

PIN: 01-02-207-024

ADDRESS:
2300 FLAMBEAU DRIVE
NAPERVILLE, IL 60564

PREPARED BY:
CITY OF NAPERVILLE
LEGAL DEPARTMENT
630/420-4170
400 SOUTH EAGLE STREET
NAPERVILLE, IL 60540

RETURN TO:
CITY OF NAPERVILLE
CITY CLERK/COMMUNITY SERVICES DEPT.
400 SOUTH EAGLE STREET
NAPERVILLE, IL 60540

PZC Case #23-1-033

ORDINANCE NO. 23 - _____

AN ORDINANCE GRANTING A
TEMPORARY USE FOR A THERAPEUTIC CHICKEN INITIATIVE
AT 2300 FLAMBEAU AVENUE

RECITALS

1. **WHEREAS**, Richard and Wendy Montalbano are the owners (“**Owners**”) of real property located at 2300 Flambeau Drive, Naperville, IL, legally described on **Exhibit A** and depicted on **Exhibit B** (the "**Subject Property**").
2. **WHEREAS**, the Subject Property is currently zoned R1A (Low Density Single-Family Residence District) in the City of Naperville and is improved with a single-family home.
3. **WHEREAS**, the Owners of the Subject Property are the founders of Touch My Heart, a not-for-profit organization serving the special needs community through various initiatives.
4. **WHEREAS**, in conjunction with Touch My Heart, the Owners began operating a facility on the Subject Property which is described on the “Touch My Heart” website as “The Farm”, or “The Farm prototype” comprised of multiple structures and chicken

coops which owners have advised house emotional support chickens, therapy chickens, and chickens being trained to become therapy chickens, where the Owners provide the special needs community with opportunities to visit, hold, and pet therapy chickens (hereinafter referenced as the “**Therapeutic Chicken Initiative**”).

5. **WHEREAS**, upon the City’s receipt of complaints regarding the chicken coop facilities and operation of the Therapeutic Chicken Initiative on the Subject Property, City Code Enforcement confirmed that the Owners had constructed extensive chicken coop structures without a building permit (the “**Original Chicken Coop Structures**”).
6. **WHEREAS**, City Code Enforcement directed the Owners to submit a building permit for the Original Chicken Coop Structures. The Owners submitted a building permit application, and two subsequent revisions, for the structures which had already been built. Owners’ applications for a retroactive building permit for the Original Chicken Coop Structures were rejected by the City on November 23, 2021, August 11, 2022, and August 29, 2022 for failure to comply with the following provisions of the Naperville Municipal Code (hereinafter collectively referred to as “**Ordinance Violations**”):
 - a. Section 10-4-6:3 (Fowl and Livestock) requires the chicken coop to be fully screened; Owner and Petitioner have not provided nor have Owner and Petitioner proposed to provide the required screening at the Subject Property;
 - b. Section 10-4-6:3 (Fowl and Livestock) permits a maximum of 8 fowl at a residential property; Owner and Petitioner have 17 fowl at the Subject Property;

- c. Section 6-2-10:1 (Accessory Buildings, Structures, and Uses of Land) requires that the chicken coop be setback 5' from the rear property line; Owner and Petitioner have constructed the chicken coop at a distance of 4.5' from the rear property line; and
 - d. Section 6-2-8 (Home Occupation Regulations) permits a maximum of 4 students at a home occupation; Owner and Petitioner permits 12 students to visit the Subject Property at any one time related to the Touch My Heart program.
7. **WHEREAS**, on November 22, 2022, following the Owners' failure to submit building permits in compliance with the Naperville Municipal Code, or to apply for a variance to seek relief from applicable Naperville Municipal Code provisions, the City issued citations ("**Citations for Ordinance Violations**") to the Owners regarding the Ordinance Violations described in Recital 6 above.
8. **WHEREAS**, the Citations for Ordinance Violations were before the DuPage Circuit Court on January 9, 2023 and May 3, 2023 and the cases were continued to give the Owners time to seek variances from the City.
9. **WHEREAS**, on April 21, 2023 one of the Owners, Richard Montalbano, submitted an application for variances to the City's Zoning Code as well as variances to animal control (PZC 23-1-033) (hereinafter referred to as the "**Zoning Application**").
10. **WHEREAS**, during the week of July 3rd, 2023, while the Citations for Ordinance Violations were still pending, and after filing their Zoning Application, the City received a complaint, and the City verified, that the Owners had constructed a significant addition to the Original Chicken Coop Structures on the Subject Property and that Owners did so (again) without having obtained the required

building permit (hereinafter referred to as the “**Unauthorized Expansion**” of the originally unpermitted Original Chicken Coop Structures).

11. **WHEREAS**, on July 10, 2023 the Owners were notified that the City had become aware of the Unauthorized Expansion of the Original Chicken Coop Structures and the Owners were instructed to do no further construction work at the Subject Property while their Zoning Application was pending.
12. **WHEREAS**, in addition, the City became aware that the Owners had placed a portable bathroom facility on the Subject Property which the Owners advised they installed in order to provide an accessible restroom facility for visiting students; Owners further advised that the portable bathroom facility is emptied by a truck once every two weeks.
13. **WHEREAS**, on July 21, 2023 the City notified the Owners that a portable bathroom facility is not permitted on the Subject Property under Article B of Title 8 of the Naperville Municipal Code (Sewer Use, Connections of Public Utilities), and directed the Owners to remove it within thirty (30) days.
14. **WHEREAS**, the public hearing regarding the variances sought in the Zoning Application was conducted before the Planning and Zoning Commission on July 19, 2023; and
15. **WHEREAS**, at the hearing, members of the Planning and Zoning Commission noted that the Owners’ uses of the Subject Property did not fit into a residential neighborhood but recommended that temporary variances be granted for an 18-month period to allow the continued use of the Subject Property, subject to certain

conditions, to provide the Owners time to relocate the Therapeutic Chicken Initiative.

16. **WHEREAS**, the Naperville Municipal Code does not allow for temporary approval of zoning variances; and

17. **WHEREAS**, Section 6-2-11 (Temporary Uses) of the Naperville Municipal Code provides that a temporary use may be approved for a period of time which exceeds six (6) months if the use does not have an adverse impact on the surrounding properties, public health, safety and general welfare; and

18. **WHEREAS**, the City has received several complaints from property owners who live in the area regarding the Owners' use of the Subject Property for the Therapeutic Chicken Initiative regarding the size of the chicken coops and lack of screening, the noise and odors from the chickens, the noise from the groups visiting the Subject Property, as well as the presence of a portable restroom facility.

19. **WHEREAS**, the City Council has determined that: (i) the uses in Zoning Application for the Therapeutic Chicken Initiative are not appropriate for a residentially zoned property; (ii) Owners failed, on two separate occasions, to comply with the requirement to obtain building permits for the structures which are used for the Therapeutic Chicken Initiative, and by such omissions created the situation they now seek relief from; and (iii) the concerns of other property owners in the area are legitimate. Notwithstanding the forgoing, and subject to strict compliance with the conditions set forth herein, the City Council has determined that it is reasonable to grant a temporary use to the Owners as provided herein to give the Owners a limited

time to come into compliance with the Naperville Municipal Code and to attempt to find a location to relocate the facilities and operations associated with their Therapeutic Chicken Initiative.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers, as follows:

SECTION 1: The foregoing Recitals are incorporated as though fully set forth in this Section 1. All exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

SECTION 2: A temporary use pursuant to Section 6-2-11 of the Naperville Municipal Code (“**Temporary Use**”) to permit the continued operation of the Therapeutic Chicken Initiative on the Subject Property through **May 31, 2024** (the “**Temporary Use Expiration Date**”) is hereby granted to the Owners of the subject property, Richard and Wendy Montalbano, subject to their compliance with the following conditions:

1. On or before November 15, 2023 Owners shall remove all structures which were added on to the Original Chicken Coop Structures as a result of the Unauthorized Expansion and return the structures to the Original Chicken Coop Structures consistent with the depictions included in the Zoning Application (attached hereto as **Exhibit C**); and
2. On or before November 15, 2023 Owners shall install a solid six foot (6’) tall board-on-board fence along the perimeter of the Subject Property as required by Section 10-4-6:3 of the Naperville Municipal Code, which shall be subject to application for and approval of all required City of Naperville permits; and
3. On or before November 15, 2023 Owners shall reduce the maximum number of chickens on the Subject Property to 12; and
4. On or before November 15, 2023 Owners shall remove the portable restroom facility from the Subject Property and provide all necessary restroom facility accommodations within the principal structure located on the Subject Property.

5. At no time shall Owners expand either the Original Chicken Coop Structures on the Subject Property or the operations of the Therapeutic Chicken Initiative.

SECTION 3: If, during the term of the Temporary Use, the City determines that one or more of the conditions set forth in Recital 2 above have not been complied with, and/or that additional violations of the Naperville Municipal Code have occurred on the Subject Property, the City Zoning Administrator may issue written notice (“**Notice**”) to the Owners terminating the Temporary Use granted hereunder and requiring Owners to come into compliance with the Naperville Municipal Code then in effect. If Owners fail to fully comply with the direction provided in said Notice within ten (10) days of issuance thereof or any other timeframe agreed to in writing by the City Zoning Administrator (the “**Compliance Timeframe**”), the City shall take any and all actions it deems appropriate, including but not limited to issuance of citations for ordinance violations to the Owners for each violation of the provisions set forth in Recital 2 of this Ordinance and for any violations of the Naperville Municipal Code for each day that said violations occurred prior to issuance of the Notice and which continue after the Compliance Timeframe.

SECTION 4: If the City determines that the Owners have failed to bring the Subject Property into compliance with the Naperville Municipal Code by the Temporary Use Expiration Date, in addition to any and all other actions which the City deems appropriate to be taken, such failure shall be deemed an ordinance violation for each day the Temporary Use, or any part thereof, continues after the Temporary Use Expiration Date.

SECTION 5: Upon expiration or termination of the Temporary Use as provided herein, the Owners may operate a home occupation at the Subject Property provided that

said home occupation is in full compliance with all provisions of Section 6-2-8 (Home Occupation Regulations) of the Naperville Municipal Code, as amended from time to time.

SECTION 6: Upon expiration or termination of the Temporary Use, the Owners may have a chicken coop at the Subject Property provided that said chicken coop is in full compliance with all provisions of the Naperville Municipal Code, as amended from time to time.

SECTION 7: This Ordinance is subject to all conditions and requirements set forth in the Naperville Municipal Code, as amended from time to time.

SECTION 8: The City Clerk is authorized and directed to record this Ordinance with the Will County Recorder.

SECTION 9: If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision, shall not affect any of the remaining provisions of this Ordinance or any other City ordinance, resolution, or provision of the Naperville Municipal Code. Technical and minor substantive revisions as deemed acceptable to the City Attorney may be made to this Ordinance and to the exhibits hereto prior to recordation of this Ordinance with the Will County Recorder.

SECTION 10: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this _____ day of _____, 2023.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2023.

Scott A. Wehrli
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk