

**MINUTES  
ZONING BOARD OF APPEALS  
SEPTEMBER 11, 2019**

**CALL TO ORDER:**

Chairperson Rosenthal called the regular meeting of the Zoning Board of Appeals to order at 6:30 PM on Wednesday, September 11, 2019 at City Hall, 101 Green Street, Galena, IL.

**ROLL CALL AND DECLARATION OF QUORUM:**

As Roll Call was:

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

A quorum was declared.

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

**APPROVAL OF MINUTES**

**MOTION:** Cook moved, seconded by Calvert to approve the August 14, 2019 minutes.

Motion carried.

**UNFINISHED BUSINESS**

Cal. No. 19S-11 & 19S-12, Applicant: Alan Trebian, 3379 S. Girot Road, Hanover, IL 61041 and Owner: Larry Aschebrook, 624 Spring Street, Galena, IL 61036. Location: Parcel: 22-101-016-00, N Part of E ½ of Lot 1, N Part of W 180' of Lot 2, Lots 1, 2 and N 17' of Lot 3 in the Subdivision of the West ½ of Lot 1, Block 59, Original Lots of Galena, Galena, Jo Daviess County, Illinois. Common Address is 624 Spring Street, Galena, IL 61036. Request for Special Use Permit for Accommodations, Vacation Rental in Neighborhood Commercial District; Special Use Permit for Removable Outdoor Display in Neighborhood Commercial District.

**MOTION:** Jansen moved, seconded by Baranski to approve the Finding of Fact for Cal. No. 19S-11 and Cal. No. 19S-12.

As Roll Call was:

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

Motion carried.

### **NEW BUSINESS**

Cal. No. 19A-04, Applicant: City of Galena, 101 Green Street, Galena, IL 61036. Request for Text Amendment to Zoning Code of Ordinances to allow Adult-Use Cannabis Land Uses in select zoning districts.

**MOTION:** Calvert moved, seconded by Cook to open the Public Hearing for Cal. No. 19A-04.

Motion carried on voice vote.

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

Matt Oldenburg, Zoning Administrator presented for the city. Oldenburg said over the past month the city council discussed whether to allow Adult Use Cannabis as a result of the Illinois Cannabis Regulation and Tax Act. The state will phase in these businesses. In 2020 existing Medical Cannabis companies will be able to claim state licenses in the initial phase. In 2021 Conditional Adult Use Cannabis licenses will be issued with preference going to candidates under a Social Equity program. Finally, in 2022 the licenses will be open to anyone else who qualifies. The Illinois Municipal League crafted a model ordinance which they sent out to municipalities. We took that information and formed it to our regulations. The council wants to make provisions to allow it in the city.

The first section of tonight's proposal is in the definitions including growing facilities, dispensaries and manufacturing type activities.

The second section is the table of permitted land uses. First are agricultural uses which include cultivation centers and craft growing facilities allowed by Special Use Permit only in limited ag and three industrial districts. Next are commercial uses of dispensing which would be allowed by SUP only in the downtown commercial district and the three industrial districts. Finally, the industrial uses which involve infusing operations, processing operations and transportation operations which would only be allowed in the three industrial districts. Dispensing organizations could be co-located with industrial uses.

The detailed land use regulations have all the detailed regulations for each type of land use and was based on the model ordinance. There is a recurring theme running through this. Generally, there is a 250-foot requirement from any residentially zoned district and a 1000-foot requirement from any school, day care or

preschool. A map was developed showing the areas where any of this activity would be prohibited. There are other layers involved with the state tax act such as no adult cannabis facilities can be located within 1500 feet of each other. This is also overlaid with the city's zoning districts to further define locations. Additionally, there are parking requirements specified in the land uses.

Rosenthal asked about parking. No other businesses in the downtown area are required to have parking.

Oldenburg said the parking requirement is exempt in the downtown district or if there is a change of use to an existing building. All operations would have to show compliance with the state act.

Baranski said the only two aspects that can be regulated by the city are the parking and distance requirements.

Oldenburg said the state act for local ordinance describes what the city's powers are – we can prohibit it completely, regulate how close they are to each other while still honoring the 1500-foot state requirement and we cannot make it more restrictive than the state act.

Jansen asked about restrictions for parks.

Oldenburg said they were not in the model ordinance, but we could include this.

Jansen asked about Rec Park.

Oldenburg said the majority of Rec Park is restricted due to its proximity to a residential district. Rec Park is owned by the city so no facility would be located here.

Baranski asked about Washington Park. If parks were included in the 1000-foot restriction nothing could be allowed on Main or Commerce streets.

Oldenburg said the council does not want anything on Main Street, but they indicated they would be fine if a facility were on Commerce Street.

Calvert asked about businesses that are also residences in the industrial district.

Oldenburg said these were zoned general commercial. To include this use would allow the downtown examples of this so it was omitted. If the Board wanted to exclude in some areas but allow in the industrial districts, we could talk about an overlay district.

Cook asked about co-locations. Why wouldn't everyone want to do this.

Oldenburg said there are a lot of factors to this. Some only want to do one facet. The cost of starting a business is quite large. Some cultivation or craft growers may want to have distribution or infusion. Most dispensing organizations do it independently unless it is an accessory of the growing facility.

Rosenthal said the only co-locations would be in the industrial districts.

Oldenburg said basically yes.

Baranski asked about smoking on site. The state act allows this correct.

Oldenburg said if the municipality allows this. The powers given to municipalities state we can allow or disallow the onsite smoking. The city does not handle any of the licensing – the state controls all of that as well as regulating personal use: how much a person can have on them, how much they can consume on site, etc. All people involved with the organization and the products distributed or grown will be carefully monitored. We are regulating the locations only. How the businesses operate is controlled by the state.

Jansen asked about tax collection.

Oldenburg said the city is working on passing an occupation tax which would allow them to collect 3% of the gross sales as well as a 2% of sales tax.

Cook asked about taxes on the medical cannabis companies.

Oldenburg said the provider would pay the tax. This use cannot be regulated by us – they can be located anywhere.

Calvert asked if a medical cannabis company could also have an adult use distribution.

Oldenburg said he thought they could, but they would have to have a secondary license. Currently there are very few available licenses and every district has a license limit so companies must choose the communities where they locate which will be market driven.

Nack said the medical facility would still need to comply with our set back regulations if they were to seek a secondary license.

Jansen asked if the county would allow this.

Nack said they could.

Rosenthal asked anyone in favor of the request to come forward. No one did.

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

Rick Pariser, 113 South High Street Galena said he is specifically opposed to the dispensing of cannabis. The other facets of the operations would be closed to the public. He is not in favor of dispensing in the downtown area. The zoning board is charged with determining where these facilities can be allowed. On behalf of the image of Galena and all those who live here and visit a dispensing facility should not be located where our main source of income comes from. He would like to see the dispensaries limited to the industrial districts. The city would not have to rush into this; we could later expand it to a site such as Commerce Street. It seems we have enough legal vices and now as a government we are sanctioning something that is injurious to our health.

**MOTION:** Bochniak moved, seconded by Cook to close the Public Hearing for Cal. No. 19A-04.

**MOTION:** Baranski moved, seconded by Jansen to send a positive recommendation to the City Council for Cal. No. 19A-04.

Discussion: Baranski said the information provided by Oldenburg was very well done. Much of this has been handed done by the State so the zoning board's task is to decide where the facilities can be located and what the parking requirements are. The council voted to go forward with this.

Oldenburg said all but the mayor voted in favor of this.

Baranski said the map and overlay districts are appropriate. He understands Pariser's point but this issue has evolved, and people are more open to it. The state has mandated it and having one or two dispensaries is okay. He's fine with it.

Rosenthal said it is going to happen in the county so when the city had the opportunity, they decided to pursue it. East Dubuque has already agreed to it. The proposal has done a good job of protecting sensitive areas. He has no problem with it.

Cook agreed with Rosenthal but said she was unsure if it should be allowed in the downtown area with all the tourism we have. Allowing it in the industrial district is fine.

Nybo agreed with Cook. He asked if we only allowed it in the industrial district could we later expand to downtown commercial.

Oldenburg said we could with a text amendment.

Calvert agreed. It was put in the state act to have residential setbacks and protections. It is much more well suited to the industrial districts than it is in the downtown commercial district.

Bochniak said he agrees but where is everyone who is against this. Pariser did a good job with his testimony but where is everyone else.

Baranski said it is pretty well known that the council agreed on a 6-1 vote to allow this. The suggestion is that people agree with this. He believes the council knew of this map and agreed to allow it in the downtown commercial district.

Nybo said we could say it should be limited to the industrial district and the council can override if they want.

Baranski said they could. We had one person speak against this. Where is everyone else.

Nybo said where is everyone in favor of it.

Rosenthal said he doesn't believe that people will stop coming to historic Galena because one dispensary opens on Commence Street. There may be people who come to Galena that bring their own. The bars that are on Main Street don't stop people from coming to town.

Nybo said that may be 100% correct. Why do we have to decide it right now?

Rosenthal said if we make it too restrictive the businesses will go somewhere else in the county. The reason the city decided on it right now is because they didn't want to lose the opportunity to collect the tax monies. He's heard it before – every time something comes to town it's going to kill Galena. It hasn't yet.

Baranski reviewed the approval criteria:

**Approval Criteria & Recommendation for Text 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; **N/A. This is a new ordinance.**
  - (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.; **N/A**
  - (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; **N/A**
  - (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; **It is arguable, but 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; **There are.**
  - (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; **Yes, there is.**
  - (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; **There will but again it is arguable; some will say yes some will say no.**

**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.**

As Roll Call was:

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

Motion carried.

**OTHER BUSINESS**

None

**PUBLIC COMMENTS**

None

**MOTION:** Bochniak moved, seconded by Jansen to adjourn the meeting at 7:05 pm.

Motion carried on voice vote.

Respectfully submitted by

Deb Price  
Zoning Board Secretary