

CITY OF ALEXANDRIA

Circuit Court

3221 COLVIN STREET PARTNERSHIP, LLC, ET AL. v./In re:

CITY OF ALEXANDRIA, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

I, the undersigned [] plaintiff [] defendant [x] attorney for [x] plaintiff [] defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- [] Claim Impleading Third Party Defendant
[] Monetary Damages
[] No Monetary Damages
[] Counterclaim
[] Monetary Damages
[] No Monetary Damages
[] Cross Claim
[] Interpleader
[] Reinstatement (other than divorce or driving privileges)
[] Removal of Case to Federal Court

Business & Contract

- [] Attachment
[] Confessed Judgment
[] Contract Action
[] Contract Specific Performance
[] Detinue
[] Garnishment

Property

- [] Annexation
[] Condemnation
[] Ejectment
[] Encumber/Sell Real Estate
[] Enforce Vendor's Lien
[] Escheatment
[] Establish Boundaries
[] Landlord/Tenant
[] Unlawful Detainer
[] Mechanics Lien
[] Partition
[] Quiet Title
[] Termination of Mineral Rights

Tort

- [] Asbestos Litigation
[] Compromise Settlement
[] Intentional Tort
[] Medical Malpractice
[] Motor Vehicle Tort
[] Product Liability
[] Wrongful Death
[] Other General Tort Liability

ADMINISTRATIVE LAW

- [] Appeal/Judicial Review of Decision of (select one)
[] ABC Board
[] Board of Zoning
[] Compensation Board
[] DMV License Suspension
[] Employee Grievance Decision
[] Employment Commission
[] Local Government
[] Marine Resources Commission
[] School Board
[] Voter Registration
[] Other Administrative Appeal

DOMESTIC/FAMILY

- [] Adoption
[] Adoption - Foreign
[] Adult Protection
[] Annulment
[] Annulment - Counterclaim/Responsive Pleading
[] Child Abuse and Neglect - Unfounded Complaint
[] Civil Contempt
[] Divorce (select one)
[] Complaint - Contested*
[] Complaint - Uncontested*
[] Counterclaim/Responsive Pleading
[] Reinstatement - Custody/Visitation/Support/Equitable Distribution
[] Separate Maintenance
[] Separate Maintenance Counterclaim

WRITS

- [] Certiorari
[] Habeas Corpus
[] Mandamus
[] Prohibition
[] Quo Warranto

PROBATE/WILLS AND TRUSTS

- [] Accounting
[] Aid and Guidance
[] Appointment (select one)
[] Guardian/Conservator
[] Standby Guardian/Conservator
[] Custodian/Successor Custodian (UTMA)
[] Trust (select one)
[] Impress/Declare/Create
[] Reformation
[] Will (select one)
[] Construe
[] Contested

MISCELLANEOUS

- [] Amend Death Certificate
[] Appointment (select one)
[] Church Trustee
[] Conservator of Peace
[] Marriage Celebrant
[] Approval of Transfer of Structured Settlement
[] Bond Forfeiture Appeal
[] Declaratory Judgment
[] Declare Death
[] Driving Privileges (select one)
[] Reinstatement pursuant to § 46.2-427
[] Restoration - Habitual Offender or 3rd Offense
[] Expungement
[] Firearms Rights - Restoration
[] Forfeiture of Property or Money
[] Freedom of Information
[] Injunction
[] Interdiction
[] Interrogatory
[] Judgment Lien-Bill to Enforce
[] Law Enforcement/Public Official Petition
[] Name Change
[] Referendum Elections
[] Sever Order
[] Taxes (select one)
[] Correct Erroneous State/Local
[] Delinquent
[] Vehicle Confiscation
[] Voting Rights - Restoration
[x] Other (please specify)

[] Damages in the amount of \$ are claimed.

Virginia Code §§15.2-2285(F)

04/25/2019

DATE

Elizabeth M Seltzer

PRINT NAME

Driscoll & Seltzer PLLC, 300 N Washington St., Ste 610

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

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EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

[] PLAINTIFF

[] DEFENDANT

[x] ATTORNEY FOR

[x] PLAINTIFF
[] DEFENDANT

**"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

3221 Colvin Street Partnership, LLC
6003 Denton Court
Springfield, VA 22152

McClelland Press, Incorporated
3221 Colvin Street
Alexandria, VA 22314

National Capital Flag Company, Incorporated
100 South Quaker Lane
Alexandria, VA 22314

Simply Doors & Closets, LLC
15100 Barnes Edge Court
Woodbridge, VA 22193

Fabulous Interior Designs, LLC
15100 Barnes Edge Court
Woodbridge, VA 221093

Wholesome Baked, LLC
2522 King Street
Alexandria, VA 22301

Eugene Stein
1430 N. Gaillard Street
Alexandria, VA 22304

Thomas and Diann Hohenthauer
720 West View Terrace
Alexandria, VA 22301

Mary Ann Hollis
41 Arell Court
Alexandria, VA 22304

WBC Alexandria, LLC
3216 Duke Street
Alexandria, VA 22314

Civil Action No.: 19001869

Plaintiffs,

v.

City of Alexandria, Virginia

SERVE:

Joanna Anderson, Esquire
301 King Street, Suite 1300
Alexandria, Virginia 22314

and

Justin M. Wilson, Mayor
301 King Street, 2d Floor
Alexandria, Virginia 22314

The City Council of Alexandria, Virginia

SERVE:

Joanna Anderson, Esquire
301 King Street, Suite 1300
Alexandria, Virginia 22314

and

Justin M. Wilson, Mayor
301 King Street, 2d Floor
Alexandria, Virginia 22314

Defendants.

COMPLAINT

This is an action pursuant to Virginia Code §§15.2-2285(F) and 8.01-184 for a judgment declaring unlawful and *ultra vires* the March 26, 2019 decision (hereinafter the “Decision”) of the Defendants City of Alexandria, Virginia and the City Council of Alexandria, Virginia (hereinafter collectively “Defendants”) to approve and authorize, in City Council Docket No. 19-1904, special use permit SUP 2018-0117 for the operation of a slaughterhouse within the City of Alexandria at 3225 Colvin Street (hereinafter “Slaughterhouse”).

The record demonstrates that the Defendant's Decision fails to meet "the fairly debatable" standard and is unreasonable, arbitrary, capricious, an abuse of power, and denies Plaintiffs' constitutional guarantees of due process and equal protection of the laws. The Decision was predetermined and orchestrated by Defendants in complete violation of Federal and Virginia state law, the Charter of the City of Alexandria, the City of Alexandria Zoning Ordinance, and the relevant deliberative bodies' own rules.

JURISDICTION AND VENUE

1. The Court has jurisdiction pursuant to Va. Code §§15.2-2285(F); 8.01-184; and 17.1-513.
2. Venue is proper under Va. Code §§ 15.2-2285(F) and 8.01-262.

PARTIES

3. Plaintiffs are owners of businesses, properties and residences near the approved Slaughterhouse. The Decision threatens all Plaintiffs with a reduction in the value of their properties, interference with the operation and livelihood of their businesses, the use and enjoyment of their properties and quality of life, as well as exposure to noxious odors and harmful biological and environmental contaminants. The Plaintiffs are:

- a. Plaintiff 3221 Colvin Street Partnership, LLC, is a limited liability company organized and existing under the laws of the Commonwealth of Virginia and the property owner of 3221 Colvin Street, Alexandria, VA 22314, which abuts 3225 Colvin Street. 3221 Colvin Street Partnership, LLC is the lessor of its property to Plaintiff McClelland Press, Incorporated.
- b. Plaintiff McClelland Press, Incorporated is a corporation formed and existing under the laws of the Commonwealth of Virginia and the lessee of

3221 Colvin Street, Alexandria, VA 22314. McClelland Press is a promotional product printer and distributor that operates its business from property that abuts 3225 Colvin Street in Alexandria.

- c. Plaintiff National Capital Flag Company Incorporated is a corporation formed and existing under the laws of the Commonwealth of Virginia and is located at 100 Quaker Lane, Alexandria, VA 22314, which is diagonally across the street from 3225 Colvin Street. National Capital Flag Company is a manufacturer and provider of a wide variety of flags.
- d. Plaintiff Simply Doors & Closets, LLC, is a limited liability company organized and existing under the laws of the Commonwealth of Virginia and is located at 3248 Colvin Street, Alexandria, VA 22314, which is directly across the street from 3225 Colvin Street. Simply Doors & Closets operates a business that provides door and closet organizer replacement services.
- e. Plaintiff Fabulous Interior Designs, LLC, is a registered foreign limited liability company organized and existing under the laws of Maryland and is located at 3248 Colvin Street, Alexandria, VA 22314, which is directly across the street from 3225 Colvin Street. Fabulous Interior Designs is a full-service design-build construction company.
- f. Plaintiff Wholesome Baked, LLC, is a limited liability company organized and existing under the laws of the Commonwealth of Virginia and the property owner of 3103 Colvin Street, Alexandria, VA 22314. Wholesome

Baked is lessor to the operator of a wholesale bakery business that is within close proximity to 3225 Colvin Street.

- g. Plaintiff Eugene Stein is the property owner of 3206 Duke Street, 3208 Duke Street and 3240 Duke Street, Alexandria, VA 22314, all which are within close proximity to 3225 Colvin Street. The property at 3240 Duke Street is directly behind 3225 Colvin Street.
- h. Plaintiffs Thomas and Diann Hohenthauer are the owners of a residence located at 720 West View Terrace, Alexandria, VA 22301, which is within the Taylor Run/Duke Street Small Area Plan.
- i. Plaintiff Mary Ann Hollis is the owner of a residence located at 41 Arell Court, Alexandria, VA 22304, which is less than half a mile from 3225 Colvin Street.
- j. Plaintiff WBC Alexandria, LLC is a limited liability company organized and existing under the laws of the Commonwealth of Virginia and lessee property located at 3216 Duke Street, Alexandria, VA 22314, which abuts 3225 Colvin Street. WBC Alexandria is the owner and operator of the Wild Bird Center.

4. Plaintiffs own properties and businesses in Alexandria, Virginia, near the Slaughterhouse property at 3225 Colvin Street in Alexandria. Plaintiffs are aggrieved by the Decision because the operation of the approved Slaughterhouse, which is an extreme agricultural land use for a densely populated urban setting, will have a significant detrimental impact on the effective operation and livelihood of their businesses, their property and business values, their use and enjoyment of their properties, and their quality of life. Moreover, the operation of the

Slaughterhouse exposes Plaintiff's, their employees, clients and families to harmful and noxious odors, as well as biological and environmental air and water born contaminants. Plaintiffs have immediate and direct pecuniary, health and welfare interests in the subject matter of this action.

5. Defendants are the City of Alexandria, Virginia (hereinafter "Defendant City") and the City Council (hereinafter "Defendant Council"), which is the governing body of the City, established under Chapter 3 of the City's Charter.

Application for Special Use Permit 2018-0117

6. As noted in a Memorandum dated March 21, 2019 from Karl Moritz, Director of Alexandria Department of Planning and Zoning to the Mayor and Defendant Council, in May 2018, an unidentified individual/entity approached the Department of Planning and Zoning (hereinafter "P & Z") regarding a request to open a potential business within that would involve the "butchering" of live poultry within the City.

7. The 3/21/2019 Memorandum notes that at the time of the inquiry, P & Z determined that the proposed business did not meet any of the permissible uses listed in the Alexandria City Zoning Ordinance, particularly as a "retail shopping establishment" under Alexandria City Zoning Ordinance Section 2-191 on account of the storage of live animals, and, Alexandria City Zoning Ordinance Section 2-112.1 relating to animal care facilities being limited to "common household pets".

8. On December 20, 2018, seven months after P & Z received the inquiry about the operation of a live poultry "butchery" within Alexandria, and one month after Mayor Justin Wilson, Vice Mayor Elizabeth Bennett-Parker, and Councilmembers Mo Seifeldein, Canek Aguirre, and Amy Jackson were elected, DC Poultry Market Corp./Abdulsalem Mused

("Applicant") applied for a special use permit for the operation of a "live poultry market" at 3225 Colvin Street (hereinafter "the SUP").

9. Within the application, Abdulsalem Mused lists his address as 1580 E. 45th Street, Brooklyn, NY 11234.

10. DC Poultry Market Corp. (SCC ID 08390635) is a Virginia Corporation formed on December 20, 2018 with a principal business address of 3225 Colvin Street, Alexandria VA 22314 and having its registered agent listed as Abdulsalem Mused at 3709 S. George Mason Drive, Suite 1508E, Falls Church, VA. Upon information and belief, Mr. Mused does not reside at the noted address and is not a resident of the Commonwealth of Virginia.

11. In the Application for the SUP, Applicant refers to itself as "SABA Live Poultry" when discussing all of its processes and procedures, despite initially identifying its Applicant status as "DC Poultry Market Corp." at the start of its SUP Application.

12. Saba Live Poultry LLC, a Virginia limited liability company, was formed on November 27, 2018, with a principal office address of 3225 Colvin Street in Alexandria, VA 22314 and listing Abdulsalem Mused as the registered agent at 3709 S. George Mason Drive, Suite 1508E, Falls Church, VA.

13. Saba Live Poultry or SABA Live Poultry has a website (viewed at www.sabahalal.com) that advertises that it is a "nationwide" chain of "slaughterhouses" with operations in 14 cities in the nation.

14. In the application for the SUP, Applicant states that it uses "the halal method of slaughter to process poultry"... "strictly in accordance with Islamic rites" involving "the whole process of meat productions from the wholesome food fed to the animals in their rearing right through until meat reaches the consumer."

15. The Alexandria City Charter Section 204 (m) classifies “slaughterhouses” as “offensive businesses” and slaughterhouses are not within the list of permitted uses within any of the City’s zoning designations.

16. The Applicant lists three distinct activities and uses within the SUP Application:

- a) Receipt and storage of live poultry available for customers to choose for ultimate consumption;
- b) The slaughter of the customer’s chosen live poultry in accordance with the halal slaughter practices;
- c) The butchering of the slaughtered poultry and packaging for the retail sale to the customer.

17. Applicant also states that it follows the “Food and Safety rules of the USDA guidelines and the “Agriculture Dept.” and that it gets inspected every week, and that there will be “USDA halal meats available for customers to purchase”.

18. Applicant states in the Application that it will be open from Monday through Sunday from 8:00am until 4:30 pm, however, in another part of the application, it states Monday through Saturday 8:00am until 4:30pm, and yet in another part, Monday to Sunday 8:00am to 6:30pm.

19. Applicant states that it will have delivery of live chickens from “Watkins Poultry Company” of no known business address, although the applicant has stated or represented that the poultry will come from Pennsylvania.

20. Applicant states that delivery of poultry will be made daily between 6:30am to 8:30am, and yet, in another part of the application, Applicant states that deliveries occur three times per week.

21. Applicant states that "Saba Live Poultry" has eight locations in the "New York Tri-Area" and six other locations in Pennsylvania, Connecticut, California and Florida.

22. Upon further investigation, the existence of Applicant owned and operated slaughterhouses in the identified other areas is not verified.

23. Applicant states that the "Saba Live Poultry" facility is cleaned and sanitized daily with an "approved" detergent.

24. Applicant states that it generates about 100 pounds of poultry meat and fat refuse a day-the "fat, bones and organs" are sealed in drums, the "feathers and workers paper towels" are sealed in garbage bags, and the blood drained from slaughter goes into "five-gallon clear packets", and all are stored in a walk-in cooler.

25. Applicant states that its "trash" will be picked up daily by "Darling International, Inc." of no known business address and in another part of the Application, Applicant states the poultry remains will be picked up every other day.

26. Applicant also states that the "trash" will be disposed of by Darling International Inc. at some unspecified location.

27. Applicant was denied an SUP for a slaughterhouse in Everett, Massachusetts because the City found that he was being evasive and deceptive during the application process.

28. Businesses and citizens in locations where Applicant has other slaughterhouses report that the smells emanating from those slaughterhouses are horrific, especially in warm weather months. As Vice Mayor Bennett-Parker reported to City Council on the record at the March 26, 2019 City Council meeting, Applicant's operations within other urban settings are not surrounded by thriving commercial establishments, such as those on Colvin, and that businesses

and residents near the other slaughterhouses are detrimentally impacted by the slaughterhouses affiliated with Applicant.

29. Sources from other localities with halal slaughterhouses report that during Islamic holidays and peak seasons, such slaughterhouses receive hundreds of customers daily with excessive amount of added traffic and parking problems causing a detrimental impact on surrounding traffic patterns, residents and businesses.

30. There are publicly available reports and studies demonstrating that slaughterhouses present detrimental public health threats and negative impact on the property values and enjoyment of use to nearby businesses and residents.

31. Notwithstanding the evidence and opinions presented to them, Defendants did not properly research or consider expert reports, studies and opinions about the ill effects of poultry slaughterhouses on the public health, welfare, and property and business values.

**PROPERTY WHERE SLAUGHTERHOUSE IS SLATED TO
OPERATE AND THE APPLICABLE SMALL AREA PLAN**

32. The Slaughterhouse will operate at 3225 Colvin Street, which is within the City of Alexandria Virginia Master Plan, Taylor Run/Duke Street Small Area Plan (hereinafter “Small Area Plan”) adopted on June 13, 1992 and last amended on May 6, 2008 (with only minor amendments). The substantive Small Area Plan is essentially 17 years old.

33. Virginia Code § 15.2-2230 requires Master Plans (including small area plans) be reviewed and updated every five years. The Alexandria City Master Plan and Taylor Run/Duke Street Small area plan was last amended on May 6, 2008, which is over 11 years old. The Small Area Plan is not reflective of the current nature and conditions of the surrounding area being considered for placement of a slaughterhouse.

34. The owner of 3225 Colvin Street is "3230 Duke LLC," which is listed with the Virginia State Corporation Commission.

35. This LLC, owned by Mehrdad Yavare, bought the property on December 1, 2008, as part of a multi-parcel sale totaling 7,200 sq. ft.

36. In the Application, Mehrdad Yavare lists himself as "general partner" of the subject property.

37. The Small Area Plan includes a mixture of commercial, restaurants, residential, light industrial, open space and recreational uses.

38. As of 1992, the Small Area Plan included at least 345.8 acres (53.4%) of residential use and only 52.8 acres (9.7%) of light industrial use.

39. The south facing side of 3225 Colvin Street fronts the narrow strip of light industrial zoned area that is on the fringe of the south side of the Small Area Plan.

40. The back north facing side of 3225 Colvin Street, however, touches the commercial zoning areas that straddle the south and north sides of Duke Street, which is surrounded by residential areas.

41. Alexandria does not designate industrial by light, medium or heavy but this area has historically been a mix of commercial and light industrial. The immediate area surrounding the front south facing area of 3225 Colvin Street has developed into a commercial use area since the adoption of the 1992 Small Area Plan. Colvin Street houses several commercial establishments and offices, including restaurants, dog daycare, gym, spa and groomer, training academy, National Accrediting Commission of Career Arts & Sciences, nearby schools, an event production company, a flag company, an auto repair shop, a general contractor, and several office buildings. The immediate vicinity of 3225 Colvin Street also includes a large commercial bakery that

processes ingredients and prepares food for sale for human consumption, and there are at least three restaurants within the immediate vicinity of the premises.

42. Colvin Street serves as an overflow morning and evening commuter alternate route to the heavy Duke Street traffic, and the availability of onsite and street parking is currently extremely limited or almost nonexistent.

43. The SUP Application did not contain a list of property within 300 feet of the boundaries of the property for which the special use permit is sought, including the following for each property:

- (a) Existing uses;
- (b) Existing zoning;
- (c) Land use designation contained in the master plan.

44. The public record for the SUP Application did not include a map showing what properties within the vicinity of 3225 Colvin Street received written Notice before any public hearing concerning the SUP Application.

45. The SUP Applicant and Defendants described the SUP Application's defined "use" as a "retail shopping establishment and a butchery with live poultry" in its purported Notices required by SUP Application procedures and Ordinance 11-301. Neither Applicant nor Defendants use the word "slaughter" or describe Applicant's slaughter use and related activities in their Public Notices to properties abutting 3225 Colvin or to the public.

46. Mehrdad Yavare, and/or his entity 3230 Duke LLC own many of the properties nearby or abutting 3225 Colvin Street.

47. Applications for Special Use Permits, and Ordinance § 11-503 set forth detailed instructions for applicants to follow concerning CITY COUNCIL AND PLANNING

COMMISSION NOTICE REQUIREMENTS, including a map showing the properties to whom applicants are required to send written notice prior to public hearings.

48. Plaintiffs and other properties in the Colvin Street area, including those abutting 3225 Colvin Street, did not receive written notice of the Planning Commission and City Council public hearings at which the SUP was approved as required by CITY COUNCIL AND PLANNING COMMISSION NOTICE REQUIREMENTS, including, but not limited to, those set forth in Ordinance §11-301, within the proscribed periods prior to any Commission or Council hearing or meeting concerning the SUP Application.

49. Colvin Street business owners claim that 3225 Colvin Street did not have visible placard notice postings on the front of the property prior to any public hearing concerning the SUP Application.

50. Defendant's classified treatment of the SUP Application as a routine retail establishment matter assigned a "consent agenda" status during public hearings.

51. The Alexandria Planning Commission approved the SUP Application on March 5, 2019.

52. On March 16, 2019, the City Council held a public hearing at which the SUP Application was considered and deferred.

53. At the City Council's Legislative meeting on March 26, 2019, the Council addressed and approved the SUP Application.

54. At all meetings and hearings, Defendants characterize the SUP's use as a "retail shopping establishment and a butchery with live poultry."

55. In staff reports and hearing testimony, Defendants assert that the only “use” within the SUP Application that warrants a “special use permit” is the “keeping of live poultry” and that the “retail” aspect will not require a special use since it was treated “like any other retail” business.

56. Defendants completely failed to conduct any analysis or due diligence review of the required factors set forth in Ordinance 11-504 regarding the “slaughter” use or other activities described within the body of Applicant’s SUP Application.

57. Defendants make several references during public hearing and meeting testimony asserting that Applicant’s SUP Application deserves approval based undefined “religious needs”.

58. Comments made during an open meeting by Defendants exposed that the Alexandria City Attorney submitted a confidential memorandum to all Council Members prior to the March 26, 2019 Council Legislative Meeting in which all Council members were warned that failure to approve the SUP Application would cause the City to be sued for religious discrimination.

59. Councilman Aguirre stated that Council had received over two hundred public communications concerning the SUP.

60. During the March 26, 2019 Council Legislative Meeting, Councilman Canek Aguirre publicly shamed vocal opponents of the SUP Application, characterizing such opponents as biased, insensitive and insulting to the SUP Applicant’s method of halal slaughter.

61. During the March 26, 2019 Council Legislative Meeting, the City Attorney and Councilman Mo Seifeldin reminded Council and the public that the SUP Application was supported on the basis of religious needs.

62. During the March 26, 2019 Council Legislative Meeting, and in comment made following that meeting, Councilwoman Redella Pepper stated that she was opposed to the approval

of the SUP Application. Pepper stated (including on the taped and publicly broadcast record) that she and other members of Council had received a legal memorandum from the City Attorney, which memorandum Pepper publicly discussed. Pepper announced that she was told that she "had to approve" the SUP Application, and that the City Attorney's memorandum set forth a threat of potentially impending litigation based on religious discrimination, on which Pepper based her vote in favor of the SUP Application.

63. When citizens requested public opposition support from the Alexandria Animal Welfare League and other local businesses, the response was that they were told by Defendants to avoid public objection based upon the religious needs of the Applicant.

64. Barry Jones, head of Meat and Poultry Services at the Virginia Department of Agricultural and Consumer Services (hereinafter "VDACS") in Richmond, Virginia, and other VDACS staff related that "Chrishaun Smith" of P & Z, and/or other P & Z staff members contacted them telling them that the Applicant's slaughterhouse should be exempt from VDACS traditional regulation and inspection of slaughterhouses based upon an exempt status for Applicant's religious needs, and in the case of Barry Jones at VDACS, that VDACS oversight of the slaughter activities would be needed on the basis of the Applicant's need to perform the slaughter pursuant to a "religious based ritual".

SLAUGHTERHOUSE REGULATION

65. Slaughterhouses are a high impact agricultural land use that is subject to stringent regulation by the US Department of Agriculture (hereinafter "USDA") and within Virginia, subject to regulation by VDACS pursuant to Chapter 54 of the Virginia Code, § 3.2-5400 *et seq.*

66. The Alexandria Zoning Ordinance sets forth a list of exceptional uses that may be permitted within defined zoning areas. However, the "slaughterhouse" use is not listed among the uses permitted to operate under a special use permit in an industrial zone area within Section 4-

1203 of the Zoning Ordinance. Indeed, “slaughterhouses” are not listed as a use contemplated even by the special use permit process. Section 2.04(m) of the Alexandria City Charter identifies “slaughterhouses” as “offensive businesses” and explicitly confers upon City Council the right and ability to “prevent” them.

SUP REVIEW PROCESS UNDER ALEXANDRIA’S ZONING ORDINANCE

67. Virginia zoning powers are set forth in the enabling legislation found within Chapter 22 of Title 15.2 of the Code of Virginia. The Alexandria City Charter sets forth the powers of the City “to adopt ordinances, **not in conflict with this charter** or prohibited by the general laws of the Commonwealth, for the **preservation of the safety, health, peace, good order, comfort, convenience, morals and welfare of its inhabitants**”. Alexandria City Charter, Section 2.04.

68. The Alexandria City Charter, Alexandria Zoning Ordinance and Alexandria City Code regulate zoning matters, including the application and issuance of special use permits. The City of Alexandria, including the City Council, must review and decide upon special use permits in compliance with applicable constitutional, statutory and common-law requirements.

69. The Zoning Ordinance of the City of Alexandria, Virginia (hereinafter “Ordinance”) §§ 11-500 controls the application process for special use permits. Pursuant to § 11-501 of the Ordinance:

“The city council may approve an application for a special use permit provided for in this ordinance if the proposed location is appropriate for the use and if the proposed use or structure will be designed and operated so as to avoid, minimize or mitigate any potentially adverse effects on the neighborhood as a whole or other properties in the vicinity.”

Requirements for a Special Use Application

70. Section 11-503 of the Ordinance requires that any application for a special use permit **shall** include the following:

- (1) A statement identifying the applicant, who shall be the owner, contract purchaser, lessee or other party having a legal interest in the subject property. **It shall include a clear and concise statement identifying the applicant** and, if different, the owner of the property, including the name and address of each person or entity owning an interest in the applicant or owner and the extent of such ownership interest unless any of such entities is a corporation or a partnership, in which case only those persons owning an interest in excess of three percent in such corporation or partnership need be identified by name, address and extent of interest. For purposes of this section 11-503(A)(1), the term ownership interest shall include any legal or equitable interest held at the time of the application in the real property which is the subject of the application.
- (2) A map showing the location of the property in question as well as all property within 300 feet of the boundaries of the property for which the special use permit is sought, including as to all property identified, the following information:
 - (a) Existing uses;
 - (b) Existing zoning;
 - (c) Land use designation contained in the master plan.
- (3) A detailed description of the operation of the proposed use.
- (4) Plans to control any potential impacts of the proposed use on the nearby community, including:
 - (a) Noise.
 - (1) Noise levels anticipated from all mechanical equipment.
 - (2) A statement as to whether the anticipated noise complies with the levels permitted by chapter 5 of title 11 of the city code.
 - (3) Plans to control these anticipated noise levels.
 - (4) Plans to control noise levels emanating from patrons.
 - (b) Odors. Methods to be used to control odors emanating from the use.

- (c) Trash and litter.
 - (1) The type and volume of trash and garbage the proposed use will generate.
 - (2) The planned frequency of trash collection.
 - (3) Planned methods to prevent littering on the property, streets and nearby properties.
- (d) Loading/unloading.
 - (1) Availability and adequacy of off-street loading facilities.
 - (2) Hours and frequency of off-street loading.
- (e) Parking.
 - (1) Location of parking either on the site or within 300 feet of the site.
 - (2) Number of spaces available to serve residents, employees and patrons during the hours of operation.
- (f) Streets. The design capacity of all streets providing access to the property.
- (g) Use capacity.
 - (1) The estimated number of patrons, clients, pupils and other such users.
 - (2) The proposed number of employees, staff and other personnel.
- (h) Hours. The proposed hours and days of operation of the use.
- (i) Signs. Existing and proposed signage to be erected or utilized on the property. (j) Hazardous materials. Name, monthly quantity and specific disposal method of any state or federally defined hazardous materials or waste to be handled, stored, or generated on the property.
- (k) Organic compounds. Name, monthly quantity and specific disposal method of any paint, ink or lacquer thinner, cleaning or degreasing solvent to be handled, stored, processed or generated on the property.

- (1) Security. Methods proposed to ensure the safety of residents, employees and patrons.
- (5) Where new construction is proposed, a site plan consistent with the requirements for same in section 11-400 shall be submitted and reviewed and approved as part of the special use permit application and pursuant to the procedures and standards of this section 11-500.
- (6) Plans and other documents exhibiting compliance with any other requirements contained in this ordinance for the special use proposed.
- (7) Such additional plans and information as the director determine are necessary and desirable for adequate review.
- (8) The fee prescribed by section 11-104.

Required Factors for Approval of a Special Use Permit

71. Ordinance § 11-504(A) provides that the “city council may approve the application, provided all regulations and provisions of law have been complied with, if it finds that the use for which the permit is sought:”

- (1) Will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use;
- (2) Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- (3) Will substantially conform to the master plan of the city.

Council must make each of these findings or the SUP may not be approved.

72. Defendants failed to consider the adverse effects and detriment on the neighborhood, improvements in the neighborhood, or property in the vicinity of the proposed use.

73. Ordinance § 11-504(B), Considerations on Review, provides that the City Council’s review of the application “may take into consideration the following factors where it determines that such factors are relevant and such consideration appropriate:”

- (1) Whether the proposed use will adversely affect the safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site.

- (2) Whether the glare of vehicular and stationary lights will affect the established character of the neighborhood, and to the extent such lights will be visible from any residential zone, whether measures to shield or direct such lights so as to eliminate or mitigate such glare are proposed.
- (3) Whether the street size and pavement width in the vicinity is or will be adequate for traffic reasonably expected to be generated by the proposed use.
- (4) Whether the location and type of signs and the relationship of signs to traffic-control is appropriate for the site and whether such signs will have an adverse effect on any adjacent properties.
- (5) Whether adequate access roads or entrance or exit drives will be provided and will be designed so as to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
- (6) Whether the proposed use will adequately provide for safety from fire hazards, and have effective measures of fire control.
- (7) Whether the proposed use will increase the hazard to adjacent property from flood, increased runoff or water damage.
- (8) Notwithstanding any other provisions of the city code, whether the proposed use will have noise characteristics that exceed the sound levels that are typical of permitted uses in the zone.
- (9) Whether the proposed use will interfere with any easements, roadways, rail lines, utilities and public or private right-of-way.
- (10) Whether the proposed use will have any substantial or undue adverse effect upon, or will lack amenity or will be incompatible with, the use or enjoyment of adjacent and surrounding property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety and general welfare.
- (11) Whether the proposed use will be constructed, arranged and operated so as not to dominate the immediate vicinity or to interfere with the development and use of neighboring property in accordance with the applicable zone regulations. In determining whether the proposed use will so dominate the immediate neighborhood, consideration may be given to:
 - (a) The location, nature, height, mass and scale of buildings, structures, walls, and fences on the site; and
 - (b) The nature and extent of landscaping and screening on the site.

- (12) Whether the proposed use will destroy, damage, detrimentally change or interfere with the enjoyment and function of any significant topographic or physical features of the site.
- (13) Whether the proposed use will result in the destruction, loss or damage of any natural, scenic or historic feature of significance.
- (14) Whether the proposed use otherwise complies with all applicable regulations of this ordinance, including lot size requirements, bulk regulations, use limitations, and performance standards.
- (15) Whether off-street parking and loading areas will be provided in accordance with the standards set out in Article VIII of this ordinance, and whether such areas will be screened from any adjoining residential uses and located so as to protect such residential uses from any injurious effect.
- (16) Such other land use and land development considerations the city determines are appropriate and relevant to the application under review.

74. Defendants failed to adequately consider the factors set forth in § 11-504(B) of the Ordinance. Instead, Defendants abdicated their responsibility to the Plaintiffs to satisfy other goals that are not consistent with the delegated police power.

NOTICE REQUIREMENTS FOR SUP APPLICATIONS

75. In addition to the City Council and Planning Commission notice requirements that apply to applications for SUPs, Ordinance § 11-301 requires Defendants to follow specific procedures for the provision of notice to the public for planning commission and council hearings and meetings regarding special use permits. The required notice in Ordinance § 11-301 is as follows:

Required Notice. Except as provided in section 11-302 below, written notice, placard notice and newspaper notice shall be given **before** each public hearing before the planning commission, the city council, the board of zoning appeals, the subdivision committee and the board of architectural review.

- (A) *Written notice.* For hearings before the planning commission, the city council, the board of zoning appeals and the subdivision committee, the applicant shall, by registered or certified mail, send written notice at least ten and no more than 30 days prior to the hearing. Restricted delivery or return receipt is not required. For

hearings before the board of architectural review, the applicant shall, by first class mail, send written notice at least ten and no more than 30 days prior to the hearing.

- (1) *Recipients of written notice.* Written notice shall be sent to the owner of the subject property, if different from the applicant, and to the owners of all abutting property. In the case of a condominium, written notice may be sent to the president of the board of the unit owners' association instead of to each individual unit owner.
- (2) *Contents of written notice.* Written notice shall contain the following information:
 - (a) The time, date and place of all hearings scheduled; and
 - (b) A description of the matter being heard, including the tax map number of the property and complete street address of the property.
- (3) *Certification.* At least five days prior to the hearing, the applicant shall supply the director with a copy of the notice, the names of those persons to whom notice has been given, and copies of the post office receipts for registered or certified mail, if registered or certified mail is required, and shall certify that notice has been sent to those to whom notice is required to be given. The applicant shall use the records and maps maintained by the city's office of real estate assessments to determine the proper recipients of notice and reliance upon such records shall constitute compliance with the requirements of this section 11-301(A).
- (4) *Waiver of notice.* A person's actual notice of, or participation in, the proceedings for which written notice is required to be provided by this section shall waive the right of that person to challenge the validity of the proceedings based on a failure to receive such written notice. Any person entitled to receive notice under this section may waive the right to notice by filing a waiver in writing with the director prior to the hearing. No waiver shall be accepted for an applicant's failure to file or to timely file a required certificate.

- (5) *Failure to receive notice.* Failure to receive any notice required by this section shall not by itself invalidate any action taken at the hearing for which notice was given.
- (B) *Placard notice.* The city shall post placards at least ten days and no more than 30 days prior to the hearing.
 - (1) *Location of placards.* Placards shall be posted along all street frontages of the property in question with the number of placards posted depending upon the length of street frontage on the lot in question.
 - (2) *Contents of placards.* Placards shall contain:
 - (a) The time, date and place of all hearings scheduled; and
 - (b) A description of the matter being heard.
 - (3) *Removal of placards.* The city shall remove all posted placards no later than seven days after a final determination has been made on the application in question.
 - (4) *Destruction of placards.* It shall be unlawful for any unauthorized person to destroy, deface or remove such placard notice. Any person taking such action shall be subject to the penalties set forth in section 11-200 of this ordinance.
 - (C) *Newspaper notice.* The director shall give newspaper notice at least ten days and no more than 30 days prior to the hearing.
 - (1) *Type of newspaper.* Notice shall be published in a newspaper of general circulation in the city.
 - (2) *Contents of newspaper notice.* The notice shall contain:
 - (a) The time, date and place of all hearings scheduled; and
 - (b) A description of the matter being heard.

76. Applicant failed to make, and Defendants failed to confirm, that notice was issued to affected parties and the public in general as required by Section 11-302 of the Ordinance.

PLANNING COMMISSION AND COUNCIL RECORDS IN PUBLIC DOCKETS

The March 5, 2019, 19-1858 Planning Commission Staff Report for SUP 2017-0117

77. The Planning Commission Staff Report for SUP 2018-0117 (hereinafter “Staff Report”) identifies the SUP Applicant’s purported multi-use business use as a “retail shopping establishment and a butchery with live poultry”. The Staff Report contains nothing regarding any slaughter activities described within the SUP Application. Instead, the Staff Report characterizes the slaughter activities as “processing” or the “halal method of meat preparation”.

78. The Staff Report notes that the proposed use would “be the first of its kind within the city limits.” Yet, without performing any analysis, studies, reports or surveys related to the impact of slaughterhouses, especially slaughterhouses located within a densely populated urban area, the Staff Report summarily stated that the “retail use with live poultry” would be “compatible with the existing commercial and industrial nature of the corridor”.

79. The Staff Report limits its SUP review to only one proposed use: “the keeping of live fowl”. The remainder of the Report is limited to the operation of a retail location. The Staff Report did not discuss or consider the required Ordinance § 11-504 factors in relation to the slaughter activities described in the SUP Application, even though this use will impose the most significant negative impact on the health, welfare, safety, and prosperity of citizens and businesses in a wide area near the proposed slaughterhouse. Moreover, the Staff Report did not consider the traditional impact that slaughterhouses have on surrounding business and property values.

80. The Conditions imposed by the Staff Report are typical and pertain to prevention of odors, removal of “trash”, parking, etc. The Department of Transportation and Environmental Services (“DTES”) conditions even allowed Applicant to use on-street parking for employees. This condition completely ignores the lack of existing parking on Colvin Street, where other prior SUP approvals in the corridor have required the applicant to provide off-street parking for its

employees. The lack of adequate parking for retail customers who are likely to visit the slaughterhouse during peak times and seasons will be exceptionally detrimental to area businesses. The Staff Report did not mention any analysis, reports or studies regarding USDA and VDACS regulations and procedures applicable to the SUP Application's slaughter activities. Further, the Staff Report makes no effort to verify the Applicant's assertions that the poultry is "organic," "USDA halal," or safe for human consumption. The Staff Report did not mention, and therefore P&Z did not investigate Applicant's poultry supplier or trash removal company. Moreover, the Staff Report fails to identify any due diligence review of the conditions at other SABA slaughterhouse locations and their impact upon the surrounding neighborhoods.

MARCH 5, 2019 PLANNING COMMISSION PUBLIC HEARING VIDEO

81. Plaintiff's and members of the Alexandria public claim they received no Notice of the March 5, 2019 Planning Commission meeting regarding the SUP Application. During such meeting, the SUP Application was described in the agenda as a "special use permit to operate a retail shopping establishment and a butchery with live poultry". The SUP Application was placed upon the "consent agenda" for the meeting. As the Chairman for the Planning Commission announced, the "consent agenda" designation signified that the SUP Application was of such a "routine matter" that it "did not require a hearing". Since Plaintiffs and the public were not given notice about the SUP Application and/or the true nature of the uses associated with the SUP Application, neither Plaintiffs nor concerned members of the public were present at the meeting and the Planning Commission approved the SUP Application as a "consent agenda" matter on a vote of 7-0, following an attempt by the Planning Commission chair to declare that no vote was needed and the SUP Application should simply be deemed approved. The Docket for the March 5, 2019 Planning Commission Meeting, however, did contain 5 email letters from members of the

public who voiced opposition to the SUP Application approval and urged the Planning Commission to deny it. The Docket also contained the March 5 Planning Commission Staff Report.

MARCH 15, 2019, MARK JINKS MEMO

82. Buried within the “after papers” of the March 16, 2019, City Council Public Hearing Docket for the SUP Application is a memorandum from the Alexandria City Manager, Mark B. Jinks, dated March 15, 2019. The memorandum reveals the failures of the Planning Commission Staff in providing information pursuant to Council member inquiries. According to the memorandum:

- Applicant will use his own vehicles for delivery of poultry. The pictures attached to the memorandum show fully enclosed box trucks without means of light and ventilation to assure the health of the enclosed poultry destined for consumption, especially since hundreds of birds are confined within stacked metal cages within the box trucks.
- USDA, VDACS and the Alexandria Health department licenses must be obtained “for this type of facility” without citing to any legal authority, Applicant proffer or commitment in the SUP Application.
- Multiple inspections will be conducted **bi-weekly**, without specifying what federal, state or local authorities will be conducting the inspections, or what activities within the proposed multi-use facility will be inspected.
- Applicant will remove “waste” three times per week, in contrast to earlier representations that the Applicant will remove “trash” daily, thereby

modifying the SUP Application without any public notice to, or comment from, the public, concerning the impact of the modified terms.

- “Darling International”, an unidentifiable entity, will remove the meat waste and bi-products.
- Applicant has locations in other Cities based on attached pictures that show unrelated store fronts in San Francisco and Yonkers, NY for “halal meat stores” that present with store front signage setting forth third-party business names that are not DC Live Poultry or even SABA Live Poultry.

MARCH 16, 2019 CITY COUNCIL PUBLIC HEARING VIDEO

83. On March 16, 2019, the City Council held a public hearing during which the SUP Application was discussed, and several public speakers presented testimony. During this meeting, the P & Z staff likened the subject SUP Application to a retail shopping establishment and emphasized that the only use attached to the location requiring special use permit analysis and conditions would be the activity of the “overnight keeping of live poultry”, as such use is not permitted within the slated industrial zone. P & Z Staff did not mention the agricultural slaughter activity use as requiring analysis under the SUP review process or requiring any SUP conditions. P & Z staff revealed a number of SUP conditions highlighted in its Staff Report, many of which are those applied to standard retail locations, with the exception of certain conditions aimed at preventing the escape of odors and removal of trash.

84. Several public speakers presented arguments and concerns regarding the potential negative health impacts on local citizens relating to exposure to poultry, air and water borne illnesses, stench, rodents, lack of proper assurances that the poultry would be safe for consumption

or USDA certified as “organic”, parking and traffic problems, impact on property and business values, etc.

85. The Applicant confirmed that it could receive and “process” 100 to 300 chicken and other poultry daily, with as many as 500 per day during Islamic holidays. Applicant testified that he never received any violations or complaints about his other facilities.

86. In a scripted dialogue between Alexandria City Mayor Justin Wilson and Chrishaun Smith of P&Z, the Mayor confirmed that the 11-504 SUP analysis and conditions only applied to the “overnight storage of poultry”, and that no 11-504 analysis was applied to the “slaughter” use within the multi-use SUP Application and that no SUP conditions or restrictions would attach to the slaughter activity use. A reminder was also made that any denials of the proposed SUP would need to take into consideration the religious needs of the Applicant, a commercial establishment.

87. Chrishaun Smith stated on the record that three layers of inspections would apply to the Applicant’s business:

- 1) 2 inspections per month by VDACS to assure that the chickens are disease free;
- 2) Another VDACS test to determine the health and fitness of the chickens, yet the frequency of the inspections was not identified; and
- 3) A USDA inspection every 3 months to determine assess the cleanliness of the facility and the care of the chickens

88. P & Z Staff asserted that all proper Notice was issued. Councilman Seifeldein noted that Councilman Aguirre called the Alexandria City Health Department and was told that poultry do not present any health concerns to the public, thus any related citizen concerns should be addressed by that brief analysis and opinion of a local health department that admits never having to review a business such as that presented within the SUP application.

89. The P & Z Staff asserted that the SUP Application's uses all comply with the Defendant City's Comprehensive Plan and Taylor Run/Duke Small area plan, despite those being outdated in violation of VA Code § 15.2-2230 and with complete disregard of the thriving commercial nature of the area, with its current overflowing traffic and parking problems.

90. Upon closing, Councilman Seifeldein made a speech that essentially classifies valid public objections as "subjective" bias, and noted that an unidentified federal law requires the current land use decision to consider the religious needs of the Applicant and his potential customers, otherwise the City would be faced with a religious discrimination law suit.

91. Councilman Seifeldein appears to be threatening litigation under the Religious Land Use and Institutionalized Persons Act (RLUIPA) by implying that this statute trumps city zoning authority in favor of the shopping convenience of religious adherents. But RLUIPA only provides that municipalities must avoid religious discrimination and the imposition of substantial burdens when institutional applicants seek a permit to site a center for expressive religious activity: "[t]he use, building, or conversion of real property for the purpose of *religious exercise*." (42 U.S.C. § 2000cc-5(7)(B)) (emphasis added). The commercial use of a site to house, slaughter and sell fowl or animals to religious participants is not a protected religious exercise for the purpose of overcoming zoning interests in a community's health, nuisance-avoidance, safety and other protections.

92. Councilman Seifeldein then moved for the Council to approve the SUP Application with its very limited conditions applicable to only attached "keeping of live poultry" use. Since no other Council member would second such motion, a vote on the SUP Application was deferred to the second legislative hearing of the month.

93. Documents attached to the record of the meeting include numerous public objections to the approval of the SUP Application, including two from the long-time former Mayor Bill Euille. Those sparse comments in favor of the application stated a desire to buy “fresh” and “organic” chicken from the Applicant.

MARCH 22, STEPHEN HAERING MEMO

94. In a March 22, 2019, memorandum from Stephen Haering, Director of the Alexandria Health Department, Haering states that USDA and VDACS regulations applicable to the slaughter of poultry within Virginia would not apply to the Applicant. Based on facts presented by the Applicant, the City’s Health Department opined that the Applicant could qualify for an exemption of “bird by bird” inspection due to the number of birds that Applicant claims it will “process”. The memorandum disclosed that the VDACS indicated the Applicant’s exemption status is “self-reporting” and that VDACS would not conduct any set inspections of the Applicant’s facility but would only conduct investigations one or two times a year. The City Health Department also stated that Virginia requires out of state poultry to be tested for Pullorum-Typhoid 30 days prior to entry into Virginia, and that within 14 days of movement within Virginia, the poultry must be tested for Avian Influenza.

95. The City Health Department’s findings contradict the cursory assertion advanced by Councilman Seilfeldein, that the Alexandria Health Department finds no concern of poultry-borne illnesses. The report also highlights the glaring lack of due diligence review by Defendants on the Applicant’s ability and willingness to abide by the noted regulations. It also highlights the glaring lack of SUP approval conditions related to such public health concerns and the slaughterhouse use in general. Further, it shows the outright deception by the Defendants in

representing that inspections of the proposed use would occur at least bi-weekly, when Defendants were made aware that the facility would be entitled to an exemption.

**MARCH 25, 2019 MEMORANDUM FROM
KARL MORITZ, DIRECTOR OF PLANNING AND ZONING**

96. In the March 25, 2019 memorandum, Karl Moritz stated that certain VDACS Department of Meat and Poultry “exemptions” would apply to the Applicant’s business (it is not noted, but these exemptions relate to slaughterhouses), thus requiring only a minimum of one VDACS Meat and Poultry division inspection a year, and that the Applicant would be required to submit certain documentation to support the exemption status. The memorandum also stated that the only other VDACS inspection would be a quarterly inspection of the poultry by the VDACS veterinary services.

97. Chrishaun Smith of P&Z contacted Barry Jones, the Director of VDACS Department of Meat and Poultry and stated that Applicant is “exempt” from traditional VDACS procedures for slaughterhouses since it is a certain type of retail location and to accommodate the religious needs of the Applicant. Mr. Jones confessed a complete lack of knowledge regarding the exemption process and stated that his division would at most, be conducting only one annual inspection.

98. Regarding evaluation of waste water from the proposed use, Defendants knew, based on the memorandum, that waste water from Applicant’s location will be allowable under the AlexRenew existing capacities and that no further regulation applied.

MARCH 26, 2019 CITY COUNCIL LEGISLATIVE MEETING VIDEO

99. During the March 26, 2019 City Council Legislative Meeting, there were new issues, findings and changes present to previous approved SUP Conditions were presented without permitting any further public notice or comment at all. During the meeting, Planning Staff

attempted to clarify what inspections of the slaughterhouse would be conducted and who would conduct them. Planning Staff discussed the VDACS exemption and related inspection information set forth in the March 25, 2019, Karl Moritz memorandum. Both Council Members and Planning Staff now referred to the operation as a slaughterhouse for the first time. Nevertheless, neither the Staff nor Council offered to broaden the required Ordinance 11-504 analysis or the SUP conditions to directly address the SUP Application's slaughter activities. Modifications were made to Conditions #12, #13 and #16, from the previously approved SUP conditions, which are tailored solely to the use defined as "the keeping of live poultry". Moreover, Condition # 16 was modified to read: "The effluent from all cleaning and sanitizing activities must drain to the sanitary sewer system with prior approval from AlexRenew". Because the slaughterhouse will operate in a building that is elevated and has an angled apron, even minor outflows of waste fluids will gravity flow to the street-fed storm sewer. Since Condition #16 (tied to the "storage of live poultry" use) refers only to effluent from "cleaning and sanitizing", no condition applies to effluent resulting from the gutting of animals or the exsanguinating of blood and other fluids. Therefore, the Defendants placed on condition whatsoever on biowaste effluent. Moreover, Virginia DEQ, and not AlexRenew, has the authority to regulate a slaughterhouse water discharge but the Defendants did not consider in any way whether the Applicant's multiple uses will meet AlexRenew or DEQ effluent limits.

100. Defendants failed to investigate or consider the impact that the Applicant's other locations have on surrounding businesses and citizens, or the probable impact that the SUP Application uses will have on the surrounding neighborhood, businesses or property. Instead, Councilman Aguirre lectured and shamed members of the public who had the temerity to voice a valid, well-reasoned objection to a slaughterhouse being placed within a dense urban area and in

close proximity to thriving commercial establishments and residential communities. He summarily dismissed such opposition as being intolerant of the halal slaughter practice.

101. Vice Mayor Elizabeth Bennett-Parker spoke regarding her site visit to Applicant's Philadelphia location, discussions with neighbors of that facility, and her observations concerning the SUP Applicant's other slaughterhouse locations. Bennett-Parker reported that individuals in the area of other slaughterhouses owned by the Applicant expressed concern regarding the intensity of the odors from the slaughterhouses, the dilapidated conditions of those facilities and the plainly apparent impact on the surrounding areas.

102. Councilwoman Amy Jackson joined in the concerns voiced by Bennett-Parker, noting that the proceedings failed to consider substantial, unresolved, traffic and parking concerns, among others.

103. Councilwoman Pepper made closing remarks before the vote stating that she believed the Application should be considered on strict land use principles but she would vote for the SUP Application solely because she was advised by the City Attorney, in a memorandum, that she was required to vote in favor of the SUP Application or face litigation for religious discrimination..

104. Notwithstanding the failure to follow its procedures for approval of an SUP and its own legislatively enacted Ordinance, Defendant City Council approved the SUP Application to permit three uses within the Industrial Zone, including a slaughterhouse use, on a 5-2 vote, and as of that date, the Defendants have conferred on the Applicant the requested SUP for the Slaughterhouse.

CAUSES OF ACTION

COUNT I

(Arbitrary, Capricious and *Ultra Vires* Legislative Act)

105. Plaintiffs repeats and re-alleges the allegations of ¶¶ 1 – 104 as if fully set forth herein.

106. Under established Virginia law, a locality may not undertake a legislative act arbitrarily, capriciously, unreasonably, or contrary to statute. *Town of Leesburg v. Long Lane Assocs. Ltd. P'ship*, 284 Va. 127 (2012); *W Lewinsville Heights Citizens Ass'n v. Bd. of Supervisors*, 270 Va. 259 (2005). The Dillon Rule provides that municipal corporations have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.

107. Pursuant to the Virginia Code, the City Charter, the Zoning Ordinance, and Virginia common law, Defendants' review and approval of the SUP Application was unreasonable, arbitrary, capricious, an abuse of power, *ultra vires* and failed to meet the "fairly debatable" standard.

108. Section 204(m) of the Alexandria City Charter classifies a slaughterhouse as an offensive business use. For this reason, the slaughterhouse is not included as a permitted use within any of the City's zoning designations, is not mentioned in the Ordinance and there are no specific standards provided for such use in the Ordinance.

109. Alexandria City's industrial zone was "established to provide areas for light to medium industrial use, including service, distribution, manufacturing, wholesale and storage facilities at low densities in areas of the city which will not negatively impact adjacent neighborhoods." Ordinance, § 4-1201.

110. The SUP application process requires the applicant to submit an application containing the elements set forth in Section 11-503(A) of the Ordinance. The Director of P & Z must confirm that the application is complete. Ordinance, § 11-503(B). The Defendant City

Council may only approve an application if it determines that all regulations and provisions of law are complied with, and that the use for which a permit is sought:

- (1) Will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use;
- (2) Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- (3) Will substantially conform to the master plan of the city.

Ordinance, § 11-504(A).

111. A SUP applicant is required to provide for specific notice to the public for each use proposed. Ordinance, § 11-301.

112. The SUP Applicant was not complete. For example, Defendants failed to resolve the many deficiencies, inconsistencies and deceptions set forth by the Applicant in the SUP Application in violation of Ordinance 11-503.

113. Defendants review and approval of the SUP Application fails to prevent adverse effects on the health and safety of those persons who reside or work in the neighborhood of the proposed use.

114. The SUP Application proposed three separate uses: (1) a retail use; (2) overnight housing of fowl (chickens); and (3) a slaughterhouse. Defendants' approval of the SUP Application arbitrarily ignored any consideration of the offensive slaughterhouse use and was instead based on deference to an undefined religious needs argument, misapplication of RLUIPA and legally unfounded assertions of religious discrimination. Defendants completely abdicated their obligation to review the slaughterhouse use or the impacts arising therefrom.

115. Defendants failed to review the “merits of the application” as required by the Zoning Ordinance, including Ordinance § 11-504, by failing to properly address, among several things, the detrimental impact to the public welfare or potential injury to property, improvements in the neighborhood, and the economic livelihood of nearby residents, businesses and property owners that may arise from the proposed slaughterhouse as a whole.

116. Defendants failed to provide proper Notice regarding the SUP Application and its review process as specified in Ordinance § 11-301.

117. Defendants ignored the outdated nature of the City Master Plan and Small Area Plan, which violate Virginia Code § 15.2-2230, and do not reflect the current conditions of the affected area.

118. Defendants fail to take into consideration any of the factors prescribed by Ordinance §11-504 regarding the slaughter activities that are part of Applicant’s business.

119. Defendant’s apply cursory consideration of Ordinance §11-504 (A) and (B) factors as relates to Applicant’s use defined as “the keeping of live poultry” use and the conditions imposed do not apply to the proposed slaughterhouse use.

120. Despite tremendous public opposition to the operation of a slaughterhouse within the City limits, Defendants not only discounted the valid objections of neighboring businesses and residents but sought to stifle public objections by shaming and vilifying those who will be most affected. In all actions taken by the Defendants, the pecuniary interests of the Applicant, a commercial entity, were elevated above those of the neighboring property owners, businesses and residents most negatively affected.

121. Defendants’ approval of the SUP Application was based on ad hoc considerations, and not on the basis of standards imposed by applicable law. The approval of an SUP Application

that fails to meet the requirements of all state and local laws is unreasonable, arbitrary, capricious, *ultra vires* and an abuse of power.

COUNT II
(42 U.S.C. § 1983 – Violation of the Due Process Clause)

122. Plaintiffs repeats and re-alleges the allegations of ¶¶ 1 – 121 as if fully set forth herein.

123. Section 1983 of Title 42 of the United States Code provides, in relevant part, that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

124. Defendant City is a person for purposes of § 1983 and is liable in that respect for the legislative acts of the Defendant Council.

125. Defendant City denied Plaintiffs the rights secured under Section 11-504 of the Ordinance by approving the SUP Application under the color of the law of the Commonwealth of Virginia and the City of Alexandria without adhering to the protections provided therein.

126. The Defendants further denied Plaintiffs due process of law in contravention of the XIV Amendment of the U.S. Constitution and Article 1, Section 11 of the Virginia Constitution.

127. Plaintiffs have legally recognized and protected property interests.

128. Defendants' approval of the Application will diminish the value of Plaintiff's properties.

129. Defendants demonstrated bias and the appearance of bias. Defendants employed patent partiality toward the Applicant and engaged in a predetermined approval process, facilitated by the Defendants, without considering or protecting the legal or property interests of the Plaintiffs.

130. The Applicant was the beneficiary of unduly favorable treatment by Defendants in deference to Applicants' religious where the law does not provide any such protection for Applicant's businesses, which is not a religious institution but a commercial, for-profit enterprise.

131. Defendants failed to afford of ensure that Plaintiffs be provided with truthful and adequate notice concerning the nature of Applicant's business.

132. Defendants failed to accord Plaintiffs adequate opportunity to express objections. Instead, Defendants made public statements to dismiss, criticize and discourage legitimate public discourse, objections and inquiries.

133. Accordingly, Defendants reviewed and approved the Application unlawfully and pursuant to constitutionally inadequate procedures, and thereby deprived Plaintiffs of their protected procedural rights and property interests without due process.

COUNT III
(42 U.S.C. § 1983 – Violation of the Equal Protection Clause)

134. Plaintiffs repeats and re-alleges the allegations of ¶¶ 1 – 133 as if fully set forth herein.

135. Defendants denied Plaintiffs equal protection of the laws, in violation of the XIV Amendment of the U.S. Constitution and Article 1, Section 11 of the Virginia Constitution.

136. Applicant received unduly favorable treatment in the approval of its SUP Application that was not provided to opponents of the Application, including Plaintiffs.

137. Without any rational or legal basis, Defendants elevated the Applicant and a professed religion for special treatment that was not afforded to Plaintiffs who are similarly situated individuals, property owners and businesses.

138. Accordingly, Defendants approved the Application without justification, unlawfully, and thereby deprived Plaintiffs equal protection of the laws.

139. As a result, Plaintiffs will be harmed by the negative impact on property values and business operations and profits.

COUNT IV
(Illegal Spot Zoning)

140. Plaintiffs repeats and re-alleges the allegations of ¶¶ 1 – 139 as if fully set forth herein.

141. City Council’s conferral of the SUP constitutes a naked and open act of spot zoning. City Council chose to provide an extraordinary exemption from a controlling zoning regime, for a shocking activity, solely for the benefit of the commercial users of one single parcel that is surrounded by other parcels exhibiting completely lawful, and completely inconsistent, uses that long predate the proposed operation of the Slaughterhouse. No provision for the Slaughterhouse is made, nor even contemplated, in any City zoning or similar plan. Instead, Defendants selected this one particular parcel for exceptionally permissive treatment, at the expense of all nearby parcels.

142. In *Wilhelm v. Morgan*, the Supreme Court of Virginia adopted the following test to determine whether a zoning ordinance is illegal spot zoning:

If the purpose of a zoning ordinance is solely to serve the private interests of one or more landowners, the ordinance represents an arbitrary and capricious exercise of legislative power, constituting illegal spot zoning; but if the legislative purpose is to further the welfare of the entire county or city as part of an overall zoning plan, the ordinance does not constitute illegal spot zoning even though private interests are simultaneously benefited.

208 Va. 398, 403-404 (1967) (internal citations omitted). The Supreme Court continued:

“illegal spot zoning is arbitrary and capricious action of a special kind.” (*Id.* At 404).

143. Defendants’ approval of the SUP Application benefits no business or resident in the surrounding area and constitutes illegal spot zoning.

COUNT V
(Claim Under Va. Code § 15.2-2208.1)

144. Plaintiffs repeats and re-alleges the allegations of ¶¶ 1 – 143 as if fully set forth herein.

145. Section 2208.1.A of Title 15.2 of the Code of Virginia states that:

Notwithstanding any other provision of law, general or special, any applicant aggrieved by the grant or denial by a locality of any approval or permit, however described or delineated, including a special exception, special use permit, conditional use permit, rezoning, site plan, plan of development, and subdivision plan, where such grant included, or denial was based upon, an unconstitutional condition pursuant to the United States Constitution or the Constitution of Virginia, shall be entitled to an award of compensatory damages and to an order remanding the matter to the locality with a direction to grant or issue such permits or approvals without the unconstitutional condition and may be entitled to reasonable attorney fees and court costs.

146. As described above, Defendants' approval of the SUP Application violated Plaintiffs' rights as secured by federal, state and local laws.

147. Pursuant to Va. Code §15.2-2208.1, Plaintiffs are entitled to compensatory damages for any losses that arise from the illegal approval, and an order directing Defendant City Council to withdraw its approval of the SUP Application consistent with the Court's determinations, and recovery of its court costs and attorneys' fees.

PRAYER FOR RELIEF

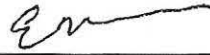
WHEREFORE, Plaintiffs pray that this honorable Court to enter judgement in favor of the Plaintiffs as follows:

- (A) Declare the Decision to be unreasonable, arbitrary, capricious and an abuse of power;
- (B) Declare Defendants' Decision to be *ultra vires*;
- (C) Declare that Defendants' Decision violates Plaintiffs' federal and state constitutional rights of equal protection;

- (D) Declare that Defendants' Decision violates Plaintiffs' federal and state constitutional rights of due process;
- (E) Declare Defendants' Decision to be void *ab initio*;
- (F) Vacate the Decision and resulting applications, permits, or authorizations issued pursuant to or in implementation of it;
- (G) Award Plaintiffs their attorneys' fees and costs to the extent permitted by law or equity; and
- (H) Award such other and further relief as this Court deems just and proper.

Dated: April 25, 2019

Respectfully submitted,



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