

**MINUTES
ZONING BOARD OF APPEALS
OCTOBER 9, 2013**

CALL TO ORDER:

Chairperson Rosenthal called the regular meeting of the Zoning Board of Appeals to order at 6:30 PM on Wednesday, October 9, 2013 at City Hall, 312 ½ N. Main Street, Galena, IL.

Kim Cook was appointed by Mayor Renner and approved by the City Council to fill Robert Carlisle's unexpired term.

ROLL CALL AND DECLARATION OF QUORUM:

As Roll Call was:

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

A quorum was declared.

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

APPROVAL OF MINUTES

MOTION: O'Keefe moved, seconded by Bochniak to approve the minutes from the August 14, 2013 meeting.

Motion carried on voice vote.

OLD BUSINESS

Cal. No. 13A-02, Applicant & Property Owner: Daniel Balocca – Address commonly known as "The Felt Manor", located at 125 South Prospect Street, Galena, IL 61036; PIN: 22-100-565-00. Request for **Text Amendment** to Zoning Ordinance Table 154.403.1 *Permitted Land Uses* and associated Small Inn definition in §154.015 to amend **Low Density Residential District** to allow for Public Accommodations, **Small Inns** to operate by **Special Use Permit only**. The Felt Manor currently operates as a Bed & Breakfast with 5 guest rooms within a Low Density Residential District. Small Inns are allowed 6-8 guest rooms by Special Use Permit only in Commercial and Neighborhood Office Districts. The proposed Text Amendment will affect

Public Guest Accommodations in Low Density Residential Districts within corporate boundaries of the City of Galena. The Applicant's request was concurrently requested with a Special Use Permit to allow a 6th guest room in the Carriage House at the rear of the property. This public hearing is a directed continuation, by City Council, of the public hearing held with the Zoning Board of Appeals on July 10, 2013.

Nybo asked to be recused due to the fact that he is the owner of a small inn.

Rosenthal granted Nybo's request.

MOTION: Baranski moved, seconded by Bochniak to open the Public Hearing on Cal. No. 13A-02.

Motion carried on voice vote with O'Keefe voting no.

City Attorney Nack swore all those in who wished to testify at the Public Hearing.

Dan Balocca, 125 S Prospect Street, Galena said he is asking for the Text Amendment to allow Small Inns in Low Density Residential Districts by Special Use Permit only. Currently Small Inns are not allowed in Residential Districts and there is no measure which allows someone to apply for a SUP to operate a Small Inn. This request aligns with the City's intent in Section 154.406. This section was modified in December of 2012 to add the words large and historic. He wants the City to provide the process so one is allowed to apply for a Special Use Permit. All he asks is that the Board do their job by hearing his request and determining its merit. There are currently four small inns in Low Density Residential areas. There are few if any complaints that he knows of. Guest accommodations contribute to the hotel motel tax - which helps pay for the visitor's center, they contribute with increased tourism, the improved properties generate more taxes for the interpretive history sites and they help provide for a total experience for those visiting Galena. Tourists want a total package when visiting Galena. The City's ordinance allows for maintenance of large buildings. Balocca said he has invested a great deal of money into his property and would continue to do so if allowed to apply for a SUP.

Rosenthal asked all those wishing to speak in favor of the request to come forward and testify,

Adam Johnson, 211 Fourth Street, Galena said as an architect he has had to apply for a Special User Permit before. It is not a rubber stamp of approval. Allowing someone to apply for a SUP would mean a property owner would be able to derive the maximum use of their property and help offset expenses associated with the maintenance of such large historical properties. We don't want these properties demolished. A SUP allows the City to have controls in place; if these are violated the SUP can be revoked. The city should allow the possibility for one to apply.

O'Keefe asked if all B and B's should be allowed to apply.

Johnson said no. Each property is unique. The application process needs to be gone through to see if the use fits.

Baranski asked Johnson if he felt the ordinance should allow someone to apply for a SUP.

Johnson said yes. You should be able to apply, but that does not mean all should or would get approval.

Anna Hemm, 226 S High Street, Galena said this Special Use would be needed to save the outbuildings. Would the City rather see these buildings decay and ultimately be destroyed. Be open minded and allow this use. The historical buildings are what bring people to Galena.

O'Keefe asked if buildings were more important than the residences which would neighbor a Small Inn.

Hemm said these buildings are important. She thought when someone moves to Galena and into these areas you should probably expect that there will be additional traffic in these historic districts. Everyone who lives on High Street parks on the street. Why should parking negatively impact a Small Inn.

Carter Newton, 129 S High Street, Galena has lived on High Street for many years near several Bed and Breakfast establishments. Before that his wife's parents lived here. In the 1980's there were two zoning issues on Park Avenue that drew much concern. The proposed 4-plex and the group home had residents worried about the quality of the projects and how they would impact their daily lives on Park Avenue. Both projects provided much needed services for Galena and have caused no real problems for the neighbors. Newton supports the request and asks that the Board approve it.

Bill Fawell, 617 Ridge Street, Galena said he is in favor of the right to apply for a Special Use Permit. In this historically rich town a property owner should be able to apply. We want these properties maintained. Commercial properties need support. If the Text Amendment is approved the scrutiny would come upon the individual Special Use Permit application.

Rosenthal asked all those opposed to the request to come forward and testify.

Rick Pariser, 113 S High Street, Galena said he was addressing the Text Amendment request only. He is asking the Zoning Board to protect his rights in his Low Density Residential home. There are places for Small Inns – Commercial Districts. More of something is not always better. You would be taking tranquil neighborhoods where home owners should be able to expect that this type of environment continue. Allowing Small Inns encroaches on neighboring homeowners rights. Small Inns are Commercial properties and should be in Commercial Districts.

Baranski asked Pariser if someone should have the right to apply. There would be a change in the text so an applicant could apply for a SUP to allow a Small Inn on their property. The Board would need to review the application to see if it was a good fit for a Small Inn.

Pariser said he feels Small Inns should not be in allowed in Residential Districts. He does not believe there should be the ability to apply for a SUP for Small Inns in Residential Districts.

Richard Luther, 32 Cemetery Ridge Road, Galena said he has 37 years of experience in the public sector working in planning and historic planning in California and Iowa. He loves this area; Galena is a unique historic community with dynamic tourism. The idea of introducing Commercial uses into Low Density Residential neighborhoods where single family homes should be most protected is controversial. Bed and Breakfast and small home occupations are allowed in LDR. This district is important because of the historic nature of the homes. Small Inns are for visitors. Small numbers of these should be in Commercial Districts. He does understand why some owners would want a change allowing a Small Inn. He thinks that changing to allow this, no matter how well intended, will result in unintended problems. If this change is approved there could be more requests than expected. He does feel that SUP's can be a good way to address a request. The Board may find that during individual SUP requests there may be many more opposed to the request. Commercial uses are not compatible in residential areas. The City of Galena code does allow B and B's and that seems to be working. He asks that the Zoning Board deny or table the request until they are able to determine what the specific impacts would be. There may be other solutions to resolve the preservation of certain buildings.

Baranski asked what problems would be created if a five room B and B was allowed to add an additional room.

Luther said it depends on the circumstances. In some instances there may not be any problems.

Baranski said the Zoning Board controls a Special Use Permit and can include language to protect the neighborhood.

Luther said that depending on the size and development conditions of the property that may be helpful. Even with some B and B's the additional rooms can cause difficulties. There is an expectation in the code that these properties be compatible with the Residential Districts they reside in.

James Wirth, 121 S High Street, Galena has studied the Text Amendment ordinance. Section 154.005 reads that the purpose is to preserve and protect. The code is not written for Commercial uses to be located in Residential neighborhoods. A Small Inn could end up virtually anywhere in Galena. Property owners would never know if their location was safe from this type of development. Other Commercial type properties would never be allowed in a Residential District - why would a Small Inn be appropriate. A SUP can dictate some conditions, but the general conditions of encroachment, transient rental, not being owner occupied, property values and salability may not be able to be remedied by the Zoning Board. Wirth is very much concerned about preservation, but alternatives should be looked at. What other options are there. A higher intensity use should not be pursued.

O' Keefe believes Small Inns should only be allowed in Commercial Districts.

Wirth concurred.

Baranski asked what impact a sixth room would have if added to a five room B and B.

Wirth said if it was that simple it wouldn't be a problem. Fire code states when you have six rooms there are numerous conditions that must be complied with.

Baranski asked how one more room affects Wirth's neighborhood.

O'Keefe said a Small Inn does not have to be owner occupied.

Baranski said almost any condition can be written into a Special Use Permit. In essence it is one more room. The Board reviews the applications and can place restrictions of the SUP.

Wirth said if it were one more room it would be one thing. Why would anyone want to have just six rooms when they could have eight rooms as the ordinance allows for Small Inns?

Rosenthal asked Balocca if he wished to rebut the testimony of those opposed.

Balocca said a B and B is a Commercial use. He is asking the Board to do their job – listen to requests, approve and if needed limit the permit with conditions.

MOTION: Baranski moved, seconded by Bochniak to close the Public Hearing on Cal. No. 13A-02.

MOTION: Baranski moved, seconded by Bochniak to approve the request for a Text Amendment allowing Small Inns to operate in Low Density Residential Districts by Special Use Permit only.

Discussion: Baranski said he appreciates everyone who has taken time to attend these meetings. He referred to Carter Newton's testimony concerning Park Avenue. There were concerns, but everything has worked out with both of those projects. He said he cannot indicate a specific area where a Small Inn would be appropriate in a Residential District, but currently you can't even apply to be considered for one. Bed and Breakfasts are Commercial uses. This could definitely be a low impact use. He would like the Board to be able to hear a request. The SUP process allows the Board to look at each request. The Board is under no pressure or expectation to approve a request. There are situations where a Small Inn makes sense.

O'Keefe said the intent of the B and B ordinance was to help homeowners off set the high costs of maintaining large historic single family homes. Some of these were grandfathered in. The biggest difference between a B and B and a Small Inn is that Small Inns are not owner occupied. This changes the character of the property. A change like this is major - the Board would be making a significant change to the B and B ordinance. The Board has looked at the B and B code several times since it was written. Opinions do change. O'Keefe said he has nothing against what Balocca is trying to do. Making a change to the B and B ordinance is a big deal. He lived across from a B and B for twenty years and it wasn't a problem, but now that he doesn't live near one - guess what. He prefers not living across from a B and B.

Rosenthal said when looking at the seven approval criteria he doesn't think anything has changed. You have to protect the neighborhoods. He understands that each application is

reviewed on its own merits. Once this door is opened you have to live with it. There is a reason it is written the way it is.

Baranski said he believes the Zoning Board can do their job and objectively review each application on its own merit.

Rosenthal said the current board members will not always be sitting in these chairs. Others may not be concerned with the integrity of the current Board's decisions.

O'Keefe said he thought the City Council should be making these changes.

Baranski said a change could be made that in a Residential District any new Small Inn would have to be owner occupied. The Comprehensive Plan often refers to historic integrity. There may be certain situations where a Small Inn would be ideal in a Residential District.

Rosenthal asked why the City Council sent this back to the Zoning Board.

Baranski said due to a technicality related to when the original Public Notice was published in the Galena Gazette.

O'Keefe said the City Council could always over turn their decision.

Nack said the Board should review the approval criteria.

Baranski said he was not sure if there had been an error in the writing of the text as #1 asks. We have made other changes to the code. It's hard to know.

Baranski said #2 – change of character in the area or throughout the city – does not apply.

O'Keefe said the request does not meet the broad definition of #3 – compatibility with the surrounding area and defining characteristics of the proposed zoning district He said this was his main reason for opposing the request.

Baranski said he thinks it could – depending on the SUP request.

Baranski said the request does comply with #4 – the proposal is in compliance with and in furtherance of the implementation of the goals and policies of the Comprehensive Plan.

O'Keefe said he disagrees. Looking at the definition of Small Inn in the B and B ordinance does not comply with #4.

Baranski said # 5 – adequate public facilities and services are available or will be made available - would be determined by the individual SUP requests.

Baranski said that #6 was also dependent upon the individual SUP request: is there adequate supply of land available in the subject area and surrounding community to accommodate the zoning.

Baranski said #7 would apply - is there a need in the community for the proposal and will there be benefits derived by the community with the proposed rezoning.

Rosenthal said personally he does not agree with #7.

O’Keefe said the B and B definition of a Small Inn clearly states they are only permitted in Commercial Districts. It was intended to keep Residential Districts just that.

As Roll Call was:

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

Motion denied.

MOTION: O’Keefe moved, seconded by Cook to approve a negative recommendation to the City Council for Cal. No. 13A-02.

As Roll Call was:

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

Motion carried.

Cal. No. 13S-03, Applicant & Property Owner: Daniel Balocca –125 South Prospect Street, Galena, IL 61036. Location: Lot Fifteen (15) and Sixteen (16) in Block Number Three (3) in the City of Galena on the West side of the Galena River in the County of Jo Daviess in the State of Illinois, common address 125 S. Prospect Street, Galena, IL. Request for Special Use Permit to change the use of the Felt Manor from a 5-room Bed & Breakfast to a 6-room Small Inn in the Low Density Residential District, pending Text Amendment to allow Small Inns use in LDR by Special Use Permit. Request was denied at public hearing on August 14, 2013. Letter of withdrawal has been received on August 26, 2013 from Daniel Balocca to withdraw his request for Special Use Permit, Cal. No. 13S-03.

MOTION: O’Keefe moved, seconded by Baranski to allow the applicant to withdraw his Special Use Permit request - Cal. No. 13S-03.

As Roll Call was:

Holman	Absent
Nybo	Recused
O'Keefe	Yes
Baranski	Yes
Bochniak	Yes
Cook	Yes
Rosenthal	Yes

Motion carried.

Nybo returned to the table.

NEW BUSINESS

None

COUNTY ZONING

None

WORKSESSION/OTHER

None

PUBLIC COMMENTS

Dan Balocca stated the Board had now voted once to approve and once to deny his request. This is an inconsistent decision.

Rick Pariser said there was more input, more information and a new Board member to which to debate and make a decision.

MOTION: O'Keefe moved, seconded by Bochniak to adjourn the meeting.

Motion carried on voice vote.

Rosenthal adjourned the meeting at 7:57 PM.

Respectfully submitted by

Deb Price
Zoning Board Secretary