

**MINUTES
ZONING BOARD OF APPEALS
MARCH 13, 2019**

CALL TO ORDER:

Chairperson Rosenthal called the regular meeting of the Zoning Board of Appeals to order at 6:30 PM on Wednesday, March 13, 2019 at City Hall, 101 Green Street, Galena, IL.

ROLL CALL AND DECLARATION OF QUORUM:

As Roll Call was:

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

A quorum was declared.

Zoning Administrator Matt Oldenburg, Acting City Attorney Tom Nack and Zoning Secretary Deb Price were present.

APPROVAL OF MINUTES

MOTION: Calvert moved, seconded by Cook to approve the February 13, 2019 minutes.

Motion carried with Jansen abstaining

UNFINISHED BUSINESS

Cal. No. 19S-01, Applicants & Owners: Dino & Sotiri Rigopoulos, 209 North Main Street, Galena, IL 61036. Location: Parcel: 22-100-163-00, N 19' of Lot 35 & SW 8.5' of Lot 36, E Side of Main Street, Original City of Galena, Jo Daviess County, Illinois. Common Address: 209 North Main Street, Galena, IL 61036. Request for Special Use Permit to allow Accommodations, Vacation Rental in the Downtown Commercial District.

MOTION: Bochniak moved, seconded by Cook to approve the Finding of Fact for Cal. No. 19S-01.

As Roll Call was:

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

Motion carried.

NEW BUSINESS

Cal. No. 19S-02, Applicants: Michael & Kathleen Hart, 4532 N Flansburg, Lena, IL 61048 and Owner: Larry Wiedenheft, 116 South Main Street, Galena, IL 61036. Location: Parcel: 22-100-142-00, S 13 ft. of Lot 20 & N 3 ½ ft. of Lot 19, East Side of Main Street, Galena, Jo Daviess County, Illinois. Common Address is 116 South Main Street, Galena, IL 61036. Request for Special Use Permit to allow Accommodations, Vacation Rental in the Downtown Commercial District.

MOTION: Jansen moved, seconded by Bochniak to open the Public Hearing for Cal. No. 19S-02.

Motion carried on voice vote.

City Attorney Nack swore in all those who wished to testify at tonight's Public Hearings.

Michael Hart, 307 South Main Street Galena said he would like to have a third-floor vacation rental at 116 South Main Street. The first and second floors have retail space. The third floor already has a kitchen and bathroom area that will be remodeled. Access would be from Commerce Street where there is an off-street parking space. You then enter through a gate into the courtyard and walk up the iron stairs. He and his wife would be managing the unit.

No other testimony was heard for this request.

MOTION: Bochniak moved, seconded by Cook to close the Public Hearing for Cal. No. 19S-02.

Motion carried on voice vote.

MOTION: Calvert moved, seconded by Jansen to approve Cal. No. 19S-02 as presented.

Discussion: Calvert 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.

As Roll Call was:

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

Motion carried.

Cal. No. 19S-03, Applicant and Owner: Magnum Recoil, 240 North Main Street, Galena, IL 61036. Location: Parcel: 22-100-117-00, Part of Lot 5, Block C, Lots in Wedge, Galena, Jo Daviess County, Illinois. Common Address is 240 North Main Street, Galena, IL 61036. Request for Special Use Permit to allow Accommodations, Vacation Rental in the Downtown Commercial District.

MOTION: Bochniak moved, seconded by Cook to open the Public Hearing for Cal. No. 19S-03.

Motion carried on voice vote.

Tim Bloom, 605 South High Street Galena said he was representing building owner Larry Wiedenheft. The building at 240 North Main Street has a retail space on the first floor, an attorney's office on the second floor and a long-term rental unit on the third floor that they are proposing be converted to a vacation rental. Access is from Diagonal Street where there is off street parking.

No other testimony was heard for this request.

MOTION: Bochniak moved, seconded by Cook to close the Public Hearing for Cal. No. 19S-03.

Motion carried on voice vote.

MOTION: Bochniak moved, seconded by Jansen to approve Cal. No. 19S-03 as presented.

Discussion: Bochniak said the same review criteria were applicable as those presented for Cal. No. 19S-02.

As Roll Call was:

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

Motion carried.

Cal. No. 19S-04 & 19V-02, Applicants and Owners: Bruce & Joyce Hanson, 616 & 618 South Prospect Street, Galena, IL 61036. Location: Parcel: 22-100-266-00, W ½ of Lot 10 and W 67.09' of N ½ of Lot 11, Between Bench & Prospect Streets, Galena, Jo Daviess County, Illinois. Common Address is 618 South Prospect Street, Galena, IL 61036. Request for Special Use Permit to allow Accommodations, Vacation Rental in the Low Density Residential District and Variance for off-street parking requirement.

MOTION: Bochniak moved, seconded by Calvert to open the Public Hearing for Cal. No. 19S-04.

Motion carried on voice vote.

Joyce Hanson, 124 North Main Street Burlington Illinois said they are requesting a permit to allow a vacation rental at 616-618 South Prospect. They will be retiring in June and are planning on living full time in Galena at 616 South Prospect Street. The other unit, 618, is where they would like the vacation rental. They have a small garage that they would like to keep for their personal use. These two units have always parked in front of the building and south towards Gear Street. The properties on Bench Street run all the way back to Prospect Street but none of them have any access off Prospect. Their duplex is the last building on the east side of the street.

Cook asked how many cars would be using the street.

Hanson said typically it has been their two and up to two for the long-term renters.

Oldenburg said the code states they need two parking spaces for each unit – this is based on square footage. There is a vacation rental at 611 South Prospect, but all their parking is off street. The Steamboat House and Avery on Prospect Street are closer to Spring Street. He has received no complaints about parking or anything else in this area.

No other testimony was heard for this request.

MOTION: Jansen moved, seconded by Bochniak to close the Public Hearing for Cal. No. 19S-04.

Motion carried on voice vote.

MOTION: Bochniak moved, seconded by Calvert to approve Cal. No. 19S-04 contingent upon approval of the parking variance, Cal. No. 19V-02.

Discussion: Jansen said the same review criteria were applicable as those presented for Cal. No. 19S-02.

As Roll Call was:

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

Motion carried.

MOTION: Bochniak moved, seconded by Cook to open the Public Hearing for Cal. No. 19V-02.

Motion carried on voice vote.

Joyce Hanson, 124 North Main Street Burlington Illinois reiterated her statements from the previous public hearing.

No other testimony was heard for this request.

MOTION: Bochniak moved, seconded by Cook to close the Public Hearing for Cal. No. 19V-02.

Motion carried on voice vote.

MOTION: Jansen moved, seconded by Bochniak to approve Cal. No. 19V-02 as presented.

Discussion: Jansen reviewed the approval criteria:

Variance Approval Criteria & Recommendation:

A variance is not a right. It may be granted to an applicant only if the applicant establishes that strict adherence to this code will result in practical difficulties or undue hardships because of site characteristics that are not applicable to most properties in the same zoning district. Such variances shall be granted only when the applicant establishes that all of the following criteria, as applicable, are satisfied:

(1) *Hardship unique to property, not self-inflicted.* There are exceptional conditions creating an undue hardship, applicable only to the property involved or the intended use thereof, which do not apply generally to the other land areas or uses within the same zone district, and such exceptional conditions or undue hardship was not created by the action or inaction of the applicant or owner of the property;

(2) *Special privilege.* The variance will not confer on the applicant any special privilege that is denied to other lands or structures in the same zoning district;

(3) *Literal interpretation.* The literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would work unnecessary and undue hardship on the applicant;

(4) *Reasonable use.* The applicant and the owner of the property cannot derive a reasonable use of the property without the requested variance;

(5) *Minimum necessary.* The variance is the minimum necessary to make possible the reasonable use of land or structures;

(6) *Compatible with adjacent properties.* The variance will not be injurious to, or reduce the value of, the adjacent properties or improvements or be detrimental to the public health, safety or welfare. In granting a variance, the decision-maker may impose conditions deemed necessary to protect affected property owners and to protect the intent of this code;

(7) *Conformance with the purposes of this code.* The granting of a variance will not conflict with the purposes and intents expressed or implied in this Code; and

(8) *Conformance with the Comprehensive Plan.* The granting of a variance will not conflict with the goals and principles in the adopted Comprehensive Plan.

The Zoning Board of Appeals can approve, approve with conditions, or deny requests for variances. If the Board would like to approve the request, a motion to draft Finding of Facts should be entertained. The Findings of Facts will then be presented for final consideration at the next Board Meeting.

As Roll Call was:

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

Motion carried.

Cal. No. 19A-02, 19SUB-01 & 19V-03, Applicant & Owner: T&C Wiene Enterprises, 2955 Red Gates Drive, Galena, IL 61036. Location: Parcel: 22-200-133-00, Part of the NW ½ of the NW Quarter of Section 24, Township 28 North, Range 1 West of the Fourth Principal Meridian, Galena, Jo Daviess County, Illinois. Common Address: 618 Gear Street. Request for rezoning to Low Density Residential from Limited Agriculture; Preliminary Plan & Plat to subdivide four residential lots from the larger parcel; and Variance to allow a 30' front yard setback.

MOTION: Bochniak moved, seconded by Calvert to open the Public Hearing for Cal. No. 19A-02.

Motion carried on voice vote.

Tom Wiene, 2955 Red Gates Road Galena said he would like to subdivide and change the zoning to Low Density Residential for farm ground on Gear Street to build homes.

Rosenthal asked if water and sewer were there.

Wienen said it was.

Oldenburg said he would need to extend the sewer a bit.

Rosenthal asked about the street being turned over to the city.

Oldenburg said all four lots would have direct access off Gear Street.

Rosenthal asked about the remainder of the property.

Oldenburg said we are looking at the entire acreage so if or when they want to subdivide the zoning is in place. There is a 66-foot easement recorded on the southern property boundary, so a street could be built in the future that would give access to the back lots.

Wienen said the lots would be about 90 feet by 115 feet.

No other testimony was heard for this request.

MOTION: Bochniak moved, seconded by Jansen to close the Public Hearing for Cal. No. 19A-02.

Motion carried on voice vote.

MOTION: Cook moved, seconded by Bochniak to approve Cal. No. 19A-02 as presented

Discussion: Cook 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 met all the approval criteria.

As Roll Call was:

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

Motion carried.

MOTION: Bochniak moved, seconded by Calvert to open the Public Hearing for Cal. No. 19SUB-01.

Motion carried on voice vote.

Tom Wienen, 2955 Red Gates Road Galena said he was requesting the 30-foot setback to mirror the house that is currently there.

Oldenburg said the variance request is for a 30-foot setback and the subdivision portion is to recommend approval to the City Council for preliminary plan and plat. The request met all the preliminary plan and plat review criteria

Oldenburg said everything in the neighborhood has a 25 foot to 30-foot setback and approval would keep the corridor the same. This is an infill development, so it is appropriate to allow a 30-foot setback.

No other testimony was heard for this request.

MOTION: Calvert moved, seconded by Jansen to close the Public Hearing for Cal. No. 19SUB-01.

Motion carried on voice vote.

MOTION: Jansen moved, seconded by Bochniak to approve Cal. No. 19SUB-01 as presented.

Discussion: None

As Roll Call was:

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

Motion carried.

MOTION: Bochniak moved, seconded by Cook to open the Public Hearing for Cal. No. 19V-03.

Motion carried on voice vote.

Tom Wienen, 2955 Red Gates Road Galena said his previous testimony applied to this request.

No other testimony was heard for this request.

MOTION: Bochniak moved, seconded by Cook to close the Public Hearing for Cal. No. 19V-03.

Motion carried on voice vote.

MOTION: Bochniak moved, seconded by Cook to approve Cal. No. 19V-03 as presented.

Discussion: Bochniak reviewed the approval criteria:

Variance Approval Criteria & Recommendation:

A variance is not a right. It may be granted to an applicant only if the applicant establishes that strict adherence to this code will result in practical difficulties or undue hardships because of site characteristics that are not applicable to most properties in the same zoning district. Such variances shall be granted only when the applicant establishes that all of the following criteria, as applicable, are satisfied:

(1) *Hardship unique to property, not self-inflicted.* There are exceptional conditions creating an undue hardship, applicable only to the property involved or the intended use thereof, which do not apply generally to the other land areas or uses within the same zone district, and such exceptional conditions or undue hardship was not created by the action or inaction of the applicant or owner of the property;

(2) *Special privilege.* The variance will not confer on the applicant any special privilege that is denied to other lands or structures in the same zoning district;

(3) *Literal interpretation.* The literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would work unnecessary and undue hardship on the applicant;

(4) *Reasonable use.* The applicant and the owner of the property cannot derive a reasonable use of the property without the requested variance;

(5) *Minimum necessary.* The variance is the minimum necessary to make possible the reasonable use of land or structures;

(6) *Compatible with adjacent properties.* The variance will not be injurious to, or reduce the value of, the adjacent properties or improvements or be detrimental to the public health, safety or welfare. In granting a variance, the decision-maker may impose conditions deemed necessary to protect affected property owners and to protect the intent of this code;

(7) *Conformance with the purposes of this code.* The granting of a variance will not conflict with the purposes and intents expressed or implied in this Code; and

(8) *Conformance with the Comprehensive Plan.* The granting of a variance will not conflict with the goals and principles in the adopted Comprehensive Plan.

The Zoning Board of Appeals can approve, approve with conditions, or deny requests for variances. If the Board would like to approve the request, a motion to draft Finding of Facts should be entertained. The Findings of Facts will then be presented for final consideration at the next Board Meeting.

The request met all the approval criteria.

As Roll Call was:

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

OTHER BUSINESS

None

PUBLIC COMMENTS

None

MOTION: Bochniak moved, seconded by Cook to adjourn the meeting at 7:15 pm.

Motion carried on voice vote.

Respectfully submitted by

Deb Price
Zoning Board Secretary