

Attachment A

Zoning Administrator's Decision being Appealed: Decision dated July 16, 2019 rejecting Petitioner's complete special use application for a healthcare facility. Ex. 1; see also Exhibit 5, Letter dated July 31, 2019; see also Exhibit 6, Letter dated August 12, 2019.

The question inherent herein is whether the Zoning Administrator has the power to reject a complete application for special use for a healthcare facility without a hearing. The answer is no. The Zoning Administrator exceeded her authority and erred in rejecting Petitioner's complete application for special use for a healthcare center without a hearing.

The Village of Itasca, Illinois Zoning Ordinance (the "Code") section 14.11 sets forth the standards and requirements for special uses. A healthcare facility is a special use in the B-2 zoning district. A healthcare facility is defined in the Code and includes both "clinics" and "hospitals." The Petitioner will operate and maintain the existing building and facilities on the subject property without new site development, other than interior renovation. Petitioner's proposed use would be a healthcare facility to provide diagnosis, treatment, and recovery support for persons disabled by substance use and mental health disorders who voluntarily seek care.

Petitioner's special use application was complete and submitted together with the required application fee on July 3, 2019. See Exhibit 7, Petitioner's Application for Special Use for a Healthcare Facility. There has been no finding or indication from the Village or the Zoning Administrator that the Petitioner's application for special use for a healthcare facility was incomplete. Because the application was submitted by the submission deadline and was complete, it should have been processed and scheduled for the August 21, 2019 public hearing and for Plan Commission consideration, findings, and recommendations. Instead, via email, Petitioner was informed that the application for special use for a healthcare center was rejected and would not be presented at the August 21, 2019 hearing. Ex. 1, see also Exs. 5, 6.

The Zoning Administrator does not have the authority to deny a complete application for special use of a healthcare facility without a hearing. Section 14.11.2 of the Code states that "Special Uses shall be authorized or denied by the President and Board of Trustees in accordance with the Illinois Compiled Statutes as amended and the regulations and conditions set forth in this Ordinance for Special Uses." The Code goes on to state "No application for a Special Use shall be acted upon by the President and Board of Trustees until after a public hearing before the Plan Commission and a written report of its findings of fact and recommendations have been submitted to the Village Board of Trustees." Code, § 14.11.2.

Further, the Village has published its Procedures and Petition for Special Use Applications (revised 05/2011), on its website at <https://www.itasca.com/657/Zoning-Ordinance-Related-Documents> (the "Procedures"). The Procedures specifically state that the "Petition for Special Use must be complete in order for your hearing to be schedule [sic] and for action to be taken by the Village. Incomplete Petitions for Special Use will be rejected by the Village and your hearing will not be scheduled until the Petition for Special Use is completely filled out."

Despite the clear language in the Code and the Village's published Procedures, the Petitioner's application for special use for a healthcare facility was not processed, was not presented to the Plan Commission for public hearing, findings, and written report and recommendations to the Board for a final decision. In denying the application, the Zoning Administrator usurped the authority of the Plan Commission and the Village Board. In summarily rejecting the application, the Village Zoning Administrator denied the Petitioner's right to due process, and failed to make a requested, reasonable accommodation for disabled persons.

Therefore, the Zoning Administrator's decision to reject Petitioner's special use for a healthcare facility should be reversed and the matter added to the next Plan Commission's public hearing. The rejection of the application and appeal of that decision have already unfairly prejudiced Petitioner. The Zoning Administrator's rejection has unduly delayed Petitioner's application for special use, which will continue to prejudice Petitioner until the matter is resolved.

Attachment B

Zoning Administrator's Decision being Appealed: Decision dated July 24, 2019 that the Plan Commission will not allow the concurrent processing of Petitioner's two special use applications, one for special use of a healthcare facility and one for a planned development. Ex. 2.

The question here is whether the Zoning Administrator has the power to determine to allow only one application for special use to move forward at one time. The answer is no. The Zoning Administrator exceeded her authority and erred in ordering that the Village will only process one special use application at a time.

After rejecting the Petitioner's application for special use for a healthcare facility, the Zoning Administrator further decided that even if the two applications could move forward, only one application could move forward at a time. This is incorrect, is not supported by the Village Code, and denies the Petitioner's right to due process and a necessary, reasonable accommodation.

Section 14.11.2 of the Code states that "Special Uses shall be authorized or denied by the President and Board of Trustees in accordance with the Illinois Compiled Statutes as amended and the regulations and conditions set forth in this Ordinance for Special Uses." The Code goes on to state "No application for a Special Use shall be acted upon by the President and Board of Trustees until after a public hearing before the Plan Commission and a written report of its findings of fact and recommendations have been submitted to the Village Board of Trustees." There are no provisions in the Code prohibiting the submittal, processing or hearing of two special use applications at the same time.

Further, the Village has published its Procedures and Petition for Special Use Applications (revised 05/2011), on its website at <https://www.itasca.com/657/Zoning-Ordinance-Related-Documents> (the "Procedures"). The Procedures specifically state that the "Petition for Special Use must be complete in order for your hearing to be schedule [sic] and for action to be taken by the Village. Incomplete Petitions for Special Use will be rejected by the Village and your hearing will not be scheduled until the Petition for Special Use is completely filled out." There are no provisions in the Procedures prohibiting the submittal, processing or hearing of two special use applications at the same time.

Without any authority, the Zoning Administrator unilaterally determined that two special use applications cannot be processed or heard at the same time solely because the processing of two special use applications at the same time has never been allowed before; because doing so would require staff and Plan Commission time; and because doing so would increase the chances of confusion and error.

There is no authority in the Village Code or elsewhere for this decision and it should be reversed. The Village regularly processes multiple applications for zoning relief for the same property at the same time, e.g., zoning map amendments, special uses, variations, text amendments, subdivisions, and planned developments. In practice the Village staff and the Plan

Commission have demonstrated the capability to address and make findings on these requests for relief in multiple applications, even involving separate and distinct standards, without becoming confused. Indeed, the processing of evidence for a healthcare facility special use at the 860 W. Irving Park Road property is far more straightforward and far less confusing than processing a planned development special use. This is particularly true when the proposed planned development involves the same project site with no development, and with the Zoning Administrator having waived no less than 38 of 54 planned development code requirements, as inapplicable to the proposal. See Ex. 4.

The decision to not process or hear two special use applications at the same time unfairly prejudices Petitioner, will unduly delay Petitioner's applications for special use, and may result in inconsistent decisions due to the improperly imposed bifurcated process. Petitioner will continue to be prejudiced until the matter is resolved. Furthermore, the delay that will result from the Village's refusal to process more than one special use application concurrently will cause the Petitioner significant financial hardship and potential damages; is a denial of Petitioner's right to due process; and is a failure to make a requested, necessary, and reasonable accommodation for disabled persons.

Attachment C

Zoning Administrator's Decision being Appealed: Decision dated May 9, 2019 that an application for special use for a planned development is required for the Petitioner's proposed healthcare facility. Ex. 3; see also Exs. 1, 2, 4.

The question here is whether the Petitioner's proposed project qualifies as a healthcare facility, as defined by the Village Zoning Code. The simple answer is yes, and therefore the Petition should properly be processed as such. The application for a special use for a planned development is not required, contrary to the Zoning Administrator's decision.

The definition of "Healthcare Facility (Health Centers)", as stated in Section 3 of the Code states that it includes both a "Clinic" and "Hospital." "Clinic" is defined in the Code, Section 3, as:

a building containing an association or group of physicians, dentists, clinical psychologists, and similar professional healthcare practitioners, including allied professional assistants who are assembled for the purpose of carrying on their professions. The healthcare facility may include apothecary, dental, medical laboratories, and/or x-ray facilities, but shall not include in-patient care and/or operating rooms for major surgery.

"Hospital" is defined in the Code, Section 3, as:

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 Code expressly defines the term "hospital" "without regard to length of stay."

1. 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
2. All places where pregnant women are received, cared for, or treated during delivery irrespective of the number of patients received.

Section 3 of the Code further includes, within the definition of "hospital," "general and specialized hospitals, tuberculosis sanatoria, mental or physical hospitals and sanatoria, and includes maternity homes, lying-in-homes, and homes for unwed mothers in which aid is given during delivery."

In its application for special use approval as a healthcare facility, the Petitioner stated that it "will provide diagnosis, treatment, and recovery support services for persons disabled by substance use and mental health disorders who voluntarily seek care. Services will include

inpatient, outpatient, and recovery programming, as described in detail in Attachment A.” See Ex. 7.

As stated in Attachment A to Petitioner’s application, the proposed healthcare facility “will be licensed by the Illinois Department of Human Services for a continuum of substance use disorder treatment services for adult males and females, ages 18 and older, under Title 77 Illinois Administrative Code Rule 2060, and as further described by the American Society of Addiction Medicine.” (footnote not included). Ex. 7.

Attachment A to Petitioner’s application goes on to state the continuum of medical services that it will provide:

- Assessment/diagnosis.
- Crisis stabilization, with stays up to seven days. Crisis stabilization will be staffed with licensed clinical staff and a registered nurse or licensed practical nurse at least 40 hours per week and with additional staff 24 hours per day, seven days per week, 365 days per year.
- Medically monitored withdrawal management (detoxification), with usual stays of three to five days. Withdrawal management units are staffed with nurse practitioners or physician assistants, registered nurses and/or licensed practical nurses 24 hours per day, seven days per week, 365 days per year. Additional staff include Illinois Certification Board-certified counselors.
- Clinically managed high-intensity residential substance use disorders treatment, with separate programs for men and women. Residential programs will have usual lengths of stay, depending on the specialized program, of up to 7, 14, 28, or 90 days. Residential substance use disorders programs are staffed with registered nurses or licensed practical nurses and Illinois Certification Board-certified or licensed counselors at least 40 hours per week and with additional program staff 24 hours per day, seven days per week, 365 days per year.
- Outpatient substance use disorders treatment. Outpatient programs are staffed with Illinois Certification Board-certified or licensed counselors, as well as with case managers.
- “Recovery home” programs, as that term is defined and used by the above-referenced state regulations, with separate programs for men and women. Recovery home stays will usually be 90 days but may be up to 365 days. Title 77 Illinois Administrative Code Rule 2060 defines recovery homes as “alcohol and drug free housing components whose rules, peer-led groups, staff activities and/or other structured operations are directed toward maintenance of sobriety for persons who exhibit treatment resistance, relapse potential and/or lack of suitable recovery living environments or who recently have completed substance abuse treatment services or who may be receiving such treatment services at another licensed facility.” Rule 2060 requires Recovery Homes to have certified staff and structure including at least five group sessions per week. In Petitioner’s model, certified staff is on the unit 24 hours per day, seven days per week, 365 days per year to administer programs, and medication, and monitor patient compliance and progress. Petitioner’s

model also includes requirements that Recovery Home patients provide weekly schedules and inform staff of all movement external to the building, and sign in and out every time they enter or leave the unit.

Attachment A to Petitioner's application further states that "[p]sychiatry and psychological services will be available throughout the facility for patients with co-occurring mental disorders. These will include on site as well as telepsychiatry and licensed clinicians on site who will conduct clinical groups and individual counseling." Ex. 7.

Petitioner's proposed use of the land and the services to be provided by Haymarket squarely fit within the definition of "healthcare facility, as defined in the Code. Pursuant to Illinois law, the language in zoning ordinances must be interpreted in favor of the free use of property, and any ambiguity will be interpreted in favor of the property owner. *Chicago Title & Trust Co. v. Village of Inverness*, 315 Ill. App. 3d 1100 (1st Dist. 2000); *Monat v. County of Cook*, 322 Ill. App. 3d 499 (1st Dist. 2001); *American National Bank & Trust Company of Chicago v. Village of Arlington Heights*, 115 Ill. App. 3d 342 (1st Dist. 1983). The terms used in zoning ordinance definitions are interpreted based on their commonly understood meanings. *County of Lake v. Gateway Houses Foundation, Inc.*, 19 Ill. App. 3d 318 (2d Dist. 1974).

The definition of "healthcare facility" within the Code, when reasonably interpreted by the terms' ordinary meanings, encompasses Petitioner's proposed use and services. Therefore, the Petitioner's proposed project qualifies as a healthcare facility, as defined by the Code.

The reason given for the Zoning Administrator's rejecting the special use application for a healthcare facility, and her order that the Village will only consider an application for a planned development (with no less than 38 waivers or exceptions, see Ex. 4) is that the Petitioner's proposed project includes residential and educational uses as other "primary uses." Of course, even if there is a residential or educational component to the healthcare facility proposed, those uses are subsumed within the defined scope of a healthcare facility and hospital, and those uses are not "primary" uses separate from the healthcare facility.

The term "primary use" is not defined in the Village Code. The term "residential use" is also not defined in the Code. "Residence Districts" under the Zoning Code provide for the development of various types of "dwelling units" within the framework of the Amendatory Comprehensive Plan adopted on February 28, 1995 or as amended, as stated in Section 7.01 of the Code. "Dwelling Units" and "Dwelling" are both defined in the Code.

Dwelling is defined as "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."

A "Dwelling Unit," as defined in the Village's Zoning Code "consists of one (1) or more rooms, which are arranged, designed or used as living quarters for one (1) family only. Individual bathrooms and complete kitchen facilities, permanently installed, shall be included in

each dwelling unit.” The Code specifies different types of “dwelling units” such as single-family – detached, multiple-family, semi-detached, etc.

Petitioner’s proposed use does not include any dwellings or dwelling units. The rooms patients will stay in are the same hotel rooms that customers currently stay in at the Holiday Inn. These are and will continue to be temporary stays – just as in the case of unlimited hospital stays for patients and guest stays at lodging houses and extended stay hotels. Not only are the stays at the proposed Haymarket healthcare facility temporary, but these stays are highly regulated, double-occupancy for unrelated patients, and with no rooms having kitchens. Further, although the rooms are double-occupancy, only the patient is allowed to stay on the property, not the patient’s family. As a result, the double-occupancy in each room includes individuals from different families. *See Ex. 7, at Attachment A.*

Petitioner’s application includes a description of two types of temporary stays for patients: (1) “residential program” and (2) “recovery home program.” The “residential program” has stays for patients of approximately 7, 14, 28, or 90 days. This program is termed “residential” as opposed to “outpatient.” Again, this stay is solely for addiction recovery, is highly regulated, and double-occupancy with no family members allowed. *See Ex. 7, at Attachment A.*

The other type of temporary stay is the “recovery home program.” Recovery home stays will usually be 90 days but may be up to 365 days. Recovery Homes, as defined by Title 77 Illinois Administrative Code Rule 2060, are “alcohol and drug free housing components whose rules, peer-led groups, staff activities and/or other structured operations are directed toward maintenance of sobriety for persons who exhibit treatment resistance, relapse potential and/or lack of suitable recovery living environments or who recently have completed substance abuse treatment services or who may be receiving such treatment services at another licensed facility.” Rule 2060 requires Recovery Homes to have certified staff and structure including at least five group sessions per week. *See Ex. 7, at Attachment A.*

Under both the “residential program” and the “recovery home program,” there are no dwellings or dwelling units, as defined in the Code. Further, there is only one “primary use”—that of a healthcare facility. There is no residential zoning classification under the Village’s Zoning Code that could be honestly and fairly applied to allow the temporary stays at the proposed Haymarket healthcare facility as a permitted or special use. The sole use proposed is for a healthcare facility “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.” Code, § 3. Therefore, there is not a “residential use” component to Petitioner’s proposed project, and the Zoning Administrator’s conclusion otherwise is wrong.

Petitioner’s application for special use for a healthcare facility, therefore, includes only one primary use—that of a healthcare facility. Healthcare Facilities are specifically defined and are expressly designated as special uses in the B-2 district applicable to the subject property. Therefore, no planned development is required for the Petitioner’s proposed healthcare facility use.

Petitioner submitted a complete special use application for a healthcare facility. For the reasons stated herein, there is no authority for the Zoning Administrator's decision to require a planned development instead of a special use for a healthcare facility, and that decision should be reversed.

The decision to require a planned development imposes additional application requirements and standards that unfairly prejudice Petitioner and have and will unduly delay Petitioner's applications, causing the Petitioner significant financial hardship and potential damages; a denial of Petitioner's right to due process; and is a failure to make a requested, necessary, and reasonable accommodation for disabled persons. Petitioner will continue to be prejudiced until the matter is resolved.

Attachment D

Zoning Administrator's Decision being Appealed: Decision dated June 25, 2019 to deny Petitioner's requested exemptions from certain planned development requirements. Ex. 4; see also Ex. 1; see also Exhibit 8, Email dated July 10, 2019.

The question here is whether the Zoning Administrator has the power to deny Petitioner's requested exemptions from the planned development requirements. The answer is no. The Zoning Administrator exceeded her authority and erred in denying certain requested exemptions from the planned development requirements.

Section 14.12.2.b states that the "planned development may be exempted from the provisions of the Subdivision Regulations and the Zoning Ordinance of the Village of Itasca to the extent specified in the final authorization of the planned development's Special Use Ordinance."

Petitioner requested exemptions from various sections of the planned development requirements, as stated in Exhibit 9 hereto, as reasonable accommodations and because they were inapplicable. On June 25, 2019, Petitioner received the Zoning Administrator's decisions on each of the requested exemptions. Ex. 4. Of particular importance is the Zoning Administrator's decision that many of the planned development requirements simply do not apply to Petitioner's proposed project.

The Petitioner requested in its planned development application that the Plan Commission exercise its authority under Section 14.12.2.b to exempt Petitioner's application from the filing requirements of a landscape plan and an economic impact statement. Ex. 9. Petitioner's planned development petition demonstrates repeatedly that the proposed "project" involves no new or changed development to the site, and no new or changed landscaping. The Petitioner also demonstrated that, like the Village itself, the Petitioner is a not-for-profit entity, and that the proposed healthcare facility will be a not-for-profit service to disabled persons. As such an economic impact statement is inappropriate and should be waived as a reasonable accommodation.

The requirements of submitting a landscape plan and economic impact statement along with the Petition represent additional burdens and standards not applicable to the Petitioner's project and serve as unreasonable impediments to the proposed use. Instead of granting the exemptions, having a hearing or forwarding the requested petition for exemptions to the Plan Commission or Village Board, the Zoning Administrator simply denied them. Ex. 4.

Additionally, with Petitioner's application for special use for a planned development, attached hereto as Exhibit 10, Petitioner requested that the deadlines for submission of the landscape plan and economic impact statement be extended as a reasonable accommodation. The Zoning Administrator also summarily denied that request on July 10, 2019 (Ex. 8, see also Ex. 1), without a hearing and without forwarding the request to the Plan Commission or the Village Board.

The Zoning Administrator exceeded her authority when she denied both the requested exemptions related to landscaping plan and economic impact statement and the requested extension of the submission deadline for those materials. The decision requiring a landscaping plan and economic impact statement, along with the standards related to those materials, should be reversed and exempted. Petitioner is prejudiced by the denial of these exemptions and its application has been unduly delayed, causing Petitioner significant financial hardship and potential damages; a denial of Petitioner's right to due process; and a failure to receive a requested, necessary, and reasonable accommodation for disabled persons. This prejudice will continue until the matter is resolved.