

**MINUTES
ZONING BOARD OF APPEALS
DECEMBER 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, December 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	Absent
Cook	Present
Jansen	Present
Nybo	Absent
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: Bochniak moved, seconded by Cook to approve the November 13, 2019 minutes.

Motion carried.

UNFINISHED BUSINESS

Cal. No. 19A-05, 19S-13 & 19S-14, Applicant and Owner: ILWAB Farms, LLC, 13275 Chetlain Lane, Galena, IL 61036. Parcel 1: 13-001-106-13, Lots 1 through 6 in Block 2 of Galena Scenic Meadows Unit 2; and Lot 7 in Block 1 of Galena Scenic Meadows Unit 2 in the City of Galena, Jo Daviess County, Illinois. Parcel 2: 13-000-105-15, Lot 5, Block 7 of the Cobblestone Crossing Plat 2, Section 12, T28N, R1W, Galena, Illinois. Request for Map Amendment to rezone Parcel 1, and a portion of right-of-way described in a concurrent Street Vacation request, from Limited Agriculture (former PUD) to Planned Industrial district. Request to rezone Parcel 2 from Medium Density Residential to Limited Agriculture district. Request for Special Use Permits to allow Adult-Use Cannabis Craft Grower and Adult-Use Cannabis Dispensing Organization land uses in Parcel 1.

MOTION: Baranski moved, seconded by Jansen to approve the Finding for Cal. No. 19S-13 and Cal. No 19S-14.

As Roll Call was:

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

Motion carried.

NEW BUSINESS

Cal. No. 19S-15, Applicant and Owner: Fotis Investments, LLC, 201 N Main, Galena, IL 61036. Parcel: 22-100-485-00, Lots 2 of the Subdivision of 1st National Bank between Commerce and Water Streets in the City of Galena, Jo Daviess County, Illinois. Common address is 115 Perry Street, Galena, IL 61036. Request for Special Use Permit to allow Adult-Use Cannabis Dispensing Organization in the Downtown Commercial district.

MOTION: Jansen moved, seconded by Bochniak to open the Public Hearing for Cal. No. 19S-15.

Motion carried on voice vote.

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

Pat Ready 4155 Pennsylvania Avenue Dubuque Iowa works for IIW and is consulting on this project. The site and building plans show that the former bank would be modified to allow for distribution and consumption on site. All changes would comply with the city's building and zoning requirements. The approximate proposed hours would be Monday thru Saturday 11-7 and Sunday 12-5. The impact to traffic would be minimal with an additional 260 trips for persons visiting Galena for the first time. The business will have about ten employees. The first floor will be used for the business with about the same amount of space for resale as consumption. They have plenty of parking with the 50 stalls and they will utilize what is there. There will be some changes to the exterior. The existing canopy will be removed which makes room for deliveries. The ATM depot will be removed and recaptured for parking. New signage will be added and the windows frosted for security and privacy.

Bochniak asked about the number of entrances.

Ready said there would be one main entry – off Perry Street as it is now. The other entrance would have double doors to accommodate deliveries and act as an emergency exit. There will be a significant amount of security and cameras are required.

Rosenthal asked about plans for the second floor.

Ready said at this time they would not occupy that floor.

Baranski asked if this area be used if they wanted to expand.

Ready said yes with approval.

Baranski asked about consumption.

Ready said per state law this would only be allowed in the lounge area.

Bochniak asked about compliance to odor regulations.

Oldenburg said they would have to comply. They will need a mechanical filter or scrubber to handle the odor.

Ready said the mechanical system will be completely overhauled. They do not want the odor to impact the public.

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

Gary Kirst 2782 Red Gates Drive Galena spoke about the negative impact of allowing distribution and consumption of cannabis.

Rosenthal reminded Kirst that the City Council had already approved an ordinance allowing this. The zoning board's task was to review the request to see if it met the approval criteria for a Special Use Permit.

Paul Connor 211 Park Avenue Galena said he is a tenant in the building next to the proposed development. He does not see this as detrimental to his business.

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

Bill Fawell 617 Ridge Street Galena stated the city had no idea just how many people would be coming to Galena once this business was operational. The city needs to look at the traffic and parking impact this business will have on the downtown area. By his estimation, annually, there would be an additional 960,000 trips.

Rosenthal asked if the applicant wished to rebut any of the testimony.

Don Manning 6735 Vistagreen Way Rockford IL 61107, attorney for the applicant, said none of their studies show anything close to the traffic impacts that Fawell presented. There is nothing to indicate the business would cause that number of additional trips into Galena.

MOTION: Bochniak moved, seconded by Cook to close the Public Hearing for Cal. No. 19S-15.

Motion carried on voice vote.

MOTION: Baranski moved, seconded by Jansen to draft a positive Finding of Fact for Cal. No. 19S-15.

Baranski said the Zoning Board is not political. The City Council has approved this use and now the Zoning Board can only look at the request to see if it meets the specified criteria set forth in the zoning ordinance. Businesses in the downtown commercial district are exempt from meeting parking requirements, but this proposal does have ample parking for employees and patrons.

Baranski 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.
 - (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 § 154.406;
 - (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 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.

The request meets the approval criteria.

As Roll Call was:

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

Motion carried.

Cal. No. 19V-05, Applicant: pb2 architecture + engineering, 2809 Ajax Avenue, Suite 100, Rogers, AR 72758; and Owner: Walmart Real Estate Business Trust, 10000 Bartell Blvd. – Walmart #5044, Galena, IL 61036. Parcel: 13-001-106-11, Lot 1 of Block 1 of Galena Scenic Meadows Unit 2, Galena, Jo Daviess County, Illinois. Common address is 10000 Bartell Blvd., Galena, IL 61036. Request for Variance to allow a second internally-illuminated wall sign on the building for new Pick-up business.

MOTION: Baranski moved, seconded by Bochniak to open the Public Hearing for Cal. No. 19V-05.

Motion carried on voice vote.

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

Amy Miles 2809 Ajax Avenue, Suite 100 Rogers Arkansas 72758 spoke on behalf of Walmart. She explained that the signage would direct patrons to the pickup area on the left side of the building. The signage will help eliminate confusion for those looking for the pickup area and will prevent shoppers from distractedly driving around in the parking lot trying to figure out where to go.

No one spoke in favor of or in opposition to the request.

MOTION: Jansen moved, seconded by Bochniak to close the Public Hearing for Cal. No. 19V-05.

Motion carried on voice vote.

MOTION: Baranski moved, seconded by Bochniak to draft a positive Finding of Fact for Cal. No. 19V-05.

Baranski reviewed the approval criteria:

Approval Criteria & Recommendation for Variance:

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 meets the approval criteria.

As Roll Call was:

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