

**MINUTES
ZONING BOARD OF APPEALS
NOVEMBER 14, 2018**

CALL TO ORDER:

Chairperson Rosenthal called the regular meeting of the Zoning Board of Appeals to order at 6:30 PM on Wednesday, November 14, 2018 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	Absent
Jansen	Present
Nybo	Absent
Rosenthal	Present

A quorum was declared.

Zoning Administrator Matt Oldenburg and City Attorney Joe Nack were present.

APPROVAL OF MINUTES

MOTION: Bochniak moved, seconded by Cook to approve the October 10, 2018 minutes.

Motion carried.

UNFINISHED BUSINESS

None

NEW BUSINESS

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

Cal. No. 18S-15, Applicant and Owner: Tanya Billmeyer-Finn, 104 North Dodge Street, Galena, IL 61036. Location: Parcel: 22-100-850-00, Lot 3 of Temple's Subdivision of Lot 8 in Block 21 of the Original City of Galena, Jo Daviess County, Illinois. Common Address is 104 North Dodge Street, Galena, IL 61036. Request for Special Use Permit to allow Accommodations, Vacation Rental in the Low Density Residential District.

MOTION: Jansen moved, seconded by Bochniak to open the Public Hearing for Cal. No. 18S-15.

Motion carried on voice vote.

Tanya Billmeyer, 104 North Dodge Street Galena stated this is a second home for her. Her primary residence is in Dubuque where she has several other vacation rentals. She would like to have permission to use this property as a vacation rental.

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

No one else spoke in favor of the request.

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

Jay Steinstra, 106 North Dodge Street Galena said he is not necessarily opposed but said he is planning to sell his home in the next few weeks and is concerned that this may negatively impact the sale or value. He doesn't know much about how vacation rentals function in Galena.

Rosenthal said the City has fairly strict rules on how they operate.

Oldenburg said there are standards that must be met. If the rental has nuisance complaints the license could be revoked. Currently there are about forty-four licensed vacation rentals and we have had no complaints.

MOTION: Bochniak moved, seconded by Cook to close the Public Hearing for Cal. No. 18S-15.

Motion carried on voice vote.

MOTION: Jansen moved, seconded by Bochniak to approve the Special Use Permit for Cal. No. 18S-15 as presented.

Discussion: Jansen 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 impact of the number of guests is congruent with a residential use at the site.*

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:

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

Motion carried.

Cal. No. 18PD-02, Applicant: Adam Johnson, 211 Fourth Street, Galena, IL 61036 and Owner: Galena Art & Recreation Center, 413 South Bench Street, Galena, IL 61036. Location: Parcel: 22-100-191-00, Lots 13, 14, 15 & 3-3/4' of Lot 16, West Side of Bench Street, D.O.R. Docket No. 85-43-20 Community Center, Original City of Galena, Jo Daviess County, Illinois. Common Address is 413 South Bench Street, Galena, IL 61036. Request for approval of Preliminary Plan to rezone to Planned Unit Development for a site, with an underlying default district of Low Density Residential, to allow proposed uses.

MOTION: Cook moved, seconded by Jansen to open the Public Hearing for Cal. No. 18PD-02.

Motion carried on voice vote.

Adam Johnson, 411 Fourth Street Galena is representing Mark Schlenker, the potential buyer of the current ARC building. He is looking to provide an accommodation that is different to Galena. He is excited about using the entire building as a group recreation rental center. You could use the gym space for reunions or team building practices and stay there overnight as well. The south playground area would be converted to a parking area; the north playground area would be turned into an outdoor entertainment area. The pool concept is more

of a large hot tub or dunk pool but is in the early planning stages. You could sit and relax in this area rather than having the basketball courts. It would not be your typical pool that would cause a lot of noise. The current on site activity is high. What they are proposing would not intensify the day to day use and would most likely lessen the day to day activity level. The way the building is situated there is no room at the rear for development so having use of the front space is important. They don't have a landscaping plan yet but are working with staff to develop one. This would provide a use that Galena does not currently have. This would allow continued use of the gym preserving that portion of the building.

Jansen asked about the first floor over flow bedroom.

Johnson said they were planning on having traditional rooms on the other floors but thought bunk room style accommodations might be appealing to some groups.

Baranski asked how the rental process would happen.

Johnson said the entire building would be rented out with staff from Schlenker's other property, The Victorian Mansion assisting.

Bochniak asked how serious Schlenker was about the pool.

Johnson said Schlenker thought this would be a good offering and would like the opportunity to build it. He's not sure if it is a priority on the to do list.

Bochniak asked how the pool would look from Bench Street.

Baranski asked about privacy.

Johnson said the pool would be sunk - it would be lower than the current basketball court. The historic preservation commission was inclined to not require a privacy fence as it would block the building.

Baranski said he was trying to picture a group of people using the pool, having cocktails and visiting.

Johnson said he thought adding some low landscape shrubbery to break up the area along the fence before the pool deck would be a good idea.

Cook asked if the pool area would be usable until 10PM.

Rosenthal said he thought that time limit was for noise purposes.

Baranski asked who would enforce the close time.

Johnson said the whole outdoor space would probably need to be closed at a specific hour.

Baranski said the necessary parking area would seem to be determined by the maximum number of people allowed by the building code.

Bochniak asked about the term entertainment.

Johnson said they were thinking about offering the space for cooking or crafting classes. The only outdoor entertainment would be the lounge area. There would be no area outside for basketball or other games.

Bochniak said if this was approved by Zoning and the City Council and there was no onsite liquor license could guests still bring their own in.

Oldenburg said renters could bring in their own alcohol like a vacation rental.

Cook asked about potential grilling areas.

Johnson said that hadn't really been determined. They would like to have a space, but parking requirements may take precedence. Developing the parking will be expensive. They want to keep it away from the building to avoid foundation issues, but the grade drops off 36-38 inches so removing material and creating the parking is challenging.

Cook asked how many parking spots were available on the south side.

Johnson said four.

Baranski said all on-site parking requires backing out on to Bench Street.

Cook said this is the case most anywhere on Bench Street.

Rosenthal said the request really is for a hybrid vacation rental. Other vacation rentals on Bench aren't even required to have off street parking.

Dave Decker, 413 South Bench Street Galena is Director of the Galena ARC. He said it is very exciting to have a buyer for the building so soon after its listing. Schlenker has been wonderful to work with. If the sale goes thru Schlenker has agreed to be flexible as to when the ARC will need to vacate the building and he has offered use of the gym during the week when space is tight at their new facility. The building has only had three uses in its 100 plus years of existence – the past 50 as the ARC. Change is always difficult, and he appreciates open mindedness when looking at the application.

Rosenthal asked if the gym is still used for basketball.

Decker said it is basically a practice gym. It is so difficult for spectators to access the gym that games and tournaments are held at Galena public school facilities.

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

John Carey, 501 South Bench Street Galena said he has lived next door to the ARC since purchasing their home in 2005. At the time it was a duplex, but they are converting it back to a single-family home. They love hearing the children at the school which is different than hearing people having cocktails while lounging around a pool. They are concerned about the change of use from a school to, for all practical purposes, a hotel that would be open 24 hours a day, 365 days a year. They are worried about parking for the seven bedrooms. This requires seven parking spots, a manger space, an ADA spot as well as a loading zone for deliveries. The plan shows three spaces which includes an ADA spot. Parking really hasn't been an issue with the ARC - people are coming and going and school buses are unloading all in front of the building. The new plan has vehicles backing onto Bench Street and the potential of large delivery trucks. There are no buffer zones or screening – virtually no landscaping. Having a liquor license, a pool and lounge area doesn't seem compatible. Are there plans for fire escapes. Is there true ADA access? A PUD requires 5 acres; this shows they have .69 acres and really the amount of usable acreage is about a third of that – maybe a quarter of an acre.

Bochniak asked what his feelings would be if the building was converted to condos with no pool.

Carey said that was what everyone was thinking. This seems to be a stand-alone party destination.

Baranski asked Carey what he thought an appropriate use for the building would be.

Carey said it could be a museum, a professional building, a community center, but he realizes ADA access is an issue.

Baranski said if this was approved and the ordinances were enforced by the City would he still have a problem with the use.

Carey said the pool is not in keeping with Galena. The potential new owner makes his living as a professional party provider. He has concerns. He thinks it is possible for the use to be managed and he trusts that the City would enforce the regulations. He said Oldenburg indicated that the City is not interested in having a frat house type facility. He does know that selling this type of building is not an easy thing. It appears the presented plan is not very well developed.

Dennis Dunton 407 South Bench Street, Galena said he has the right side of a duplex just North of the ARC. His neighbor is Roger Karsk at 409 South Bench Street. They are the first building to the right of the ARC. Dunton has owned his property for fifteen years. He and his neighbor have two concerns. The first is parking. The ARC has been a great neighbor, but parking is an issue in this area. When you add seven housing units but only three parking spaces there are going to be problems. Backing onto Bench seems a problem – there is no turnaround. The second concern is toward the pool. This goes against everything that is Galena. An outdoor entertainment venue seems more appropriate for East Dubuque. He wants the ARC to have a new larger facility. He suggests that the new owner convert the building into something akin to an artist's center. Our community has a wonderful relationship with artists and area artisans could lease space for their needs. This would be a magnet to the community and would generate sales. He believes developing the space into condos would also be fine.

Rosenthal said if this was an arts center you would still have artists and consumers looking for parking spaces.

Dunton said artists would need parking but most visitors to Bench Street walk it so that would be less impactful than what is being proposed.

Baranski said that use was recently filled with the newly opened arts center on Summit Street. If the building were used for condos it is likely the entire building would be converted resulting in many more than seven units possibly double that number which in turn increases the parking needs. He asked Dunton if pool were removed would the request be okay.

Dunton said the pool is the most objectionable portion of the request but if people can sit outside until all hours of the night consuming alcohol that is problematic too.

Baranski and Rosenthal asked about ordinances concerning noise.

Oldenburg said that would be a general disturbance issue and noise complaints are handled by the police.

Rosenthal said this would not be any different than any Galena resident having a gathering with the potential for alcohol and noise.

Ilisa Farrell 505 South Bench Street, Galena said she has had ownership of this property for thirty-two years. She is in the process of retiring after thirty years in real estate. With the exception of the ARC it is a residential neighborhood. There is very little off street parking so most residents park on the street. As a proposed PUD

there is not the required necessary acreage. Parking is a problem with this development. She feels if this were developed as condominiums you would still only have seven or eight units in the entire building because each unit would have a kitchen, bathrooms, living spaces etc. and the building would have common spaces and hallways. If the pool was not built the outside area could be differently configured for more parking. When people own their space, they have a vested interest in how things are taken care of which is different than having the building as a rental. Having entertainment at this venue means all different kinds of things to this residential neighborhood. Trying to lump this into a PUD just because there is no other appropriate category doesn't seem to fit.

Bochniak asked would there be concerns if a church wanted to use the building.

Farell said she has a church on the other side of her duplex and knows what a church brings.

Bochniak said this type of building will probably have issues with parking and noise no matter what new use is developed.

Baranski said this area really isn't a neighborhood – there are plenty of other uses – the ARC, churches, the library, Turner Hall, the back of Main Street restaurants.

Farell believes condos would be a much better use for the building.

Diane Checckin 414 South Bench Street, Galena lives directly across from the ARC. She and her husband have been residents of Galena for over thirty years. There have been increased parking issues in the area due to the recently approved vacation rentals. The parking demands would only increase due to the use and needs of this proposal. A PUD under five acres requires buffering and mitigation of any adverse effects to neighboring properties. She cannot say enough about her negative feelings toward the pool - large groups can cause a number of problems. This is not the highest and best use for this property.

Christy Wheatley 518 Hill Street, Galena said she is here tonight for her own concerns but also for a friend who lives on Bench Street. Of course parking will become more of an issue as will noise. The idea of a pool in front of the building seems to be asking for trouble. It seems many aspects of the project have not been very well thought through.

Rosenthal asked if Johnson wished to respond to the objectors.

Johnson said he certainly appreciates the feedback provided by the neighbors. The term outdoor entertainment space is a zoning term and he agrees that the neighbors' quality of life needs protecting from detrimental and adverse activities. Would the 10PM end time solve this - he's not sure. The property would be managed by off-site staff from the Victorian Mansion. Is that enough for the neighborhood – that's up to them. Small Inns are managed the same way. No matter what is done with the building parking is going to be a problem. It's easy to think converting to condos would be a sure thing. You would need to destroy the third-floor gymnasium and probably need to seek historic funding to make a full-blown conversion financially feasible. You will still have parking issues and you would want to create some type of outdoor area for residents to use. Would this still be a concern to the neighbors. Converting to commercial space could be even more challenging. Trying to create a use where the gym is retained still seems a viable option.

Bochniak asked if Johnson thought it would be wise to take a step back and meet again with the owner to get a more concrete plan developed.

Johnson said he is not sure what the timeline is for the sale. He said he would like to hear what the Zoning Board has to say and how this impacts the plans.

Rosenthal asked for a motion to close the Public Hearing.

MOTION: Jansen moved, seconded by Bochniak to close the Public Hearing for Cal. No. 18PD-02.

Motion carried on voice vote.

MOTION: Baranski moved, seconded by Jansen to approve the request with conditions for Cal. No. 18PD-02.

Discussion: Baranski said this is a very difficult situation. When he heard ARC was moving he was concerned about the building's future. Conceptually there are good parts to the application but there are some bad as well. He has four points:

1. First because it is a small PUD, the Planned Unit Development ordinance was created because there are many unique properties in Galena and we need different tools to address those properties and yes bufferyards are important. This is only the preliminary plan approval – the Zoning Board would need to approval a final plan.
2. Baranski feels it is a bad idea to not have an on-site manager. Turning a building of that size over to whomever is not a good idea. Having a manager present is essential to maintaining oversight.
3. The pool is not a good idea. He would probably deny that.
4. He agrees with Oldenburg's recommendation to convert the proposed pool area into additional parking if possible.

Jansen concurs. He's not sure if a manger needs to be onsite always during rental but the pool does not belong. Any extra off-street parking that can be created should. The entire downtown area has parking issues. His biggest concern is that this building will have the same fate as that of St. Mary's School. It could sit unused and deteriorate for years which will have a negative impact on neighboring properties. He applauds the ARC for moving to the new site. It will be a wonderful facility. It's not necessarily the City's responsibility to ensure that old buildings have a constant use. He wants it to have a new life, but he's concerned about the potential of it being used as a party house. We need to put in some safeguards to protect the City.

Baranski said he did think about converting it to condos but that is a multi-million-dollar project. Does Galena have a demand for condos?

Jansen said the former high school on Prospect Street sold to a developer for about \$56,000. They then converted to condos. Owning an empty building still requires physical upkeep and financial burden.

Rosenthal said the St. Mary's building has been sitting empty rotting away since 1974.

Bochniak questioned interior restrictions on times for basketball and other activities. If there was going to be a play, musical, concert or even a group of musicians out for a reunion are we looking to restrict that type of noise.

Baranski said it would seem no different than if a group of people were at a private home. If there are complaints the police would respond telling them to quiet down.

Bochniak asked Oldenburg about the definition of entertainment.

Oldenburg said we have definitions for indoor and outdoor entertainment whether it is commercial or if the public is invited or private.

Rosenthal asked what the intent was for entertainment at this site.

Baranski said with a PUD we can pick and choose what seems appropriate to the area and property. He shares the concern of the neighbors for activities such as large frat style gatherings. But how do we restrict it. The application indicates twenty people. Does this mean twenty people in the entire building at one time. There is a building code calculation for how many people are safely allowed in that space.

Oldenburg said the primary purpose of a PUD is to determine what types of land use would be allowed on the site. The accommodations occupancy determines how many people are allowed for such uses as basketball or plays. This should be catered toward the total occupancy of the group renting the building.

Baranski asked as to the gym being used by ARC even after the sale. Would that be allowed.

Oldenburg said you could establish the land uses so the request could move forward. The applicant could later apply for a special use permit to allow additional types of entertainment use such as larger scale basketball use.

Rosenthal said it is very doubtful; that you would be renting out sleeping quarters while having a concert in the gym. It is also unlikely that these sleeping areas would be rented seven days a week, so you could have another activity in the building during those times. You could see families having reunions here – renting the building so everyone could be together and have use of the facilities and gym. It appears every time we have this type of request everyone starts talking frat parties and keggers and yet as far as he knows we haven't had any problems. He agrees that the pool is not a good idea and it seems the liability would be a problem for the owner. An area for people to sit and visit and possibly grill out seems reasonable. He's not as concerned about the parking. Four additional off-street parking spaces are four more spaces than are currently there. It's a good use for the building. He was a member of the last graduating class at St. Mary's in 1974 and he knows how the building looks. If the same thing happens here we are going to have many more people coming in fifteen years from now asking what the City is going to do about that falling down building. It sounds great to have a museum here but who's footing the bill. We have someone who wants to buy the building and use it. The City has the rules and the ability to limit the uses to protect the neighbors. He thinks it's a good idea – there are not a lot of uses for this type of building. If the ARC had not gotten this space 50 years ago it may not have had a use since then.

Bochniak went back to indoor entertainment. If we approve this tonight can we put restrictions on the indoor entertainment when we have the final review.

Oldenburg said the Zoning Board would recommend approval to the City Council and that would be the last time the Council would act on it unless there is some sort of appeal. This is the time the tone is set for the PUD. You could say that accommodations and indoor recreation on the third floor are allowed by right and cap the occupancy. You could say that any other indoor entertainment uses would require a Special Use Permit from the Zoning Board which means a public hearing. You could ask that the matter be continued to the December meeting although he doesn't think new testimony would be allowed.

Rosenthal said it would be nice to hear what the new owner's real intent was concerning entertainment. He doesn't want to see the gym use limited if it doesn't have to be. Yes, it will be limited somewhat due to the overnight accommodations, but he also doesn't want to have a concert on the third floor causing the neighbors to have a legitimate complaint.

Baranski said he thought the Board needed to define what would be allowed as commercial indoor entertainment. He thinks it would be beneficial to have a conversation with the developer.

Nack said right now the Board must speculate as to what the developer is looking to do. You can continue the request to the next meeting where clarification could help determine the uses.

Oldenburg said accessory uses by right, such as basketball, could be allowed. If they wanted to have things like small concerts or hypnotists for groups they would need to come back to the zoning board for a public hearing to obtain a Special Use Permit. This would be after approval of the PUD along with any necessary conditions. The Board should be able to proceed with the application for principal uses of accommodation and indoor recreation at whatever scale the board feels is appropriate.

Nack said the developer may not want to proceed if every indoor entertainment idea must come back before the zoning board and has the potential to be denied. Johnson may be able to clarify.

Baranski said he thinks the developer should come before the Board to address what it is that he has in mind. The Board can better proceed in deciding and include any necessary conditions.

Bochniak said limits on the number of persons attending entertainment type events could be determined depending on the number of overnight guests.

Baranski said he wished the Board had more information to base their decision on.

Rosenthal said if people are concerned about concerts being held there can't we just not allow those.

Nack said you could, but even something as simple as basketball could be an issue. Are the windows open, are they playing in there at all times of the day making a lot of noise. Maybe an end time of midnight would be appropriate. The problem is we don't know what he wants to do – you are being forced to guess.

Baranski asked what the most appropriate way was to get the information needed to make this decision.

Nack said you could continue the agenda item until the next meeting but there would be no new testimony as the public hearing had been closed. The Board can ask the developer for clarification as to what the intended uses are.

Rosenthal said he thinks the entertainment issue needs sorting out as well as the swimming pool.

Oldenburg asked if the board was keeping the outdoor recreation separate from indoor commercial. We have existing land uses as a guide so if you want to restrict nuisance type activities and/or hours of operation we have the tools to do so.

Bochniak asked where cooking classes would fall.

Oldenburg said that is an institutional use which is like they operate now.

Rosenthal asked if we shouldn't just continue this to the next meeting for clarification.

Oldenburg said we also need to look at the intensity as well as specific uses.

Baranski asked if you could have it read activities similar to those of the ARC.

Oldenburg said you could. As far as parking, changes of use are exempt, but parking can be addressed with the PUD.

Nack said as for the neighbors it appears alcohol use and timing of activities are a focus of concern.

Rosenthal said we don't have restrictions limiting a group of people who are gathered outside at someone's house grilling, visiting and having a few drinks. If you aren't bothering anyone it's allowed. You can't put so many restrictions on it that people won't want to come and stay.

Baranski said he just doesn't think it's possible to determine this without the developer coming to us with more specifics on what it is he wants to do.

Nack said someone would need to make a motion to continue.

MOTION: Bochniak moved, seconded by Baranski to continue the request for Cal. No. 18PD-02 until the December 12 meeting to clarify with the applicant the recreation and entertainment land uses that are proposed, the proposed hours and the proposed occupant load for those uses.

As Roll Call was:

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

Motion carried.

NEW BUSINESS

None

WORK SESSION

None

OTHER BUSINESS

None

PUBLIC COMMENTS

None

MOTION: Bochniak moved, seconded by Jansen to adjourn the meeting at 8:35 pm.

Motion carried on voice vote.

Respectfully submitted by
11-14-2018

Deb Price
Zoning Board Secretary