



Village of Galena ZONING AND PLANNING COMMISSION

MINUTES OF THE MEETING OF APRIL 17, 2013

The Zoning and Planning Commission of the Village of Galena met on Wednesday April 17, 2013 in the Council Chambers of the Village Hall at 109 Harrison Street, Galena, Ohio. Present were members; President Tom Hopper, Nancy Feole, Stan Swisher, Mark Brooks and Mike Bragalone. Also present were Zoning Inspector David LaValle, Zoning Clerk Sally Hopper, Village Solicitor Ken Molnar, Village Administrator Jeanna Burrell and visitors: Big Walnut Board of Education representative Verna Hines, Joyce Howitz, Malena Howitz, Dave & Heather Adams, Eddy Ambrose, D.J. Young and a court reporter. The meeting was officially called to order at 7:06 PM.

Copies of the revised minutes from the meeting of December 19, 2012 had been distributed to all members by the Clerk. The originally approved minutes needed to be replaced by the Revised December 19, 2012 minutes because as passed in January they contained the following factual errors: The location was shown as the Municipal Building, 9 West Columbus Street not the Village Hall, 109 Harrison Street and David LaValle's title was shown as the Deputy Zoning Inspector instead of as the correct title of Zoning Inspector. A motion to approve the revised minutes, as presented, was made by Nancy Feole, seconded by Stan Swisher and passed unanimously.

Copies of the minutes from the meeting of January 16, 2013 had been distributed to all members by the Clerk. A motion to approve the minutes, as presented, was made by Nancy Feole, seconded by Mike Bragalone and passed unanimously.

Copies of the minutes from the cancelled meetings of February 20 and March 20, 2013 had been distributed to all members by the Clerk. A motion to approve both minutes, as presented, was made by Mark Brooks, seconded by Stan Swisher and passed unanimously.

A hearing was held on the application of Edward Ambrose, DBA Sambuca's Italian Greenhouse, for a change in zoning district classification from Farm Residential (FR1) to Planned Commercial and Office District (PC) for 577 North Walnut Street, PIN numbers 41742003001000 and 41742003002000. Village Solicitor Ken Molnar introduced the proceedings and how they would be handled procedurally. The court reporter swore in all witnesses that wished to testify.

Attorney Mr. D.J. Young of the firm Firestone & Brehm, of Sunbury, spoke on behalf of the applicant. He introduced the matter to the Commission and stated that everyone knew about the business, the history of the zoning issues and that after conversations with a number of people, including Mr. LaValle, that it had been decided that the best thing to do was rezone the property. He believed this was being driven by a number of things, especially signage but also that the business was successful and operating more than 180 days a year and was growing. Their application speaks for itself and attempts to properly zone the property. He is here to answer any questions. The application and associated County Auditor's aerials are entered as Hearing Exhibit 1.

Mr. Young added that it is his understanding that Mr. Ambrose and the Ohio Department of Transportation (ODOT) have been operating under an informal agreement to allow the use of the portion of the property which is located in the State Route 3 (SR3) right-of-way to be used as part of the business. He also stated that the current flags and

signage are an integral part of attracting customer's attention to the fact that a retail business is located on the site.

Mr. Dave LaValle, Village Zoning Inspector, then gave a summary of his Staff Review, Dated April 10, 2013, and introduced various diagram and maps of the property shown as Village Exhibit A through C.

Mr. LaValle reported on the background leading to this application:

On December 19, 2012 a report known as: *Summary of File Notes and Zoning Opinion* was presented to the Zoning and Planning Commission regarding a zoning investigation of Sambuca's Green House. This document detailed the history of the facility beginning on or about September 12, 2007. On that date, the Commission issued a Conditional Use Permit for a permanent trellis (pergola) structure which had already been constructed without a zoning permit. The report indicates several changes have taken place including additions and unapproved modifications to the facility and operation beyond the original agricultural roadside stand. Most noteworthy is the extension of the commercial facilities into a single family home and garage. The minutes of the December 19, 2012 meeting detail the progression of the business from a small, seasonal, roadside plant sales stand to the present much larger operation including a new retail sales show room building. Contrary to the original proposal, the business is now in operation year round. With few exceptions, the changes were completed without zoning or building permits.

In public discussion with Mr. Ambrose on December 19, The Zoning and Planning Commission suggested he consider rezoning the property from the current FR-1 District to a Planned Commercial and Office District. This district requires a Development Plan as part of the rezoning petition process. The Commission encouraged Mr. Ambrose to write a development plan to accurately reflect the current scope of the business. The Commission indicated some changes would be necessary to make the operation in legal compliance with the Village Zoning Code. For example, signs were pointed out as one area in need of change.

The property was annexed into the Village in 1974. The business was started as a roadside stand on or about 2007 and is subject to the Village Zoning Code. Currently the Village classifies the operation as a non-conforming use in violation of the zoning code.

Mr. LaValle noted a number of items in his summary of his report with his conclusions as follows:

The application does not include a survey drawing of the property or a legal description. No engineering data is included. The lack of suitable survey and legal description makes it difficult to accurately understand exactly what is under the control of the owner. Approval of this petition without suitable and clear understanding of the owner's control of the property is not advised.

The information provided also fails to indicate the number of parking spaces to be set aside for off-street customer use. Parking is a very basic municipal commercial zoning consideration. This application fails to give any number, size or locational data for off street parking other than to allude to, "existing gravel parking". Review of the parking data supplied is insufficient to make an evaluation of parking conformance with the Village Zoning Code. No data is supplied regarding loading areas, their location, size or even its presence. Information provided is insufficient to make a determination. It appears that the existing gravel parking will be used for both loading and/or parking without any further definition. No information is given regarding employee parking, customer parking and delivery truck loading areas. Parking as presented will not meet Village Zoning Code standards.

It is noted much of the operation takes place in the ODOT road right-of-way. This activity includes storage of materials, customer parking, materials loading and unloading as well as many signs and other attractions. The question is: does the owner have permission to use right-of-way space for business purposes? Will questions about Sambuca's Commercial use of the right-of-way come up in the future? The Village will need clear documentation of any permission or arrangements with ODOT. Rezoning the property without this information is not advised.

At the December 19, 2012 Planning and Zoning Commission meeting, signs were specifically mentioned as an area of concern. The application materials presented do not make an accurate accounting of the location, size or description of the signs existing or proposed beyond general statements and number. The Village has noted that a portable sign exists in the ODOT right of-way and that other signs project into the right-of- way. Based on the information presented, it is difficult to determine much about the signs, except to understand the signs and displays and attractions now present will remain unchanged, if the rezoning is approved. The signs as now used do not conform to the Village Zoning Code. No information is presented regarding the relationship of the signs to public

safety or the potential encroachment into the public road right-of-way. The information indicates signs will continue to be attached to the fence and that portable signs will continue to be placed at right angles to the fence and otherwise continue to extend into the ODOT right of way on SR 3. It would be unwise to rezone without obtaining information from ODOT about signs located in the State right-of-way. Without sufficient property survey information it is difficult to fully understand all property control issues. Portable signs are not permitted in the Village and have been ordered removed in the past. Signs are not permitted in the road right-of-way, and signs attached to a fence in the right-of-way are prohibited. Approval of this petition will not be in the interest of Village sign regulation.

The application states a 20' by 20' enclosed pole building structure may or will be constructed. The drawing does not show the location for this proposed building or any description of changes which may be needed to accommodate this new building.

On site solid waste containment and disposal is a concern when considering zoning for a commercial use. No information is given regarding the location, access or schedule for disposal. A general statement is made indicating that no screening will be provided. Disregarding proper solid waste disposal and screening may cause new zoning problems and should not be overlooked. Inadequate information is provided to properly evaluate this important issue or its impact on the community. What does the facility do with its solid waste materials?

No information is provided about the types and quantity of any materials sold through the store that might be considered hazardous or dangerous or which might need special treatment and storage to protect public health and safety. Will the facility store and sell any materials which are considered worthy of special treatment and handling? Similar type facilities often provide lawn chemicals, pesticides, herbicides and like materials which may pose contamination hazards if not handled according to applicable governing standards. No information is provided about how the facility is prepared to handle possible spills, fires or potential contamination of the soil, air or waterways. It is illegal to discharge potentially damaging materials into the public wastewater collection and treatment system without first notifying and receiving permission from the Village. No information is given about the type and quantity of hazardous materials to be stored in the house. Does the house meet standards for the safe storage, fire prevention and sales of these chemicals?

The application alludes to Exhibit 2 as indicating a theme for the commercial activity. Without a better description and photo identification it is not possible to discern exactly what theme for the facility is portrayed or intended.

The application alludes to having no effect on storm water drainage but discounts the addition of 400 square feet of roof area to be added. No engineering data is presented regarding storm water control and run off prevention. Attention needs to be paid to this issue especially with any new buildings or changes in ground coverage. It is suggested that without some engineering and survey information it is impossible to determine potential storm water run-off from the property. The property is nearly completely covered with structures and graveled parking lot. Storm water control should be examined prior to any approval. Village engineering review costs are passed on to the applicant.

The development schedule is confusing in that it states the property is built out, but that a new 400 square foot building may be added. No time schedule is included and no space has been shown on the sketch drawing for the new building. A less confusing and more precise schedule is needed for monitoring purposes.

A commercial business needs proper street access meeting minimum dimensions, line of sight distances and the like. Lacking a survey, it is not possible to accurately determine safe ingress or egress to the joint use parking lot.

The property has existing fencing installations. Item "e" states that, "as built fencing" will be replaced, however it is unclear what fence is to be replaced. Information is not given about the specific fence type or dimensions so it is not possible to determine compliance at this time with current fence regulations in the Village Zoning Code.

The conversion of the house over to retail use, open to the public, normally requires the structure to meet commercial building code for occupancy. No information has been provided indicating the facility meets Ohio commercial building and safety codes. Approval of this rezoning without reference to these codes is not advised. It should be noted the conversion of the house to a retail store has not been approved by the Village.

The application seeks 18 divergences from the standard zoning commercial zoning requirements. No justification,

explanation or reason is given to support these major requests. If granted, as submitted, the rezoning will permit unusual and extreme deviations from the spirit and letter of the zoning code and standard community planning. In so doing, the owner will be granted a total exemption from zoning control. As such, a dangerous precedent will be set which will affect the uniform and fair application of the Village Zoning Code.

Mr. LaValle's conclusion is that approval of this proposed zoning amendment and the Development Plan will not be in the public interest and will diminish the purpose of the Village Zoning Code. Approval of the petition will raise questions regarding fairness and the equal application of the code. This application should be denied as presented.

Following Mr. LaValle's report the floor was opened for questions from the audience. There were none.

The Commission then followed with a number of questions and comment regarding the application. A number of these questions and comments centered on the large portion of the area being used by the business for parking and storage in the ODOT right-of-way area. Mr. Young reiterated that ODOT knew about the arrangement and had not had any problems with the operation. When asked if he had obtained a letter stating that from ODOT, Mr. Young said that he did not have their agreement in writing. He commented that he did not wish to get ODOT involved. Mr. Molnar stated that without a letter or other such written agreement, that the applicant would need to furnish a copy of the right-of-way easement so that he could examine it to see if the use of area is allowable.

There were a number of other questions and concerns regarding signs, storage of hazardous materials, storm water runoff issues in light of the large percentage of ground cover, driveway access, parking, the conversion of the house into a retail showroom without any inspections or approvals and the incompleteness of the application. After a period of back and forth discussion with Mr. Young the Commission explained to the applicant his options since it was obvious that additional work would be needed if he wished approval.

At Mr. Young's request he was granted a brief time-out to confer with his client at 7:54 PM. The hearing was resumed at 7:59 at which time the applicant formally requested that the hearing be continued until the next meeting to allow additional time to amend their application.

In light of the request by the applicant, Mr. Edward Ambrose, DBA Sambuca's Italian Greenhouse, a motion to table the application and continue the hearing until the next scheduled meeting, was made by Nancy Feole, seconded by Mark Brooks, and passed unanimously.

The court reporter was dismissed and the meeting returned to regular session.

A lengthy informal discussion was then held between Mr. Young, Mr. Ambrose, the staff and the Commission on items related to the application. Many issues were discussed and suggestions were made on how to improve the application. The Commission was clear that they were trying to work cooperatively with the applicant to bring him into compliance, however, proper procedures and rules must be followed to allow the business to continue to operate. It is clear the operation is not currently in compliance and the application, as submitted, could not be approved. Mr. Ambrose and Mr. Young then left and the meeting continued on regular monthly business.

Member Mark Brooks had to leave at 9:17 PM.

Zoning Inspector David LaValle gave a summary monthly Zoning Inspector and Property Maintenance Report. The Journey Fellowship, currently located in the old Fling Hardware building on the square in Sunbury, purchased the former Galena School Building from the Big Walnut Board of Education at an auction on April 3rd. They are expected to close on the property on May 3rd and to submit a conditional use request for use as a church. There may also be a request for a parking agreement with the Village for the shared lot.

The Village has sold the former Municipal Building at 9 West Columbus Street. There is nothing submitted yet, but plans for its use under Planned Commercial zoning are expected in the near future.

The clerk had nothing additional to report.

There was no old business.

There was no new business.

There being no further business before the Commission, a motion to adjourn the meeting was made by Mike Bragalone, seconded by Stan Swisher, and passed unanimously. **The next scheduled meeting will be on Wednesday, May 15, 2013 at 7:00 PM.** The meeting was officially adjourned at 9:33 PM.

Clerk

Chairman

CERTIFICATION

I, Sally H. Hopper, Clerk of The Planning & Zoning Commission of the Village of Galena, Ohio do hereby certify that publication of the above MINUTES were duly made by posting true copies thereof at five (5) of the most public places in the Village of Galena as provided for in Ordinance No. 2013-13 enacted by the Council of the Village of Galena on March 18, 2013.

Sally H. Hopper, Clerk