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July 8, 2020

VIA EMAIL

Mr. Kenneth Walden
Ms. Mary Rosenberg
Access Living
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Re: 860 W. Irving Park Road Zoning
Application (Haymarket DuPage)
PC 19-014

Dear Mr. Walden and Ms. Rosenberg:

We are in receipt of your letter dated June 30, 2020, which requested that the Village of Itasca classify Haymarket DuPage's application for zoning relief as a Special Use Healthcare Facility rather than a Special Use Planned Development. You may not be aware, but this request was made previously by prior counsel for Haymarket, Mr. Michael Roth. In fact, it was the subject of Haymarket's appeal to the Plan Commission and later the Village Board last summer and was the substance of the litigation dismissed by Judge Bonnie Wheaton in March.

The Village's position is unchanged: the proposed use is a mixed-use development of both residential and healthcare. We understand your client's position; however, it is the Village's position that the planned recovery homes, which will house clients for long-term stays up to a year, is residential. The Illinois Administrative Code defines "recovery homes" as "housing components" for "congregate living" for "residents" "who recently have completed substance abuse treatment services or who may be receiving such treatment services at another licensed facility." Ill. Admin. Code § 2060.509. In other words, these residents are not receiving in-house medical care as the individuals in the in-patient and detox programs. The latter programs fit neatly into the Itasca Zoning Ordinance's definition of "healthcare"; however, the former dormitory-like recovery homes do not. As a result, Haymarket's petition is for a mixed use in the B-2 District. The Village recommended that Haymarket apply for a special use under Section 8.04(2)(u) for a planned development rather than a text amendment. To ease the burden on Haymarket, the Village waived many of the Planned Development submittal requirements.

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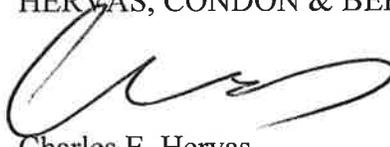
We are familiar with the Fair Housing Act, Americans with Disabilities Act, and the Rehabilitation Act, as well as the requirement that the Village reasonably accommodate disabled/handicapped individuals. The Village disagrees with your interpretation of this requirement. None of the cases cited (nor could we find any) require that the Village must suspend its processes in favor of Haymarket in order to reasonably accommodate persons with disabilities. The statutory accommodation provisions require a plaintiff to show (1) that the accommodation is *necessary* to alleviate discrimination and (2) that the accommodation is reasonable and proportional to the costs to implement it. *Wis. Cmty. Servs. v. City of Milwaukee*, 465 F.3d 737, 752 (7th Cir. 2006). To show that the accommodation is necessary, a plaintiff must show “that the reason for his deprivation is his disability” or that “‘but for’ his disability, he would have been able to access the services or benefits desired.” *Id.*; *see also Nikolich v. Arlington Heights*, 870 F. Supp. 2d 556, 565 (N.D. Ill. 2012). Importantly, “reasonable accommodation” does not require a municipality to waive its zoning application requirements. *United States v. Vill. of Palatine*, 37 F.3d 1230, 1233-34 (7th Cir. 1994).

We disagree that the Village’s interpretation of its Zoning Ordinance and its requirement that Haymarket submit a planned development application is necessary to alleviate discrimination. This requirement does not hurt disabled persons by reason of their disability. Rather, Haymarket is being treated the same as any other petitioner applying for a unique use which does not neatly fit into the Zoning Ordinance. Moreover, given the Village’s need to fairly apply its Zoning Ordinance for all applicants and to respect the rights of neighboring property owners and other taxing bodies, it is unreasonable and disproportional to request that the Village suspend its zoning application procedures for Haymarket DuPage.

In sum, the Village denies your request for accommodation.

Very truly yours,

HERVAS, CONDON & BERSANI, P.C.



Charles E. Hervas



Yordana J. Wysocki

cc: Mary Dickson
Bridget O’Keefe