

March 25, 2019

Via First Class Mail & fax (631-224-3060)

John M. Lorenzo, Chairman
Michael A. Gajdos, Vice Chairman
William D. Wexler
Daniel J. Sullivan
Vincent J. Messina, Jr.
Zoning Board of Appeals
40 Nassau Ave. Suite 1
Islip, New York 11751

Re: Request to Deny Application of Joseph Rosario for a Special Exception

Dear Mr. Lorenzo and Members of the Board:

On behalf of the undersigned residents of Islip and People for the Ethical Treatment of Animals' ("PETA") more than five-thousand members and supporters in Islip, we are writing to urge the Zoning Board of Appeals (the "Board") to deny Joseph Rosario and/or 1 Beaver Dam Road LLC's August 2018 special exception application (the "Application") to establish a "poultry slaughterhouse with accessory retail use" in an Industrial 2 district at 1 Beaver Dam Road, Islip, New York (the "Live Market"). *See* Exhibit A, Application to Appear Before the Board of Appeals Town of Islip (Aug. 31, 2018). As described further below, the facility also intends to operate for the "live storage of poultry," a use that Islip's zoning ordinance expressly prohibits, and provides no exceptions for, in Industrial 2 districts. *See* Town of Islip Code § 68-355(A)(7). Therefore, the Board cannot lawfully grant the Application and allow the Live Market to operate as proposed.

As you know, Islip's zoning ordinance expressly prohibits "[a]battoirs or stockyards and poultry slaughterhouses or live storage of poultry" in Industrial 2 districts. Town of Islip Code § 68-355(A)(7). The Application was submitted pursuant to Town of Islip Code § 68-357(C), which permits, by special exception only, the establishment of a "[p]oultry slaughterhouse" in an Industrial 2 district. As explained in a letter to the Board from the applicant's attorney, unlike an actual slaughterhouse—which does not have provisions on site to provide animals with food and water, and typically kills all animals within twenty-four hours of delivery to the facility—the proposed Live Market plans to keep live chickens onsite and essentially continue the rearing process by feeding and watering them until they are purchased for slaughter, whenever that may be. *See* Exhibit B, Letter from Eugene R. Barnosky to Zoning Board of Appeals (Dec. 21, 2018) at 4-5 (noting that "approximately 300 chickens will be at the site at any one time and *no particular chicken should be there for longer than a few days* at the most" and that the "poultry have access to water and feed" (emphasis added)).

Although "poultry slaughterhouse[s]" may be permitted by special exception by the Board after a public hearing, *id.* § 68-357(C), the "live storage of poultry" may not, *see id.* §§ 68-353 to 68-368. The only other poultry-related use that may be permitted by special exemption in Industrial 2 districts are "[c]ommercial poultry farm[s]," *id.* § 68-357(F), which the Live Market is not and does not purport to be.

A zoning board’s interpretation of its zoning ordinance is generally entitled to deference, “and judicial review is generally limited to ascertaining whether the action was illegal, arbitrary and capricious, or an abuse of discretion.” *Kabro Assocs., LLC v. Town of Islip Zoning Bd. of Appeals*, 944 N.Y.S.2d 277, 279 (N.Y. App. Div. 2012) (citation and quotation marks omitted). However, where “the question is one of purely legal interpretation of statutory terms, deference to the zoning board’s interpretation of its zoning ordinance is not required.” *J & M Harriman Holding Corp. v. Zoning Bd. of Appeals of Vill. of Harriman*, 879 N.Y.S.2d 494, 496 (N.Y. App. Div. 2009).

The plain language of the Islip zoning ordinance expressly and unambiguously prohibits the “live storage of poultry” in Industrial 2 districts. Town of Islip Code § 68-355(A)(7). The applicant expressly and unambiguously asserts that the facility for which the Application was submitted would be used to store live poultry. Accordingly, if the Board grants the Application—and therefore authorizes the Live Market to store live poultry at the facility pursuant to a special exception which may only be granted for the limited purpose of operating a poultry slaughterhouse, *see id.* § 68-357(C)—the Board’s decision would be directly contrary to the plain language of Islip’s zoning ordinance, and arbitrary, capricious, and an abuse of discretion. *See* N.Y. C.P.L.R. § 7803(3). We therefore urge the Board follow its zoning ordinances and deny the Application. Thank you for your attention to this important matter.

Very truly yours,

REDACTED

Deborah L. Puccio

REDACTED

Edward Bubak

REDACTED

Shannon Elsner-Bubak

REDACTED

Arleen Farina

REDACTED

Christina Spera-Bartlett

REDACTED

Jacquelyn Walsh

REDACTED

Christine A. Miceli

REDACTED

Rosalie Gonzalez

REDACTED

John Di Leonardo

Animals in Entertainment and IGC Outreach Manager, PETA
President, Long Island Orchestrating for Nature

REDACTED

Attachments

cc: John R. DiCioccio, Town Attorney (*via email: townattorney@islipny.gov*)