



## Legislation Text

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File #: 23-0845B, Version: 1

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### **CITY COUNCIL AGENDA ITEM**

#### **ACTION REQUESTED:**

Option 1: Concur with the intent of the PZC to allow a continued temporary use of the chicken coop structures and associated home occupation for a period of time as determined by the City Council and subject to certain conditions, or

Option 2: Concur with staff to deny PZC 23-1-033, finding that the chicken coop structures and associated home occupation are too intensive for a single-family residential property, and that the facilities and operations should comply with all applicable provisions of the Naperville Municipal Code

**DEPARTMENT:** Transportation, Engineering and Development

**SUBMITTED BY:** Adam Beaver, AICP Candidate, Community Planner

#### **BOARD/COMMISSION REVIEW:**

The Planning and Zoning Commission (PZC) held the public hearing for PZC 23-1-033 on July 19, 2023. Following presentations by staff and the petitioner, five members of the public spoke in support of the petitioner's requested variance and one member of the public raised concerns. During deliberation, the PZC discussed the appropriateness of the existing operation in a residential neighborhood, as well as the potential relocation of Touch My Heart's operations to an alternative location. The PZC also discussed approving the variances subject to conditions and an expiration date. At the conclusion of the public hearing, the PZC made a motion to approve PZC 23-1-033 subject to the condition that the chicken coop structures be returned to their size as of April 21, 2023, that the approvals have an 18-month sunset date, and that a 6' privacy fence be provided around all sides of the yard (approved, vote 7-2). Staff does not concur.

#### **BACKGROUND:**

The subject property is zoned R1A (Low Density Single-Family Residence District) and is located on the east side of Flambeau Drive near the intersection of Flambeau Drive and Peshtigo Avenue. The approximately 12,500 square foot lot is improved with a single-family residence and a non-conforming accessory structure. The owners of the subject property are Richard and Wendy Montalbano ("Owners").

The Owners are the founders of Touch My Heart, a not-for-profit organization serving the special needs community through various initiatives. 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."

"The Farm" is comprised of multiple structures and chicken coops which house emotional support chickens, therapy chickens, and chickens being trained to become therapy chickens. The Owners

provide the special needs community with opportunities to visit, hold, and pet therapy chickens (hereinafter referenced as the “Therapeutic Chicken Initiative”).

**Prior Enforcement Action**

The Owners built the chicken coop structures on the subject property without applying for building permits. After receiving a complaint call from a neighbor, City of Naperville Code Enforcement made first contact, and on October 27, 2021 the Owners were instructed to apply for permits for the coop structures.

The permit application submittals did not meet Municipal Code requirements and were rejected by staff on November 23, 2021, August 11, 2022, and August 29, 2022.

Code Enforcement issued three citations for ordinance violations on November 22, 2022. The cases went to court on January 9, 2023 and again on May 3, 2023.

The cases were continued to allow the Owners time to seek variances from the City.

In furtherance of the Therapeutic Chicken Initiative Mr. Montalbano (“Petitioner”) applied for the following four variances on April 21, 2023:

1. maintain large chicken coop structures on the property for which building permits were not obtained and which do not meet setback requirements;
2. approval of a waiver of the required screening for coops;
3. the ability to increase the permitted number of fowl from eight to 20; and
4. the ability to operate a home occupation that includes instruction of more than four students at a time.

If the variances are approved, only the structures on the subject property as of April 21, 2023 would be permitted. The expanded structure (see below) would need to be removed.

Staff did not recommend approval of the variance requests to the PZC and found that the chicken coop structures, and associated home occupation, are too intensive for a single-family residential property.

Additional staff findings and details regarding the PZC’s recommendation are below.

**DISCUSSION:**

***Neighbor Complaints***

The City has received several complaints from neighboring property owners regarding the Owners’ use of the subject property, including the size of the chicken coops and the lack of screening, noise and odor from the chickens, noise from visiting groups, as well as the presence of a portable restroom facility.

During the week of July 3, 2023, City staff received a complaint indicating that the Owners had built an additional chicken coop structure. Staff contacted the Owners who admitted that the expansion did occur (see attached correspondence). Staff also determined that the Owners failed to obtain a building permit and advised Owners that any further illegal expansions will result in additional citations/fines.

### ***Coop Screening Variance***

Naperville Municipal Code Section 10-4-6:3 states that any pen, coop, or other structure used for the purpose of housing fowl that is not fully enclosed shall be screened to a height of six feet. The screening may be comprised of fences or walls six feet in height or landscaping of at least 75% opacity and shall be located either along the perimeter of the lot where the structures are located or around the perimeter of the coop enclosures themselves.

Petitioner requested a variance to waive all screening requirements.

Staff is not in support of this request due to the scale of the structures and because their location is closer to the property line than is permitted by Code.

### ***Number of Fowl Variance***

Naperville Municipal Code Section 10-4-6:3.1 states that the maximum number of fowl permitted on any property is eight.

There are currently 17 chickens on the subject property.

Petitioner requested a variance to increase the permitted number to 20.

Staff is not supportive of this request since the number of fowl requested (more than double what the Code allows for) paired with the additional variance requests would create a use that is too intensive for a single-family residential property.

### ***Coop Setback Variance***

Naperville Municipal Code Section 6-2-10:1 states that accessory structures must be at least five feet from the rear property line.

Owners have constructed (and expanded) the coop structures so that they are 4'6" inches from the rear property line.

Staff is not supportive of this request since the encroachment of the structures continues along the majority of the 100' property line.

### ***Home Occupation Regulations Variance***

Naperville Municipal Code Section 6-2-8:3.3 states that the class size for home instruction of music, dance, home crafts and art must not exceed four students at any time.

Petitioner sought approval to increase the permitted number of students from four to 12 students.

Staff is not supportive of the requested variance finding that the overall use is too intense for a single-family residential property.

### ***On-Site Temporary Portable Restroom Facility***

Staff recently became aware that Owners installed a temporary portable restroom facility in the side yard of the subject property (see attached photos). Per the Owners, this facility is used to provide an

accessible restroom for visiting students. Owners have indicated that the facility is serviced approximately every two weeks by a truck that pulls into the drive on the north side of the property.

Staff has notified the Owners that the temporary portable restroom facility is required to be removed from the subject property based on Article B (Sewer Use, Connections) of Title 8 (Public Utilities) of the Naperville Municipal Code which prohibits private sewage disposal systems and privies when connection to a public sanitary sewer is available. (*Note: Title 5 (Building Code) provides exceptions to this prohibition for active building permit projects*).

Petitioner seeks City Council approval to permit the temporary portable restroom facility to remain.

Staff does not support this request and finds that a portable restroom facility is inappropriate for long term use in a residential neighborhood.

### **PZC Review**

The public hearing for PZC 23-1-033 was conducted on July 19, 2023. Following presentations by staff and the Petitioner, as well as public comment, the PZC discussed the requested variances and noted concerns regarding the appropriateness of the existing facilities in a residential neighborhood.

At the conclusion of discussion, the PZC closed the public hearing and made a motion to approve PZC 23-1-033 on a temporary basis (18 months) subject to the conditions that the chicken coop structures be returned to their condition as of April 21, 2023; that the number of chickens be reduced from 17 to 12; and that a 6' privacy fence be provided around all sides of the yard (approved, vote 7-2). Staff does not concur.

During the meeting Owners agreed with the PZC's recommended conditions but re-emphasized their desire to retain the portable restroom facility on the subject property for the duration of the temporary variances.

### ***Approval Via a Temporary Use***

Title 6 (Zoning Ordinance) of the Naperville Municipal Code does not allow for variances to be approved on a temporary basis. However, if the City Council agrees with the intent of the PZC's recommendation, it may instead consider approving an ordinance granting the Owners a temporary use for the subject property pursuant to Section 6-2-11 of the Naperville Municipal Code for a timeframe the Council determines to be appropriate.

### ***Revised Temporary Use***

A temporary use ordinance has been drafted in accordance with the substance of the motion made by the PZC at the July 19 meeting. The ordinance approves a temporary use for the Therapeutic Chicken Initiative on the subject property (except that staff would recommend a nine month timeframe instead of the 18-month timeframe proposed by PZC) and is subject to the Owners' compliance with the following five 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);

2. On or before November 15, 2023 Owners shall install a solid six foot tall board-on-board fence along the perimeter of the Subject Property as required by Section 10-4-6:3.6 of the Naperville Municipal Code, which shall be subject to application for and approval of all required City of Naperville permits;
3. On or before November 15, 2023 Owners shall reduce the maximum number of chickens on the Subject Property to 12;
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; and
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.

**Staff Recommendation**

Staff recommends the City Council deny the variance requests and find that the chicken coop structures, and associated home occupation, are too intensive for a single-family residential property, and that the facilities and operations should comply with all applicable provisions of the Naperville Municipal Code.

However, if the City Council determines that a temporary use should be granted to allow the Owners to continue the Therapeutic Chicken Initiative on the subject property, the term of the temporary use be no longer than nine months (expiring May 31, 2024) and subject to the conditions listed above.

It should be noted that following expiration of the temporary use, the Owners may continue to have a chicken coop and home occupation on the subject property so long as such facilities and operations comply with all applicable provisions of the Naperville Municipal Code.

**FISCAL IMPACT:**

N/A