

AGENDA
ZONING BOARD OF APPEALS

April 8, 2015

6:30 PM

CITY HALL, 101 GREEN STREET, GALENA, IL

1. Call to Order
2. Roll Call and Declaration of Quorum
3. Approval of March 11, 2015 ZBA Meeting Minutes.

OLD BUSINESS

4. Cal. No. 15S-02, Owner & Applicant: Dino F. & Sotiri F. Rigopoulos - 219 North Main Street Galena, IL 61036. Parcel: 22-100-169-00, Located on the East side of North Main Street, West 33 feet of Lot 40 and South 11 feet of Lot 41 of the original part of Galena. Common address: 219-221 North Main Street, Galena IL. Request for Special Use Permit for Outdoor Entertainment accessory to the primary use of a restaurant in the existing outdoor dining area at the site.

NEW BUSINESS

5. Cal. No. 15PDA-01, Owner & Applicant: Wilson Bros. Hanover DBA Galena Chrysler – 937 Galena Square Drive, Galena, IL 61036. Parcel: 13-001-106-02, Located in Block 1 Lot 2 in Galena Scenic Meadows Unit 2, Sections 11 & 12, Township 28 North, Range 1 West, City of Galena, Jo Daviess County. Common address: Walmart Outlot #C2, Galena IL. Request for Map Amendment to a Planned Unit Development Plan to amend the default zoning of Walmart Outlot #C2 from Planned Commercial to General Commercial to allow for Outdoor Display Sales & Service. *****Withdrawn*****

COUNTY ZONING

6. None

WORKSESSION & OTHER

7. None

PUBLIC COMMENTS

8. Public Comments
9. Adjourn

Anyone who may require special assistance or special accommodation should contact City staff during office hours at 777-1050, prior to the meeting.

Posted April 2, 2015

By Matt Oldenburg

**MINUTES
ZONING BOARD OF APPEALS
MARCH 11, 2015**

CALL TO ORDER:

Chairperson Rosenthal called the regular meeting of the Zoning Board of Appeals to order at 6:31 PM on Wednesday, March 11, 2015 at City Hall, 101 Green Street, Galena, IL.

ROLL CALL AND DECLARATION OF QUORUM:

As Roll Call was:

Baranski	Absent
Bochniak	Present
Cook	Present
Holman	Present
Nybo	Present
O'Keefe	Present
Rosenthal	Present

A quorum was declared.

Zoning Administrator Matt Oldenburg, City Attorney Joe Nack and Zoning Secretary Deb Price were also present.

APPROVAL OF MINUTES

MOTION: O'Keefe moved, seconded by Bochniak to approve the minutes for the February 17, 2015 meeting.

Price noted that at the bottom of page 10 she omitted that Nybo returned to the table after the Public Hearings. She will insert this into the permanent minutes.

Motion to approve the amended minutes carried on voice vote.

Oldenburg noted that Baranski was now present via electronic attendance.

Rosenthal asked that the minutes reflect that Baranski was present electronically. It was 6:33.

Electronic attendance is allowed by the Zoning Board's Rules of Procedure:

Section 8: Electronic Participation.

A. Rule Statement. Any member may attend any meeting of the Zoning Board of Appeals via electronic means (such as by telephone, video, internet connection or other electronic tools) provided that such attendance is in compliance with this Section 8.

B. Prerequisites. A member may attend a meeting by electronic means if the following conditions are met:

- (1) A quorum is physically present throughout the meeting.
- (2) A majority of the members present throughout the meeting.
- (3) The member has notified the Secretary at least twenty-four (24) hours before the meeting, unless impractical, so that necessary communications equipment can be arranged. Inability to make the necessary technical arrangements will result in denial of a request for electronic attendance at the meeting by the member.
- (4) The member has identified one of the following three (3) reasons why he or she is unable to physically attend the meeting:
 - (a) The member cannot attend because of personal illness or disability; or
 - (b) The member cannot attend because of commitments to his or her employer or the business of the City of Galena do not allow attendance; or
 - (c) The member cannot attend because of a family or other emergency.
- (5) The Secretary, after receiving the electronic attendance request, shall inform the Chairperson and other members of the Board of the request for electronic attendance.

OLD BUSINESS

Cal. No. 15V-01, Applicant: Adam Johnson – 211 Fourth Street, Galena, IL 61036 and Owner: Matthew Carroll, 319 Meeker Street, Galena, IL 61036. Location: Parcel: 22-100-896-00, Located on Lots 17 and the East part of Lot 16 in Block 24 of the original town of Galena, situated on the West side of the Galena River, City of Galena, Jo Daviess County, Illinois. Common address 319 Meeker Street, Galena, IL 61036. Request for a variance to allow 5 parking spaces to be off-site, contingent upon approval of a Special Use Permit request for a 6-room Small Inn.

Nybo asked that he be allowed to recuse himself from the next two agenda items as he is a guest house owner.

Rosenthal asked that the minutes reflect Nybo's recusal.

MOTION: Bochniak moved, seconded by Cook to approve a positive Finding of Fact for a Variance request to allow 5 parking spaces to be off-site based on the Variance Approval Criteria and contingent upon approval of a Special Use Permit for a 6- room Small Inn.

Discussion: O’Keefe said the Finding of Fact included very few facts. This would grant a special privilege to the applicant. That the property is located next to Downtown Commercial and is more associated with that district seems to say that it doesn’t really matter what the zoning – just ask for whatever you like. When have we ever granted a parking variance to this degree – it is a special privilege. If approved this would basically void the Bed and Breakfast Ordinance. Is it in compliance with the Comprehensive Plan – who knows? We use that whenever we want.

As Roll Call was:

Bochniak	Yes
Cook	Yes
Holman	No
Nybo	Recused
O’Keefe	No
Baranski	Yes
Rosenthal	Yes

Motion carried.

Cal. No. 15S-01, Applicant: Adam Johnson – 211 Fourth Street, Galena, IL 61036 and Owner: Matthew Carroll, 319 Meeker Street, Galena, IL 61036. Location: Parcel: 22-100-896-00, Located on Lots 17 and the East part of Lot 16 in Block 24 of the original town of Galena, situated on the West side of the Galena River, City of Galena, Jo Daviess County, Illinois. Common address 319 Meeker Street, Galena, IL 61036. Request for Special Use Permit to allow a 6-room, owner-occupied, Small Inn in a Low Density Residential District

MOTION: Bochniak moved, seconded by Cook to approve a positive Finding of Fact for a Special Use Permit to allow a 6-room, owner-occupied, Small Inn in a Low Density Residential District.

Discussion: O’Keefe said he was voting against this simply because of the variance. He is not opposed to the special use – just the variance.

Rosenthal said this is a unique property. He is glad someone is willing to take on the cleanup and restoration. Parking was and always will be an issue in Galena. Unless we tear down the hills and fill in the river it will continue to be a problem. Sometimes you have to bend the rules in order for things to happen. He is in favor of the project and hopes Carroll is successful.

As Roll Call was:

Cook	Yes
Holman	No
Nybo	Recused
O’Keefe	No
Baranski	Yes
Bochniak	Yes
Rosenthal	Yes

Motion carried.

Nybo returned to the table.

NEW BUSINESS

Cal. No. 15S-02, Owner & Applicant: Dino F. & Sotiri F. Rigopoulos - 219 North Main Street Galena, IL 61036. Parcel: 22-100-169-00, Located on the East side of North Main Street, West 33 feet of Lot 40 and South 11 feet of Lot 41 of the original part of Galena. Common address: 219-221 North Main Street, Galena IL. Request for Special Use Permit for Outdoor Entertainment accessory to the primary use of a restaurant in the existing outdoor dining area at the site.

MOTION: O’Keefe moved, seconded by Cook to open the Public Hearing on Cal. No. 15S-02.

Motion carried on voice vote.

Attorney Nack swore all those persons in who wished to testify at tonight’s public hearing.

Dino Rigopoulos, 221 N Main Street, Galena said he would like to provide tasteful acoustic music for his patrons on the outdoor patio. All regulations would be followed and no amplification would be used. Looking from Main Street, the entertainer would be located in the front left corner facing the patio/courtyard. The sound would project towards Commerce Street rather than Main Street. He wants to try it – maybe it works maybe it doesn't.

Rosenthal asked those in favor of the request to come forward. No one did.

Rosenthal asked those opposed to the request to come forward and testify. No one did.

MOTION: Bochniak moved, seconded by Cook to close the Public Hearing on Cal. No. 15S-02.

Motion carried on voice vote.

MOTION: O'Keefe moved, seconded by Holman to draft a positive Finding of Fact to approve a request for a Special Use Permit for Outdoor Entertainment accessory to the primary use of a restaurant in the existing outdoor dining area at the site pursuant to the Approval Criteria.

Discussion: Nybo said he was in favor of this the first time the Zoning Board reviewed it and he is still in favor of this.

O'Keefe said the request met all the approval criteria.

Approval Criteria & Recommendation:

The purpose of a special use review is to provide an opportunity to utilize property for an activity, which under usual circumstances, could be detrimental to other permitted uses and which normally is not permitted within the same district. A special use may be permitted under circumstances particular to the proposed location and subject to conditions that provide protection to adjacent land uses. A special use is not a use by-right and one that is otherwise prohibited without approval of a special use permit.

The application shall demonstrate that the proposed development will comply with the following:

- (1) *Site plan review standards.* All applicable site plan review criteria in § [154.914](#).
- (2) *District standards.* The underlying zoning district standards established in §§ [154.201](#) through [154.209](#) including the defining characteristics of the district;
- (3) *Specific standards.* The land use regulations established in § [154.405](#);

(4) *Availability of complementary uses.* Other uses complementary to, and supportive of, the proposed project shall be available including, but not limited to: schools, parks, hospitals, business and commercial facilities, and transportation facilities.

(5) *Compatibility with adjoining properties.* Compatibility with and protection of neighboring properties through measures such as:

(a) *Protection of privacy.* The proposed plan shall provide reasonable visual and auditory privacy for all dwelling units located within and adjacent to the site. Fences, walls, barriers and/or vegetation shall be arranged to protect and enhance the property and to enhance the privacy of on-site and neighboring occupants;

(b) *Protection of use and enjoyment.* All elements of the proposed plan shall be designed and arranged to have a minimal negative impact on the use and enjoyment of adjoining property.

(c) *Compatible design and integration.* All elements of a plan shall coexist in a harmonious manner with nearby existing and anticipated development. Elements to consider include: buildings, outdoor storage areas and equipment, utility structures, building and paving coverage, landscaping, lighting, glare, dust, signage, views, noise, and odors. The plan must ensure that noxious emissions and conditions not typical of land uses in the same zoning district will be effectively confined so as not to be injurious or detrimental to nearby properties.

Nybo said we should include that this use is allowed by Special Use Permit only in the Downtown Commercial District.

As Roll Call was:

Holman	Yes
Nybo	Yes
O’Keefe	Yes
Baranski	Yes
Rosenthal	Yes
Bochniak	Yes
Cook	Yes

Motion carried.

COUNTY ZONING

None

WORKSESSION/OTHER

None

PUBLIC COMMENTS

None

MOTION: Bochniak moved, seconded by Cook to adjourn the meeting at 7:05 pm.

Motion carried on voice vote.

Respectfully submitted by

Deb Price
Zoning Board Secretary

DECISION

ZONING BOARD OF APPEALS OF THE CITY OF GALENA

REGARDING

CALENDAR NUMBER: 15S-02

APPLICATION BY: Dino F. & Sotiri F. Rigopoulous – 219 North Main Street
Galena, IL 61036.

FOR: A Special Use Permit to allow Outdoor Entertainment
accessory to the primary use of a restaurant in the existing
outdoor dining area at the site.

FINDINGS OF FACT

PROCEDURES

Pursuant to law, a public hearing was held by the Galena Zoning Board of Appeals regarding this matter on March 11, 2015. The hearing was advertised in an edition of the Galena Gazette that was available to the general public between 15 and 30 days prior to the hearing. Letters were sent out to notify property owners within 250 feet of subject property of the request and public hearing date. They were invited to testify if they so desired. A quorum of the Board was present at the hearing in which the subject application and materials were reviewed and all persons were heard who desired to testify.

NATURE OF APPLICATION

The applicant is requesting a Special Use Permit to allow Outdoor Entertainment as an accessory commercial land use in the Downtown Commercial District. This land use is allowed by Special Use Permit only in the Downtown Commercial District.

The applicant proposes to offer live acoustic music in the outdoor patio area at Gobbie's, 221 N. Main Street. Their clientele have repeatedly requested the desire to have live music entertainment in the patio area while they are outside enjoying their dining experience. The applicant would like to accommodate this desire within the parameters of the Special Use Permit regulations.

The applicant currently operates a restaurant / sports bar that offers an outdoor dining area to its customers during the warmer seasons. The addition of live music outside will provide visitors

with an entertainment venue outside while dining that previously hasn't existed in the downtown area.

No physical alterations are planned on the site or structure to accommodate this use.

Land uses include Commercial / Tourism / Apartments in all directions.

PUBLIC SUPPORT AND/OR OBJECTIONS

In accordance with Article 9, Table 154.918.1 of the City of Galena Zoning Ordinance, a public hearing was held for the Special Use Request. The Zoning Board of Appeals heard testimony regarding the application from the applicant and the public.

Since the Zoning Board of Appeals is not bound by the strict rules of evidence, substantial latitude is procedurally given in all cases to the kind of evidence that may be made a part of the record. In this case, all testimony and exhibits entered into the record were evaluated and given weight by Board members on the basis of credibility and factuality.

The following persons presented testimony during the public hearings. Their testimony was recorded in the official minutes of the hearing, which are hereby made a part of the findings.

Testimony Presented on Behalf of the Applicant and in Support of the Proposal:

- **Dino Rigopoulos, 221 N Main St** - spoke as the applicant and owner. Dino said he would like to provide tasteful acoustic music for his patrons on the outdoor patio. All regulations would be followed and no amplification would be used. Looking from Main Street, the entertainer would be located in the front left corner facing the patio/courtyard. The sound would project towards Commerce Street rather than Main Street. He wants to try it – maybe it works maybe it doesn't.

Testimony Presented in Opposition to the Proposal:

- **No one spoke in opposition to the request**

APPLICABLE SECTIONS OF THE ZONING ORDINANCE

- Section 154.005 sets forth the Intent and Purpose of the Zoning Ordinance.
- Section 154.201 (C) (6) provides a definition and description of the Downtown Commercial District.
- Table 154.403.1 lists the Permitted Land Uses permitted by right or by Special Use Permit for all Zoning Districts.
- Section 154.406 (K)(10) defines and outlines the regulations for Outdoor Entertainment as an accessory commercial use.
- Section 154.914 lists the criteria for Site Plan Review.

- Section 154.924 sets forth the Purpose, Applicability, Review Criteria, Decision-Maker, Application and Review Procedures, and Validity for Special Use Permits.

CONCLUSIONS

In applying the regulations and pertinent performance standards of the Zoning Ordinance to this particular case, the following conclusions are reached:

1. The subject property is located in the Downtown District.
2. The Zoning Ordinance provides for Outdoor Entertainment as follows:
 - a. Outdoor Entertainment is permitted only by Special Use Permit as an accessory commercial use in the Downtown Commercial District.
3. The Downtown Commercial District is intended to permit both large- and small-scale downtown commercial development at an intensity which provides significant incentives for infill development, redevelopment, and the continued economic viability of existing development. Accordingly, the district standards area crafted to work in conjunction with the requirements of the Historic District. A wide range of office, retail, and lodging land uses are permitted within this district.
4. The applicant seeks a Special Use Permit to allow Outdoor Entertainment as an accessory commercial land use in the Downtown Commercial District.
5. The applicant will ensure that the outdoor entertainment is limited to acoustical performances only during the allotted times allowed by the regulations.

DETERMINATION

Based upon the facts in this case, the Zoning Board of Appeals does find and conclude that the request by Dino F. & Sotiri F. Rigopoulos for a Special Use Permit to allow Outdoor Entertainment as an accessory commercial land use in the Downtown Commercial District should be approved for the following reasons:

1. The site plan review met the criteria for this request.
2. The request meets the district standards for the Downtown Commercial District and is congruous to the defining characteristics of the district.
3. The request meets the detailed land use regulations established for Outdoor Entertainment use. As required by the regulations, hours of operation, location and sound levels of performance were all considered.
4. Complimentary uses are available.
5. The request is compatible with adjoining properties through:
 - a. The protection of privacy will be maintained;
 - b. The elements of the plan are designed and arranged to have a minimal negative impact on the use and enjoyment of adjoining property;
 - c. The elements of the plan will coexist in a harmonious manner with nearby existing properties.
6. This use is allowed only by Special Use Permit in the Downtown Commercial District.

DECISION

NOW, THEREFORE BE IT RESOLVED, that this Zoning Board of Appeals has determined that this request by Dino F. & Sotiri F. Rigopoulos for a Special Use Permit to allow Outdoor Entertainment as an accessory commercial land use in the Downtown Commercial District should be approved.

PASSED AND APPROVED this 11th day of March, A.D. 2015, by the Galena Zoning Board of Appeals by a vote of 7 ayes, 0 nays, 0 absent, 0 abstain, 0 recused.

John Rosenthal, Chairperson

MEMO

To: The Zoning Board of Appeals
From: Matt Oldenburg, Zoning Administrator
Date: April 3, 2015

RE: Cal. No. 15PDA-01, Owner & Applicant: Wilson Bros. Hanover DBA Galena Chrysler – 937 Galena Square Drive, Galena, IL 61036. Parcel: 13-001-106-02, Located in Block 1 Lot 2 in Galena Scenic Meadows Unit 2, Sections 11 & 12, Township 28 North, Range 1 West, City of Galena, Jo Daviess County. Common address: Walmart Outlot #C2, Galena IL. Request for Map Amendment to a Planned Unit Development Plan to amend the default zoning of Walmart Outlot #C2 from Planned Commercial to General Commercial to allow for Outdoor Display Sales & Service. *****Withdrawn*****

The Applicant has withdrawn their request. They will resubmit an application in the future with a new proposal.

Surrounding property owners will be notified of the withdrawal prior to the meeting.