Public, State of Illinois
My Commission Expires 07/10/23
May 1, 2018

Dupage County Board of Appeals:

I am requesting a Conditional Use to allow me to build an additional garage space for the detached garage on my property. The conditional use would allow the square footage of the existing space to increase from 910 square feet (I received zoning relief on July 15, 2018 petition Z15-008 to increase the required 850 sq. ft. to 910 sq. ft.) to approximately 1582 square feet. The garage addition would be built on the back of the existing garage and would be screened from our street by the existing garage, house and vegetation. Our lot size is 39,607 square feet, almost one acre and it would not change the beauty of our yard.

The garage addition would be used for space of my vintage cars. I do not buy and sell my cars or operate any business from our residence. This is a hobby that I have enjoyed since a young age. I am 65 years old and work part time as a Plastic Sales Engineer.

The proposed garage addition will be built 10 feet from the property line, in line with the existing detached garage. No trees would be removed and would not impair any supply of light to our neighbors. No neighborhood traffic would be affected because we will be using the existing driveway. The structure would not interrupt any drainage or cause any flood issue to our neighbor’s property. No first responder’s cost would be incurred. The garage addition would not create a nuisance because it would be used as storage for my hobby.

Maynard Ostrowski
5620 Chase Ave.
Downers Grove, IL 60516
MEMORANDUM

TO:   DuPage County Development Committee
FROM:  DuPage County Zoning Board of Appeals
DATE:   October 4, 2018
RE:   Z18-043 8300 Kearney, LLC

Development Committee: October 16, 2018:

Zoning Board of Appeals Meeting: October 4, 2018: The Zoning Board of Appeals recommended to approve the following zoning relief:

1. Conditional Use for a Planned Development.
2. Variation to reduce front yard setback from 30 feet to 25 feet.
3. Variation to reduce corner side yard setback from 30 feet to 25 feet.

Subject to the following conditions:

1. That the property be developed in accordance with the petitioner’s revised site plan made part of Zoning Petition #Z18-043 8300 Kearney, LLC dated October 11, 2018.

2. That the owner/developer is to apply for and receive a Building Permit for all construction and/or excavation that occurs on the property.

3. That in conjunction with the submittal of a building permit the developer provides a landscape plan showing partial landscape screens around the perimeter of the development but not in the areas of the taxiways/taxilanes to the main runway.

4. That there be no fixed obstacles located in the taxi lanes that interfere with airplanes using the taxilanes. Furthermore, no unattended movable objects shall be located in any place that will interfere with airplanes using the taxilanes.

5. That the property be developed in accordance with all other codes and Ordinances of DuPage County including but not limited to provisions requiring special event permit approval form the County Development Committee for extraordinary activities that occur on the subject property.
ZBA VOTE (to Approve): 7 Ayes, 0 Nays, 0 Absent

FINDINGS OF FACT:

1. That petitioner testified that he seeks the subject zoning relief for a planned development for nine single-family, hangar homes with an existing airplane hangar in the Brookeridge Airport Subdivision.
   - That petitioner testified that the proposed seven homes will include a garage hangar for airplanes and/or cars on the first level; a living area on the second level; and a partial living area and/or rooftop deck on the third level.
   - That petitioner testified that the footprint is expected to be 50 feet by 50 feet and an expected price point to start above $600,000.00.
   - That petitioner testified that the existing hangar will remain in the middle of the proposed development for the use of the property owner, Mr. Brackett. Furthermore, that Mr. Brackett testified that the existing hangar will be open for use by the HOA’s in the Brookeridge subdivision.

2. That petitioner testified that he seeks a Variation to reduce the front yard setback from 30 feet to approximately 25 feet and a Variation to reduce the corner side yard setback from 30 feet to approximately 25 feet, to allow for the purpose of taxiing in the proposed development, as well as to allow for the proper turning radius for the proposed airplanes.
   - As such, petitioner testified that the subject Variations will allow for the widest clearance to allow for at least one plane on the taxiing runway and 1 plane parked on a proposed driveway.

3. That petitioner testified that directly west of the proposed development is the tiedown area/ concrete runways for airplanes within the Brookeridge subdivision; that directly north there are no residences but to the northwest there are some residences; that directly to the east there is one residence across from Kearney Road; and that directly to the south is one residence.
   - That petitioner testified that there are approximately 83 homes in the Brookeridge subdivision.
4. That petitioner testified that the proposed development will include a new Homeowners Association, which will be formed with CC&Rs (Covenants, Conditions, and Restrictions).

5. That petitioner testified that the proposed development will have less impervious surface than what the property currently maintains, through the addition of pervious brick pavers and concrete. Furthermore, that petitioner testified that any stormwater on the subject property will be stored in voids between brick pavers.

6. That petitioner testified that the proposed development will be serviced by sewer from DuPage County and water from the Village of Darien. Furthermore, that petitioner testified that both utilities are eight-inch mains with adequate supply.

7. That petitioner testified that they will maintain geoweb runways through the grass on the subject property, to stabilize the ground, as indicated in petitioner’s site plan made part of Zoning Petition #Z18-043 8300 Kearney, LLC dated July 26, 2018.

   • Furthermore, that petitioner testified that the subject geoweb runways will be for the use of neighboring properties, should they have a right to access the subject property and proceed to the main Brookeridge runway.

8. That objectors have indicated that the primary concern with the subject zoning relief is objector’s airplane access from Kearney Road, across the subject property to the main Brookeridge runway.

   • That petitioner has mitigated objector’s concern by identifying geoweb runways on the subject property for objector’s use to traverse across the subject property to access the main Brookeridge runway.

   • That the ZBA makes no finding as to whether the property located at 8315 Kearney Road, Downers Grove, Illinois has any legal right to access the runways of the Brookeridge Airpark through or over the use of the subject property. The Zoning Board of Appeals finds that this type of determination is outside of its purview and that the granting of the zoning relief requested has no effect, and is not intended to effect, any rights that have been previously granted or not granted to the property located at 8315 Kearney Road, Downers Grove, Illinois.

STANDARDS FOR CONDITIONAL USE AND VARIATIONS:
1. That the Zoning Board of Appeals finds that petitioner has demonstrated that the granting of the Conditional Use and Variation is in harmony with the general purpose and intent of the Zoning Ordinance, and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the County’s comprehensive plan for development.

2. That the Zoning Board of Appeals finds that petitioner has demonstrated the granting of the Conditional Use and Variation will not:

   a. Impair an adequate supply of light and air to the adjacent property as petitioner has demonstrated that the proposed development will include significant green space, along with runways for airplanes to circulate through the development, as indicated in petitioner’s site plan made part of Zoning Petition #Z18-043 8300 Kearney, LLC dated July 26, 2018.

   b. Increase the hazard from fire or other dangers to said property as petitioner has demonstrated that they will receive a building permit from the County for the proposed development and that it will be built pursuant to the current building codes.

   c. Diminish the value of land and buildings throughout the County as petitioner has demonstrated that they will repair the existing, dilapidated airplane hangar and introduce 9 single-family hangar homes to the area.

       • As such, that the petitioner has demonstrated that the Brookeridge Homeowners Association has no objections to the proposed development and that the HOA believes that the proposed development will increase the value of land in the area.

   d. Unduly increase traffic congestion in the public streets and highways as petitioner has demonstrated that the proposed hangar homes will be smaller, single-family home with a lower density of traffic. Furthermore, that petitioner testified that the proposed development will have a low intensity of use as the proposed hangar homes are expected to be purchased by empty-nesters, “snowbirds,” and part-time residents.

   e. Increase the potential for flood damages to adjacent property as petitioner has demonstrated that the proposed development will have less impervious surface than what currently exists on the subject property.
f. Incur additional public expense for flood protection, rescue or relief as petitioner has demonstrated that the proposed development will have less impervious surface than what currently exists on the subject property, and that the proposed homes will be built pursuant to all County codes.

g. Otherwise impair the public health, safety, comfort, morals or general welfare of the inhabitants of DuPage County as petitioner has demonstrated that the proposed development will be an added benefit to the neighborhood and will improve a large, delipidated hangar in the community. Furthermore, that the proposed development will introduce 9 new, single-family homes to the neighborhood.

PETITIONER’S DEVELOPMENT FACT SHEET

<table>
<thead>
<tr>
<th>GENERAL ZONING CASE INFORMATION</th>
</tr>
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<tbody>
<tr>
<td><strong>CASE #/PETITIONER</strong></td>
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<td><strong>ZONING REQUEST</strong></td>
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<td><strong>OWNER</strong></td>
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<td><strong>ADDRESS/LOCATION</strong></td>
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<td><strong>PIN</strong></td>
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<td><strong>TWSP./CTY. BD. DIST.</strong></td>
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<td><strong>ZONING/LUP</strong></td>
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<td><strong>AREA</strong></td>
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<td><strong>UTILITIES</strong></td>
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<td><strong>PUBLICATION DATE</strong></td>
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<td><strong>PUBLIC HEARING</strong></td>
</tr>
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</table>

**ADDITIONAL INFORMATION:**

- Building: No Objections.
- DUDOT: No Comment.
- Health: No Objections.
- Stormwater: No Objections with the concept of the petition. Additional information may be required at time of permit application.
- Public Works: No Objections with the concept of the petition. Additional information may be required at time of permit application. (See attached documentation).

**EXTERNAL:**

- Village of Downers Grove: “No Comments.”
- Village of Darien: No Comment.
Downers Grove Township: No Objections.
DG Township Highway: No Comment.
Darien-Woodridge Fire Dist.: No Objections.
Sch. Dist. 66: No Comment.
Forest Preserve: No Comment.
Village of Woodridge: No Comment.

GENERAL BULK REQUIREMENTS:

<table>
<thead>
<tr>
<th>REQUIREMENTS</th>
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<th>EXISTING</th>
<th>PROPOSED</th>
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<tr>
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<td>30 FEET</td>
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<td>South Int. Side Yard</td>
<td>10 FEET</td>
<td>APPROX. 148 FT</td>
<td>APPROX. 10 FT</td>
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<tr>
<td>North Corner Side Yard</td>
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<tr>
<td>West Rear Yard</td>
<td>25 FEET</td>
<td>APPROX. 90 FT</td>
<td>APPROX. 50 FT</td>
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LAND USE

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<td>Airplane Hangar</td>
<td>0-5 DU AC</td>
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<tr>
<td>North</td>
<td>Millbrook Drive and beyond R-3 SF RES</td>
<td>Pond/ County of DuPage</td>
<td>0-5 DU AC</td>
</tr>
<tr>
<td>South</td>
<td>R-3 SF RES</td>
<td>House</td>
<td>0-5 DU AC</td>
</tr>
<tr>
<td>East</td>
<td>Kearney Road and beyond R-4 SF RES</td>
<td>House</td>
<td>0-5 DU AC</td>
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<tr>
<td>West</td>
<td>R-3 SF RES</td>
<td>Airplane Runway</td>
<td>0-5 DU AC</td>
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</tbody>
</table>
Updated Site Plan Submitted by Petitioner on 10-11-2018
DU PAGE COUNTY ZONING BOARD OF APPEALS

Zoning Petition Z18-043 8300 Kearney, LLC

Please review the information herein and return with your comments to:
Jessica Infelise, DuPage County Building and Zoning Department, 421 North County Farm Road, Wheaton, Illinois 60187; or via email at Jessica.Infelise@dupageco.org or via facsimile at 630-407-6702 by August 29, 2018.

**COMMENT SECTION:**

| 1. NO OBJECTION/CONCERNS WITH THE PETITION. |
| 2. NO OBJECTION/CONCERNS WITH THE CONCEPT OF THE PETITION. ADDITIONAL INFORMATION MAY BE REQUIRED AT TIME OF PERMIT APPLICATION. |
| I CANNOT COMMENT AT THIS TIME. ADDITIONAL INFORMATION REQUIRED. |
| I OBJECT/HAVE CONCERNS WITH THE PETITION. |

**COMMENTS:** We are the sewer provider to the area – the developer will need to obtain a sewer permit from us.

**SIGNATURE:** Edward Bazu
**DATE:** 8-13-18

**MUNICIPALITY/TOWNSHIP/AGENCY/DEPARTMENT:**

**GENERAL ZONING CASE INFORMATION**

| CASE #/PETITIONER | Z18-043 8300 Kearney Road |
| ZONING REQUEST | 1) Conditional Use for a Planned Development |
| | 2) Variation to reduce front yard setback from 30 feet to 25 feet |
| | 3) Variation to reduce corner side yard setback from 30 feet to 25 feet |
| OWNER | 8300 Kearney, LLC 13700 West 103rd Street, Lemont, IL 60439 |
| ADDRESS/LOCATION | 8300 Kearney Road, Downers Grove, 60516 |
| PIN | 09-32-400-004 |
| TWP,CTY, BD. DIST. | Downers Grove N District 3 |
| ZONING/LUP | R-3 SF 0-5 Du Ac |
| AREA | 2.81 Acres (122,105 sq. ft.) |
| UTILITIES | Water and Sewer |
| PUBLICATION DATE | Daily Herald: July 10, 2018 and August 13, 2018 |
| PUBLIC HEARING | July 26, 2018 and August 30, 2018 |

**PLEASE NOTE:** FILING OF THIS FORM DOES NOT SUBSTITUTE FOR A FORMAL OBJECTION PURSUANT TO THE ILLINOIS STATE STATUTES.

Jack T. Knuepfer Administration Building, 421 N. County Farm Road, Wheaton, Illinois 60187

Packet Pg. 28
U R B A N  I N V E S T M E N T  R E S E A R C H  C O R P O R A T I O N

H A N G A R  H O M E  D E V E L O P M E N T

8300 K E A R N E Y  R O A D
D O W N E R S  G R O V E ,  I L

1ST FLOOR PLAN

CONCEPTUAL PLAN PRESENTED FOR INFORMATION PURPOSES ONLY AND IS NOT INTENDED FOR PERMIT OR CONSTRUCTION DOCUMENTS

BASE TEN ARCHITECTS, INC.
July 26, 2018

Robert J. Kartholl, Chairman
DuPage County ZBA
421 North County Farm Road
Wheaton, Illinois 60187

Phillip Luetkehans
105 E. Irving Park Road
Itasca, Illinois 60143
pluetkehans@slg-atlty.com

RE: 8300 Kearney, LLC/Luetkehans Planned Development
8300 Kearney Road, Downers Grove, Illinois

Dear Chairman Kartholl and Mr. Luetkehans:

Our office has been retained to represent Ms. Barbara Miller of 8315 Kearney Road, Downers Grove, Illinois 60516. Ms. Miller is opposed to the Petitioner’s current proposal to subdivide and create a planned development with nine new single family homes because (1) said proposal would sever Ms. Miller’s legal access rights to the adjacent runways and (2) the current proposal does not comply with the spirit and intent of the protective covenants and restrictions governing the Petitioner’s property.

**Governing Documents**

Both Ms. Miller’s and the Petitioner’s properties were created by Austin Talbert’s Assessment Plat (“Talbert’s Plat”) recorded in 1958 as R1958-8831205 (corr. R1958-883126). Talbert’s Plat took almost 100 acres of unincorporated property and divided it into 11 lots. (Lots are numbered 1-12, however there is no Lot 4). Lots 1-11 were all farmland or vacant land while Lot 12 was developed and labeled on Talbert’s Plat as an east-west runway, a north-south runway and a hangar just off the north-south runway. Ms. Miller owns Lot 1 of Talbert’s Plat and the Petitioner’s lot is part of Lot 12 that contains the still-existing hangar. The entirety of Lot 12, including the portion now proposed for development, was and is “common area” for the benefit of the buildable lots.
Also recorded in 1958, as R1958-882382, was a Declaration of Protective Covenants, Conditions, Restrictions and Easements for Talbert’s Plat (the “Declaration”). This Declaration has never been amended. It provides the right of runway access for buildable lots in Talbert’s Plat (including Ms. Miller’s lot):

9. The Declarant is confirming herewith that Lot 18 in Block 1 in Brookeridge Unit No. 2 is a landing field and that it is the owner in fee simple thereof, and that Lot 12 of Austin Talbert’s Assessment Plat is a runway for said landing field and that said landing field and runway are available for the use as such subject to the following terms and conditions:

(b) That the fee simple title owners of Lot 1, 2, 5, 7, 8, 9, 10 and 11 of said Assessment Plat or their respective lessees, if any, shall have the right to use the landing field or runway for civil aircrafi either owned or leased by them, and the Declarant expressly reserves the right to grant permission to such other persons as it may elect to use the said landing field and runway.”

The Declaration also places conditions and restrictions on the buildable lots in Talbert’s Plat. Lot 12 was exempted from the conditions and restrictions as it was the “common area” of Talbert’s Plat, being used by each of the owners of the buildable lots. The conditions and restrictions for all of the buildable lots in Talbert’s Plat are summarized as follows:

1. Single family, private dwellings only; not more than two stories; not more than a three car garage (See ¶1 of the Declaration);
2. No more than two dwelling houses on any tract; no residence shall be built on any tract, or division thereof, less than 2.5 acres of land (¶1, 18);
3. Minimum square feet as follows: one story – 1800 sq. ft.; two story – 2200 sq. ft. (¶2);
4. No building shall be erected until approved by an architectural committee selected annually by the Board of Directors of the Declarant (¶3);
5. Other restrictions such as masonry, fencing and livestock (¶2.17).

Lastly, the Declaration states that its covenants, conditions, restrictions and easements run with the land and are binding upon the declarant and all subsequent purchasers and successors. (See ¶19 of the Declaration)
Petitioner Has Notice of Access Rights, Development Restrictions and Sale Restrictions

In 1967, Talbert Construction Equipment Company, the declarant of the Declaration, assigned all of its rights under the Declaration to J.R. Furtney, Inc which was recorded as R1967-019468. This Assignment stated that Lot 12 was comprised of runways and a landing field operated by the declarant such. Referenced in that Assignment is a Rider attached to Articles of Agreement for Deed recorded as R1967-024206 wherein Talbert Construction Equipment Company agrees to sell Lot 12 to J.R. Furtney, Inc. subject to, among other things, the Declaration “presently existing of record with reference to both Austin Talbert’s Assessment Plat and Brookeridge Unit No. 2.” This Rider also states that Lot 12 is the communal runway.

In 1968, J.R. Furtney, Inc. assigned its declarants’ rights to John R. Furtney, William Harris and James Krughoff. This Assignment was recorded as R1968-035203. That same day, Mr. Furtney, Mr. Harris and Mr. Krughoff assigned their declarant’s rights to Brookeridge Aero Associates, Inc. which was recorded as R1968-035204.

Title to that portion of Lot 12 now proposed for development changed hands several times between 1968 and 1970. On July 9, 1968, the entirety of Lot 12 was sold to Brookeridge Aero Associates, Inc. via a Quit Claim Deed recorded as R1968-035202. Title was specifically subject to the Declaration and also subject to a declaration “relating to the rights and provisions for maintenance of property as landing field for aircrafts.” On June 30, 1970, Brookeridge Aero Associates, Inc. sold the part of Lot 12 now proposed for development to Richard O. Burns, Jr., which was recorded as R1970-023872. This Deed was also subject to “protective covenants, conditions, easements and restrictions of record,” and also included a rider with additional restrictions. Said rider stated the following two provisions:

“4. It is further understood by the parties that if the subject property is sold by Purchaser in the future to any person or entity with the Hangar structures now situated thereon intact in its present form or in a revised or remodeled form then approval of such sale shall be required by the majority of the shareholders of Brookeridge Aero Associates, Inc. . . .”

“6. It is the intention of the seller that the easement, conditions, restrictions and covenants as set out in this deed are to run with the land and be binding on the Purchaser and all persons claiming under him.”
Robert J. Kartholl, Chairman  
Phillip Luetkehans  
July 26, 2018  
Page 4

Richard O. Burns, Jr. and his wife put their portion of Lot 12 into trust where it stayed until the trustee quit claimed the property to Mr. Burns’ sons in 2011. The Burns’ sons conveyed the property to the current owner, 8300 Kearney, L.L.C., in 2018. This latest deed was recorded as R2018-042685 and was subject to the “covenants, conditions, restrictions and easements of record.” At no time in the complicated history of Lot 12 has any purchaser taken title to the property without notice of the Declaration or without a clear understanding that Ms. Miller has access rights over Lot 12.

Assurances of Access

Ms. Miller and her husband purchased the south half of Lot 1 of Talbert’s Plat in 1980 and subsequently purchased the north half of Lot 1 in 1982. Both Ms. Miller and her husband have taken several steps since 1980 to receive assurances that their Lot 1 has the ability to access Lot 12 as their right under the Declaration.

A letter dated September 10, 1984 was circulated by Borla, Kubiesa and Power, P.C. providing assurances to the residents along Kearney Road that the township would permit the residents to taxi airplanes along Kearney Road (which separates Lots 1 and 2 from Lot 12). This right was reiterated in a subsequent letter from the same firm dated June 11, 1986. (See letters attached as Exhibit A) Mr. Miller reached out to the President of Brookeridge Aero Associates, Inc. in June of 1986 regarding access rights who responded that Lot 1 has the “right to use Lot 12 just as you would have a right to use the airport.” (See letter attached as Exhibit B) Lastly, the previous owners of the Petitioner’s property, Dr. Burns’ sons, were also aware of the access rights. In 2013, Ms. Miller’s son, Joseph Miller, memorialized a conversation with the wife of one of Dr. Burns’ sons, Debbie Burns, in an email to Ms. Miller. In Joseph’s conversation with Debbie, she confirmed that Ms. Miller has access rights and “will make sure any potential buyer understands that.” During that conversation, Debbie also assumed that the property would most likely be sold to a developer. (See email attached as Exhibit C)

In the almost 40 years that the Millers have owned Lot 1 of Talbert’s Plat, they have requested and received assurances from an attorney, the property owner of Lot 12 and Brookeridge Aero Associates, Inc. that they have the right to access the runway by crossing both Kearney Road and Lot 12.
Robert J. Kartholl, Chairman
Phillip Luetkehans
July 26, 2018
Page 5

Conclusion

Ms. Miller’s main objection to the proposed development is that, as the owner of Lot 1, the Declaration permits her to use Lot 12 to access the runways. If the Petitioner’s current proposal is approved, Ms. Miller’s access to both the east-west and north-south runways will be severed as there is no viable alternative route for Lot 1 to access the runways other than through the Petitioner’s part of Lot 12. This access is a unique and valuable property right and Ms. Miller objects to its loss.

Approval will also permit the Petitioner to develop a portion of Lot 12 in a way that is prohibited to the other lot owners in Talbert’s Plat. Every other lot owner of a buildable lot within Talbert’s Plat is subject to the development restrictions contained in the Declaration. Lot 12 was specifically excluded from these restrictions only because it was the common area (containing runways, hangar and gas tanks) that benefited the buildable lots. It is only by a technicality that this Petitioner is able to request the proposed development. Ms. Miller believes that the solution to this issue is for the ZBA to require the Petitioner to obtain approval from a majority of the shareholders of Brookeridge Aero Associates, Inc., as mandated by the 1970 deed, so that Brookeridge Aero Associates, Inc. can evaluate whether the Petitioner should be held to the same development restrictions as all other developers and owners within Talbert’s Plat.

Both Ms. Miller and I will attend the Petitioner’s July 26th public hearing to present this letter and answer any questions the ZBA members may have.

Sincerely,

Christina M. Morrison
CMM/ct

cc: Charles Wentworth, attorney for Brookeridge Aero Associates, Inc.
September 10, 1984

Tom Glasgow
6525 Kearney Rd.
Downers Grove, IL 60516

Re: Kearney Road Easement.

Dear Tom:

As you requested, please let this letter serve as my status report to you and the other folks along Kearney Road as to my discussions with Doug Slansky, the attorney for Downers Grove Township, and Ed Smith, Road Superintendent for DuPage Township.

I met with Doug and Ed on August 23, 1984 at the office of Doug Slansky in Downers Grove. My overall impression of the meeting was that the township is quite willing to accept Kearney Road as a township road and maintain the same, subject to the attorneys working out a way that that is to be done so that the concerns of the residents along Kearney Road are met. Specifically, these concerns are that the roadway be not much larger than the 16 feet that it currently occupies; that the residents along Kearney Road retain their taxi rights along that road at all times; that that right of way not be used for any public utility, including sewer, water or gas lines; and lastly, that some precautions be taken by signage or otherwise to prevent speeders along that small residential road. It was agreed between myself and Doug Slansky that an easement to the township for a roadway could accomplish giving the township the road for maintenance purposes, yet meeting these other concerns of the residents. Ed Smith indicated that 16 feet is too narrow and that the minimum size of a road the township could adequately maintain and snowplow would be 18 feet.

At that point in the discussion, the question became one of the cost of putting the road back into shape so that the township could properly maintain it. Ed Smith had already asked an engineering firm in Downers Grove, Wight & Company, to do some preliminary estimates of either repair or replacement of that...
road to an 18 foot right of way. However, he considered the costs that Wight & Company came up with to be out of line, and suggested that he himself would review the situation and come up with a proposal and cost estimate that would be as low as possible yet he is concerned that he take over a street that can be properly maintained in the future.

The meeting was adjourned on the representation by Ed Smith that he would prepare this cost proposal and relay that information to me so that we would then have some concrete costs to consider when the question of splitting those costs between the township and the residents will be discussed. I am now waiting for this information from Ed Smith, and as soon as I get it I will be in touch with you.

My overall feeling on the meeting was that the township feels some sort of responsibility towards the maintenance of that Kearney Road, irregardless of any court decisions to the contrary. In that line, they seem very willing to work with the residents to come up with an acceptable way that the township could take over the maintenance function on that road. I expect you will be hearing from me within the next week or two.

Sincerely,

Kenneth T. Kubiesa

KTK; jms
June 11, 1986

Ed Rensi
8400 Kearney Road
Downers Grove, IL 60516

Re: Kearney Road - Roadway Easement.

Dear Ed:

Pursuant to your request, I have taken time to review my file and materials concerning Kearney Road and specifically with respect to the owners in Austin Talbert's Assessment Plat controlling the use of Kearney Road by those coming from outside of the subdivision. A case entitled Reiman vs. Kale, 63 Ill.App.3d 773, 38 Ill.Dec. 671 (1980) is an Illinois Appellate Court case that conclusively determined that Kearney Road and that portion of 86th Street within the Austin Talbert's Assessment Plat are not public roads. That case, along with admissions by the township during our prior discussions, support the conclusion that Kearney Road and 86th Street within Austin Talbert's Assessment Plat is a private road subject to reasonable control by the owners in the affected area.

The Appellate Court in Reiman vs. Kale concluded that Kearney Road and 86th Street are roadway easements, the benefits of which run in favor of all those owning within the Austin Talbert's Assessment Plat including those owners of lot 3 which is now Brookeridge Creek. That roadway easement is meant to be an ingress and egress easement allowing owners and invitees within Austin Talbert's Assessment Plat, including Brookeridge Creek, the right of access to their property. However, this right of access is subject to "the reasonable use of said road segment in accordance with the covenants and restrictions covering the plat of subdivision" as stated by the Appellate Court. This "reasonable use" in accordance with the appropriate
covenants and restrictions can certainly be interpreted to mean that the owners in the Austin Talbert's Assessment Plat can reasonably restrict the manner of access through the subdivision along these roads. The covenants and restrictions of which the court speaks concern the airport and the implication in the declaration of covenants and restrictions that the owners in Austin Talbert's Assessment Plat have access to the airport runway along the roadway easements.

Therefore, it is my opinion that the owners in Austin Talbert's Assessment Plat can reasonably restrict the manner of access to the subdivision along Kearney Road and 86th Street so to provide for the safety of those using that easement and the residents for whose benefit the easements were created. Keep in mind, however, that the homeowners' efforts to impose limitations or restrictions carries with it a greater potential liability that comes along with this control. An ingenious plaintiff's lawyer, when confronted with a potential claim for injury occasioned on Kearney Road or 86th Street in your area might very well look towards the restrictions imposed by the owners as an additional factor causing such an accident. Speed bumps would be an example of the type of control that might result in an injury and liability against those who installed that speed bump. For this reason, I would be careful that the association or whichever entity that exerts control over the roads be adequately covered by liability insurance.

I trust that I have answered your questions concerning the legal status of the roadways and the ability of the owners in Austin Talbert's Assessment Plat to control the use of these roads. If you have any further questions or comments, don't hesitate to give me a call.

Sincerely,

Kenneth T. Kubiesa

KTK:jms
Encl.-(Felman vs. Kale)
BROOKERIDGE AERO ASSOCIATES, Inc.
760 88th Street • Downers Grove, Illinois 60516
June 10, 1986

Mr. Lee Miller
8315 S. Kearney
Downers Grove, Ill., 60516

Dear Lee,

Enclosed please find the information you requested. You will find page one of the covenants governing your property as well as Lot 12 (The hangar property). I have given you a copy of page one because it shows the document numbers, so you can go to Wheaton and get a complete copy for your records.

Also, I have given you copies of Article 9 which applies specifically to Lot 12. I'm not a lawyer, but I believe this says that your lot has the right to use Lot 12 just as you would have a right to use the airport; subject to the conditions set forth in (A) thru (J) as stated.

I have also included a plat plan of the airport, showing that the hangar and the North/South runway are both Lot 12.

I would suggest that you get a complete copy of the covenants and ask someone to look into the matter for you, as it is rather complicated.

Yours truly,

BROOKERIDGE AERO ASSOCIATES, INC.

Nick Dispensa, President

ND/Scd

Enclosures
DEAR BURNS PROPERLY, SALE ON
4-19-13

From: "Joseph Miller" <joe@binderysupply.com>
Subject: Joe
Date: April 19, 2013 8:51:26 AM CDT
To: "Granda Miller" <grandma@dhpsupply.com>

Mom,

I just spoke with Debbie Burns about the hanger. She has the deed documents now and has spoken with Neal from Brookring. She understands that you and Merci Rensi have access rights for an airplane and will make sure any potential buyer understands that. They were asking $1,000,000 but understand that the property is overpriced. She thinks they should be asking less. However because the two Burns brothers cannot agree on the asking price they do not have the property listed at this time. As of today everything will continue to sit in limbo. But eventually the property will be sold and most probably to a developer that will put up three very large houses.

Joe Miller
DHP Mfg., Bindery Equipment & Supply
Technical Sales
850-465-9263

Order: short drill bits quickly at www.DHPwebstore.com


Additional Information Submitted by Objector on August 30, 2018:

Day Robert & Morrison, P.C.
ATTORNEYS AT LAW
300 E. 5th Avenue
Suite 200
Naperville, Illinois 60563
630-637-8611
Fax 630-6614
www.drm.law

SCOTT M. DAY
RACHEL K. ROBERT
CHRISTINA M. MCILROY
ROBERT G. BLACK
KEELI M. SMITH
Of Counsel

August 30, 2018

Honorable Robert J. Kartholl
Chairman
DuPage County Zoning Board of Appeals
421 North County Farm Road
Wheaton, Illinois 60187

Mr. Phillip A. Luetskans
Schirott, Luetskans & Gamers, LLC
105 East Irving Park Road
Itasca, Illinois 60143
pluetskans@illigarty.com

RE: 8300 Kearney, LLC/Luetkans Planned Development
8300 Kearney Road, Downers Grove, Illinois

Dear Chairman Kartholl and Mr. Luetskans:

As you know, our office has been retained to represent Barbara Miller of 8315 Kearney Road, Downers Grove, Illinois 60515. Ms. Miller reiterates her opposition to Petitioner’s proposal to subdivide and create a planned development with nine new single-family homes because the proposal would sever Ms. Miller’s legal vested access rights to the adjacent runways.

At the July, 2018 public hearing, Petitioner stated that a potential runway access area was shown in Petitioner’s site plan, however, this access would only be provided if mandated by “some court or someone.” (ZBA transcript, 07/26/18, p. 18) Since the July public hearing, Petitioner and Ms. Miller have been unable to come to an agreement regarding Ms. Miller’s access rights.

At the July public hearing, I submitted several historical documents including a Declaration of Protective Covenants, Conditions, Restrictions and Easements for Austin Talbert’s Assessment Plat dated June 4, 1958, recorded in DuPage County as R1958-88282 (the “Declaration”). I also submitted all of the deeds recorded for Petitioner’s property after the Declaration was recorded.

Day Robert & Morrison, P.C.
& Professional Corporation
Honorable Robert J. Kartholl
Mr. Phillip A. Luetkehans
Page 2
August 30, 2018

The Declaration clearly states that Ms. Miller has the right to cross Petitioner’s property to access the private runway. In addition, the deed history of Lot 12 clearly shows that each property owner of Lot 12 has taken title with notice of, and subject to, the knowledge that Ms. Miller has such access. Petitioner has denied that Ms. Miller has access rights, but has provided no documentation refuting the recorded documents I have submitted. This is not a “he-said, she-said” situation. The uncontested documentation establishes my client has a private property right on Petitioner’s property, and approval of this planned development will make the County complicit in unlawfully stripping my client of this right. It is settled Illinois law, as detailed below, that the County cannot approve Petitioner’s planned development request without violating Illinois case precedent.

I. HISTORICAL GRANTING OF ACCESS OVER PETITIONER’S PROPERTY.

The Declaration recorded in 1958 has never been amended. The Declaration vests the right of runway access in Lots 1, 2, 5, 7-11 in Talbert’s Plat (again, Lot 1 is owned by Ms. Miller), and specifies as follows:

“9. The Declarant is confirming herewith that Lot 18 in Block 1 in Brookeridge Unit No. 2 is a landing field and that it is the owner in fee simple thereof, and that Lot 12 of Austin Talbert’s Assessment Plat is a runway for said landing field and that said landing field and runway are available for the use as such subject to the following terms and conditions:

***

(b) That the fee simple title owners of Lot 1, 2, 5, 7, 8, 9, 10 and 11 of said Assessment Plat or their respective lessees, if any, shall have the right to use the landing field or runway for civil aircraft either owned or leased by them, and the Declarant expressly reserves the right to grant permission to such other persons as it may elect to use the said landing field and runway.

***

19. It is further agreed that the Covenants, Conditions, Restrictions and Easements herein contained shall constitute an easement and servitude in and upon the said tracts or premises and every part thereof and that they shall run with the land and shall inure to the benefit of and be binding upon and
enforceable by the Declarant herein, its successors and assigns, and by any original Purchaser from the said Declarant herein of any tract in said development, and the grantees, and the heirs, executors, administrators, successors and assigns, of said Purchaser; and further, that failure by either the Declarant or by the owner of any tract in said development to enforce any obligations, reservations, easements, building lines, setbacks, building restrictions, conditions, rights, powers, charges, exceptions and agreements herein contained, shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto."

In no uncertain terms, this 1958 Declaration made the entirety of Lot 12 a servient estate to the right of access easement held by, and vested in, the owners of Lots 1, 2, 5, 7-11 in Talbert’s Plat. Because Ms. Miller owns Lot 1, she holds this vested access easement right.

II. CONSTRUCTION OF THE IMPROVEMENTS VIOLATES THE VESTED EASEMENT RIGHT.

Recognizing that Ms. Miller has a vested access easement right, the DuPage County Zoning Board of Appeals needs to understand the Illinois law governing such rights.

An easement is a right or privilege in the real estate of another, and when exercised in connection with the occupancy of other land, it is deemed to be an easement appurtenant. Willoughby v. Lawrence, 116 Ill. 11, 4 N.E. 356 (1886). An easement appurtenant passes by conveyance of the land to which it is attached even if not expressly mentioned, and the servient estate is subject to the easement until it is terminated or abandoned. Messenger v. Ritz, 345 Ill. 423, 178 N.E. 38 (1931); Chicago Title and Trust Co. v. Wabash-Randolph Corp., 384 Ill. 78, 51 N.E.2d 132 (1943).


An easement appurtenant attaches not only to the dominant tract as a whole, but also to each and every part thereof, and is not extinguished by a division of the dominant estate. As a result, Ms. Miller holds an access easement right over the portion of Lot 12 now owned by 8300 Kearney,
Honorable Robert J. Kartholl  
Mr. Phillip A. Luettekanehs  
Page 4  
August 30, 2018

LLC. Garrison v. Rudd, 19 Ill. 558 (1858); 28 C.J.S. Easements § 65; Restatement of the Law of Property, § 488.

Furthermore, Ms. Miller is entitled to the “necessary use” of the access area easement, which in this case provides for airplane ingress and egress. McCann v. R.W. Dunteman Co., 242 Ill. App.3d 246, 609 N.E.2d 1076 (2d Dist. 1993). “Necessary use” is the use that is reasonably necessary for airplane access over the entire Lot 12, (Flower v. Valentine, 135 Ill. App.3d 1034, 482 N.E.2d 682 (1st Dist. 1985); Schaefer v. Burnstine, 13 Ill.2d 464, 150 N.E.2d 113 (1958)).

While the owner of the servient estate (here, Petitioner) is entitled to the “reasonable use” of its portion of Lot 12 (Ogilby v. Donaldson’s Floors, Inc., 13 Ill.2d 305, 148 N.E.2d 758 (1958)), Illinois courts have uniformly held that the permanent placement of obstructions in an area that significantly lessens the ingress and egress rights of the dominant owner is not reasonable, and is therefore inconsistent with the right of reasonable enjoyment. Schaefer v. Burnstine, 13 Ill.2d 464, 150 N.E.2d 113 (1958) (emphasizing that permanent obstruction by gates and posts was not reasonable use). Therefore, as a matter of law, the County must recognize that Petitioner has no legal right to construct permanent obstructions within Lot 12 where Ms. Miller holds a vested easement right.

Once an easement is definitely settled and located, as is the case here under the express terms of the Declaration, it cannot be changed or diminished by either party without the consent of the other. Kohl v. Chouteau Island Drainage and Levee Dist., 283 Ill. 69, 118 N.E. 999 (1918); Elser v. Village of Gross Point, 240 Ill. 508, 88 N.E. 1018 (1909); Kenilworth Sanitarium v. Village of Kenilworth, 220 Ill. 264, 77 N.E. 226 (1906). Ms. Miller has not agreed to modify or diminish their access to Lot 12, and thus the County and Petitioner are legally powerless to unilaterally do so.

III. APPROVAL OF THE DEVELOPMENT WILL AUTHORIZE PETITIONER TO COMMIT TRESPASS.

In the context of easements, trespass occurs when there is a material interference with the right of the owner of the dominant estate to reasonable use of the servient parcel. McMahon v. Hines, 298 Ill. App.3d 231, 697 N.E.2d 1199 (2d Dist. 1998). A party such as Petitioner is liable for trespass if they intentionally intrude upon the easement land of another (Dial v. City of O’Fallon, 81 Ill.2d 548, 411 N.E.2d 217 (1980)), and a plaintiff need not prove actual harm to recover damages for trespass because it occurs whenever a dominant estate property interest is invaded. Johnson v. Tipton, 103 Ill.App.3d 291, 431 N.E.2d 464 (2d Dist. 1982).
Honorable Robert J. Kartholl
Mr. Phillip A. Luetkehans
Page 5
August 30, 2018

In the context of trespass in this matter, Ms. Miller has the right to use Lot 12 to access the private runways. A trespass occurs if Petitioner constructs improvements upon Lot 12 which unreasonably interfere with or diminish the vested access rights held by Ms. Miller. Peoples Gas Light and Coke Co. v. Joel Kennedy Construction Corp., 357 Ill.App.3d 579, 829 N.E.2d 866 (1st Dist. 2005). This is true even if Petitioner is attempting to improve its property, as it can only use Lot 12 for a purpose consistent with Ms. Miller’s right to use the easement area. Id.; Chicago Title Land Trust Co. v. JS II, LLC, 977 N.E.2d 198, 2012 IL App. (1st) 063420 (2012).


IV. THE COUNTY RISKS A CLAIM FOR INVERSE CONDEMNATION.

Not only will an intentional trespass occur if Petitioner is allowed to construct permanent improvements, the County itself may be liable for a taking by way of an inverse condemnation as detailed hereafter.

In day-to-day use, lawyers tend to use the phrases “inverse condemnation” and “regulatory taking” interchangeably. However, inverse condemnation is a broader phase used to describe any situation where a property owner must sue the government for the taking of private property rights without payment of just compensation. In an inverse condemnation case, the owner is the plaintiff and the government is the defendant. An inverse condemnation can be a physical taking or a regulatory taking, and can even include the taking of personal property. Lamar Witeco Outdoor Corp. v. City of West Chicago, 823 N.E.2d 610 (2d Dist. 2005); Byron Dragway Inc. v. County of Ogle, 759 N.E.2d 595 (2d Dist. 2001); Tim Thompson Inc. v. Village of Hinsdale, 617 N.E.2d 1227 (2d Dist. 1993). The typical vehicle for pursuing a claim for inverse condemnation is a suit by the property owner for the issuance of a writ of mandamus, with the writ requiring the governmental body to file the eminent domain suit.

The Illinois law addressing inverse condemnation claims was significantly and recently broadened by the Illinois Supreme Court in Janice Hampton v. Metropolitan Water Reclamation District of Greater Chicago, 2016 IL 119861. Compelled by recent U.S. Supreme Court decisions on point,
Honorable Robert J. Kartholl  
Mr. Phillip A. Luettehans  
Page 6  
August 30, 2018

the Illinois Supreme Court expanded Illinois law to recognize that even a temporary taking of private property can give rise to an inverse condemnation claim against a local government. In this regard, the Illinois Supreme Court stated:

The Illinois takings clause reaches beyond the scope of the federal takings clause and provides a remedy for owners whose property is damaged by some government action. Property is considered damaged for purposes of the takings clause if there is "any direct physical disturbance of a right, either public or private, which an owner enjoys in connection with his property; a right which gives the property an additional value; a right which is disturbed in a way that inflicts a special damage with respect to the property in excess of that sustained by the public general."

Neither the County nor Petitioner owns the access easement over Lot 12. Should the County approve a planned development and building permits which obliterate these private property rights, inverse condemnation could result. If a court holds that the County’s approval and permits are either a taking or damaging of Ms. Miller’s private easement rights, the County will not only be forced to pay just compensation for the loss of the easement, but also Ms. Miller’s attorney fees incurred in the inverse condemnation suit.

Simply stated, the Illinois Constitution prohibits the County from either “taking” or “damaging” Ms. Miller’s access easement rights without just compensation. This is a constitutional limitation imposed upon the County, and inverse condemnation affords injured property owners the vehicle to directly sue the County for both damages and attorney fees.

V. CONCLUSION.

On behalf of Ms. Miller, we urge the DuPage County Zoning Board of Appeals to deny Petitioner’s planned development and subdivision application. In simplest terms, Petitioner does not have the necessary property rights to build the improvements sought. Granting approval would violate the expressly granted vested access easement rights held by Ms. Miller over Lot 12 as the owner of Lot 1. Allowing construction of the Lot 12 improvements would also constitute an intentional trespass by Petitioner in violation of Illinois law, subjecting Petitioner to punitive damages. And the County itself would confront a clear risk of facing an inverse condemnation case if approval is granted.
Honorable Robert J. Kartholl  
Mr. Phillip A. Luetkehans  
Page 7  
August 30, 2018

Based on the foregoing, Ms. Miller again respectfully requests that the DuPage County Zoning Board of Appeals adhere to longstanding Illinois law and deny Petitioner’s application.

Sincerely,

Christina M. Morrison

CMM/ct
cc: Barbara Miller
Additional Information Submitted by Petitioner on 10-4-18

Phillip Luetkehans

From: Vonic, Michael/CH-I <Michael.Vonic@jacobs.com>
Sent: Wednesday, October 03, 2018 11:21 PM
To: Bismarck Brackett; Phillip Luetkehans
Cc: Mark Doles
Subject: RE: Revised Drawing
Attachments: Brookridge_Alt_R3.pdf

Mr. Brackett,

RE: Review of Brookridge Hangar Home Development

Summary
I have reviewed the provided Brookridge Hangar Home Development preliminary plan, dated October 3, 2018, against pertinent Federal Aviation Administration (FAA) and Illinois Division of Aeronautics design guidelines on taxilane geometry, and find no objection to the aircraft pavement layout as designed for the aircraft represented. It meets the separation and layout design criteria that would be utilized at public-use airports, such as DuPage Airport for aircraft of this size, Aircraft Design Group I.

Detail
The following resources were utilized in this review:

3. Airpark information [http://www.ltvz.org/airport-information/]

There is little, if any, formal guidance available that applies to the criteria of safe movement of aircraft in private (restricted use) airports. I then default to the public-use taxilane criteria, as I would utilize at a public airport, such as DuPage Airport within FAA defined ‘non-movement’ area.

As such, the review analysis used FAA guidance of design of taxilanes from Resource 4. All aircraft represented on the development drawing are designated within FAA Aircraft Design Group I (ADG I). There is no smaller ADG defined. It is appropriate to assume that no larger ADG would regularly operate from this facility.

Taxilane centerline distance to fixed or moveable object of 39.5' for Aircraft Design Group I (aircraft wingspan 49’ or less) appears to be met throughout the depicted development; however, controls should be placed on driveway access/objects to the southwest hangar as to be clear of or give-way by fixed or moveable objects, as to not interfere with the adjacent taxilane object-free area directly to the east.

This review was performed using preliminary concepts provided by PDF material and containing dimensions as described, and is expected to be ‘Not to Scale’. This review does not replace review of final design materials. This review did not conduct survey or analysis of existing conditions represented on the image and was limited to proposed aircraft pavement geometry and associated clear areas. No formal aircraft movement computer simulations were utilized for this review.

Regards,
Michael Vonic, PE

From: Bismarck Brackett <bbracket@ulrc.com>
Sent: October 3, 2018 1:00 PM
To: Vonic, Michael [CHI] <michael.vonic@jacob.com>; Phillip Luetkehans <pluetkehans@slg-atty.com>
Subject: [EXTERNAL] Revised Drawing

Mr. Vonic:

Drawing revised, and thank you very much for your assistance!

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MEMORANDUM

TO: DuPage County Development Committee
FROM: DuPage County Zoning Board of Appeals
DATE: September 27, 2018
RE: Z18-046 Pogorzelski (Bloomingdale/ District 1)

Development Committee: October 16, 2018:

Zoning Board of Appeals Meeting: September 27, 2018: The Zoning Board of Appeals recommended to approve the following zoning relief:

Variation to reduce the side yard setback from 10 feet to approximately 7.6 feet (North side).

Subject to the following conditions:

1. That the property be developed in accordance with the petitioner’s updated site plan made part of Zoning Petition #Z18-046 Pogorzelski dated September 27, 2018

2. That the owner/developer is to apply for and receive a Building Permit for all construction and/or excavation that occurs on the property.

3. That in conjunction with the submittal of a building permit the developer provides a landscape plan showing partial landscape screens around the perimeter of the development.

4. That the property be developed in accordance with all other codes and Ordinances of DuPage County.

ZBA VOTE (to Approve): 6 Ayes, 0 Nays, 1 Absent

FINDINGS OF FACT:

1. That petitioner testified that he purchased the subject property in January 2018 and has not moved to the subject property due to the poor living conditions inside the subject principal building.
a. As such, that petitioner testified that he will move to the subject property once he remodels the inside of the subject principal building.

2. That petitioner testified that he seeks the subject zoning relief to build a two-car attached garage to the existing principal building.

3. That petitioner testified that the prior property owners converted the one-car attached garage on the north side of the subject principal building into living space.

4. That petitioner testified that he seeks the subject zoning relief to revert the existing living space back to an attached garage and build an addition to create a two-car garage.

5. That petitioner testified that due to the lot size and location of the principal building, in order to build a two-car attached garage he would encroach into the north side yard setback.

6. That petitioner testified that north wall within the subject principal building is a load-bearing/structural wall

7. That petitioner testified that the existing living space he plans to revert back to an attached garage contains several utilities/mechanicals for the principal building, which would be more safely accessible if they were open, within a garage.

8. That petitioner testified that he will not run a business out of the proposed attached garage.

9. That petitioner testified that he will demolish the existing detached garage and existing shed on the subject property.

10. That petitioner testified in addition to building the attached garage, he will also be building a second-story addition onto the subject one-story single-family home.

STANDARDS FOR VARIATIONS:

1. That the Zoning Board of Appeals finds that petitioner has demonstrated that the granting of the Variation is in harmony with the general purpose and intent of the Zoning Ordinance, and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the County’s comprehensive plan for development.

2. That the Zoning Board of Appeals finds that petitioner has demonstrated the granting of the Variation will not:
a. Impair an adequate supply of light and air to the adjacent property as petitioner has demonstrated that he will increase the amount of greenspace on the subject property by removing the existing detached garage and shed and reverting the existing living space back to an attached garage.

b. Increase the hazard from fire or other dangers to said property as petitioner has demonstrated that he will receive a building permit from the County for all construction/excavation on the subject property, including the proposed attached garage and that it will be built pursuant to the current building codes.

c. Diminish the value of land and buildings throughout the County as petitioner has demonstrated that he will remove the aging, detached accessory buildings (detached garage and shed) and will build the proposed attached garage addition, which will be an added benefit to the subject neighborhood.

d. Unduly increase traffic congestion in the public streets and highways as petitioner has demonstrated that he will revert the existing living space back to an attached garage and build an addition to create a two-car garage, which will be consistent with the architecture of the subject principal building.

e. Increase the potential for flood damages to adjacent property as petitioner has demonstrated that the County’s Stormwater Department has no objections on the proposed detached garage and will review the building plans at the time of permit application.

f. Incur additional public expense for flood protection, rescue or relief as petitioner has demonstrated that the County’s Stormwater Department has no objections on the proposed detached garage and will review the building plans at the time of permit application.

g. Otherwise impair the public health, safety, comfort, morals or general welfare of the inhabitants of DuPage County as petitioner has demonstrated that he will remove the aging detached accessory buildings (detached garage and shed) and will revert the existing living space back to an attached garage and build an addition to create a two-car garage, which will create additional greenspace on the subject property.

- Furthermore, that petitioner has demonstrated that the granting of a Variation to reduce the north side yard setback from 10 feet to approximately 7.6 feet will not obstruct public safety access to the subject property and adjacent properties,
and that the south side yard will remain unaltered and may be used for additional public safety access to the subject and adjacent properties.

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**PETITIONER’S DEVELOPMENT FACT SHEET**

**GENERAL ZONING CASE INFORMATION**

<table>
<thead>
<tr>
<th>CASE #/PETITIONER</th>
<th>Z18-046 Pogorzelski</th>
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<tr>
<td>ZONING REQUEST</td>
<td>Variation to reduce the side yard setback from 10 feet to approximately 7.6 feet (North side).</td>
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<tr>
<td>OWNER</td>
<td>MARCIN POGORZELSKI, 7N107 BRIARGATE TERRACE, MEDINAH, IL 60157</td>
</tr>
<tr>
<td>ADDRESS/LOCATION</td>
<td>7N107 BRIARGATE TERRACE, MEDINAH, IL 60157</td>
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<td>PIN</td>
<td>02-01-304-012</td>
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<td>TWSP./CTY. BD. DIST.</td>
<td>Bloomingdale District 1</td>
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<tr>
<td>ZONING/LUP</td>
<td>R-3 RES SF 0-5 DU AC</td>
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<tr>
<td>AREA</td>
<td>.76 (33,105 sq. ft.)</td>
</tr>
<tr>
<td>UTILITIES</td>
<td>Well and Septic</td>
</tr>
<tr>
<td>PUBLICATION DATE</td>
<td>Daily Herald: September 11, 2018</td>
</tr>
<tr>
<td>PUBLIC HEARING</td>
<td>September 27, 2018</td>
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**ADDITIONAL INFORMATION:**

- **Building:** No Objections.
- **DUDOT:** No Comment.
- **Health:** No Comment.
- **Stormwater:** No Objection with the concept of the petition. Additional information may be required at time of permit application.
- **Public Works:** No Objections. “We do not provide sewer/water to that area.”

**EXTERNAL:**

- **Village of Itasca:** No Objections.
- **Village of Roselle:** No Comment.
- **Village of Bloomingdale:** No Comment.
- **Bloomingdale Township:** No Comment.
- **Township Highway:** No Objections.
- **Roselle Fire Dist.:** No Comment.
- **Sch. Dist. 11 Medinah:** No Comment.
- **Forest Preserve:** No Comment.
### GENERAL BULK REQUIREMENTS:

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<thead>
<tr>
<th>REQUIREMENTS:</th>
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<th>PROPOSED</th>
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<td>West Front Yard:</td>
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<td>APPROX. 61.6 FEET</td>
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<td>APPROX. 7.6 FEET</td>
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<td>South Int. Side Yard:</td>
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<td>East Rear Yard:</td>
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### LAND USE

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<td>R-3 SF RES</td>
<td>House</td>
<td>0-5 DU AC</td>
</tr>
<tr>
<td>North</td>
<td>R-3 SF RES</td>
<td>House</td>
<td>0-5 DU AC</td>
</tr>
<tr>
<td>South</td>
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<tr>
<td>West</td>
<td>Briargate Terrace and beyond R-3 SF RES</td>
<td>House</td>
<td>0-5 DU AC</td>
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MEMORANDUM

TO: DuPage County Development Committee
FROM: DuPage County Zoning Board of Appeals
DATE: October 11, 2018
RE: T-1-18 Text Amendments to the County Zoning Ordinance relative to Adult Business Uses and Performance Standards

DuPage County Development Committee: October 16, 2018:

Zoning Board of Appeals: October 11, 2018: The ZBA recommended to approve the following Text Amendments to the DuPage County Zoning Ordinance relative to the following:

1. Adult Business Uses:
   a. Add to the Definition section language relative to Adult Business Uses relating to service provided to people age 21 years and above: 37-302: DEFINITIONS;
   b. Add to ADULT BUSINESS USES section language relative to service provided to people age 21 years and above: Section: 37-416.

2. Add to the Performance Standards language relative to certain chemical and toxic substances. PART 3. PERFORMANCE STANDARDS

ZBA Vote (To Approve) 7 Ayes, 0 Nays

FINDINGS OF FACT:

1. The ZBA finds that Amendment #1- a and b correlate to one another as the amendment to the adult business definitions and use requirements adding language that any use that provides a service to people age 21 years or older shall be considered an adult business use and therefor subject to all the adult business use regulations of the County Zoning Code is reasonable and provides clarity to the ordinance and the County’s enforcement capabilities.

2. The ZBA finds that the exception to this proposed requirement that any use that offers service to people age 21 years or older can provide such adult use or service in a zoning district other than an I-1 and I-2 Zoning District provided the user has a license or permit to do so (e.g.: a liquor license) is reasonable and protects the rights of those uses while at the same time assures a reasonable review and vetting of the services and management of those business.
3. The ZBA finds that the language adding to PART 3. PERFORMANCE STANDARDS relative to certain chemical and toxic substances correlates with the recent Building Code Amendments adopted by the County Board on October 9, 2018.

4. The ZBA finds that while the Zoning Ordinance currently adequately regulates the entitlement process for the manufacturing, use and/or storage of certain types of chemical and toxic substances and materiel through the Zoning Board of Appeals Conditional use zoning process, the proposed change will specifically add the term ethylene oxide, (while currently regulated as a, “similar type chemical” to others listed in the code), to the list of chemicals specifically regulated in and by the Performance Standards of the Zoning Ordinance.

5. The ZBA finds that coupled with the recent amendments to the County Building Code the proposed changes will make clear to the development community the requirements and entitlement process that one must procure for these types of uses when making application for a building permit.
**EXHIBIT #1**

**Amendment #1 a and b:** to add to the Definition section language relative to Adult Business Uses relating to service provided to people over the age of 21 years: 37-302:

**DEFINITIONS:**

**ADULT BOOKSTORE AND/OR VIDEO STORE:** An establishment having as a significant or substantial portion of its stock in trade books, magazines, or periodicals or other printed matter, and/or photographs, films, motion pictures, videocassettes, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or the building and or use or service is provided to or restricted to people age 21 years of age or older where no permit or license has been issued otherwise allowing such service to people age 21 years of age or older.

**ADULT BUSINESS USE:** The use of property for the operation of a massage parlor and/or bathhouse, massage school, or any use of which a significant or substantial portion involves an activity distinguished or characterized by its emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas, including, but not limited to, the operation of adult bookstore and/or video store, adult mini-motion picture theater, adult motion picture theater, adult motion picture arcade, adult motel, adult card and gift, or novelty store. For the purposes of this chapter an adult business use shall not be deemed a retail business, recreational or social facility, accessory use or general use unless the building and or use and service is provided to or restricted to people age 21 years of age or older where no permit or license has been issued otherwise allowing such service to people age 21 years of age or older.

Adult Business Use shall also include any other use involving a business use that provides service(s) to patrons (either the general public or club members) that involves the use’s employees performing, engaging in or conducting any of the following with a patron: a) bathing/washing; b) private modeling; c) body painting, or d) any exhibition, performance or dance intended to sexually stimulate any patron; and where the activities described in a) through d), above, are performed for, arranged with, or engaged in a location within the use’s facility that is not in plain view of other persons within the facility, or not in a direct, unobstructed line of view with a manned managerial or security station, or which involve a patron exposing a Specified Anatomical Area or performing a Specified
Sexual Act in view of any employee. For purposes of example and not limitation, exhibitions, performances or dances shall specifically include activities commonly referred to as striptease, table dancing, couch dancing, taxi dancing, lap dancing, private dancing or straddle dancing.

ADULT CARD, GIFT, OR NOVELTY STORE: An establishment having a significant or substantial portion of its stock in trade items, such as cards, games, and novelties which are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas, or the building and or use or service is provided to or restricted to people age 21 years of age or older where no permit or license has been issued otherwise allowing such service to people age 21 years of age or older.

ADULT MINI-MOTION PICTURE THEATER: An enclosed building or any portion or portions thereof having a capacity from six (6) to fifty (50) persons, where, for any form of consideration (including a coin or token inserted into a coin or token operated projector, video screen, or other image producing device), patrons may view films, motion pictures, videocassettes, slides or similar photographic electronic reproductions in which a significant or substantial portion of the total presentation time is devoted to the showing of materials that are distinguished by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or the building and or use or service is provided to or restricted to people age 21 years of age or older where no permit or license has been issued otherwise allowing such service to people age 21 years of age or older.

ADULT MOTEL: A hotel, motel or similar commercial establishment which:

A. Offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other electronic or photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right of way which advertises the availability of such transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions; or

B. Offers a sleeping room for rent for a period of time that is less than eight (8) hours; or

C. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than eight (8) hours.
ADULT MOTION PICTURE ARCADE: An establishment in which electronic, electrical, or mechanical still or slide projectors, motion picture projectors, video screens, closed circuit television transmissions or other image producing devices operable by insertion of a coin or token or for other consideration are maintained for presentation of images to five (5) or fewer persons at a single time per such device and where images presented are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas—**or the building and or use or service is provided to or restricted to people age 21 years of age or older where no permit or license has been issued otherwise allowing such service to people age 21 years of age or older.**

ADULT MOTION PICTURE THEATER: An enclosed building with a capacity of fifty (50) or more persons where, for any form of consideration, patrons may view closed circuit television transmissions, films, motion pictures, videocassettes, slides or similar electronic or photographic reproductions in which a significant or substantial portion of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities of specified anatomical areas—**or the building and or use or service is provided to or restricted to people age 21 years of age or older where no permit or license has been issued otherwise allowing such service to people age 21 years of age or older.**

***

b. To add to the language in Section 37-416.1: DECLARATION OF POLICY:

In the development and execution of these sections regulating and limiting the location of adult business uses, it is recognized that adult business uses, by virtue of their nature, have serious objectionable operational characteristics which can have a deleterious effect upon areas adjacent to them. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary purpose of these regulations is to control the concentration or location of these uses to the fullest extent allowable by law, in order to eliminate such adverse effects. It is not the intent of these sections to deny adults access to sexually oriented materials and services or the providers of such materials and services their market in a manner that is inconsistent with the law.

**In addition, the purpose of these regulations is to regulate a building, use or a service which is provided to or restricted to people age 21 years of age or older where no permit or license has been issued otherwise allowing such access to a building, use or service to people age 21 years of age or older.**
Amendment #2 to add to Chapter 10, PART 3. PERFORMANCE STANDARDS:

37-1006.3: CONDITIONAL USES, RELATED TO AIR POLLUTION:

In the R-1, R-2, R-3, R-4, R-5, R-6, R-7 residence districts, the B-1, B-2 business districts, the O office, the O-R office research, I-1 light industrial and I-2 general industrial districts the following uses are prohibited except as a conditional use:

A. Electric power generating stations, burning fossil fuels.

B. Facilities having fuel combustion emission sources with a total rated heat input in excess of ten million (10,000,000) Btu per hour, burning coal or fuel oil.

C. Facilities emitting more than one hundred (100) tons per year, or five hundred fifty (550) pounds per operating day of sulphur dioxide, ethylene oxide, carbon monoxide, nitrogen oxides, particulate matter, organic material, or any other air contaminant designated by the state of Illinois air pollution agency as harmful to human health.

D. Municipal or commercial incinerator installations established primarily for the burning of refuse. (2005 Code)

37-1009.1: EXPLOSIVE MATERIALS STORAGE; CONDITIONAL USE:

Except by conditional use in the O-R office research, I-1 light industrial and the I-2 general industrial districts, no activities involving and/or storage, utilization or manufacture of materials or products in quantities exceeding five (5) pounds which decompose by detonation shall be permitted. Such materials shall be stored, utilized, and manufactured in accordance with applicable rules and regulations of the DuPage County fire prevention code, the DuPage County Building Code and the Illinois Environmental Protection Agency.

Materials which decompose by detonation include, but are not confined to, all primary explosives such as lead azide, lead styphnate, fulminates and tetracene; all high explosives such as TNT, TNX, EMM, PETN and picric acid; propellants and components thereof, such as dry nitrocellulose, black powder, boran hydrides,
hydrazine and its derivatives; pyrotechnics and fireworks such as magnesium powder, potassium chlorate and potassium nitrate; blasting explosives such as dynamite and nitroglycerine; unstable organic compounds such as acetylides, tetrazoles and ozonides, including but not limited to sulphur dioxide, ethylene oxide, carbon monoxide, nitrogen oxides, particulate matter, organic material, or any other air contaminant designated by the state of Illinois air pollution agency as harmful to human health; unstable oxidizing agents such as perchloric acid, perchlorates, chlorates, and hydrogen peroxide in concentrations greater than thirty five percent (35%); and nuclear fuels, fissionable materials and products, and reactor elements such as Uranium 235 and Plutonium 239.

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