



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Sent via US Mail and Email (ghampshire@bkclawva.com; clourenco71@gmail.com; steve@wydlerbrothers.com; robinquattrone98@gmail.com)

August 21, 2019

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McLean, VA 22101

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7008 Symphony Court
McLean, VA 22101

Re: Use Determination Re: 1318 Kurtz Road
Tax Map Ref: 30-2 ((13)) 36
Zoning District: R-2
Salona Village Sect. 1

Dear Mr. Hampshire, Ms. Zimmerman, Ms. Lourenco, Mr. Wydler, and
Mr. and Mrs. Quattrone:

This is in response to your letters received on July 3, June 4, April 26 and April 10, 2019,
respectively.

REQUEST: Request for a determination that the Kurtz Property referenced above be deemed
either a congregate living facility or a medical care facility, which can include an inpatient
treatment facility—not a group residential facility.



PLANNING & DEVELOPMENT

Department of Planning and Development
Zoning Administration Division
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035-5507
Phone 703-324-1314
Fax 703-803-6372
www.fairfaxcounty.gov/planning-development

ZONING INFORMATION AND BACKGROUND:

Zoning: The Kurtz Property has a lot area of 24,759 square feet, is zoned to the R-2 District, and is part of the Salona Village subdivision. It is developed with a single-family dwelling constructed in 2011. The property is not subject to any proffered conditions, or special exception, special permit or variance.

Relevant Zoning Ordinance Definitions:

CONGREGATE LIVING FACILITY: A facility that provides housing and general care on a permanent or temporary basis, including the provision of on-site supportive services, such as special care and treatment, in a supervised setting with on-site counselors or other staff. This includes facilities providing in-patient alcohol and addiction detoxification services and for the care of more than eight mentally ill or developmentally disabled patients. This term does not include a GROUP HOUSEKEEPING UNIT, GROUP RESIDENTIAL FACILITY, ASSISTED LIVING FACILITY, SCHOOL OF SPECIAL EDUCATION, or any facility providing services or treatment to anyone who does not reside at the facility.

GROUP RESIDENTIAL FACILITY: A group home or other residential facility, with one or more resident or nonresident staff persons, in which no more than: (a) eight (8) mentally ill, intellectually disabled or developmentally disabled persons reside and such home is licensed by the Virginia Department of Behavioral Health and Developmental Services; or (b) eight (8) intellectually disabled persons or eight (8) aged, infirm or disabled persons reside and such home is licensed by the Virginia Department of Social Services; or (c) eight (8) handicapped persons reside, with handicapped defined in accordance with the Federal Fair Housing Amendments Act of 1988. The terms handicapped, mental illness and developmental disability shall not include current illegal use or addiction to a controlled substance as defined in Sect. 54.1 3401 of the Code of Virginia or as defined in Sect. 102 of the Controlled Substance Act (21 U.S.C. 802).

For the purpose of this Ordinance, a group residential facility shall not be deemed a group housekeeping unit, or ASSISTED LIVING FACILITY and a dwelling unit or facility for more than four (4) persons who do not meet the criteria set forth above or for more than eight (8) handicapped, mentally ill, intellectually disabled or developmentally disabled persons shall be deemed a CONGREGATE LIVING FACILITY.

MEDICAL CARE FACILITY: Any institution, place, building, or agency that offers or provides health services and medical, psychiatric, or surgical care to two or more persons, primarily as inpatients, suffering from a health condition, illness, disease, injury, deformity, or other physical or mental condition. This use includes facilities that offer or provide acute, chronic, convalescent, aged, nursing, or mental/intellectual/physically disability services and

includes facilities offering or providing these services. For the purposes of this Ordinance, this term includes a HOSPITAL, ASSISTED LIVING FACILITY, NURSING FACILITY, and other facilities that may be described as a sanatorium/sanitarium, mental hospital, intermediate/extended care facility, medical school, and other similar institutions or facilities. This term does not include CONGREGATE LIVING FACILITY, CONTINUING CARE FACILITY, GROUP RESIDENTIAL FACILITY, or INDEPENDENT LIVING FACILITY, physician's office, first aid station for emergency medical or surgical treatment, medical laboratory, or medical office providing out-patient services.

Background: On May 15, 2019, I issued a determination regarding the proposed use by Newport Academy of the three Davidson Properties (1620, 1622, and 1624 Davidson Road). Based on the physical layout and the operational characteristics of that proposed facility, I determined that the use on those properties was most similar to a congregate living facility, because it was intended to operate as a single residential facility serving more than 8 mentally ill persons receiving on-site supportive services. At that time, I specifically stated that the determination letter did not address the Kurtz Property, which was still under review. Newport Academy is no longer proposing to establish operations at the Davidson Road properties and Virginia Health Operations, LLC, d/b/a Newport Academy has instead filed a revised license application with the Virginia Department of Behavioral Health and Developmental Services (VDBHDS) to operate a single Mental Health Children's Residential Service for up to 8 female residents ages 12-17 to be located at 1318 Kurtz Road.

In light of the revised license request and your requests for a zoning determination on the Kurtz Property, I requested additional information from Newport Academy regarding the operation of the facility proposed for that site. In general, the questions concerned the minimum length of stay of the individuals, the number of resident and nonresident staff, how much floor area would be used as office, parking(for staff, visitors, and family events), and the maximum number of cars anticipated at any one time.

In response, Newport Academy indicated that at the time of admission a resident is expected to stay between 45 and 90 days, with the average stay between 45 and 60 days. They further noted that Newport Academy is not a drug rehabilitation facility and does not provide detoxification services. Further, no individual who enters treatment with Newport Academy is currently using illicit substances. While Newport Academy indicated that no staff will live at the Kurtz Property, they did not specify how many nonresident staff will be on site at any one time. They did indicate that mornings will typically be set aside for academics and individual therapy, afternoons for group therapy (including music therapy, life skills counseling, yoga, meditation and other fitness activities), and evenings for additional study and therapy as needed. Meals will be eaten in a family-style setting and residents are engaged in programming and under staff supervision from the time they wake up, until they go to sleep with "awake" supervising staff on site 24 hours per day. However, based on a review of the license

application for the Kurtz Road property, it appears that at least 8 staff members will be on site from approximately 8:00 am to 7:00 pm.

With regard to parking, Newport Academy noted that the driveway can accommodate up to 8 vehicles, not including the 3-car garage, and stated that they will take appropriate actions—through the use of a shuttle, off-site parking and other means as necessary—to minimize the number of vehicles (whether staff or visitors) parked at the property at any one time.

DETERMINATION:

I have thoughtfully considered your respective positions and carefully reviewed the revised license application submitted by Newport Academy to VDBHDS. Based on a review of the revised license application and the facts available and as outlined above, it is my determination, in accordance with Zoning Ordinance Sect. 18-103, that the proposed use of the Kurtz Property meets the definition of and is most similar to a Group Residential Facility. Newport Academy plans to operate a single residential facility, licensed by VDBHDS, with one or more resident or nonresident staff persons, in which no more than 8 mentally ill, intellectually disabled or developmentally disabled persons reside; the home will not provide any in-patient alcohol or addiction detoxification services.

A congregate living facility, similar to a group residential facility provides on-site supportive services on a permanent or temporary basis in a supervised setting with on-site counselors or other staff. But the definition of congregate living facility specifically includes facilities caring for more than 8 mentally ill or developmentally disabled patients and providing in-patient alcohol and addiction detoxification services. Newport Academy is not providing in-patient alcohol and addiction detoxification services, and it provides care for no more than 8 individuals. The congregate living facility definition also specifically excludes a group residential facility. Similarly, while the definition of a medical care facility includes facilities that offer or provide mental/intellectual/physical disability services, it specifically excludes a group residential facility or a congregate living facility.

This determination also comports with the provisions set forth in Va. Code Sect. 15.2-2291(A) which states that:

Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident or nonresident staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such

Mr. Gifford Hampshire, Ms. Zimmerman, Ms. Lourenco, Mr. Wydler and Mr. and Mrs.
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facility. For purposes of this subsection, "residential facility" means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to this Code.

This determination is based on the facts and information available to date, including the revised license filed with VDBHDS, and is applicable only to the Kurtz Property. Should facts or circumstances change, this determination is subject to change.

In addition, please note that this determination is not a written order or a notice of zoning violation; however, as a courtesy, please be aware it may be subject to appeal to the Fairfax County Board of Zoning Appeals in accordance with Part 3 of Article 18 of the Zoning Ordinance. Should you have any additional questions, please feel free to contact me at 703-324-1314.

Sincerely,



Leslie B. Johnson
Zoning Administrator

cc: John W. Foust, Supervisor, Dranesville District
Mavis Stanfield, Deputy Zoning Administrator, Permits Branch
Jae Benz, Director of Licensing, VDBHDS, 1220 Bank Street, Richmond,
VA 23219
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Suite 1800, Tysons, VA 22102
Michael Allen, Esq., Relman, Dane & Colfax, PLLC, 1225 19th Street,
N.W., Suite 600, Washington, DC 20036
Monroe RE, LLC, 1318 Kurtz Road, McLean, Virginia 22101

July 3, 2019

Via Federal Express

Ms. Leslie B. Johnson
Zoning Administrator
Zoning Administration Division
Department of Planning and Zoning
12055 Government Center Pkwy., Suite 807
Fairfax, VA 22035



2019-0541

Re: Request for Zoning Determination that 1318 Kurtz Road be determined to be a Congregate Living Facility or a Medical Care Facility, not a Group Residential Facility.

Dear Ms. Johnson:

This firm represents Matthew Desch who resides 1317 Kurtz Road, McLean, Virginia, Daniel Duval, who resides at 1214 Buchan Street, McLean, Virginia and Jason Hein, who resides at 1316 Kurtz Road, McLean Virginia (collectively, the "Landowners"). I reference your 15 May 2019 Use Determination ("Use Determination") regarding 1620 Davidson Road, McLean, Virginia, 1622 Davidson Road, McLean, Virginia, 1624 Davidson Road, McLean Virginia (collectively, the "Davidson Properties") and 1318 Kurtz Road, McLean, Virginia (the "Kurtz Property"). You determined that that the Davidson Properties constituted a single facility use most similar to a Congregate Living Facility requiring a special exception. You also stated that your determination did not address the Kurtz Road property because that location was still under review with Newport Academy then planning to submit another revised application to VDBHDS to open its initial application at Kurtz Property.

You may know that, on June 11, 2019, Newport did, indeed, submit such a revised application under the name of Virginia Health Operations, LLC. (the "June 2019 Revision"), a copy of which is attached as **Exhibit A**. You will see that the June 2019 Revision shows Virginia Health Operations, LLC with a parent company of Monroe Capital Holdings, LLC and with a "Service Type" as "MH Children Residential Service" (as opposed to "MH Children Group Home Residential Service").

You noted in the Use Determination that Newport's initial application "did not characterize its proposed service as a group home, as that would have limited its occupancy." You also observed that the applicant "did not characterize its use as a homelike single dwelling."

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By continuing to describe the “Service Type” as “MH Children Residential Service” and not “MH Children Group Home Residential Service” in the June 2019 Revision, Newport continues in its attempt to avoid the Zoning Ordinance limitations of “Group Residential Facility” and to instead focus on medical treatment, including substance abuse treatment, as opposed to residency in a homelike setting. Newport’s focus on treatment, not residency, is patent in the “Service Description” section of the June 2019 Revision:

SERVICE DESCRIPTION

MISSION STATEMENT

At Newport Academy’s Kurtz Road location, we believe in sustainable healing. In our Mental Health facility for up to 8 residents, *we treat* female adolescents, ages 12-17, guiding them from self-destruction to self-esteem, addressing the underlying causes of harmful behaviors. The Newport Academy program provides the safety, support, and above all, the unconditional love that teens and their families need in order to heal. *By incorporating multiple modalities of psychological and experimental therapies, and a dedication to treating the entire family, we offer a superior adolescent treatment program.*

PHILOSOPHY

The Newport Academy philosophy is based on unconditional love, compassion, and acceptance. At our Kurtz road location, we will leverage over eleven years of company experience at locations throughout the country that have helped develop best practices *in treating thousands of teens, depression anxiety, trauma, substance abuse and eating disorders.* Our approach provides sustainable healing through identifying and addressing our clients’ underlying trauma(s)/attachment wounds. We meet our teens where they are, and provide a safe, accepting, and nurturing environment in which deep issues can surface and be addressed. When an adolescent arrives at Newport Academy, our compassionate staff loves them until they can love themselves. As authentic, positive connections with staff, peers, and family are explored and emerge, healing begins, and old, maladaptive behaviors are no longer needed. Fear is truly replaced with love, and wholeness is rediscovered.

At our treatment home, our board-certified psychiatrists, psychologists, and therapists have advanced degrees within the specializations of teen mental health, substance abuse, depression in teens, teenage anxiety, and eating disorders. Our therapists are often licensed as “Phd, or PsyD (Psychologist), LMFT (Licensed

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Marriage and Family Therapist), LCSW (Licensed Clinical Social Worker)). Every individual also has a licensed counselor—LPC (Licensed Professional Counselor), CADC (Certified Alcohol and Drug Counselor) and MD. The Newport Academy Treatment Teams meet daily to review and discuss plans and individuals' progress, sharing research and results to optimize each teen's curriculum and therapeutic growth track. We are accredited through the Joint Commission, the gold standard of treatment.

PERSONALIZED TREATMENT

Upon admission to the Newport Academy's Kurtz Road home, each adolescent is assigned an eight-person Treatment Team that develops a personalized program to ensure positive growth and sustainable healing. The Treatment Team consists of:

- Psychiatrist
- Individual Therapist
- Family Therapist
- Medical Doctor/Pediatrician
- Registered Nurse
- Registered Dietician
- Counselor
- Clinical Director.

Exhibit A-13, Emphasis added.

Newport's "Service Description" in the June 2019 Revision is consistent with the description of Kurtz Property and the Davidson Properties in the National Provider Identifier Database ("NPI") that provides "Health Care Provider Taxonomy Codes", described therein as "a hierarchical code set that consists of codes, descriptions, and definitions . . . designed to categorize the type, classification, and/or specialization of health care providers." See **Exhibit B-9**. NPI describes "Newport Academy-Kurtz as follows:

Newport Academy-kurtz (Monroe Operations, Llc) (sic) is a drug rehab facility in McLean, Virginia. It is a Substance Abuse Residential Rehab Facility and provides treatment to people with drug addiction and other substance abuse problems. The NPI Number for Newport Academy-kurtz is 1316427214.

Exhibit B-1; <https://npino.com/drug-rehab/1316427214-newport-academy-kurtz/>. NPI lists "Newport Academy-Kurtz has having a "primary specialty" taxonomy code for "Psychiatric Residential Treatment Facility" (#323P00000X) and a secondary specialty of "Substance Abuse

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Disorder Rehabilitation” (#324500000X). See **Exhibit B-10**. The same is true for “Newport Academy-Davidson 1”, Monroe Operations LLC, “Monroe Operations, LLC” (1620 Davidson Road)” and “Monroe Operations, 1622 Davidson Road”. See **Exhibit B1-16**. See also https://npidb.org/organizations/residential_treatment/psychiatric-residential-treatment-facility_323p00000x/1316427214.aspx.

Newport’s “Service Description” in the June 2019 Revision is also consistent with its website’s focus on medical treatment (including substance abuse), as opposed to residency in a homelike single dwelling. See <https://www.newportacademy.com>. Newport describes its program as follows:

**Newport Academy—Top-Rated Teen Rehab Center
What We Treat**

*At Newport Academy, we bring teens from self-destruction to self-esteem by treating the underlying causes of high-risk behavior. We treat individuals, ages 12-20, struggling with teenage depression, teen anxiety, eating disorders, trauma and **teenage substance abuse**. Newport Academy is a different kind of teen rehab center. Through our clinical expertise and holistic care, we empower teens and restore families.*

Exhibit C-1. (Emphasis added). Even Newport’s description of its “Residential Program” is focused on medical treatment, not residency in a homelike setting:

Each adolescent’s individual treatment program incorporates evidence-based clinical, experimental, and academic elements for superior, comprehensive care. Our integrative residential treatment center for teens consists of a minimum of 30 hours of clinical and experiential therapy each week, plus 20 hours of academic study and tutoring.

Exhibit C-2.

And Newport touts its bona fides in mental health treatment for “teen treatment centers” like that classified by NPI for the Kurtz and Davidson Properties.

More than 500 years of clinical & therapeutic expertise

Newport Academy has assembled the best adolescent mental health treatment staff in the country to serve as the foundation for our unparalleled teen treatment centers. The Newport Academy team includes more than 200 clinicians,

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therapists, and specialists from all over the world, with a wide range of degrees and experience.

Exhibit C-11.

Virginia Code § 15.2-2291 requires zoning ordinances to consider a *residential facility* where no more than eight individuals with mental illness, intellectual disability or developmental disabilities reside, with one or more nonresident staff persons, as residential occupancy by a single family and that mental illness and developmental disability “shall not include current use of or addition to a controlled substance as defined in §54.1-5401. Fairfax County Zoning Ordinance § 20-200 complies by providing a definition of a “Group Residential Facility” consistent with § 15.2-2291, including that the facility be a “group home or other residential facility” where “mentally ill, intellectually disabled or developmentally disabled persons reside” with the proviso that such persons shall not include the current use or addition to a controlled substance. As observed by Fairfax Circuit Court some 22 years ago:

Both the Virginia Code and the Fairfax County Ordinances at issue (collectively referred to as “statutes”) were created in response to the 1988 Amendments to the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (“FHA”). The purpose behind the FHA amendments *is to prohibit discrimination in housing opportunities on the basis of status*, including those persons handicapped by reason of mental illness.

Board of County Supervisors of Fairfax County, et. al. v. Board of Zoning Appeals of Fairfax County; Law No. 150970; Alternative House, Inc. v. Board of Zoning Appeals of Fairfax County Law No. 150851 (April 7, 1997. Fairfax Circuit Court), p. 5. (emphasis added).

The June 2019 Revision, NPI database and Newport website demonstrate convincingly that the purpose of the Newport-Kurtz Treatment Home (as well as the Newport Davidson Treatment Homes) has nothing to do with creating a housing opportunity for persons handicapped by reason of mental illness but everything to do with a providing medical treatment to emotionally troubled teens, including those suffering from substance abuse. The last sentence of Newport’s “Mission Statement” bears repeating.

By incorporating multiple modalities of psychological and experimental therapies, and a dedication to treating the entire family, we offer a superior adolescent treatment program.

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The Kurtz and Davidson “treatment homes” are, thus, “homes” in name only. That thin veil of nomenclature does not obscure the repeatedly self-described purpose of the facilities to provide “multiple modalities of psychological and experimental therapies” not only to the troubled teen, but also the teen’s “entire family”¹, as opposed to creating residential housing opportunities to mentally ill persons consistent with the purpose of the FHA, Va. Code § 15.2-2291 and Zoning Ordinance § 200-200.

It is enough that Newport trumpets its treatment plan as addressing “substance abuse” as well as depression, anxiety, trauma and eating disorders because not only “addiction” because the mere “illegal use of controlled substances” would disqualify the Kurtz treatment facility from “Group Residential Facility” status. But the focus on all kinds of treatment, as opposed to the provision of residential housing opportunities renders the Kurtz and Davidson proposals most like either a “Congregate Living Facility” or “Medical Care Facility”, defined by § 20-200 as:

CONGREGATE LIVING FACILITY: A facility that provides housing and general care on a permanent or temporary basis, including the provision of on-site supportive services, such as special care and treatment, in a supervised setting with on-site counselors or other staff. This includes facilities providing in-patient alcohol and addiction detoxification services and for the care of more than eight mentally ill or developmentally disabled patients. This term does not include GROUP HOUSING KEEPING UNIT, GROUP RESIDENTIAL FACILITY, ASSISTED LIVING FACILITY, SCHOOL OF SPECIAL EDUCATION, or any facility providing services or treatment to anyone who does not reside at the facility.

MEDICAL CARE FACILITY: Any institution, place, building or agency that offers or provides health services and medical, psychiatric, or surgical care to two or more persons, primarily as inpatients, suffering from a health condition, illness, disease, injury, deformity, or physical or mental condition. This use includes facilities that offer or provide acute, chronic, convalescent, aged, nursing, or mental/intellectual/physically (sic.) disability services and includes facilities offering or providing these services. For the purposes of this Ordinance, this term includes a HOSPITAL, ASSISTED LIVING FACILITY, NURSING FACILITY and other similar institutions or facilities. This term does not include CONGREGATE LIVING FACILITY, GROUP RESIDENTIAL FACILITY, or INDEPENDENT LIVING FACILITY, physician’s office, first aid station

¹ Newport repeats this claim on its website.

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for emergency medical or surgical treatment, medical laboratory, or medical office providing out-patient services.

The Zoning Ordinance definition of “Group Residential Facility” explicitly provides that “a dwelling unit or facility for more than four (4) persons who do not meet the criteria [of that definition] . . . shall be deemed a CONGREGATE LIVING FACILITY.” The repeated disclosure in the June 2019 Revision, the Newport Website and the NPI that treatment at the Kurtz and Davidson treatment homes includes that of “substance abuse” means that you are constrained by the Zoning Ordinance to determine that those facilities must be deemed “Congregate Living Facilities.”²

In light of Newport’s repeated claims, however, that it treats the “entire family”, the Kurtz and Davidson centers may, instead, be more like a Medical Care Facility since the above definition of Congregate Living Facility specifically excludes “a facility providing services or treatment to anyone who does not reside at the facility”. And the apparent treatment of both inpatients (the mentally or troubled teens) and outpatients (presumably parents and siblings) is most like an “institution, place, building, or agency that offers medical, psychiatric, or surgical care to two or more persons, primarily as inpatients”. See definition of “Medical Care Facility”, above. You may determine, therefore, that Newport’s secondary treatment of family member outpatients renders the Kurtz and Davidson operations to be more like a Medical Care Facility than a Congregate Living Facility.

Regardless, none of the proposed facilities falls within the definition of Group Residential Facility or within intent of the FHA, Va. Code § 15.2-2291 and Zoning Ordinance 20-200 to provide residential housing opportunities to mentally handicapped persons. In this regard one must appreciate that the Code of Virginia enables the Virginia Department of Behavioral Health and Developmental Services (VDBHDS) to regulate not on only “group homes” but also all sorts of “residential facilities” for persons with mental illnesses. See Va. Code Ann. § 37.2-408(B). The regulations promulgated under this authority, thus, distinguish between “Group Home” and “Residential Treatment

² You may recall the statement of Newport’s agent, Mr. Jamison Monroe, at the 24 April 2019 McLean High School meeting that the “primary diagnosis” of adolescents who would be treated at the Davidson and Kurtz properties was “mental health issues” and that the facilities were not “drug rehabilitation center or methadone clinics”. This statement certainly at least implied—consistent with the June 2019 Revisions, NPI Taxonomy Codes and the Newport Website”—that substance abuse treatment would be part of the treatment plan as at least a secondary diagnosis.

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program”, with the former being defined as “a children’s residential facility that is a community-based, homelike single dwelling or its acceptable equivalent” and the latter not being restricted to single family dwellings or equivalent and allowing for “medically-necessary, out-of-home programs designed to provide necessary support and address mental health, behavioral, substance abuse, cognitive or training needs of a child or adolescent”. 12 VAC35-46-10.³ This regulatory distinction appropriately parallels the Zoning Ordinance distinction between Group Residential Facility on the one hand and Congregate Living Facility and Medical Care Facility on the other. *See infra*. As you suggested in the Use Determination, the Zoning Ordinance and Virginia Code/Administrative Code are consistent in limiting the use of single family dwellings to those that do not treat substance abuse and focus on creating residential housing opportunities for mentally ill children in a homelike single dwelling.

By counsel’s letter dated 28 June 2019, Newport contends that that 15.2-2291 divests you of authority to interpret the Zoning Ordinance. Specifically, counsel states that VDBDS licensure “*ipso facto*” deprives you of power to determine that particular use is not a “Group Residential Facility” as defined by the Fairfax County Zoning Ordinance or to determine that such use is most similar to another use defined by the Zoning Ordinance such as a Medical Care Facility or a Congregate Living Facility. Counsel fails cite any authority for this proposition and such would directly contradict the power the General Assembly granted to zoning administrators as the sole authority to render interpretations of zoning ordinances. *See* Va. Code Ann. § 15.2-2286(4). Further, and as discussed above, Newport has failed to apply for the VDBHDS designation of “MH Children Group Home Residential Service” and, in any event, the VDBHDS has yet to grant a permit license of any sort for the Kurtz facility.

For all of the above reasons, Messrs. Desch, Duval and Hein respectfully request that you determine that the proposed Newport Kurtz treatment “home” is most like either a Congregate Living Facility or a Medical Care Facility and, in any event, not a “Group Residential Facility.

Thank you for your kind attention to this request. Of course, please do not hesitate to contact me with questions.

³ These two different categories of facilities correspond to “HH Children Group Home Residential Service” and MH Children Residential Service” on the “Service Type” section of the VDBHDS application for licensing form. It is telling, therefore, that Newport continues to eschew the “MH Children Group Home Residential Service” in its “Service Type” description within the June 2019 Revision.

Leslie Johnson, Zoning Administrator
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Sincerely,



Gifford R. Hampshire

GRH/kb
Enclosure (as stated)

cc: Matthew Desch
Daniel Duval
Jason Hein
Elizabeth D. Teare, County Attorney
Sean F. Murphy, Esq.

Katie Zimmerman
1502 Wasp Ln.
McLean, VA 22101
[48th District]

Christiane Lourenco
6912 Southridge Drive
McLean, VA 22101
[48th District]



June 4, 2019

Via Email: Leslie.Johnson@fairfaxcounty.gov

Leslie Johnson, Zoning Administrator
Department of Planning and Zoning
12055 Government Center Parkway
Fairfax, VA 22035

Re: Zoning Determination Request for Psychiatric Residential Treatment Facility

Dear Ms. Johnson,

I am writing to thank you for your recent help with the situation in McLean concerning Newport Academy's efforts to open Psychiatric Residential Treatment Facilities in residential zones. You issued a determination that the proposed use of the three contiguous Davidson Properties as psychiatric residential treatment facilities is most similar to a "Congregate Living Facility" rather than a "Group Living Facility" pursuant to Fairfax County's zoning definitions.

However, this does not address the proposed use of a psychiatric residential treatment facility as a "Group Living Facility" pursuant to Fairfax County's zoning definitions. As defined by VA Code¹, an "inpatient psychiatric facility" or "IPF" means a private or state-run freestanding psychiatric hospital or *psychiatric residential treatment center*. Fairfax County zoning defines a "Medical Care Facility" as any facility that offers or provides health services and medical, *psychiatric*, or surgical care to two or more persons, primarily as *inpatients*.

This research done by McLean residents suggests that a valid argument can be made that psychiatric residential treatment facilities are in fact Medical Treatment Facilities pursuant to Fairfax County Zoning which have, we believe, stricter zoning regulations. This would, in our opinion also apply to the NA facility at 1318 Kurtz Road (or any other NA facility) as pursuant to this website² their primary specialty is listed as "Psychiatric Residential Treatment Facility" which according to the Virginia statute is an inpatient psychiatric facility which could arguably be considered a Medical Care Facility.

For the above reasons, the McLean community questions the use of 1318 Kurtz Road (or any other NA facility) as a Group Residential Facility and respectfully requests a formal written determination on whether a Psychiatric Residential Treatment Facility, as an *inpatient* psychiatric facility, should be categorized as a "Medical Care Facility" that offers or provides health services and medical, *psychiatric*, or surgical care to two or more persons, primarily as *inpatients*.

¹ 12VAC30-130-850. Definitions. Part XIV. Residential Psychiatric Treatment for Children and Adolescents.

² https://npino.com/drug-rehab/1316427214-newport-academy-kurtz/?fbclid=IwAR1N1MP2cSOj_f8HaA5KniSUG3aKKNiptwiLyvJQM7dDnA5PIaAORsKpWpM

Please know that this zoning determination request is an integral part of our common goal - to increase the oversight and regulation of (but not the exclusion of) all Group Homes³ serving Disabled Persons to (a) ensure compliance with but not abuse of the Federal Fair Housing Act and applicable Federal, Virginia and Fairfax County laws and regulations; (b) ensure the health and safety of all residents of Group Homes; and (c) preserve not only the goals⁴ of Group Homes but the characteristics of residential neighborhoods⁵.

Sincerest Thanks,

/s/ Katie Zimmerman

/s/ Christiane Lourenco

Katie Zimmerman and Christiane Lourenco

CC Via Email: Del. Kathleen Murphy: DelKMurphy@house.virginia.gov; Del. Rip Sullivan: DelRSullivan@house.virginia.gov; John Foust: Dranesville@fairfaxcounty.gov; Chairman Bulova: Chairman@fairfaxcounty.gov

³ Group Home to include both "traditional" and "transitional" community residences, residential treatment facilities, children's residential facilities, residential facilities, etc., in which the residents are a class of Disabled Persons.

⁴ "Community residences must locate to achieve their main goals: normalization and community integration... community residences that locate too close to one another undermine their ability to achieve normalization and community integration. Clustering community residences on a block can create a *de facto* social service district and create an institutional atmosphere. A rationally-based spacing requirement benefits the protected class: people with disabilities." See Daniel Lauber, "A Real LULU: Zoning for Group Homes and Halfway Houses Under the Fair Housing Amendments Act of 1988" *John Marshall Law Review*, Vol. 29, No 2, Winter 1996, p. 369-407.

⁵ Courts have, on occasion, upheld local zoning authority if a city demonstrates that a group care facility would substantially affect the character of a neighborhood." See Ted Gathe, "Regulating Group Homes in the Twenty First Century: The Limits of Municipal Authority", April 2013, p. 6-18.

Robyn & David Quattrone
7008 Symphony Court
McLean, VA 22101
Cell: 202-841-7321



April 26, 2019

Leslie Johnson
Zoning Administrator, Fairfax County
12055 Government Center Pkwy.
Fairfax, VA 22035

RE: **REQUEST FOR DETERMINATION THAT THE FOLLOWING FOUR PROPERTIES BE
CONSIDERED CONGREGATE LIVING FACILITIES**

- 1620 Davidson Road, McLean, VA 22101 / TAX MAP #0303 01 0030C1
- 1622 Davidson Road, McLean, VA 22101 / TAX MAP #0303 01 0030B1
- 1624 Davidson Road, McLean, VA 22101 / TAX MAP #0303 01 0030A1
- 1318 Kurtz Road, McLean, VA 22101 / TAX MAP # 0302 13 0036

Dear Ms. Johnson:

My principal residence is 7008 Symphony Court which shares a fence line with one of the above-referenced Davidson Road properties and is approximately one mile from the Kurtz Road property (collectively, the "Monroe Properties"). The Monroe Properties were each purchased by the same entity (Monroe RE LLC) within the last 12 months. As we are all now aware, Monroe RE LLC intends to install a treatment facility in each of these four homes with up to eight patients in each home (32 total). I attended the April 24, 2019 meeting at McLean High School which you and other state and local officials attended along with Jameson Monroe, Founder and CEO of Newport Academy, which will operate these four entities.

Based on the law and Mr. Monroe's representations at the hearing, I hereby submit this request for determination that the Monroe Properties, individually and collectively, do not qualify as a Group Residential Facility as defined by local zoning laws. We believe that any of the following provides sufficient basis to grant my Request for Determination that these are Congregate Living Facilities.

**The Monroe Properties are Each Congregate Living Facilities,
Not Group Residential Facilities**

While the parties involved – from Monroe/Newport to the government officials representing the residents of McLean – seem to have conceded that Newport's proposed facilities fall under the definition of Group Residential Facility, even a cursory reading of the Fairfax County Zoning

Ordinance reveals that to be an inaccurate interpretation. The four proposed facilities fall squarely within the definition of Congregate Living Facilities.

The definition of a Group Residential Facility is contained in Fairfax County Zoning Ordinance and states (emphasis added):

A group home or other residential facility ... in which no more than ... (c) eight (8) handicapped persons **reside**, with handicapped defined in accordance with the Federal Fair Housing Amendments Act of 1988. ...

A Congregate Living Facility is defined in the Zoning Ordinance as follows (emphasis added):

A facility that provides housing and general care on a permanent or **temporary** basis, **including the provision of on-site supportive services, such as special care and treatment, in a supervised setting with on-site counselors or other staff.**

While ample attention has been given to the number of persons that may take advantage of the services provided by either type of facility, merely cutting off occupancy at eight persons receiving treatment is not sufficient to receive safe harbor treatment under the definition of Group Residential Facility. *First*, the definition of a Group Residential Facility refers to people who **"reside"** in the facility, while the definition of a Congregate Living Facility focuses that can be care provided on a **"temporary"** basis.¹ *Second*, the latter definition focuses on the fact that services are provided as the fundamental purpose of the facility, and references the exact type of services to be provided by Monroe/Newport.

"Reside" vs. "Temporary"

Mr. Monroe's statement at the April 24 meeting confirmed that the average length of stay for a given patient is 6 to 10 weeks – 42-70 days. The key question, then, becomes who can qualify a someone who "resides" in such a facility?

- Virginia tax law defines a resident as follows: "A person who lives in Virginia, or maintains a place of abode here, for **more than 183 days during the year**, or who is a legal (domiciliary) resident of the Commonwealth, is considered a Virginia resident for income tax purposes." <https://tax.virginia.gov/residency-status>; see also Code of Virginia Section 58.1-302 and 23VAC10-110-30 (emphasis added).

Basic math tells us that Newport patients are not residents under this definition.

- Virginia law also includes definitions for "domiciliary" residents:

¹ The definition of Congregate Living Facility also references care on a "permanent" basis but based on length of patient stay, that part of the definition is inapplicable here.

In making this determination [if one is a "domiciliary" resident] consideration is given to a number of factors, including, but not limited to the following: sites of real and tangible property, location of savings and checking accounts, motor vehicle registration and licensing, motor vehicle operator's license, voter registration, membership in clubs and civic groups, place of business, profession or employment, charitable contributions, location of schools attended by children, length of time of residence, place of birth and marriage, residence of family, reason for abandoning or acquiring domicile, and, in the case of a minor or married person, domicile of parents, husband, or wife and/or children. No single factor is dispositive in determining domicile; rather the factors are examined collectively to determine if the intent to acquire or abandon Virginia domicile exists.

Plainly, a teenager receiving mental health services for less than three months meets none of these requirements individually, let alone meets them collectively.

- Nor are these patients tenants, landlords, or owners of any real property in the way one would typically consider when determining whether someone is a resident. Rather, they are more akin to hotel guests or "licensees" who have a temporary right to be in a place, but who can be removed at any time as they have no legal interest in the property.

Indeed, a person spending less than three months in a given location is the very antithesis of a resident and the very definition of someone occupying that facility to receive services on a "temporary" basis.

Services Provided

Also significant is that the definition of Group Residential Facility focuses on the nature of the persons who reside there and the specific disabilities that qualify them for residence. Conversely, the definition of Congregate Living Facility focuses on the type of service provided, making it clear that the purpose of the facility is to provide a place for a patient to receive those services. Notably, the services mentioned, "the provision of on-site supportive services, such as special care and treatment, in a supervised setting with on-site counselors or other staff," are exactly the services Newport plans to provide.

Accordingly, there can be no other conclusion than that the Monroe Properties are Congregate Living Facilities. Any other conclusion requires a myopic focus on the number of patients rather than the quality and character of the group facility. While Newport Academy desperately wishes to avoid the Congregate Living Facility label because such use would require a special exception under criteria Newport Academy cannot possibly meet, it simply cannot do so in this circumstance.

All Four Homes in McLean Should be Viewed on an Aggregated Basis

The Monroe Properties, three of which are on the same street and the fourth of which is one mile away, should be evaluated not as four single family homes, but as one aggregated facility. Under this view, these facilities also would be regarded as a Congregate Living Facility – in addition to the reasons above – by virtue of exceeding the eight person occupancy limit.

First, three of the four homes are contiguous and have a common fence surrounding them, evidencing that they will be run as one compound.

Second, it is clear that these homes will share certain resources in terms of cleaning, food service, and other basic daily needs, including possibly shared caregivers such as counselors, therapists, yoga teachers, and art and music therapy instructors. Indeed, neighbors have already made the acquaintance of the interior designer who confirmed she is working on each of the Davidson Road homes and have seen the construction and renovation crews traverse from home to home. Mr. Monroe did not dispute the notion of certain shared resources at the April 24 meeting, and indeed suggested that he purchased three homes next to one another to “mitigate the impact.”

Zoning laws are in place to protect the residential feel of a neighborhood. Every government official who attended the April 24 meeting agreed that they did not endorse the establishment of this type of facility in three homes on one street because they will fundamentally change the nature and character of the neighborhood. The reason they will change the neighborhood is because they constitute one facility operating out of four separate buildings – an impermissible outcome under the zoning laws and one which, as noted, requires a special exception for which Newport does not qualify.

DOJ/HUD Joint Statement

The DOJ and HUD issued a Joint Statement on Nov 10, 2016 which in paragraph 19 provides a roadmap for you to block this obvious commercial use in light of your very valid concerns about the Fair Housing Act. Here is a [link to the Joint Statement](https://www.justice.gov/opa/file/912366/download?fbclid=IwAR2KNMQg2bVUV7Rj6eui2N0rxmLt524lcZg3_7tmVReiSUJTpv7qSQ_wFYY)² and the relevant section is reprinted below. The bottom line is that not every concern about a group home is discriminatory in nature and group homes may not operate in a supervisory vacuum using the FHA as a sword and shield. What the Q&A below tells you is that the concerns of local residents, such as those raised at the meeting, may be considered and should not automatically be considered discriminatory. You may act here, in accordance with the arguments outlined above, without running afoul of Federal law.

²https://www.justice.gov/opa/file/912366/download?fbclid=IwAR2KNMQg2bVUV7Rj6eui2N0rxmLt524lcZg3_7tmVReiSUJTpv7qSQ_wFYY

19. Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities (see Q&A 5), a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.

Even the concern cited as an example here is one which could and should serve to block the proposed sites. Mr. Monroe indicated at the April 24 meeting that he anticipated at least nine cars at each home at any given time. While he suggested there was enough parking for that many cars at each location (notably attained by paving over the front lawns of these former homes), that should be verified and additional questions should be asked regarding parking for additional staffing, visitors, and vendors. Indeed, this level of parking does not address the purported claims on his website of 4:1 and 5:1 staff to patient ratios, which if true would yield the need for exponentially more parking. Even at the claimed levels, that equates to an additional 27 cars at a time on Davidson Road, an already congested road where there are near misses with school and neighborhood kids every day. Moreover, both Davidson and Kutz Roads are extremely narrow with very little room to maneuver, and Davidson Road is already filled each day with student parking. Please see attached photographs of Davidson Road.

This is just one complaint among many raised by concerned citizens that should be investigated pursuant to the above guidance from the Department of Justice and Department of Housing and Urban Development.

We appreciate your time and attention to this matter and look forward to hearing back from you at your earliest convenience.

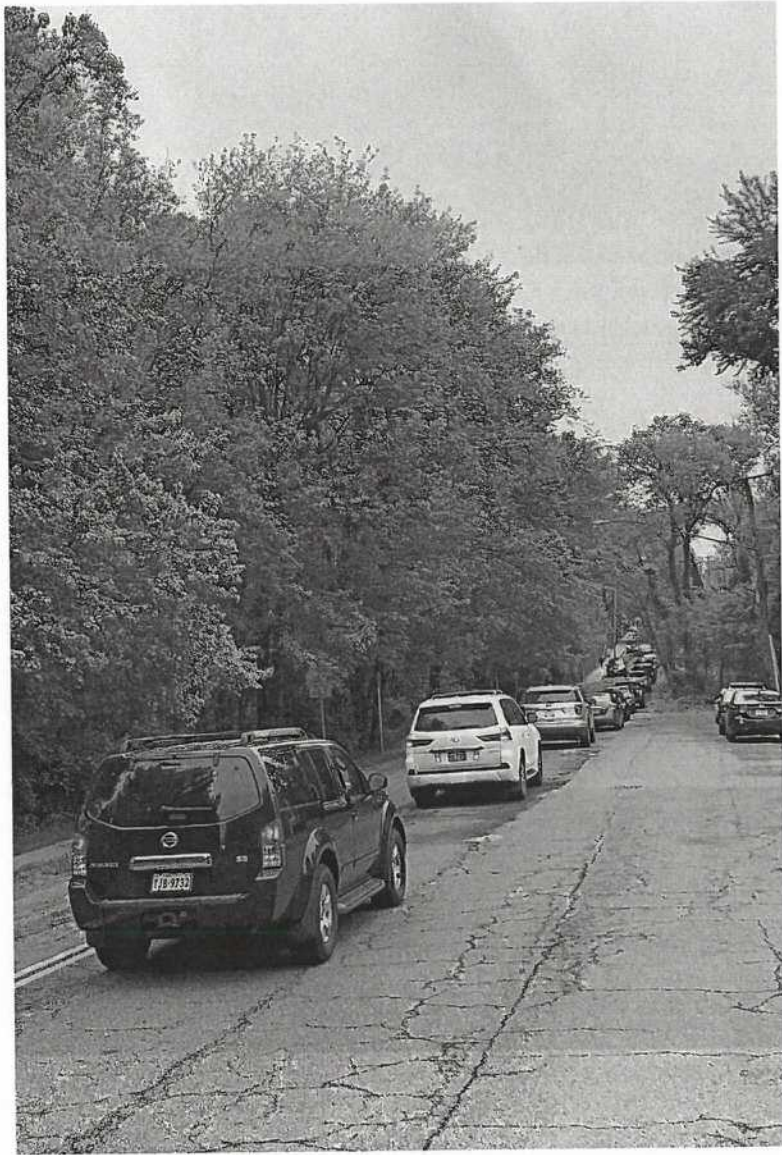
Very truly yours,

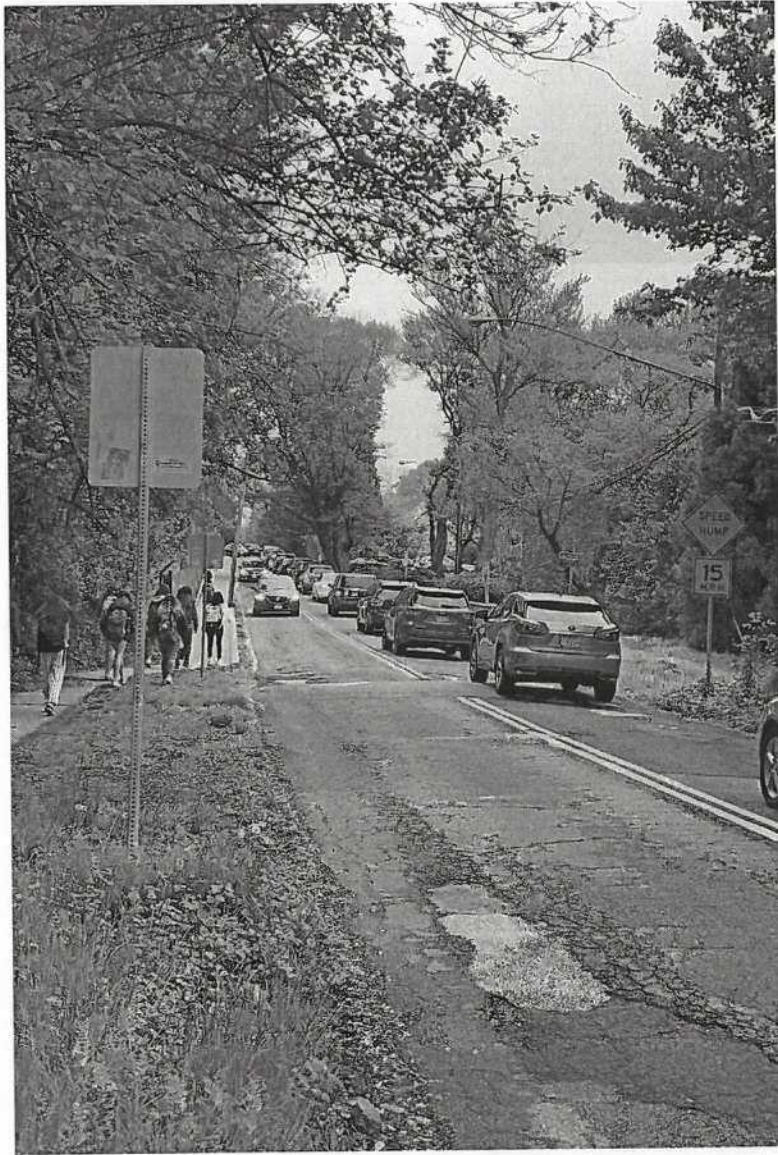
/s/
Robyn C. Quattrone

/s/
David C. Quattrone

Cc: John Foust, Dranesville Supervisor
Delegate Rip Sullivan
Delegate Kathleen Murphy
Beth Teare, County Attorney
Jameson Monroe, Newport Academy

Attachments





Steve Wydler
7009 Symphony Court
McLean, VA 22101
Cell: 703-851-8781



April 8, 2019

Leslie Johnson
Zoning Administrator, Fairfax County
12055 Government Center Pkwy.
Fairfax, VA 22035

RE: REQUEST FOR DETERMINATION THAT THE FOLLOWING 3 PROPERTIES BE CONSIDERED ONE "GROUP LIVING FACILITY":

- 1620 Davidson Road, McLean, VA 22101 / TAX MAP #0303 01 0030C1
- 1622 Davidson Road, McLean, VA 22101 / TAX MAP #0303 01 0030B1
- 1624 Davidson Road, McLean, VA 22101 / TAX MAP #0303 01 0030A1

Dear Ms. Johnson:

My principal residence is 7009 Symphony Court which is adjacent to the above-mentioned three Davidson Road properties (collectively, the "**Monroe Properties**") which are all zoned R-3. The Monroe Properties were purchased by the same entity (Monroe RE LLC, copied) within the last 12 months. It has come to my attention that Monroe RE LLC intends to install an "Assisted Living" facility in each of these three homes with up to eight residents in each home (24 total). I understand from a phone conversation with your Fairfax County Zoning Department that Monroe RE LLC is relying on Section 2-502 of Article 2 of the Fairfax County Zoning Ordinance which allows a dwelling unit to house a "group residential facility".

I hereby submit this request for determination that the common ownership (and/or same control group) of three properties in close proximity to each other (in this case, they are contiguous) in a residential neighborhood be deemed one (1) "group residential facility" (and not three). Together, the Monroe Properties comprise approximately 30,000 square feet of finished space. The Monroe Properties will inevitably share resources (including without limitation parking, personnel, patients, materials/supplies, operations, etc) which is further reason for them to be deemed one "group residential facility".

Treating the Monroe Properties as one "Group Living Facility" is consistent with the letter and spirit of the federal, state and local laws. Allowing the Monroe Properties to operate three facilities in such close proximity to each other would create a "commercial compound" which is wholly inconsistent with the residential zoning of the neighborhood. By granting this request for determination, the Monroe Properties would be limited to no more than 8 residents *in aggregate* in accordance with Article 20's definition of "Group Residential Facility". Any resident occupancy beyond eight residents in aggregate across the Monroe Properties would be a "Congregate Living Facility" which would require a zoning variance.

One further point for consideration. Monroe RE LLC owns a fourth property located at 1318 Kurtz Road, McLean, VA 22101 (Tax Map # 0302 13 0036) which it also purchased within the last 12 months. Our understanding is that Monroe RE LLC intends to operate a fourth "Assisted Living" facility in that location. If this Kurtz facility shares any resources with the Monroe Properties (which they likely will), then all four properties would be one commercial enterprise and we would respectfully ask that Fairfax County deem all four entities one "Group Living Facility".

Thank you in advance for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to be "Steve Wydler", written over a horizontal line.

Steve Wydler

cc: Monroe RE LLC
Supervisor Foust
All Households on Symphony Court, McLean, VA