



## Village of Itasca Community Development Department

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### MEMORANDUM

<b>TO:</b>	Itasca Plan Commission	<b>RE:</b>	Haymarket DuPage, LLC Holiday Inn Proposal 860 W. Irving Park Rd.
<b>FROM:</b>	Shannon Malik Jarmusz, AICP Director of Community Development	<b>DATE:</b>	August 14, 2019
<b>CC:</b>		<b>ENCL:</b>	Haymarket DuPage LLC Appeal submittal dated August 13, 2019

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Attached you will find a submittal from Ice Miller LLP on behalf of Haymarket DuPage with regard to a request for the Plan Commission to consider appeals to administrative determinations made in my capacity as Director of Community Development/Zoning Administrator.

The appeal hearing will occur at next Wednesday's Regular Plan Commission meeting on August 21, 2019. Please review the attached documents to make yourselves familiar with the background.

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Village of Itasca  
Community Development Department  
Plan Commission  
Agenda Item

APPEAL HEARING

August 21, 2019

PC 19-014

**TITLE: Village Zoning Administrator's Response to Petitioner Haymarket DuPage, LLC's Appeal regarding 860 W. Irving Park Rd.**

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Haymarket DuPage LLC (Haymarket) is appealing the decisions of the Zoning Administrator (Community Development Director) Shannon Malik Jarmusz under the Zoning Ordinance. In response, the Zoning Administrator states the following:

**I. HAYMARKET'S PROPOSAL IS APPROPRIATELY GOVERNED BY THE PLANNED DEVELOPMENT SECTION OF THE ZONING ORDINANCE.**

- A. Haymarket's proposal is unique and does not easily fit into any category of the Zoning Ordinance. Haymarket's proposal for the conversion of the 168-room hotel into a non-profit facility for addiction recovery and mental health care includes, among other things:
- i. Detox. Haymarket proposes to have a short-term, medically intense unit for withdrawal management with stays of 3-5 days.
  - ii. Residential Program. Haymarket proposes a "residential program" with stays for individuals receiving mental health care treatment and or addiction recovery treatment for 7 – 90 days.
  - iii. Recovery Homes. "Recovery Homes" is a term used by the Illinois Administrative Code, § 2060.509. These "Recovery Homes" are defined as "alcohol and drug free *housing* components" and must "provide a structured alcohol and drug free environment for congregate living" which can be used by "residents." Haymarket proposes that individuals may live in these Recovery Homes for up to 365 days. When Haymarket initially proposed its facility, it was represented that the Recovery Homes portion of the facility will consist of a minimum of 120-130 beds (60-65 double occupancy rooms).
  - iv. Outpatient. Haymarket's proposal includes outpatient programs for their clients/patients.
  - v. Childcare. Haymarket's proposal includes childcare for its residents and patients in order to provide full family treatment.
  - vi. Education/work. Haymarket's proposal includes parenting education, fatherhood programing, GED preparation class, job placement services, and health education.
  - vii. Dining. Haymarket proposes to have a community dining facility to be used by residents.

- B. Based on this information, Ms. Malik Jarmusz determined that Haymarket's proposal did not fit neatly into any existing category under the Zoning Ordinance. For example, Haymarket's proposal is not clearly:
- i. Boarding/Lodging House. This use is primary residential. Haymarket's proposal is both medical (detox, residential treatment, and outpatient), residential (recovery homes), and other (childcare, education, and job placement).
  - ii. Child Care Center or School. The proposed primary use is not childcare or children's education.
  - iii. Dwelling Unit. This definition (and the subcategories of efficiency, multifamily, single-family detached, single-family attached, etc.) requires complete kitchen facilities and individual bathrooms.
  - iv. Family Care Home. This category does not apply because it is limited to "five (5) or fewer developmentally disabled persons" and Haymarket's proposal is for renovating a 168-bed facility for double occupancy.
  - v. Hotel/Motel. This category does not apply as it is for use by transient guests.
  - vi. Hotel Extended Stay. This category does not apply as the maximum length of stay is 120 days.
  - vii. Lodging Room. This category may apply to the recovery homes portion of the proposal but is not allowed in any district.
  - viii. Nursing Home. This category does not apply as it excludes care for mental illness.
- C. Haymarket's proposal has components of the following:
- i. Dwelling. "A dwelling is a building, or portion thereof, designed or used exclusively for residential occupancy including single-family dwellings, two family dwellings, and multiple-family dwellings, but not including mobile homes, hotels, motels, rooming, boarding, or lodging houses." This definition is a good fit for the proposed recovery homes but not the rest of the proposed uses.
  - ii. Healthcare Facility. Healthcare facilities have two subcategories.

- (1) Clinic: A clinic does not allow any in-patient care but is appropriate for outpatient care.
  - (2) Hospital: “A hospital is any institution, place, building, or agency, public or private, whether organized for profit, or not, devoted primarily to the maintenance and operation of facilities for the diagnosis and treatment or care of two (2) or more unrelated persons admitted for overnight stay or longer in order to obtain medical care, including obstetric, psychiatric, and nursing or care of illness, disease, injury, infirmity, or deformity.” The term “hospital”, without regard to length of stay, also includes: “Any facility which is devoted primarily to providing psychiatric and related services and programs for the diagnosis and treatment or care of two (2) or more unrelated persons suffering from emotional or nervous disease” and “mental or physical hospitals.” The detox program and residential program fit most closely into this category.
- D. This property is in the B-2 Community Business District, which is governed by § 8.04 of the Zoning Code and was established to “promote a harmonious, efficient, and convenient retail shopping environment.” The District encourages traffic safety through proper traffic routing and auto parking, freedom from traffic congestion through provisions for adequate off-street parking, and the protection and promotion of the surrounding residential area. Since the B-2 District is primarily a business district, the proposed residential use (the recovery homes component) is not a traditional fit for the district.
- E. When a proposed use does not fit into any existing category under the Zoning Ordinance, the petitioner may either (1) seek a text amendment or (2) planned development. Because a text amendment is forever part of the Zoning Ordinance and this type of proposal seemed unlikely to be reoccurring, Ms. Malik Jarmusz determined that Haymarket should apply for a planned development by special use.
- F. Planned Development by special use is governed by Section 8.04(2) of the Zoning Code. A Planned Development is used when the use of land contains 3 or more acres as an integral unit and combines one or more primary land uses. Here, Ms. Malik Jarmusz determined that the uses in Haymarket’s proposal include two primary uses and several secondary uses:
- i. Residential – Dwelling
  - ii. Healthcare – Hospital
  - iii. Healthcare-Clinic
  - iv. Childcare
  - v. Education

vi. Dining

- G. Because of the multiple uses proposed by Haymarket, Ms. Malik Jarmusz correctly determined that a planned development application was appropriate.

**II. THE ZONING ADMINISTRATOR REASONABLY ACCOMMODATED HAYMARKET'S REQUEST TO WAIVE INAPPLICABLE PROVISIONS OF THE ZONING ORDINANCE.**

Haymarket requested several waivers from Section 14.12's requirements for Planned Development. Because there was no new construction contemplated by Haymarket, Ms. Malik Jarmusz agreed that certain subsections of Section 14.12 were inapplicable. Haymarket is challenging two subsections which were not waived by the Zoning Administrator: the landscape plan and the economic impact statement.

- A. The landscape plan requirement was not waived because the landscaping on the site is approximately four decades old. Ms. Malik Jarmusz believes the Plan Commission and Village Board may wish to take this opportunity to review the existing landscaping and determine whether the existing plantings are adequate for this new proposal.
- B. The economic impact statement was not waived because Village staff has concerns about the impact Haymarket's proposal will have on the Village's tax revenue and resources. Ms. Malik Jarmusz asked Haymarket to address these concerns in an economic impact statement so that the Plan Commission and Village Board can consider them with Haymarket's proposal.

**III. THE ZONING ADMINISTRATOR ACTED WITHIN THE SCOPE OF HER AUTHORITY WHEN REFUSING TO PROCESS AN INAPPLICABLE PETITION AND A LATE PETITION.**

- A. Ms. Malik Jarmusz, as Community Development Director, is the Zoning Administrator (Itasca Code of Ordinances, § 30.091(B)).
- B. Section 14.02(1) states that the Zoning Administrator "shall be in charge of the administration and enforcement of this Ordinance" and is responsible for receiving zoning applications and adopting rules and procedures consistent with the Zoning Ordinance.
- C. Ms. Malik Jarmusz, in her role as Community Development Director and Zoning Administrator, regularly works with petitioners, landowners, and developers to ensure that the materials submitted to the Plan Commission are appropriate and complete. She provides petitioners, landowners, and developers with feedback and comments on their submittals, and often requires them to modify or update their submittals in advance of the Plan Commission hearing or the Village Board meeting. Ms. Malik Jarmusz believes that it is staff's responsibility to ensure that each petition before the Plan Commission and Village Board is appropriate and

complete so that the Plan Commissioners' and Trustees' time is not wasted or misused.

- D. Since petitioners, landowners, and developers may appeal any of Ms. Malik Jarmusz's decisions to the Plan Commission and Village Board, where they receive a chance to be heard and have the adverse decision reviewed, their due process rights are fully protected.
- E. In order to ensure that petitions are appropriate and complete before the public hearing at the Plan Commission, Village staff requires sufficient time to review each petition, provide feedback to each petitioner, and prepare the staff memorandum for the Plan Commissioners' review in advance of the hearing. Village staff works with several departments (engineering, building, and police) and the Fire Protection District to ensure that all concerns are raised before or during the public hearing. To have an orderly process, deadlines are announced at the beginning of the year and enforced. Here, Haymarket was given a 7-day extension to submit all materials for the planned development application. Since they missed the deadline and 7-day extension, Haymarket's petition was not scheduled for the August Plan Commission meeting.
- F. Finally, although numerous petitions with multiple parts are regularly heard before the Plan Commission (e.g., variances, class I site plan review, subdivision, special use), the Plan Commission does not hear alternative or competing petitions. Here, Haymarket submitted 2 special use petitions in the alternative. Mr. Michael Roth's cover letter dated July 3, 2019, indicated that Haymarket was seeking approval of its petition for healthcare special use and, if that was not the appropriate application, approval of its petition for a planned development by special use (page 3). This "either-or" approach would require staff to analyze two separate, alternative petitions and would require this Commission to review these alternative petitions at the same hearing. To Ms. Malik Jarmusz's knowledge, this Plan Commission has never proceeded in this manner and she did not think it was appropriate here.
- G. In her role as Zoning Administrator, Ms. Malik Jarmusz determined that Haymarket needed to submit a complete petition for a planned development by special use and needed to do so by the deadline in order to be placed on the agenda for the Plan Commission. This is consistent with this Commission's prior instructions to Ms. Malik Jarmusz concerning the role of her office and staff and is consistent with how this Commission has handled petitions in the past.

In conclusion, Ms. Malik Jarmusz requests that this Plan Commission uphold her decisions and recommend dismissal of Haymarket's appeal.