

**City of Prospect Heights
Plan/Zoning Board of Appeals
June 26, 2024**

I. MEETING COMMENCEMENT:

The regular meeting of the Plan/Zoning Board of Appeals was called to order at 7:04 pm by Chairman Kempa, at City Hall, 8 N. Elmhurst Road, in Prospect Heights, Illinois.

II. ROLL CALL:

Present: Chairman Kempa, Commissioners DeGraf, Patel, Saewert, Simmons and Mishevski (late – 7:09)

Absent: Commissioner Rygiel absent by prior notice

Quorum is present.

Present at the meeting: Director of Building & Development Daniel A. Peterson and Recording Secretary: Jenn Myzia

III. APPROVAL OF May 22, 2024 MINUTES

Motion made by Commissioner DeGraf seconded by Commissioner Saewert to approve the meeting minutes with corrections.

ROLL CALL VOTE:

AYES: Commissioners Simmons, Mishevski, Patel, Saewert and Chairman Kempa

NAYS:

ABSENT: Commissioner Rygiel & Mishevski

ABSTAIN: Commissioner DeGraf

Motion carried 4:0:2:1

IV. OLD BUSINESS: None

V. NEW BUSINESS:

1. Review and adoption of rules for public hearing.

Chairman Kempa requests a motion to adopt the rules for the public hearing at 7:12 pm

Motion by Commissioner Patel

Second by Commissioner DeGraf

ROLL CALL VOTE:

AYES: Commissioners Mishevski, Patel, DeGraf, Saewert, Simmons and Chairman Kempa

NAYS:

ABSENT: Commissioner Rygiel

ABSTAIN:

Approved 6:0:1:0

2. PZBA Case No. 24-01 PUD – Public Hearing Amendments and Variations

Applicant: City of Prospect Heights, Daniel A. Peterson, Director Building & Development

Address: 8 N. Elmhurst Rd., Prospect Heights, IL 60070

Description of Request:

- A. The petitioner is seeking to amend Title 5 Chapter 2 Definitions and Title 5 Chapter General Provisions of Zoning Code to add regulations for allowing chickens as an accessory use in the R-1 Single Family Residential District per Section 5-6-1 of the City of Prospect Heights Zoning Code.

Chairman Kempa requests a motion to open the public meeting for 24-01 PUD at 7:14 pm
Motion by Commissioner Saewert
Second by Commissioner Simmons

VOICE VOTE:

AYES: Commissioners Patel, DeGraf, Simmons, Mishevski, Saewert and Chairman Kempa

NAYS:

ABSENT: Commissioner Rygiel

ABSTAIN:

Approved: 6:0:1:0

Chairman Kempa swears in Director Daniel A. Peterson representing the City of Prospect Heights.

Director Peterson states the City must meet the five standards of Chapter 5-10-10 Amendments of the Zoning Code for approval of text for the proposed amendment. Director Peterson states the goal of this text amendment is to establish chickens as an approved accessory use and to benefit the entire community to have guidelines and rules, which establish predictability, consistency and enforceability for chicken owners and non-chicken owners.

He explains the difference between the Title 9 Police regulations Chapter 1 Animal Control and Title 5 Zoning code for land use. He states the Police Code lists what is prohibited and a violation. ~~Where as~~ Whereas, the Zoning code is a land use code and states what is allowed and therefore if ~~and~~ use is not specifically listed it is expressly prohibited. Director Peterson highlighted the requirements for accessory structures and how the City is required to verify compliance with city, state and federal requirements. Specifically, as it relates to neighbor impacts and potential impacts the City's compliance with the FEMA Community Rating System and flood insurance programs. Accessory structures placed in federally regulated flood zones may negatively impact the entire community by causing the City to lose its CRS Rating and the 20% discount on flood insurance to the all properties required to have flood insurance. The Flood Zone map was presented and a fiscal impacts of the flood insurance rates for the River Trails Condo property were presented as evidence.

Director Peterson presents the draft ordinance. The proposed ordinance would add definitions, create a new section 5-3-21 Keeping Chickens. Key items presented include: Property registration, inspection requirement, limitation on number of hens, prohibition of roosters, and 12 month time frame for existing properties to become compliant. The City is proposing a fee for keeping chickens permit at \$50.00 initial permit fee for the accessory structure with a \$40.00 zoning fee and yearly \$40.00 zoning review and safety inspection fee for each year thereafter.

Director Peterson provided testimony showing examples of typical lot design and explained ~~where chicken~~ where chicken coops are permitted per the existing zoning codes for properties in the R 1 District.

Director Peterson provided testimony regarding the research completed to prepare the proposed ordinance. There are no best practices or standardized model ordinances, so a review of 22 municipalities ordinances and summary presented. Director Peterson interviewed resident on both sides of the issue.

Chairman Kempa asks the board to question the application.

Chairman Kempa asks which code has the precedence, the Police Code or the Zoning Code.

Director Peterson responds the Zoning Code because it regulates the land use the Police code regulates is it an animal control violation.

Chairman Kempa asks for clarification on the section of the draft ordinance in which a permit be required prior to the purchasing of hens. He specifically asks is the permit required prior to purchasing hens the first time or every time.

Director Peterson responds for the initial purchase.

Chairman Kempa asks if an initial permit is submitted for, an inspection takes place and everything is satisfactory, what is the purpose of the annual inspection.

Director Peterson responds that conditions change and this is notated on the annual business licensing inspections, life safety inspections and the rental inspection programs.

Chairman Kempa asks what is the reason for livestock registration.

Director Peterson responds in the event of an outbreak it is helpful and could potentially provide resources.

Commission Patel asks how the number of twenty (20) hens was decided regardless of lot size.

Director Peterson stated in review of other municipalities the average lot area per hen was 1,000 sq. ft. However, not all lots will be able to support that number depending on existing accessory structures and compliance with existing requirements.

Commissioner Simmons asks for clarification on what happens on the inspection for example the third year.

Director Peterson replies the inspection is a zoning inspection to verify the conditions have not changed. It is to confirm the sanitation plan is in order. It is to confirm the structure has not been changed, specifically in regard to size and placement of the coop on the property.

Commissioner Saewert asks for clarification on the square footage of the coop, i-if does the square footage pertains ~~s~~ to only the structure or is the fenced in run part included in the total square footage.

Director Peterson responds that under the current zoning code an accessory structure indicates the current code does defines the area as an accessory -structure whether or not it has a roof ~~or not~~, or walls. He reads the current zoning code definition of an accessory building.

Commissioner DeGraf asks about the regulation of the portable coop.

Director Peterson comments a portable coop would still be viewed as an accessory structure because the code states s it can be fixed or resting upon, a portable coop is resting upon.

Commissioner Patel asks for clarification if the resident has a solid six foot (6') high privacy fence, is a coop still require per draft ordinance 5-3-21: (A) 6.

Director Peterson states this is in effort to have free roaming chickens and to prevent them from becoming a nuisance to other residents.

Commissioner Mishevski states the draft ordinance is written toward new chicken owners but how will it affect existing chicken owners.

Director Peterson comments that his recommendation is a one-year compliance allowance to those residents who already own chickens.

Commissioner Patel asks if the residents who have already built coops would be eligible to apply for a zoning variation to seek approval to maintain the current condition.

Director Peterson refers to Chapter 1 of the Zoning Code and the intent to rectify non-conforming conditions.

Commissioner Saewert asks Commissioner Patel if he was referencing to a specific lot that may not comply or an already existing structure.

Commissioner Patel answers for something that is existing now and is considered non-compliant with the current proposal.

Director Peterson states a hardship isn't created because something is in existence. He states a hardship is a requirement for a variation and if that standard cannot be met, a variation cannot be granted. The use must have been in existence at the time of the original code adoption in 1977.

Discussion and clarification continues on the current standard of accessory structure allowance as per allowed by the current code. Discussion pertaining to the number of birds allowed takes place.

Commissioner Saewert asked if there has been any input from the Police Department in regard to something being put in place for a noise ordinance that can be enforced.

Commissioner Simmons asks what is the current remedy for the example photo used as the proposed draft ordinance is not in effect.

Director Peterson states a violation notice for work without a permit, structure in the wrong location and electrical work without a permit as an extension cord runs across the yard. He continues to explain the plan review process had a permit application been received.

Commissioner Simmons asks about proposed section 5-3-21: (A) 5 – and if allowing chickens to free roam on a property will not be allowed.

Director Peterson replies there is a provision to free range chickens if the property has a solid six (6') foot high privacy fence.

Commissioner Patel asks how long a resident would have to comply if they have a rooster.

Director Peterson states there is a one –year recommended compliance time-frame.

Chairman Kempa swears in the public.

Grace Martinez – 1213 Highland, Prospect Heights – against annual inspection, concerned about transmission of disease from bird to bird, willing to register chickens with the City against registration fee, in regard to draft item 12 & 13, is amicable with no sale of eggs and hens but questions what they are to do with an excess if there are over 20 hens if slaughtering is prohibited. She questions why there can't be a mix of fowl.

Jim Kleinschmidt – 410 W. Clarendon, Prospect Heights – states he and his wife are in agreement with the draft ordinance.

Genevieve Charet – 5 Alton, Prospect Heights – presents an alternative into evidence suggested changes from chicken keepers. (Exhibit 16).

PJ Parmar – 3 Garden Ct., Prospect Heights – Pro Rooster.

Tiffany Hinton – 1011 Wildwood, Prospect Heights – supports Genevieve Charet and Grace Martinez. Against limit of 20 chickens. References Katz vs. United States 1967 in regard to filming from the R.O.W. and submitting as evidence.

Randall Brace – 300 Linden Rd. North, Prospect Heights – against the draft ordinance and refers to 9.1.2 of the Police Code.

Katie King – 8 W Camp McDonald, Prospect Heights – pro rooster

Nikki Moylan – 108 W Kenilworth, Prospect Heights – agrees with Grace Martinez, Genevieve Charet, Tiffany Hinton, Randall Brace and Katie King. Pro 3-strikes rule for roosters. Pro ducks. Anti-annual inspection. In agreement with complying with current zoning code in regard to placement of coops. Against privacy fence requirement.

Dean Papa – 6 Alton, Prospect Heights – would like for a compromise between sides and continues to state there is a very bad smell. Pro-inspection.

Sara Meyer – 504 Grego, Prospect Heights – in agreement with the chicken owners. Anti-annual inspection. The \$40.00 chicken registration fee should be re-evaluated in comparison to the annual pet fee. States if chicken owners need a six foot (6') privacy fence then dog owners should be required a six foot (6') privacy fence.

Debbie Scheffler – 11 Countryside, Prospect Heights – chicken owner, pro-guidelines but agrees what has been presented should be re-evaluated.

Eric Strohmeier – 402 W. Willow, Prospect Heights – agrees guidelines need to be established but the presented draft ordinance is overreaching.

Gina Salefski – 15 Robert Ave., Prospect Heights – would like clarification on the fees presented.

Becky Fuscone – 213 S. Maple, Prospect Heights – pro chicken, feels unheard.

Chairman Kempa asks for comments and questions from the commissioners.

Chairman Kempa suggests a less is more theory of starting with fewer restrictions and then adding in if and when necessary under the premise of it is easier to add restrictions than remove restrictions.

Commissioner Patel has two main concerns. The first is the roosters crowing in the morning and finding a solution for this. The second concern is the smell. He questions how to deal with these two issues and finding a reasonable solution. He is concerned with the subjectivity of noise and smell as these can be personal opinion issues. Commissioner Patel asks Director Peterson why the limit on chickens specifically and why aren't ducks and other fowl included in the allowable fowl per the draft ordinance.

Director Peterson answers without a best practice from a Stated Organization such as the Department of Agriculture or the USDA, municipal government looks at what surrounding municipalities adhere to.

Commissioner Patel asks should a number be instituted, how do the residents reduce their flock to comply if they are not allowed to sell the excess hens and or other fowl.

Director Peterson states he does not have a good answer for this question at this time. Director Peterson poses the question if there is no regulation written in the books and a situation takes place, how do you proceed with enforcement.

Commissioner Patel states he would like to have "coops" defined better.

Commissioner Simmons asks that by the current code the maximum chicken coop size can be 200 square feet (200 sq. ft.).

Director Peterson confirms that is correct.

Commissioner Saewert states she would like to focus on what the zoning board does best which is to focus on the location of the coop on the property which will not be offensive with the neighbors and will be keeping with accessory structures in general. Commissioner Saewert agrees with Chairman Kempa to begin with minimal restrictions and start with getting permits to ensure the placement on the property is correct and the correct size and re-evaluate with the assistance of an advisory board. Commissioner Saewert suggests starting with the permit procedure and not initiate the annual inspection unless a complaint is received and clarifying the description of a coop so that it is clear for everyone.

Director Peterson clarifies the fee is not a per bird fee. He explains he is offering a reduced plan review fee for coops as an accessory structure and the \$40.00 is the zoning fee already in the codes.

Commissioner Patel states he believes the Forty Dollar (\$40.00) annual fee for chickens up to the agreed upon number is reasonable as the dog and cat fee is per pet.

Commissioner Patel asks Mr. Brace which municipalities he refers to in regard to which do not regulate the number of fowl allowed and if any are neighboring to Prospect Heights.

Mr. Brace responds that he can get the list which he presented at the January meeting for submission.

Commissioner Patel asks Mr. Parmar how he handles his roosters when they crow.

Mr. Parmar responds he does not hear them because he keeps them inside at night.

Discussions about the number, size and configuration of accessory structures takes place.

Discussions about meat birds take place.

Chairman Kempa requests a motion to close the public hearing for 24-01 PUD at 10:00 pm

Motion by Commissioner Simmons

Second by Commissioner Patel

ROLL CALL VOTE:

AYES: Commissioners Saewert, Patel, Mishevski, Simmons, DeGraf and Chairman Kempa

NAYS:

ABSENT: Commissioner Rygiel

ABSTAIN:

Approved 6:0:1:0

Director Peterson states if the public hearing is closed and the Zoning Board of Appeals requests a new draft ordinance an entirely new application must be submitted. He states if the public hearing is closed the ZBA must vote to submit the draft ordinance to city Council as submitted, submit with conditions or deny the draft ordinance entirely.

Chairman Kempa requests a motion to re-open the public hearing for 24-01 PUD at 10:08 pm

Motion by Commissioner DeGraf

Second by Commissioner Saewert

ROLL CALL VOTE:

AYES: Commissioners Mishevski, Simmons, DeGraf, Patel, Saewert and Chairman Kempa

NAYS:

ABSENT: Commissioner Rygiel

ABSTAIN:

Approved 6:0:1:0

Director Peterson asks for a continuance to properly review the new information provided and continue the hearing to the ZBA at the September 25, 2024.

Chairman Kempa requests a motion to continue the public hearing for 24-01 PUD until September 25, 2024 at 10:09 pm

Motion by Commissioner DeGraf

Second by Commissioner Saewert

ROLL CALL VOTE:

AYES: Commissioners Mishevski, Simmons, DeGraf, Patel, Saewert and Chairman Kempa

NAYS:
ABSENT: Commissioner Rygiel
ABSTAIN:
Approved 6:0:1:0

- VI. **Public Comment – Non-Agenda Items**
- VII. **Previous Application Updates**
- VIII. **Communications –** Tuesday July 16 there will be a Joint meeting for the Zoning Code at 6:30 pm.

IX. **Adjournment** 10:13 pm

Motion to Adjourn: Commissioner Saewert
Second: Commissioner Patel

ROLL CALL:

AYES: Commissioners DeGraf, Saewert, Simmons, Patel, Mishevski and Chairman Kempa

NAYS:

ABSENT: Commissioner Rygiel

ABSTAIN:

Approved 6:0:1:0