

**MINUTES
ZONING BOARD OF APPEALS
JANUARY 13, 2016**

CALL TO ORDER:

Acting Chairperson Nybo called the regular meeting of the Zoning Board of Appeals to order at 6:34 PM on Wednesday, January 13, 2016 at City Hall, 101 Green Street, Galena, IL.

Nybo asked for a moment of silence to recognize and honor Zoning Board member Dan O'Keefe who died suddenly January 6.

ROLL CALL AND DECLARATION OF QUORUM:

As Roll Call was:

Baranski	Present
Bochniak	Present
Cook	Present
Holman	Absent (arrived at 6:50)
Nybo	Present
Rosenthal	Absent

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 December 9, 2015 meeting.

Motion to approve the minutes carried on voice vote.

OLD BUSINESS

None.

NEW BUSINESS

Nybo said the Board would hear the concept plan first as Board Member Holman was on his way.

Concept Plan Review, Applicant: MSA Professional Services, Inc. for Owner: 997 Galena LLC, 2439 Kruser Rd., Hamilton, NJ 08690. Parcel: 22-200-079-04, Lot 4 of the Galena Square Subdivision, Galena, IL 61036. Request for concept plan review to provide non-binding feedback on proposed development at the outlot for Galena Square. Proposal includes a single-story, 2-3 tenant building to be located in the South parking lot area of the Galena Square Shopping Center.

Steve Schmidt, MSA, 210 S Dodge Street Galena said the property was recently purchased by 997 Galena LLC. They are marketing the vacant property and looking for opportunities to maximize their investment. This would be a build to suit when a tenant is found. The owner is looking to see if the concept they are presenting would be agreeable to the City. There is the potential to add another unit at the end of the building next to Los Aztecas – addition would look identical to what is already there. This addition would not have a big impact on the current structure. The proposed structure in the parking lot would be a free standing building possibly with a drive thru. It would be built as close as possible to Galena Square Drive. The building that is actually constructed will depend on the tenant. The area is currently impervious surface so the addition of any green space would be an improvement. The detention pond should not be an issue as it was constructed for the entire build out. Parking for the new businesses would not be an issue as there is already adequate parking for both new locations although two additional handicapped parking spots would be designated. What they are looking for now is general feedback from the Board.

Baranski asked if they had thought about locating the building so when you drive in on Galena Square Drive you would look at the front of the building not the back.

Schmidt said you could make the back look like the front to be more appealing. There are main sewage lines running through the parking lot and it would be great if they could avoid those. They also thought they would keep this new business near the current ones. This was the first choice or idea. It's not for certain what will actually be proposed.

Bochniak said it seemed coming down the main entry drive and then making a right turn and then a sharp right turn to continue curving right around to the drive thru could be tricky.

Schmidt said they could look to relocate the building to avoid issues such as this.

Nybo said the Highway 20 Corridor Design regulations would have to be followed.

Schmidt agreed. Oldenburg has already discussed these with Schmidt.

Oldenburg explained the land use for a drive thru. This is a PUD and Planned Commercial zoning district which doesn't typically allow a drive thru. When the development was approved in 1990 it was zoned Unrestricted Commercial so that is why we would allow a drive thru.

Nybo asked about covenants and restrictions.

Oldenburg said the City does not get involved in those

In general the Board said they had no objections.

Nybo asked that the record reflect that Board member Holman was now in attendance.

Cal. No. 16S-01, Applicant: Straka Johnson Architects, P.C., 3555 Digital Drive, Dubuque, IA 52003 for Owner: John Coulter, 201 South Main Street, Galena, IL 61036. Location: Parcel: 22-100-049-00, Lot 34 between Main and Bench Streets in the original town of Galena, situated on the West side of the Galena River, City of Galena, Jo Daviess County, Illinois. Common address 201 South Main Street, Galena, IL 61036. Request for Special Use Permit to expand an existing, conforming, Outdoor Dining land use. This request is contingent upon a Street Vacation request to vacate part of Washington Street between Main and Bench Streets.

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

MOTION: Cook moved, seconded by Bochniak to open the Public Hearing on Cal. No. 16S-01.

Motion carried on voice vote.

Jack Coulter, 201 S Main Street, Galena, IL said he would like the Zoning Board to look at his request to expand his current outdoor dining into the paver area of Washington Park. The design would develop, enhance, improve and maintain this area. The changes would be costly, but would improve the area that was redeveloped in 1987. He has been in business in Galena since the mid 1980's with the restaurant above Galena Cellars, Vinny's, Bubba's and One Eleven. The outdoor dining has been a great addition for Gobbie's and Campache's. The proposal would enhance, develop and improve the Washington Street area. This would be a beautiful area to dine and would benefit the City with added employment and taxes. The city would be relieved of all expenses to maintain or improve this area and the visual corridor would be maintained from Main Street to Bench Street. Coulter appreciates the Board hearing his request.

Baranski questioned the operational aspects. Foot traffic would be going up and down the public pedestrian sidewalk and steps all the while servers and staff are traveling the same space. Seems like trouble. He is wondering if there has been any consideration for separating the two streams of traffic.

Coulter said on any busy weekend he can serve 700-1000 people at Vinny's. This does cause some congestion as inside the stairwells are only three feet wide. People are very patient and understanding. Outside at the bottom of the stairs at Main Street the area is about 7 ½ feet wide. It gradually narrows as you travel up but it is still 3 ½ to 4 feet as you get to the garden area. Coulter doesn't believe this is an issue. The proposed dining area is spread out over several levels which helps the traffic. While the restaurant and outdoor area would have a large number of available tables and chairs it does not mean that they would always be 100% occupied.

Baranski said the link from Bench Street to Main Street is vital.

Nybo asked all those in favor of the request to come forward and testify.

Gavin Doyle, 248 Council Fire Circle, Galena said he has known Coulter for 19 years and is proud to support this request. He and Jack have been personal friends since they emigrated from Ireland to Galena. He is an excellent businessman who is always very professional and successful. The architects have drawn up a good plan that will directly impact and enhance the Washington Park area for both locals and tourists.

James Wirth 121 S High Street, Galena, said he was unsure if he was in favor of the project but he did have a question. He was concerned about the grade of the dining area. The grade is very steep – how in the world will dining be an option.

Marty Johnson 28 Vista Ridge, Galena said the current steep slope or grade here will be changed. They will reuse the existing pavers to construct dining terraces. These will go up the hill but not past the stone wall. There would be some improvement with the storm water runoff as it would slow as it traveled down the grade.

Baranski said originally the roadway did not exist until the area was redeveloped from 1984-1987. The grade simply slumped into Washington Street. There were plans to terrace this area but the City Council decided to stop with the pavers.

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

Elizabeth Boggess 116 S Bench Street, Galena said the current function of these steps and the paver area should not be lost. In the 1800's this street existed. This is a wonderful backdrop for

photos and families enjoying the look and feel of Galena's past. If this is allowed to be terraced what is stopping anyone from doing the same on Perry Street. This will set a precedent. The area is not contiguous – the public sidewalk is between the business and the pavers. This is a busy sidewalk as it is but now everyone will be using the sidewalk including wait staff. In the summer you can sit in Washington Park and listen to the musicians. The whole atmosphere will change once dining is allowed. We should commit to saving Washington Park.

Adam Johnson 211 Fourth Street, Galena said this property is not a public threat. Relief does not need to be provided so a business can expand. He agrees that foot traffic will be a concern. Every 30 seconds or so there will be service people making a trip up or down the steps. It may well be a public access but it certainly will not look as though the public can access Bench or Main Street via the sidewalk and steps. He thought the redevelopment of the area was to be a homage to the brick streets as almost every other one had been torn out. The Comprehensive Plan shows a pocket park here. The street and the park and the public access work together. It was done well and we should appreciate it. Once it is changed it will never go back. The view from Main Street will look different.

Baranski asked Johnson if he would think differently if the pedestrian traffic issue could be resolved.

Johnson said this is public space and public access and you need to have the openness of the whole space.

Dan Harms 308 Elk Street, Galena applauded the efforts of the business owner to expand and develop an attractive plan. It did pass through Historic Preservation, but this is Zoning which means land use. The street scope will change – the historic view will change. There will be a pedestrian problem as you will have tables, chairs, umbrellas, heaters and the like. The profile and the entire view will change. Visitors to town will not see this as an access point and by vacating the street you could potentially have issues with infrastructure access. The design does have the potential to have a pervious surface which could help storm water retention and management.

Kathy Leonard 102 N Bench Street, Galena said she agrees with much that has been said. She said the applicant mentioned that others have outside dining but no others have a public sidewalk thru their dining area. The view from Main Street up to the Methodist Church will be lost amongst the tables and chairs. We would be losing a piece of our historic past. Don't keep picking away at what we have left.

Carole Sullivan 7211 W Buckhill, Galena is concerned about the practicalities and safety of mixing the pedestrian traffic and restaurant staff. The stairs and sidewalk have to be navigated to provide service. Getting to the lowest terrace level while dealing with large trays, tourists, locals, children

and pets would be very challenging especially when most would not be anticipating restaurant staff to be on the sidewalk or stairs.

Baranski asked Sullivan if she would feel differently about the request if the pedestrian traffic was no longer an issue.

Sullivan said it would be much safer but she is still concerned with the view. If the pedestrian traffic was somehow separated the public may feel they have more of a right to travel this route. Overall she is not enthusiastic about the request.

Lenny Hosey 117 S Bench Street, Galena said Vinny's is a landmark but he has the same concerns others have spoken about. There are only a few places that you can access Main Street from Bench or vice versa. Washington Street is the only access point without stairs. He wonders if the request is granted would stairs be installed here too. The restaurant traffic will be difficult to deal with. It seems that there would be more surface area to maintain. It would be year round upkeep with only a few months of dining.

Baranski said the application states the City would vacate the sidewalk /street which would mean the property would become the applicants to maintain year round.

Emily Painter 602 Monroe Street, Galena agrees with many that have spoken. She very much wants to keep the sidewalk access. This would be difficult with trays of food and drinks. What are the issues with alcohol outside?

Nybo asked the applicant if he wished to rebut any of the testimony.

Coulter said he wants to enhance what is already there. With all the electronic devices there are less trips made to service a table. Liquor being served would be covered with the license for Vinny's. He has always been thoughtful and has kept the look of Galena. He wants to keep thinking ahead and looking to see what is good for Galena. The furnishings would be tasteful and there would be no large brand labeling on things such as the umbrellas.

Marty Johnson said he has been working with the City on the easement details. He thought that if the City granted the street vacation the property would become his and he would lease the sidewalk back to the City. The walkway could potentially be moved so the dining was contiguous. They have wondered how that would feel as a pedestrian corridor.

Nybo asked if anyone wished to comment.

Richard Hess, 116 S Bench Street, Galena asked if the right of way or easement could be explained.

Nack said he thought the logic would be to have the two properties be contiguous rather than have the two properties separated by a city walkway that the City would potentially retain. Generally, when you are doing annexations the City right of ways are not an impediment to contiguity. If there were any safety issues on public property that were created by food or alcohol the restaurant owner would be responsible. If an easement was granted the public access would come back to the City. There are lots of different options that could be explored by the City if the approval criteria were met for the request.

James Wirth asked what would happen with a street vacation if Coulter sold the property. What legal standing is there? What are the limits? The City has vacated streets before – one on Bench Street. The property is for sale and this area is covered by a parking pad, play area and storage.

Nack said conditions and options could be included by the Council to cover contingencies.

Wirth asked if the applicant could possibly lease the property. Could the terrace barriers be portable so the area could be opened back up during the colder months? This street has historical significance. General Grant lived on South High Street. He would have traveled this when he was going to work at his Father's Leather store or perhaps after attending church services at the Methodist Church on Bench Street. This really should be preserved.

Kathy Leonard said the sidewalk is part of the original street. If they are asking for City property to be vacated the public right of way will be affected.

Richard Hess asked if the sidewalk would go with the street if vacation was approved.

Nack said he could not speak for the City Council but that is one possibility.

MOTION: Baranski moved, seconded by Holman to close the Public Hearing on Cal. No. 16S-01.

Motion carried on voice vote.

MOTION: Baranski moved, seconded by Holman to deny the request for Special Use Permit to expand an existing, conforming, Outdoor Dining land use. This request is contingent upon a Street Vacation request to vacate part of Washington Street between Main and Bench Streets for Cal. No. 16S-01.

Discussion: Baranski agrees that Coulter would do a first class job as would architect Marty Johnson. He does have concerns with the public access – Section 154.914C5i. of the ordinance.

He is struggling with this. Could the issue be mitigated? The possibility of families and kids as well as restaurant staff using the stairway all at once is hard to visualize. The ordinance allows outdoor dining by special use permit in the downtown commercial district as an accessory use. The specific standards state the total area devoted to outdoor dining cannot exceed 15% of the total area devoted to indoor dining area as principle use and should comply with all regulations. The request does exceed 15%. If larger than 15%, the request shall meet all the requirements of the sales and service outdoor display land use. When you look at those regulations it seems that these are less restrictive than those that are under 15%. In the outdoor land use table, outdoor sales and service display, outdoor dining in the downtown commercial district as an accessory use is not allowed. The standard refers to the table, but nowhere does it really read that it is allowed. It seems illogical that it would be less restrictive. The applicant needs to comply with all other City and State regulations. Would a variance have been a better request?

Oldenburg explained the history of the property. Vinny's is allowed by right to have outdoor dining because the use existed before the current ordinance was adopted. The current ordinance would require a Special Use Permit. They are existing conforming land use. In looking at current code they are not an existing non-conforming use so none of the expansion regulation requirements apply. The detailed land use regulation table, Section 403.1 is broken down by principle and accessory uses. Looking at downtown commercial, principle use, outdoor dining as an accessory commercial use is allowed by special use permit. Looking at outdoor sales and service outdoor display as a principal commercial use you find that it is not even allowed in the downtown commercial district. It seemed the request was really for an accessory use to the 8,000 square foot indoor dining space - 1,700 square feet of outdoor dining was being sought. The definition for accessory commercial uses for buildings includes language stating if you are looking for any exceptions to accessory commercial use outside of what is specified then only a special use permit request is necessary. The way the accessory use language definition is written it did not seem a variance was needed and so he advised handling seeking a special use permit.

Baranski said looking at the regulations it seems to make no sense that allowing more than 15% would have less restrictions than requests that are under or at 15%. It seems we have always approved a request within the 15%.

Oldenburg said the Board can always include concerns in the language of the Special User Permit.

The Board discussed 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.

The request fails criteria #1 and #5a. Otherwise it conforms to the rest of the requirements.

As Roll Call was:

Bochniak	Yes
Cook	Yes
Holman	Yes
Nybo	Abstain
Baranski	Yes
Rosenthal	Absent

Motion carried.

COUNTY ZONING

None.

WORKSESSION/OTHER

None

PUBLIC COMMENTS

None.

MOTION: Bochniak moved, seconded by Cook to adjourn the meeting at 8:15 pm.

Motion carried on voice vote.

Respectfully submitted by

Deb Price
Zoning Board Secretary