

MEMORANDUM

TO: Charles Witherington-Perkins
Director of Planning and Community Development

CC: Bill Enright
Deputy Director of Planning and Community Development

FROM: Latika Bhide
Development Planner

DATE: December 10, 2014

RE: PC 14-018, I-Cubed Enterprises/Food Commissary
Follow-up on the issues raised during and after the Plan Commission hearing.

I-Cubed Enterprises/Food Commissary is seeking a Land Use Variation to allow “Bakery Products, Wholesale and Production” in the M-1 district at 2910 N. Arlington Heights Road. The petition was heard at the October 8, 2014 Plan Commission meeting, at which the Commission made a recommendation for approval of the request. This item was postponed to the December 15, 2014 Village Board meeting at the petitioner’s request to allow them time to provide additional information.

Residents from the Burr Oak neighborhood met with Village staff after the Plan Commission hearing on October 28, 2014. The residents expressed their concerns about odors, catering, wild animals attracted by the odor, as well as the size of the proposed kitchen. Materials submitted by the residents are attached to this memo.

The memo summarizes the issues that were discussed during the Plan Commission hearing.

I. FOLLOW UP ON ISSUES DISCUSSED AT THE PLAN COMMISSION HEARING

Plan Commission/Resident Questions:

Members of the Plan Commission had questions relative to the Illinois Department of Public Health Food Service Sanitation Code and Village Health Department requirements. The following clarifications were provided by the Health Services Department.

- Q1. How are violations of the Food Service Sanitation Code handled by the Health Department? If violations are not corrected, or not corrected within a specified time, can the facility be shut down?
- A1. Violations of the Food Service Sanitation Code are documented on an inspection form and provided to the owner/operator. If violations that constitute a substantial hazard to the public health are not corrected, a food operation may be closed. Violations that are not a substantial hazard and aren't corrected in a timely fashion may result in the issuance of citations for Court.
- Q2. Per the Food Service Sanitation Code, is it acceptable to store garbage indoors until such time as it is picked? If not, would it be acceptable per the Code to store the garbage within the loading dock on the site until it is picked up?
- A2. Refuse may be stored indoors, but must be kept in rodent-proof containers with tight-fitting lids and away from prep areas.

In response to this issue, Condition #2 as recommended by the Plan Commission states that: The trash dumpster on the site will be internally located if permitted, or screened from public ways, and surrounding uses and secured with fencing, sealed and moved north of the loading dock.

Since the Code allows indoor trash areas, Staff recommends, consistent with the Plan Commission motion the following modified condition #2: Based on the response from the Health Department, the condition can be modified as follows: **An indoor refuse storage area must be provided for this use.**

At this time, the petitioner has indicated that they agree and intend to incorporate an indoor refuse area within their tenant space. Please see the attached letter, dated October 15, 2014. A schematic plan for the indoor refuse area has been provided.

It should be noted that many developments downtown have indoor refuse storage areas that include restaurant garbage. These include:

- Panera Bread
- California Pizza Kitchen
- Alt Thai
- Wildfish
- Jimmy John's
- La Roca Tapas
- Peggy Kinnane's
- Armand's
- Tuscan Market
- Ttowa

The food service operations at Arlington International also include an indoor refuse storage area.

- Q3. For an outdoor garbage enclosure, are there any code restrictions against requiring a roof enclosure? Are garbage bins with sealed lids acceptable?
- A3. No roof is required for outdoor garbage enclosures. Refuse containers must have lids that are kept closed. The Building Division may have separate requirements (fire suppression) for a roof over a refuse storage area. The petitioner has agreed to provide an indoor refuse area within their tenant space. Please see the attached letter dated October 15, 2014 and a schematic plan for the indoor refuse area, dated December 5, 2014.
- Q4. Has the Health Department received any complaints from the residents in the Luther Village or The Moorings regarding odors or garbage from their kitchen facilities?
- A4. No. The Health Department has not received any complaints from the residents in the Luther Village or The Moorings. There are a total of 668 dwelling units at the Luther Village and two campus restaurants. There are 293 dwelling units at The Moorings.
- Q5. Will catering services be provided at this facility?
- A5. There was discussion at the Plan Commission hearing regarding Savory Salads catering events and the possibility of operating catering services out of this location. The petitioner's application did not indicate that a catering establishment was being requested at this location. The petitioner has indicated that the fulfillment of catering orders is not going to be taken, completed, or delivered at or directly from the commissary. Any catering services will be sourced out of the Savory Salads retail location, which is permitted. Per their written statement (dated October 15, 2014, attached) the purpose of the food commissary is not to accommodate or increase the catering business.

Per Chapter 28, Zoning Regulations, Catering Establishments are defined as: A facility whose primary purpose is to provide food, generally in large quantities, for banquets or for special events which are held off the premises not including a carry-out restaurant or a sit-down restaurant. Catering Establishments are permitted as a Special Use in the B-1 district and are permitted by right in the B-2, B-3, and B-4 districts. Therefore, Catering Establishments are not permitted in the M-1 district at this location. To allow a catering establishment at this location would require the approval of a land use variation. The Petitioner has indicated that no catering will occur at the commissary, although this would be difficult to enforce.

Though several restaurants within the Village provide catering services, there are no stand-alone catering establishments in the Village.

- Q6. From the resident's testimony, it appears that there is a rodent/ coyote/ skunk problem in the area at this time. Does the Village have an animal control program?

- A6. The Police Department has two Animal Wardens available to assist residents as well as businesses, with Domestic and Wildlife issues. The Village does not have a rodent control program. It was indicated by the Animal Wardens that the skunks are quite busy at this time of the year, trying to fatten up to keep warm over the winter. It was also indicated that coyotes are everywhere. The Village does not do anything unless the animals (skunks and coyotes) are sick or injured. The property owner always has the option of hiring a private trapper at their own cost. However, it must be noted that with coyotes, if you remove any animals from a certain area, it will cause the number in litters to go up to replace the population which in turn could cause an increase in coyotes in the area.
- Q7. One of the residents asked if the Food Service Sanitation Code requires the equipment (in the Food Commissary) to be sterilized? If yes, where/how are the chemicals disposed?
- A7. No. There is no requirement for equipment to be sterilized.

Odors

Attached for your reference are two memos from the Health Department, dated March 20, 2013 and April 5, 2013 addressing concerns raised by the Plan Commission relative to cooking odors. Based on previous code enforcement cases that have gone to court, it is difficult to enforce odor conditions.

Grease Traps

At the Plan Commission hearing, the petitioner alluded to the possibility of locating the grease trap indoors, if permitted by Code. At this time, no building permit plans have been submitted for this use. Therefore, it has not been established whether an external or internal grease trap will be used. However, if an exterior grease trap is used, it will not attract rodents because it is an underground system that is contained and sealed.

The grease trap should be located as far north as practically feasible.

M-2 vacancy

The proposed use is permitted by right in the M-2, Limited Heavy Manufacturing District. At the Plan Commission hearing, there was discussion relative to the vacancy rate for property zoned M-2 in the Village. There is approximately 2.8 million square feet of M-2 zoned property in Arlington Heights. Approximately 370,375 square feet of space, amounting to 13.3% is estimated to be vacant. Most of the M-2 zoned property is located at the far south end of the Village along Algonquin Road and Golf Road.

Other Issues:

Loading, Delivery and Refuse provisions in the Zoning Ordinance

Per Chapter 28, Zoning Regulations, in the B-1, B-2, B-3, and B-4 districts, all deliveries and loading related activities, as well as parking lot sweeping in the service area, directly abutting a residential property, is not permitted between the hours of 10:00 p.m. and 7:00

a.m. There are no restrictions on delivery or loading operations in the Manufacturing districts. The Village Board could consider imposing similar restrictions for this use.

The Village requires the screening of all refuse areas using walls, fencing, planting or a combination of these. The garbage enclosure was originally proposed to be located outdoors. The petitioner has since indicated that they intend to incorporate an indoor refuse area within their tenant space. Please see the attached letter dated October 15, 2014 and a schematic plan for the indoor refuse area, dated December 5, 2014.

Savory Salads at 215 N. Hough Street, Barrington

The Food Commissary is intended to prep food for the existing Savory Salads restaurant in Barrington and the proposed Savory Salads restaurant in Arlington Heights at the Esplanade Center on Euclid Avenue.

- Staff contacted the Planning and Community Development Department for the Village of Barrington on October 15, 2014 regarding the existing Savory Salads location in Barrington. The feedback received was positive. It was indicated that Savory Salads is a really great business. The Village of Barrington has had no issues with them. They are very well liked in the community. The citizens/people really like them and their business continues to grow and increase. The Village of Barrington has not had any Health issues with Savory Salads.
- Food facilities within Lake County in Barrington are inspected by the Lake County Health Department. Inspection Reports for food facilities in Lake County are available on their website. The restaurant passed all inspections in 2013 and 2014.

Other Similar Facilities

It should be noted that other facilities such as Jewel Osco also have kitchen facilities on-site and also provide cake and party trays.

- The Jewel Osco located at 440 East Rand Road is located immediately south of the residential properties on Circle Hill Drive.
The distance between the store and the residence to the north is located approximately 80 FT.
- The Jewel Osco located at 1860 South Arlington Heights Road is located immediately to the east of the single family properties on Surrey Park Lane.
The distance between the store and the residence to the west is located approximately 95 FT.
- The Jewel Osco located at 122 N. Vail Avenue is located near residential development to the west and south.
Residential properties are located 57.5 FT to the west and 111 FT to the south.

The Health Department has indicated that they have not received any complaints regarding rodents or odors relative to the Jewel Osco stores listed above. Also, there are

many restaurants located in close proximity to residential.

By comparison, the Commissary (not including the office portion) would be located approximately 108 feet from the property line, and approximately 160 feet from the residence to the south and approximately 250 feet from the residence to the east. The interior refuse area will be located approximately 160 feet from the property line and approximately 217 feet from the residence to the south.

Former Use of Building

- The prior tenant of 2910 N. Arlington Heights Road (tenant space in question) was Optimal Energy LLC. Optimal Energy is an installer of geothermal heating and cooling systems. Per staff's understanding, the business was involved at this location in designing/engineering the heating and cooling systems and fabricating sheet metal into duct work required for the systems.
- Prior to Optimal Energy, the tenant at this location was Sedecal USA, Inc. (2001). The company is involved in Original Equipment Manufacturer (OEM) design and manufacturing of high frequency X-Ray generators and X-Ray systems. Per their business license, at this location, the business conducted sales and service for X-Ray Medical devices.

Other Commissaries

Staff contacted the Environmental Health Division within the Community Development Department at Elk Grove Village to enquire about the food commissaries located in the Village. The Food Commissary for 'Sweet Tomatoes', which is a restaurant specializing in salad bar, specialty salads, soups, pasta, and breads, is located in the Village within a Restricted Industrial (I-1) district. The property at 875 Cambridge Dr. is surrounded by other I-1 properties. The Commissary serves their 6 Chicagoland locations. It was indicated to staff that the facility is approximately 10,000 square feet in area. Elk Grove staff indicated that he had not received any odor, pest or garbage complaints for this use. The commissary is not adjacent to residential uses.

II. MEETING WITH NEIGHBORS

On October 28, 2014, Planning and Community Development staff met with the neighbors from the Burr Oak neighborhood. The residents expressed concerns about home values, odors and smells from the Commissary operation, and the health and safety concerns due to wild animals being attracted due to odors.

The residents also expressed concerns regarding the size of the kitchen as well as the equipment proposed for the kitchen. The residents further expressed concern regarding any catering from this location. The information provided by the residents is attached to this memo.

III. CONFERENCE CALL WITH PETITIONER

On November 6, 2014, Planning and Community Development staff held a conference call with Stephanie Jameson, the operator of Savory Salads/Food Commissary and

Attorney Dominic Buttitta. Based on the concerns expressed by the residents, staff asked the petitioner to provide additional information, specifically related to the size of the kitchen and the various equipment. The petitioner has provided a response, dated December 5, 2014, which is attached.

The petitioner has indicated that the larger floor area would allow them to buy required items in bulk to save cost and reduce deliveries. Also, due to the Illinois Department of Public Health (IDPH) regulations, they are required to store meat and cheese separately from produce, therefore requiring ample sized coolers/freezers. The petitioner is proposing floor mixers instead of the table top mixers currently used, to mix a larger quantity of dough. Because of the small window for baking, the larger revolving ovens are necessary to simultaneously fit all dough in the oven. The petitioner has also indicated that they are proposing four (prep) tables to avoid congestion and the need to sanitize and resanitize surfaces. The three and four compartment sinks are per the IDPH requirements.

The petitioner has indicated that at this time there will be two employees at the Commissary. The petitioner has estimated that at an absolute maximum, the employees at the commissary would not exceed ten, wholly depending upon demand.

Further, the petitioner has stated that they have no intention of running night shifts and it is currently the policy of the company to be closed on Sundays. All prep work is proposed to be done from Monday to Saturday during daytime hours.

IV. OPTIONS

The Village Board could consider the following options:

- A. Concur with the Plan Commission recommendation with modified Condition #2: ~~The trash dumpster on the site will be internally located if permitted, or screened from public ways, and surrounding uses and secured with fencing, sealed and moved to the north side of the loading dock.~~ **An indoor refuse storage area must be provided for this use.**
- B. Deny the petitioner's request.
- C. Concur with the Plan Commission recommendation with modified Condition # 2, listed above with additional conditions as follows:
 - a. All deliveries and loading related activities, as well as parking lot sweeping in the service area, directly abutting a residential area, shall not be permitted between the hours of 10:00 p.m. and 7:00 a.m.
 - b. The grease trap should be located as far north as practically feasible.

- c. The hours of operation for the commissary will be limited to Monday to Saturday between 7:00 a.m. to 7:00 p.m. The commissary shall not operate a night shift and no Sunday operation is permitted.

V. RECOMMENDATION

In efforts to address nearby residents concerns while still allowing this new business and building occupancy, the following modified Plan Commission recommendation could be considered by the Village Board:

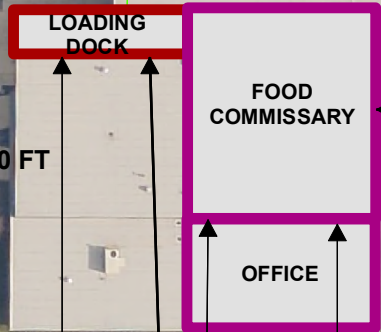
1. The Land Use Variation is limited to I Cubed Enterprises/Food Commissary only and food prep shall be limited to Savory Salads.
2. ~~The trash dumpster on the site will be internally located if permitted, or screened from public ways, and surrounding uses and secured with fencing, sealed and moved to the north side of the loading dock.~~ **An indoor refuse storage area must be provided for this use.**
3. If the Village determines that the proposed use results in the emission of objectionable odors in quantities so as to be readily detectable by an observer at any point on the boundary line of any premises or beyond, then the petitioner will need to incorporate additional measures and/or improvements that will address the odor issue. The exhaust venting should be moved as far north as possible.
4. Once the food preparation schedule is determined, the frequency of the trash pick-up will be increased so that trash placed in the receptacle will not remain in the receptacle for more than 48 hours.
5. The site shall be monitored for any issues relative to resident concerns such as odor, rodents, traffic and trash.
6. The Petitioner shall comply with all Federal, State and Village codes, regulations and policies.
7. **All deliveries and loading related activities, as well as parking lot sweeping in the service area, directly abutting a residential area, shall not be permitted between the hours of 10:00 p.m. and 7:00 a.m.**
8. **The grease trap should be located as far north as practically feasible.**
9. **The hours of operation for the commissary will be limited to Monday to Saturday between 7:00 a.m. to 7:00 p.m. The commissary cannot operate a night shift and no Sunday operation is permitted.**

Attachments:

- Aerial Image, 2910 N. Arlington Heights Road
- Email from David Zajicek, Hinshaw and Culbertson, dated 10-16-2014
- Memo, from Sean Freres, Environmental Health Officer, dated 3-20-2013
- Memo, from Sean Freres, Environmental Health Officer, dated 4-5-2013
- Petitioner Communication, dated 12-05-14
- Petitioner Communication, dated 10-15-2014
- Information provided by neighbors after neighborhood meeting

COLLEGE DR

ARLINGTON HEIGHTS RD



250 FT

160 FT

OFFICE

FOOD COMMISSARY

LOADING DOCK

108 FT

160 FT

217 FT

Schematic Sketch



Bhide, Latika

From: RZinkann@hinshawlaw.com on behalf of DZajicek@hinshawlaw.com
Sent: Thursday, October 16, 2014 10:54 AM
To: Bhide, Latika
Cc: Dominic J. Buttitta, Jr.; brian@astrotech.com.hk
Subject: I-Cubed Land Use Variation

Ladika -

In response to your request for information relative to I-Cubed's request for a land use variation, the property owner's (Astrotech, Inc., hereinafter called AST), prior tenant of the approximate 13,000 sq. ft. premises now being leased by I-Cubed was used for HVAC consulting and contracting work including office, warehouse, show room, and fabrication. No manufacturing was involved. The fabrication consisted of buying sheet metal, cutting it and configuring it into typical HVAC duct work, much like we all have in our homes.

Regarding vacancy, AST realized in December of 2012 that the prior tenant would not be extending its lease after expiration on September 30, 2013. Accordingly, AST hired a broker to begin looking for a replacement tenant and found none until approximately 15 months later in March of 2014, being I-Cubed. During the 15 month drought, there were very few inquiries. The reason being that the premises is small and one of many similar premises for rent in "C" type office/warehouse buildings in the Arlington Heights area. Moreover, this particular premises had an untypical office/warehouse ratio of approximately 30% office/70% warehouse instead of the typical 10/90 or 20/80, at most. Moreover, there is no drive-in truck dock available to this premises and, moreover, the dock is shared with AST. This has always been a negative factor with other potential tenants. AST was fortunate to find a potential tenant, I-Cubed, with the visionary and unique concept of a hybrid office and food preparation use closely fitting a 30/70 ratio and no need for a private drive-in dock.

So, the question isn't really one of absolute vacancy but rather a question of tenant interest. If I-Cubed had not appeared on the scene, AST would most likely still be looking for a tenant.

I hope this sufficiently responds to your questions. If not, feel free to contact me.

David E. Zajicek, Partner

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Memorandum

To: James McCalister, Director of Building & Health Services
C: Matt Dabrowski, Development Planner
From: Sean Freres, Environmental Health Officer
Date: March 20, 2013
Re: Manpasand: PC 12-022

The following is a response to a request from the Planning & Community Development Department to address concerns of the Plan Commission regarding the expansion of Manpasand Restaurant.

Manpasand opened in March, 2002. In November, 2006, the Health Department received an anonymous complaint about cooking odors. An inspection was conducted and it was observed that the cooking equipment, surfaces and hood filters were in need of cleaning. The cleaning was done and no additional complaints were received at that time. At a December, 2006 Village Board meeting, a couple complained to the Board that odors from Manpasand have been an ongoing problem. In March, 2007 the Health Department received complaints from owners of three different homes adjacent to the shopping center where Manpasand is located. A citation was issued to the business owner for permitting the emission of an objectionable odor. The three complainants appeared in court as witnesses. After seven court appearances, the case was non-suited by the Village Prosecutor because the Village could not sustain a burden of proof that Manpasand presented a viable odor nuisance.

There have been two other food service nuisance odor complaints that staff can recall. In August 1994, a citation was issued to a restaurant for nuisance odors. After four court appearances, the defendant was found not guilty of permitting the emission of nuisance odors. The court stated that since the property was zoned for a restaurant, and the exhaust equipment was operating properly, no violation existed. The other complaint involved a large coffee bean roasting operation. The Village Board at that time had a condition with the operators that if complaints were received, and they were unable to resolve them, they would cease the operation. Complaints were received and the company moved their operation to an adjacent community.

The equipment in Manpasand's kitchen ranges in age from eleven years to much more recent. The two original cooking hoods were removed and replaced with one large hood in May 2011, after a fire occurred. The filters in the hood are used to extract the grease, which also helps remove the odors. This is what Manpasand, along with any other food service that cooks in Arlington Heights uses to control odors. The hood complies with current State and Village regulations, and has been operating normally during routine inspections.

There are manufacturers of cooking hoods that make odor reduction units that claim to "eliminate or reduce odors to an acceptable level." The newer technologies advertised to reduce odors have not been evaluated by a third party and staff is not aware of a system of this type being installed in Arlington Heights. There is nothing in the Village or State codes that would require a food service facility to install such a system.

Memorandum

To: James McCalister, Director of Building & Health Services
cc: Matt Dabrowski, Development Planner
From: Sean Freres, Environmental Health Officer
Date: April 5, 2013
Re: Manpasand Restaurant- 644 E. Golf Rd.

This memo is in response to the memo sent by Planning & Community Development on April 1, 2013, regarding concerns raised by the Plan Commission relative to cooking odors. The Environmental Health Officers have reviewed the letter sent by Affiliated Realty and Management Company and concur with their findings.

1. Manpasand did install a new hood in 2011.
2. Additional odor control systems are expensive and cannot guarantee the elimination of cooking odors.
3. Requiring additional odor control systems on all new or expanding restaurants would be expensive, and may cause restaurants to relocate to other communities.

In addition, as stated in the memo to you dated March 20, 2013, the Village has prosecuted two restaurants in the past under the Village's Nuisance Odor code unsuccessfully. In one of the cases, the Judge stated that since the property was zoned for a restaurant, and the exhaust equipment was operating properly, no violation existed. The other case was non-suited by the Village Prosecutor because the Village could not sustain a burden of proof that the restaurant, Manpasand, presented a viable odor nuisance.