

**MINUTES  
ZONING BOARD OF APPEALS  
AUGUST 13, 2014**

**CALL TO ORDER:**

Chairperson Rosenthal called the regular meeting of the Zoning Board of Appeals to order at 6:30 PM on Wednesday, August 13, 2014 at City Hall, 101 Green Street, Galena, IL.

**ROLL CALL AND DECLARATION OF QUORUM:**

As Roll Call was:

Baranski	Present
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:** Bochniak moved, seconded by Cook to approve the minutes for the July 9, 2014 meeting.

Motion carried on voice vote.

**OLD BUSINESS**

Cal No. 14S-06, Applicant & Owner: James Wirth – 121 South High Street, Galena, IL 61036. Location: Parcels: 06-500-170-00 & 06-500-174-03 both part of Lot One (1) in Block Number Twenty-nine (29), Original Town East of Galena River in the County of Jo Daviess in the State of Illinois, common address 901 Fourth Street, Galena, IL 61036. Request for Special Use Permit to allow House Tour as an accessory residential land use in a Low Density Residential District. Continuation hearing scheduled for this meeting. Applicant has submitted written request for a one month extension for continuation of hearing to be held at the September ZBA Meeting.

**MOTION:** Baranski moved, seconded by Nybo to grant the one month extension for Cal. No. 14S-06.

As Roll Call was:

Bochniak	Yes
Cook	Yes
Holman	Yes
Nybo	Yes
O'Keefe	No
Baranski	Yes
Rosenthal	Yes

Motion carried.

### **NEW BUSINESS**

Cal. No. 14A-02, Applicant: City of Galena – 101 Green Street Galena, IL 61036. Request for Text Amendment to Table §154.403.1 *Permitted Land Uses* and Section §154.406 (K)(10) *Outdoor Entertainment* to allow Outdoor Entertainment as an accessory commercial land use, by Special Use Permit only, in the Downtown Commercial District and to append regulations to Outdoor Entertainment land use regulations for the DC District.

**MOTION:** Baranski moved, seconded by Cook to open the Public Hearing on Cal. No. 14A-02.

Motion carried on voice vote.

City Attorney Nack swore all those in who wished to testify at this public hearing.

Zoning Administrator Matt Oldenburg presented for the City. He said the City Council initiated this request and asked him to draft a proposal which was then reviewed at the July 14, 2014 City Council meeting. He looked at the current street performer's ordinance which allows acoustic performances on Main Street. He incorporated this with the existing outdoor entertainment land use regulations found under detailed land use descriptions in the ordinance. This is listed as an accessory commercial land use. Outdoor entertainment would have to be an accessory use to a permitted principal commercial use. It is currently allowed in General Commercial by right and allowed in Planned Commercial Districts by Special Use Permit only. For Downtown Commercial it would seem best if allowed by Special Use Permit only which requires someone to come before the Zoning Board and ask permission for outdoor entertainment. The Zoning Board is the decision maker for Special Use Permits. Oldenburg said additional language had been added to:

**SECTION II: Section §154.406 (K)(10) – Accessory Commercial Land Uses of the City of Galena Zoning Code,** is hereby amended as follows:

- *(Additions are shown as underlined)*

#### **(K) Accessory Commercial Land Uses**

(10) **Outdoor entertainment.** These accessory land uses include a variety of entertainment uses, such as volleyball courts, horseshoe pits, and music stages, where the area of such uses does not exceed 15% of the floor area of the principal use.

(a) *Regulations:*

1. Activity areas shall not be located closer than 100 feet to a residentially zoned property.

2. Facility shall provide a Type IV bufferyard along all borders of the property abutting residentially zoned property, as specified in § [154.605](#).

3. Outdoor entertainment uses shall comply with all other city and state regulations regarding such uses, including, but not limited to, those dealing with noise and lighting.

4. Outdoor musical entertainment in Downtown Commercial District shall also be in compliance with the following:

a. Performing is limited to 10:00 am. to 10:00 p.m.

b. No performer shall utilize any speaker, microphone or mechanical amplification device.

c. No performer shall generate any sound by any means so that the sound is louder than 70 decibels (70dB) on the Capital A Scale of an ANSI approved sound level meter measured at a distance of 50 feet or more, either horizontally or vertically from the point of generation.

Oldenburg said street performers are only allowed to perform until 8:00PM. The amplification language in c is taken from the street performers regulations. With a Special Use Permit approach the Board, at its discretion, can add to the regulations by creating other considerations that might be necessary on a case by case basis.

O'Keefe said Gobbie's already went through this process with the Zoning Board only to have the City Council turn it down.

Oldenburg said yes but that was for a text amendment.

O'Keefe said the SUP would go with the land right.

Baranski and Rosenthal both said yes.

Baranski said the property owner would need to follow the detailed regulations and special conditions.

Oldenburg said if a SUP is approved and an operator becomes a nuisance or abandons the use the Zoning Board and the City can revoke the permit.

Baranski said the location and the allowed decibels as they relate to Main Street are all factors the Board would consider before approving a SUP request.

Rosenthal said it seems to make sense that the Zoning Board makes the conditions for Special Use Permits because we are the ones that approve or deny the request.

Cook asked how street performers fit into this.

Oldenburg said street performers are on City property. Outdoor Entertainment has to be within the confines of the SUP holder's private property. A street performer is required to have a one year renewable license that is allowed by non-home rule cities.

Nybo asked if we limit where street performers perform.

Oldenburg said we limit the hours and the locations.

O'Keefe said the street performer license is one of the best gigs in town. Small amount for the permit and you can play and earn money.

Nybo asked about strolling performances.

Oldenburg said that would not be allowed. Any complaints or possible violations would be addressed with the landowner.

No one was in attendance to testify either in favor of or opposition to the request.

**MOTION:** O'Keefe moved, seconded by Baranski to close the Public Hearing on Cal. No.14A-02.

Motion carried on voice vote.

**MOTION:** Baranski moved, seconded by Bochniak to approve the request for a Text Amendment to Table §154.403.1 *Permitted Land Uses* and Section §154.406 (K)(10) *Outdoor Entertainment* to allow Outdoor Entertainment as an accessory commercial land use, by Special Use Permit only, in the Downtown Commercial District and to append regulations to Outdoor Entertainment land use regulations for the DC District.

**Discussion:** Rosenthal asked about amplifications. Performers need to stay under 70 decibels, but some performers may need amplification to be heard. Can we change this?

Oldenburg said the Board can make this more restrictive, but not less. Amplification would not be allowed.

Nybo said the amplification limit would be the same for both street performers and outdoor entertainment.

O'Keefe asked if there were any permits allowing this in Galena already.

Oldenburg said it is allowed by right in General Commercial. A permit is not required and amplification is allowed. They would need to follow regulations 1-3 for accessory commercial land uses – outdoor entertainment.

Rosenthal asked about special events and dances held downtown.

Oldenburg said these events are approved by the City Council.

Rosenthal said everything should be on the same level. What is allowed downtown for a public event should be what is allowed for the SUP. The City should at least look at this.

Oldenburg said the special events are held on City property.

O'Keefe said the SUP would run with the land. An owner/applicant could obtain the permit and then sell the property to someone who has different ideas for the SUP. There is the potential for problems if the property sells. He doesn't like the City Council giving this back to the Zoning Board.

Baranski reviewed the Approval Criteria:

(1) Whether the existing text or zoning designation was in error at the time of adoption; Baranski said this is either not applicable or it may be that when rewriting the Ordinance the Board really did not take this into consideration.,

(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.; Baranski and the Board agreed that there been a change in the character of Galena and the Downtown Commercial District.

(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; Baranski said there are areas in the downtown district where this would work. With a SUP application the Board can review and see if it meets the regulation criteria and whether it would have an excessively adverse impact on surrounding properties.

(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; Baranski said yes it is.

(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; Baranski said this is either yes or it is not applicable.

(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;

Baranski and the Board agreed that this would be determined by each individual application.

(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. Baranski said as a benefit to the economy and the community yes. It is a good idea.

O’Keefe said again that he does not like the idea of the City Council kicking this back to the Zoning Board.

Baranski said any land use decision is approved by the Zoning Board. He is okay with the Board being responsible for this type of decision. The Zoning Board is the final decision maker for Special Use Permits and the Board has powerful tools when determining the specifics of a Special Use Permit. The Board looks at all the factors and merits of each application to determine if a permit should be issued.

Rosenthal agreed.

O’Keefe said the opinions and viewpoints of the Zoning Board have changed over the years. He sees where this could be a problem in the future.

Rosenthal said the City Council changes too. Changing the text and requiring a Special Use Permit is a better way to address the outdoor music issue. The Zoning Board has a lot of control and can police this as it evolves.

As Roll Call was:

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

Motion carried.

### **COUNTY ZONING**

None

### **WORKSESSION/OTHER**

None

## **PUBLIC COMMENTS**

None

**MOTION:** Bochniak moved, seconded by O'Keefe to adjourn the meeting at 7:03 pm.

Motion carried on voice vote.

Respectfully submitted by

Deb Price  
Zoning Board Secretary