

## September 9, 2020 Galena Zoning Board of Appeals Meeting

### Notice of Meeting by Teleconference

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Due to the essential nature of public meetings in conducting official City business and in line with the prohibition of gatherings, the upcoming Wednesday, September 9, 2020 Galena Zoning Board of Appeals meeting will take place via teleconference utilizing Zoom Video Communications. The meeting will be conducted at Zoom meeting <https://us02web.zoom.us/j/83502146579> (ID: 835 0214 6579), with the following opportunities to participate, and reminders:

- **MEETING START TIME** – ZBA meeting will start at 6:30 p.m.
- **PUBLIC COMMENT** – Public Comment will be conducted as usual near the end of the meeting. To ensure the public will be able to participate the city is providing four ways in which the public can submit their comments.
- **PUBLIC HEARING** – The Public Hearing will be conducted at the beginning of the agenda item. To ensure the public will be able to participate the city is providing four ways in which the public can participate in the public hearing.

TELECONFERENCED — Public is invited to participate via Zoom Video Communications, meeting <https://us02web.zoom.us/j/83502146579> (ID: 835 0214 6579). When the presiding officer calls for public comments during the meeting, an attendee wishing to speak by video and/or audio link will be asked to “raise hand”.

- A. If using a PC or Mac:
    1. During a meeting, click on the icon labeled "Participants" at the bottom center of your PC or Mac screen.
    2. At the bottom of the window on the right side of the screen, click the button labeled "Raise Hand." Your digital hand is now raised. The meeting presiding officer will recognize you to speak for not more than three minutes.
    3. After speaking, lower you hand by clicking the same button, now labeled "Lower Hand."
  - B. If using a mobile device:
    1. Tap "Raise Hand" at the bottom left corner of the screen. The hand icon will turn blue and the text below it will switch to say "Lower Hand" while your hand is raised.
    2. The meeting presiding officer will recognize you to speak for not more than three minutes.
    3. After speaking, lower you hand by clicking the same button, now labeled "Lower Hand."
2. E-MAILED – Public participation can be submitted via email to [mjoldenburg@cityofgalena.org](mailto:mjoldenburg@cityofgalena.org) with the subject "Public Comment (or Public Hearing) – September 9, 2020". The Zoning Secretary will read emails received out loud into the public record.

3. MAILED – Public participation can be mailed to the Galena Zoning Board of Appeals, 101 Green Street, Galena, IL 61036. Please include "ZBA Public Comment or Public Hearing" on the outside of the envelope. Please know that postage delivery time could cause the mailing to arrive after the meeting time.

4. TELEPHONE – Public participation can be by telephone by dialing the following:

Meeting ID: 835 0214 6579

One tap mobile

+13126266799,,83502146579# US (Chicago)

Dial by your location +1 312 626 6799 US (Chicago)

Find your local number: <https://us02web.zoom.us/j/84709765100?pwd=aUErcTVKV0dDZ29ncEJsUFFCYUpXUT09>

- **SOCIAL DISTANCING** – Public meetings will be conducted via teleconference/virtually utilizing Zoom Video Communications to insure recommended social distancing. Join the meeting at <https://us02web.zoom.us/j/84709765100?pwd=aUErcTVKV0dDZ29ncEJsUFFCYUpXUT09> (ID: 847 0976 5100; Password 438193).
- **AGENDA** — The meeting agenda follows this page and is posted at [www.cityofgalena.org](http://www.cityofgalena.org) and on the exterior of City Hall, 101 Green Street, Galena, Illinois.
- **NOTICE** – Members of the public participating in the meeting via Zoom will be muted unless recognized by the presiding officer to speak. Participants joining the meeting via Zoom agree that video and/or audio from their computer or device may be broadcast to other meeting participants and may be recorded. By joining the meeting, participants also agree that their video feed to the meeting may be disabled by the presiding officer and their audio feed may be muted. Members of the public participating via Zoom are encouraged to test their system prior to the meeting start time and become familiar with any changes to the Zoom operating environment that may have been made by Zoom.
- **QUESTIONS** — Questions about the teleconference meeting may be directed to Zoning Administrator, Matt Oldenburg at [mjoldenburg@cityofgalena.org](mailto:mjoldenburg@cityofgalena.org) or 815-777-1050.



# City of Galena, Illinois

## AGENDA

### ZONING BOARD OF APPEALS

WEDNESDAY, SEPTEMBER 9, 2020  
6:30 P.M. – CITY HALL 101 GREEN STREET

ZOOM TELECONFERENCE MEETING (ID: 835 0214 6579)  
<https://us02web.zoom.us/j/83502146579>

ITEM	DESCRIPTION
20Z-2001	Call to Order by Presiding Officer
20Z-2002	Roll Call
20Z-2003	Establishment of Quorum

### APPROVAL OF MINUTES

ITEM	DESCRIPTION	PAGE
20Z-2004	Approval of the Minutes of the Regular Meeting of August 12, 2020.	3 - 9

### UNFINISHED BUSINESS

ITEM	DESCRIPTION	PAGE
20S-06	Elisabeth Kempner – Request for Special Use Permit to allow Outdoor Entertainment as an Accessory Commercial Use in the Downtown Commercial District at 116 S. Main Street.	10-13

### NEW BUSINESS

ITEM	DESCRIPTION	PAGE
	None	

### OTHER BUSINESS

ITEM	DESCRIPTION	PAGE
20Z-2005	Public Comments Not to exceed 15 minutes as an agenda item Not more than 3 minutes per speaker	
20Z-2006	Adjournment	

**CALENDAR INFORMATION**

BOARD/COMMITTEE	DATE	TIME	PLACE
Zoning Board of Appeals	Wednesday, October 14, 2020	6:30 P.M.	Zoom Teleconference Meeting: Meeting ID information to be announced.

Posted: September 4, 2020 at 4:00 p.m. Posted By: Matt Oldenburg

**MINUTES  
ZONING BOARD OF APPEALS  
AUGUST 12, 2020**

**ZOOM TELECONFERENCE MEETING (ID: 821 5841 8843; Password 089311)**  
<https://us02web.zoom.us/j/82158418843?pwd=RmtjUjNtSXkwSEQzNFZlMkd0RHl5UT09>

**CALL TO ORDER:**

Chairperson Rosenthal called the regular meeting of the Zoning Board of Appeals to order at 6:30 PM on Wednesday, August 12, 2020 at City Hall, 101 Green Street, Galena, IL.

**ROLL CALL AND DECLARATION OF QUORUM:**

As Roll Call was:

Baranski	Present
Bochniak	Absent
Calvert	Present
Cook	Present
Jansen	Absent
Nybo	Present
Rosenthal	Present

A quorum was declared.

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

**APPROVAL OF MINUTES**

**MOTION:** Cook moved, seconded by Calvert to approve the July 8, 2020 minutes.

Motion carried.

**UNFINISHED BUSINESS**

Cal. No. 20S-05, Applicant: Adam Johnson, 211 Fourth Street, Galena, IL 61036 and Owner: Christine White, 9396 West Powder House Hill Road, Galena, IL 61036. Location: Parcel: 22-100-013-00, Lot 10 and Part of W 97' of Lot 11, Lots between Main & Bench Streets of the Original City of Galena, Galena, Jo Daviess County, Illinois. Common Address is 523 South Main Street, Galena, IL 61036. Request for Special Use Permit to allow Accommodations, Vacation Rental in the Downtown Commercial District.

**MOTION:** Baranski moved, seconded by Cook to ratify the Finding of Fact for Cal. No. 20S-05 as written.

As Roll Call was:

08-12-2020

1

Bochniak	Absent
Calvert	Yes
Cook	Yes
Jansen	Absent
Nybo	No
Baranski	Yes
Rosenthal	Yes

Motion carried.

### **NEW BUSINESS**

Cal. No. 20S-06, Applicant and Owner: Elisabeth Kempner, 116 South Main Street, Galena, IL 61036. Location: Parcel: 22-100-142-00, S 13 Ft. Lot 20 & N 3-1/2 Ft. Lot 19, East Side of Main Street, Original City of Galena, Galena, Jo Daviess County, Illinois. Common Address is 116 South Main Street, Galena, IL 61036. Request for Special Use Permit to allow Outdoor Entertainment as an Accessory Commercial Use in the Downtown Commercial District.

**MOTION:** Cook moved, seconded by Calvert to open the public hearing for Cal. No. 20S-06.

Motion carried by voice vote.

Nack swore in all those who wished to testify at tonight's public hearing.

Adam Johnson, 211 Fourth Street Galena presented an application for outdoor seating behind 116 South Main Street. Based on the area calculations the space that will be used is slightly smaller than what it is there now. They will be adding border landscaping along the outside wall which will remove some square footage.

Rosenthal asked if the parking area stays.

Johnson said it would.

Baranski asked if the courtyard fence was already there. The plans also show a bathroom being added.

Johnson said the courtyard fence is already there and a bathroom is being added toward the back of the building.

Baranski asked who the courtyard seating was for. Will all users of the building be able to use this?

Johnson said it was only for patrons of the bar.

Rosenthal asked if they would be serving food.

Johnson said nothing would be prepared there.

Elisabeth Kempner, 11440 Dandar Galena said she and her sister are the owners of the champagne bar. The outdoor courtyard will offer patrons a comfortable, private outside area to gather away from Main Street.

Rosenthal asked about the number of people allowed.

Johnson said fifteen square feet is required per person – he thought maybe twenty.

Kempner said she figured sixteen people - four tables of four people.

No one spoke in opposition to the request.

**MOTION:** Baranski moved, seconded by Calvert to close the public hearing for Cal. No. 20S-06.

**MOTION:** Baranski moved, seconded by Nybo to draft a positive Finding of Fact for Cal. No. 20S-06 as written.

Discussion : Baranski said he didn't feel there would be a negative impact on the area with only sixteen people in the outdoor patio area. With everything that is happening right now and for future use this will be a helpful thing.

Rosenthal said there is a similar outdoor patio area on North Main Street which has never been a problem.

Baranski reviewed 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. *The proposed plan meets the site plan review standards.*
- (2) *District standards.* The underlying zoning district standards established in § 154.201 through § 154.209 including the defining characteristics of the district; *This proposed use meets the district standards.*
- (3) *Specific standards.* The land use regulations established in § 154.406; *The proposed use meets the specific standards established in §154.015, §154.403.1 and §154.406(D)(18).*
- (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. *Complimentary uses are available to the project.*

(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. *The proposed use will protect the privacy of adjacent properties.*

(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. *There is no change to the physical aspect of the existing development and therefore should have a minimal impact on the use and enjoyment of adjacent properties.*

(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. *The design and integration of the proposed use has no projected impact on adjacent properties regarding nuisances.*

**The Zoning Board of Appeals can grant, conditionally grant, or deny all applications for a Special Use Permit or an amendment thereof. If the Board would like to grant the request, a motion to draft Findings of Fact should be entertained. The Findings of Fact will then be presented for final consideration at the next Board meeting.**

The request meets all the approval criteria.

As Roll Call was:

Calvert	Yes
Cook	Yes
Jansen	Absent
Nybo	Yes
Baranski	Yes
Bochniak	Absent
Rosenthal	Yes

Motion carried.

Cal. No. 20A-03, Applicant and Owner: Ramonalisa, LLC, 1480 US Route 20 W, Elizabeth, IL 61028. Location: Parcel: 06-000-167-00, Part of Lot 1, Grant Hills Motel Place, S21, T28N, R1E, Galena, Jo Daviess County, Illinois. Common Address is 9372 US Route 2 W, Galena, IL 61036. Request for Rezoning from Limited Agriculture to General Commercial upon annexation into the City of Galena.

**MOTION:** Baranski moved, seconded by Cook to open the public hearing for Cal. No. 20A-03. Motion carried by voice vote.

Nack swore in all those who wished to testify at tonight's public hearing.

Bill Vincent, 8 Arrowwood Drive Galena said earlier this year his septic system failed. He went to the County Health Department to get a permit but was told he would need to tie into the city sewer.

Rosenthal asked if it was because he didn't have enough room for a new septic.

Vincent said legally it was not possible for him to install a new septic because he was within 150 feet of the city sewer.

Rosenthal asked Nack and Oldenburg if that was true.

Nack said it was.

Oldenburg said if a property is within 1000 feet commercially of city sewer service you are required to tie in per State, County and City statute. Additionally, the city requires you to annex if you are adjacent to corporate boundaries.

Nybo asked if this property was on city water.

Oldenburg said it is not. They are allowed to continue using their private well but if it fails, they will need to connect to the 12" main that is near the property.

No one else spoke in favor of or in opposition of the request.

**MOTION:** Cook moved, seconded by Calvert to close the public hearing for Cal. No. 20A-03.

**MOTION:** Baranski moved, seconded by Cook to send a positive recommendation to the City Council for Cal. No. 20A-03.

Discussion: Baranski said annexation as it relates to zoning and getting properties off septic and well are all good things.

Baranski reviewed the approval criteria:

**Approval Criteria & Recommendation for Map Amendment:**

In order to maintain internal consistency within this code and on the zoning map, proposed amendments to the text and zoning map must be consistent with the purposes stated herein.

- In determining whether the proposed amendment shall be approved, the following factors shall be considered:
  - (1) Whether the existing text or zoning designation was in error at the time of adoption;
  - (2) Whether there has been a change of character in the area or throughout the city due to installation of public facilities, other zone changes, new growth trends, deterioration, development transitions, etc.;
  - (3) Whether the proposed rezoning is compatible with the surrounding area and defining characteristics of the proposed zoning district or whether there may be adverse impacts on the capacity or safety of the portion of street network influenced by the rezoning, parking

problems, or environmental impacts that the new zone may generate such as excessive storm water runoff, water, air or noise pollution, excessive nighttime lighting, or other nuisances;

- (4) Whether the proposal is in conformance with and in furtherance of the implementation of the goals and policies of the Comprehensive Plan, other adopted plans, and the policies, intents and requirements of this code, and other city regulations and guidelines;
- (5) Whether adequate public facilities and services are available or will be made available concurrent with the projected impacts of development in the proposed zone;
- (6) Whether there is an adequate supply of land available in the subject area and the surrounding community to accommodate the zoning and community needs; or
- (7) Whether there is a need in the community for the proposal and whether there will be benefits derived by the community or area by the proposed rezoning.

**The Zoning Administrator and Zoning Board of Appeals shall make recommendations and the City Council shall take final action.**

**(1) When the Zoning Board of Appeals or City Council deems it necessary or expedient, additional property in the zoning district may be considered for a zoning change provided that this additional property is also addressed in the public hearing notice, in accordance with § 154.919(F).**

**(2) In the event of a written protest against a proposed amendment signed and acknowledged by the owners of 20% of the frontage proposed to be altered or by the owners of 20% of the frontage immediately adjoining or across the alley or rear line therefrom or by the owners of 20% of the frontage directly opposite the frontage proposed to be altered as to such regulations or zoning district and filed with the City Clerk, such amendment shall not be passed except by the favorable vote of two-thirds of all of the selected members of the City Council.**

The request meet all the approval criteria.

As Roll Call was:

Cook	Yes
Jansen	Absent
Nybo	Yes
Baranski	Yes
Bochniak	Absent
Calvert	Yes
Rosenthal	Yes

Motion carried.

**OTHER BUSINESS**

None

**PUBLIC COMMENTS**

None

**MOTION:** Cook moved, seconded by Calvert to adjourn the meeting at 6:50 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:** 20S-06

**APPLICATION BY:** Elisabeth Kempner, 116 South Main St., Galena, IL 61036.

**FOR:** A Special Use Permit to allow Outdoor Commercial Entertainment as an accessory commercial use in the Downtown Commercial District.

**FINDINGS OF FACT**

**PROCEDURES**

Pursuant to law, a public hearing was held by the Galena Zoning Board of Appeals regarding this matter on August 12, 2020. 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 the outdoor patio area behind their building at 116 South Main Street. The patio area faces South Commerce Street and is enclosed on three sides behind the principal structure. The applicant would like to accommodate their guests to enjoy the outdoor area in the rear of the building within the parameters of the Special Use Permit regulations. There are multiple land uses within this property; this use serves as an accessory use to the principal commercial land use on the ground and second levels that are considered to be Indoor Commercial Entertainment.

The area of the patio is at the 15% required area of the principal use.

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

Staff recommends approval of this request.

### **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:**

- **Adam Johnson, 211 Fourth Street, Galena**, presented an application for outdoor seating behind 116 South Main Street. Based on the area calculations the space that will be used is slightly smaller than what it is there now. They will be adding border landscaping along the outside wall which will remove some square footage.

Rosenthal asked if the parking area stays.

Johnson said it would.

Baranski asked if the courtyard fence was already there. The plans also show a bathroom being added.

Johnson said the courtyard fence is already there and a bathroom is being added toward the back of the building.

Baranski asked who the courtyard seating was for. Will all users of the building be able to use this?

Johnson said it was only for patrons of the bar.

Rosenthal asked if they would be serving food.

Johnson said nothing would be prepared there.

- **Elisabeth Kempner, 11440 Dandar, Galena**, said she and her sister are the owners of the champagne bar. The outdoor courtyard will offer patrons a comfortable, private outside area to gather away from Main Street.

Rosenthal asked about the number of people allowed.

Johnson said fifteen square feet is required per person – he thought maybe twenty.

Kempner said she figured sixteen people - four tables of four people.

### **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.

## **DETERMINATION**

Based upon the facts in this case, the Zoning Board of Appeals does find and conclude that the request by Elisabeth Kempner 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 consistent with the defining characteristics of the district.
3. The request meets the detailed land use regulations established for Outdoor Entertainment use.
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 Elisabeth Kempner 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 12<sup>th</sup> day of August, A.D. 2020, by the Galena Zoning Board of Appeals by a vote of 5 ayes, 0 nays, 2 absent, 0 abstain, 0 recused.

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John Rosenthal, Chairperson