

McGuireWoods LLP
1750 Tysons Boulevard
Suite 1800
Tysons, VA 22102
Tel 703.712.5000
Fax 703.712.5050
www.mcguirewoods.com

Sean F. Murphy
Direct: 703.712.5487

McGUIREWOODS

*Housing - Great Falls -
Newport*

OCT 13 2020

sfmurphy@mcguirewoods.com
Direct Fax: 703.712.5243

October 8, 2020

BY ELECTRONIC AND FIRST CLASS MAIL

Leslie B. Johnson
Fairfax County Zoning Administrator
Department of Planning and Zoning
Zoning Administration Division
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035-5505

Re: Request for Use Determination for 11740 Plantation Drive
Tax Map: 6-1 ((1)) 22A
Zoning District: R-E

Dear Ms. Johnson:

We write you on behalf of Virginia Health Operations, LLC ("VHO") and Monroe LE, LLC ("Monroe"), which we collectively refer to as "Newport Academy," with respect to the property located at 11740 Plantation Drive, Great Falls, Virginia 22066 (the "Property" or "11740 Plantation Drive").

Newport Academy recently leased the Property and seeks to operate a single-sex group residential facility for adolescents with mental health diagnoses. This single-sex group home will provide care for no more than eight adolescents, with one or more nonresident staff persons, and will be licensed by the Virginia Department of Behavioral Health and Developmental Services ("VDBHDS") as a MH Children Residential Service. For these reasons and those set forth more fully below, Newport Academy requests a use determination that the proposed use of the Property would be considered a Group Residential Facility as defined in Article 20 of the Fairfax County Zoning Ordinance ("Zoning Ordinance") and therefore permitted, by-right.

Contemporaneously, we are also sending a separate request for use determination regarding a recently leased property located at 11901 Plantation Drive, Great Falls, Virginia 22066. As described therein, Newport Academy also seeks to operate a single-sex group home for eight adolescents, with one or more nonresident staff persons, licensed by the VDBHDS at 11901 Plantation Drive.

A. Applicable Law.

As you know, in accordance with Section 2-502 of the Zoning Ordinance, a group residential facility may occupy a dwelling unit. FAIRFAX, VA., ZONING ORDINANCE § 2-502. In other words, a group residential facility is a by-right use in any residential zoning district. *Id.* The definition of a “group residential facility” is set forth in Section 20-300 of the Zoning Ordinance, which states in part:

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 Development 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 Zoning Ordinance conforms to the requirements of § 15.2-2291(A) of the Code of Virginia, which provides 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 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.

The Property that Newport Academy is developing falls squarely within the foregoing framework of a by-right use, as further shown below. As such, the Property must be classified as a group residential facility.

B. Newport Academy and Previous Use Determinations.

By way of background, Newport Academy provides treatment to adolescents between the ages 12 and 17 who are experiencing depression, anxiety, trauma, and other mental health issues and, does so in a loving environment that helps its clients recover from their struggles in a safe, supportive, home-like setting. In service of this mission, Newport Academy has offered programs to adolescents throughout the United States, including locations in California, Washington, Connecticut, Pennsylvania and Maryland. Most recently, in response to significant community need, Newport Academy has operated a group residential facility for adolescent girls at 1318 Kurtz Road, McLean, Virginia 22101 (“Kurtz Property”) since March 22, 2020.

In your role as Zoning Administrator, you determined, by letter of August 21, 2019, that “the proposed use of the Kurtz Property meet[s] the definition of and is most similar to a Group Residential Facility, as long as the facility is licensed by the VDBHDS.” A copy of the letter and the license issued by the VDBHDS is attached. As outlined herein, the group residential facility at the Kurtz Property is substantively identical to the proposed use of 11740 Plantation Drive. Consequently, we believe you should make the same determination here.

Pursuant to a letter of November 2, 2017 to Sagebrush Treatment Center (attached), you previously issued a use determination regarding 11740 Plantation Drive—finding that this group home was a *by right* use as a group residential facility for treatment of adult men recovering from substance abuse. While that determination is not controlling as to Newport’s proposed use, the prior classification as a by-right use is instructive. Indeed, inasmuch as Newport disclaims any interest in providing substance use treatment or detoxification services—and does not intend even to seek VDBHDS licensure to provide such services—its proposed use of the Property is less intensive than it has been for the past three years.¹

C. Proposed Group Home at 11740 Plantation Drive.

The proposed use for the Property is as a single-sex residence, serving adolescents between 12 and 17 years of age experiencing depression, anxiety, trauma, and other mental health issues in a warm, nurturing environment.

The physical characteristics of the Property are ideal for such a group home. The Property is situated on nearly three acres, in a sparsely populated neighborhood of Great Falls, Virginia. The lot immediately adjacent to the Property on the left is a wooded lot with no residents. Likewise, the home on the lot immediately to the right is positioned at a significant

¹ While there can be no question that a group home with eight or fewer residents and a VDBHDS license to provide substance use treatment and detoxification services is a by-right use under § 20-300 of the Zoning Ordinance and § 15.2-2291 of the Virginia Code—and that the Zoning Administrator has, for the past 30 years routinely made such determinations concerning group homes for adults and children in Fairfax County—that is simply not what Newport Academy proposes for the Property.

distance from the Property. Moreover, the home located on the Property is substantially set back from Plantation Drive. The Property also boasts beautiful outdoor space, including both a covered and uncovered deck, and significant grounds.

The Property contains ample space for parking, including a three-car garage, motor court, and an expansive circular drive-way to accommodate all of Newport Academy's parking needs. The Property presents no problems for parking or local traffic.

The home also includes more than enough space and amenities for operation of the proposed group home. The 10,390 square foot home includes 5 bedrooms, 8 bathrooms, gym, game room, media room, recreational room, sunroom, a classroom, and ample space for conducting therapy sessions and providing other supportive services to the residents. All of Newport Academy's business operations are conducted offsite—at Newport's offices in California, Tennessee and Fairfax County.

With respect to the proposed group home generally, Newport Academy will offer a structured environment and 24-hour support for its residents. The staff members at the Property will include psychiatrists, therapists, counselors, nurses, dietitians, care coordinators and experiential therapy practitioners. While these staff members will not reside at the Property, there will be "awake" supervising staff on-site 24 hours per day. Newport Academy residents will participate in individual therapy, group therapy, academic study, and a variety of other activities, including music therapy, life skills counseling, yoga, meditation and other fitness activities. Residents will have access to common areas of the home for downtime and will eat meals with other residents in a family-style setting. Newport Academy's residents typically stay between 30 to 90 days, with the national average for length of stay being 45 days.

Likewise, each resident will have an individualized treatment plan developed by her treatment team. Each week, residents will participate in a minimum of 30 hours of clinical and experiential therapy and 20 hours in academic study and tutoring. Newport will not admit a resident who is currently using illicit substances or needs treatment for same. Likewise, any resident of Newport Academy who is determined to be using alcohol or other drugs will be subject to immediate administrative discharge.

D. VDBHDS Licensure.

VDBHDS licenses public and private providers of community services throughout Virginia. Without relevant exception, and pursuant to Va. Code Ann. §37.2-408, VDBHDS has the exclusive authority to license group homes for adolescents providing the kinds of services Newport proposes at the Property.

Accordingly, Newport Academy intends to submit an application to the VDBHDS for a license to operate the proposed group residential facility. In particular, Newport Academy will

Leslie B. Johnson
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Re: Request for Use Determination for 11740 Plantation Drive
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seek a MH Children Residential Service license for the Property. MH Children Residential Service is defined by the VDBHDS as "a mental health children's residential service for children with serious emotional disturbance." Consequently, the license granted to Newport Academy for the Property will permit Newport Academy to provide mental health treatment to its residents.

In conclusion, Newport Academy respectfully requests a use determination that the proposed use of the Property would be considered a Group Residential Facility as defined in Article 20 of the Zoning Ordinance and therefore permitted, by-right. We appreciate your consideration and we are available to discuss this matter further if you wish.

Sincerely yours,



Sean F. Murphy
McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800
Tysons, VA 22102
Tel: 703/712-5487
Fax: 703/712-5243
sfmurphy@mcguirewoods.com



Michael Allen
Relman Colfax PLLC
1225 19th Street, N.W., Suite 600
Washington, D.C. 20036
Tel: 202/728-1888
Fax: 202/728-0848
mallen@relmanlaw.com

cc: Laura S. Gori, Senior Assistant County Attorney
John W. Foust, Supervisor, Dranesville District



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 (sfmurphy@mcguirewoods.com & mallen@relmanlaw.com)

August 21, 2019

✓ Sean F. Murphy, Esq.
McGuire Woods LLP
1750 Tysons Boulevard, Suite 1800
Tysons, VA 22102

Michael Allen, Esq.
Relman, Dane & Colfax, PLLC
1225 19th Street, N.W., Suite 600
Washington, DC 20036

Re: Use Determination Re: 318 Kurtz Road
Tax Map Ref: 30-2 ((13)) 36
Zoning District: R-2
Salona Village Sect. 1

Dear Mr. Murphy and Mr. Allen:

I am writing in response to both your June 28, 2019, letter and your follow up letter dated August 5, 2019. The June 28 letter asked that I find Newport Academy's proposed use of 1318 Kurtz Road ("Kurtz Property") to be a group residential facility, rather than an inpatient treatment center or medical care facility (as requested in a June 4, 2019, letter to me from Katie Zimmerman and Christine Lourenco). Your August 5 letter was in response to my July 19 letter posing several questions about the operational characteristics of 1318 Kurtz Road. Your letter also offered a response to Mr. Gifford Hampshire's July 3 request to me for a zoning determination that the Kurtz Property be deemed a congregate living facility or a medical care facility, not a group residential facility.

REQUEST: Request for a determination that the Kurtz Property is a group residential facility under the Fairfax County Zoning Ordinance and not a congregate living facility or medical care facility which is inclusive of an inpatient treatment facility.

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, special exception, special permit or variance.



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

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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,

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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 other characteristics of the 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. Now 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 the various requests for a zoning determination on the Kurtz Property, my July 19 letter requested additional information regarding the operation of the proposed facility. In general, the questions related to the minimum length of stay, the number of resident and nonresident staff, parking (for staff, visitors, and family events) and the proposed amount of office space for use by Newport Academy staff.

Your August 5 letter did not fully respond to my questions, but you did indicate 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. You note that Newport Academy is not a drug rehabilitation facility and does not provide detoxification services; no individual who enters treatment with Newport Academy is currently using illicit substances. Further, you state that no staff will live at the Kurtz Property, but you did not indicate how many non-resident staff will be on site at any one time. You stated that my request for such information is solely within the purview of VDBHDS. (We have requested and received this type of information from other providers of residential mental health and disability services as part of similar use determination requests.) 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 8:00 am to 7:00 pm. You 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 reserved 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.

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With regard to parking, you note that the Zoning Ordinance does not limit the amount of parking on a residential lot, but that the driveway can accommodate up to 8 vehicles, not including the 3-car garage. The Zoning Ordinance does have a minimum parking requirement for a single-family detached dwelling of 2 spaces per unit for lots with frontage on a public street (Par. 3 of Sect. 11-103). For lots smaller than 36,000 square feet in the R-1 through R-4 Districts, the Ordinance also requires that all parking in the front yard be on a surfaced area, and in the R-1 and R-2 Districts no more than 25% of any front yard may be paved for parking purposes (Par. 8 of Sect. 11-102). It appears that the property currently complies with these provisions. However, any future paving or expansion of the driveway within the front yard could conflict with this provision. Finally, you indicate that Newport Academy 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 given time.

DETERMINATION:

Based on a review of Newport Academy's 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, as long as the facility is licensed by the VDBHDS. Newport Academy plans to operate a single residential facility, 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 be licensed by the VDBHDS and does not provide any in-patient alcohol and addiction detoxification services. While the definition of a medical care facility includes facilities that offer or provide mental/intellectual/physical disability services, the definition of medical care facility 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:

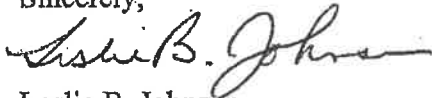
Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident or nonresident staff persons, as residential occupancy by a single family. For 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 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.

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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,



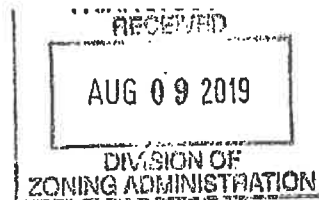
Leslie B. Johnson
Zoning Administrator

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
Monroe RE, LLC, 1318 Kurtz Road, McLean, VA 22101
Gifford R. Hampshire, Esq., Blankingship and Keith, P.C., 4020 University Drive,
Suite 300, Fairfax, VA, 22030
Katie Zimmerman, 1502 Wasp Lane, McLean, VA 22101
Christine Lourenco, 6912 Southridge Drive, McLean, VA 22101
Meagan E. Costello, 1643 Kurpiers Court, McLean, VA 22101
Steve Wydler, 7009 Symphony Court, McLean, VA 22101
Robyn and David Quattrone, 7008 Symphony Court, McLean, VA 22101

McGuireWoods LLP
1750 Tysons Boulevard
Suite 1800
Tysons, VA 22102-4215
Tel 703.712.5000
Fax 703.712.5050
www.mcguirewoods.com

Sean F. Murphy
Direct: 703.712.5487

McGUIREWOODS



sfmurphy@mcguirewoods.com
Direct Fax: 703.712.5243

2019-0655

August 5, 2019

BY ELECTRONIC AND FIRST CLASS MAIL

Leslie B. Johnson
Fairfax County Zoning Administrator
Department of Planning and Zoning
Zoning Administration Division
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035-5505

Re: June 4, 2019 Zoning Determination Request for 1318 Kurtz Road
Tax Map Ref: 30-2 ((13)) 0036

Dear Ms. Johnson:

On behalf of Virginia Health Operations, LLC ("VHO") and Monroe LE, LLC ("Monroe") (and collectively referred to as "Newport Academy,"), we write in response to your letter of July 19, 2019, requesting information about the proposed operation of 1318 Kurtz Road (the "Kurtz Property" as a group home for adolescent girls with mental health diagnoses. We also address the claims contained in a July 3 letter to you from Gifford R. Hampshire (the "Hampshire Letter").

For the reasons outlined below, we believe that Newport Academy's proposed use of the Kurtz Property easily fits within the Zoning Ordinance's definition of a Group Residential Facility, and that it would be improper to characterize it in any other fashion.

A. Proposed Facility at Kurtz Road.

Since 2008, Newport Academy has assisted adolescents and young adults suffering from a variety of mental health issues which can impair their ability to attend school, to engage constructively with their families, and to develop positive relationships. For more than a decade, Newport Academy has been treating kids from McLean and Northern Virginia at locations out of state. Responding to requests from mental health professionals and parents noting the hardship of traveling to visit their children in distant locations, Newport Academy acquired the Kurtz Road property in early 2019 in order to provide residential services for these children much closer to home.

Newport Academy's interest in operations at the Kurtz Property is driven wholly by the demand for residential services of this kind. More specifically, Newport Academy intends to

Leslie B. Johnson
Fairfax County Zoning Administrator
RE: June 4, 2019 Zoning Determination Request for 1318 Kurtz Road
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operate at the Kurtz Property a homelike environment for adolescent girls between 13 and 17 years of age struggling with depression, anxiety, trauma, and other mental health issues.

Though Newport Academy is still discussing specific programmatic elements with the Virginia Department of Behavioral Health and Developmental Services (“VDBHDS”), once opened, mornings will typically be set aside for academics and individual therapy, and afternoons for group therapy (including music therapy, life skills counseling, yoga, meditation and other fitness activities). Evenings are reserved for additional study and therapy, as needed. All meals are 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.

As we have made clear in previous correspondence, Newport Academy is not a “drug rehabilitation facility.” It does not provide “detoxification”, and no one who enters treatment with Newport Academy is currently using illicit substances.

B. VDBHDS Licensure.

As you know, on June 11, 2019, Newport Academy submitted a revised licensure application with the VDBHDS for Kurtz Road (“Revised Application”). As discussed more fully in our letter of June 10, 2019, VDBHDS alone is empowered to determine whether an applicant meets the requirements for licensure. Absent a contrary determination from VDBHDS, you lack the authority to classify the Kurtz Property as a medical care facility, a congregate living facility or an inpatient treatment center. Under Virginia Code § 15.2-2291, VDBHDS licensure conclusively establishes that a group home for eight (8) or fewer residents is a “residential facility.” Such a group home is thus a “Group Residential Facility” as that term is defined in § 20-300 of the Fairfax County Zoning Ordinance.

The detailed inquiries in your letter of July 19 raise two concerns. First, you appear to be invading the exclusive province of VDBHDS, and in a fashion contrary to the practice of Fairfax County zoning officials over the past 30 years. Second, your letter comes perilously close to violating federal provisions prohibiting certain inquiries about the disability of the prospective residents of Kurtz Road.

A determination that the Kurtz Property is a medical care facility, a congregate living facility or an inpatient treatment center would improperly supplant the statutory role assigned to VDBHDS under § 15.2-2291, which provides that “[n]o conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on [group residential facilities].” Accordingly, your inquiry should cease—as it has for zoning officials considering group homes in Fairfax County for more than 30 years—once VDBHDS determines that the Kurtz Property meets the basic statutory criteria of a group residential facility. Expanding your assessment beyond this permissible scope and assessing other factors such as residency and staffing decisions violates the basic premise of § 15.2-2291.

Similarly, such a determination would contradict the County's own position in previous litigation with respect to the relevant portions of the State Code and the Zoning Ordinance which, as remedial laws, must be construed liberally.¹ The invasiveness of your inquiries is also at odds with the County's actions in previous similar circumstances, such as the favorable determinations for group residential facilities located at 7809 Schelhorn Road, 5343 Summit Drive, 10416 Burke Lake Road, or 8337 Lewinsville Road, among others.

The Americans with Disabilities Act and the Fair Housing Act constrain the County's inquiries concerning the disability of prospective residents of the Kurtz Property, effectively requiring the County to demonstrate that such inquiries are necessary to advance a legitimate governmental purpose which cannot be achieved without a less discriminatory impact. *See, e.g.,* U.S. Dep't of Justice, Americans with Disabilities Act, Title II Technical Assistance Manual, available at <https://www.ada.gov/taman2.html#II-3.5300>, at ¶ II-3-5300 ("A public entity may not make unnecessary inquiries into the existence of a disability"). *See also* 24 C.F.R. § 100.202(c) ("It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person.") Given the County's decades-long deference to VDBHDS on group home issues, and the apparent influence of neighborhood opponents on your 2019 treatment of Newport Academy, it is difficult to understand how the inquiries in your July 19 letter are justifiable.

C. Response to July 19 Letter Requesting Information Regarding Operational Characteristic of the Kurtz Property.

Reserving all of its rights with respect to your actions and inquiries, Newport Academy is willing to provide the following information in response to your July 19 Letter:

- **Inquiry Concerning Length of Resident Stays:** The ruling in *Board of Supervisors of Fairfax County v. Board of Zoning Appeals*, 1997 WL 1070562 (Fairfax Circuit Ct., April 7, 1997), renders your line of inquiry impermissible. Notwithstanding that, at a public forum held on April 24, 2019, Jamison Monroe made clear that, at time of admission, a resident is expected to stay between 45 and 90 days, and that the average actual stay is between 45 and 60 days.
- **No Resident Staff:** None of Newport Academy's staff will live at the Kurtz Property.

¹ *See Post-Trial Memorandum of the Board of Supervisors, The Zoning Administrator, Alternative House, Inc. and the Northern Virginia Partnership for Children, Board of Supervisors of Fairfax County v. Board of Zoning Appeals*, 1997 WL 1070562 (Fairfax Circuit Ct., April 7, 1997).

- **Office Space for Business Operations:** All of Newport's business operations—as distinct from residential mental health therapy—are conducted at its offices in Tennessee and California.
- **Parking:** The Zoning Ordinance does not contain a restriction or a limit on the amount of parking permitted on a residential lot – and as you can see from the attached photograph, the Kurtz Road Property can accommodate up to eight vehicles. Nonetheless, Newport Academy will take appropriate actions through the use of a shuttle, off-site parking and other means as necessary to decrease parking at the Kurtz Property to minimize as much as possible the number of vehicles parked at the property at any one time per day (whether of staff or visiting family members).

All of the other questions in your July 19 Letter—including those about staffing and operations details for the Kurtz Road Property—are wholly improper, as Virginia Code § 15.2-2291 make them exclusively the province of VDBHDS, and to the extent VDBHDS has requested or required such information, Newport Academy has provided it to VDBHDS. Newport Academy declines to provide responses to these questions from you as they are not within the scope of your jurisdiction as the County's Zoning Administrator.

D. Response to Hampshire Letter.

The Hampshire Letter requests that you determine that the proposed facility at the Kurtz Property is either a Congregate Living Facility or a Medical Care Facility. The crux of its argument is that by providing mental health services to its residents, Newport Academy cannot be considered a group residential facility because its focus is on “medical treatment” and not on “residency.” Hampshire Letter at 2. Of course, that cannot be the case—providing mental health services to adolescents in a residential setting is precisely the purpose of Newport Academy and is why VDBHDS licensure is necessary. To suggest otherwise is nonsensical and is not worthy of your consideration.

Mr. Hampshire also takes issue with the “Service Type” Newport Academy identified in its Revised Application, speculating that the selection of “MH Children Residential Service,” rather than a “MH Children Group Home Residential Service” somehow evidences an “attempt to avoid the Zoning Ordinance limitations of ‘Group Residential Facility’ and to instead focus on medical treatment....” Hampshire Letter at 2. However, the service type Newport Academy identified is a distinction without a difference as we have shown in our prior letters. Moreover, Newport Academy has made clear that it intends to provide treatment for adolescent girls struggling with depression, anxiety, trauma, and other mental health issues in a homelike setting. The “Service Type” identified in Newport Academy's Revised Application does not change that.

Further, as set forth in detail in our June 28 letter, the term “Medical Care Facility” cannot be applied to the Kurtz Property, as it conflicts with the unambiguous language of the

Leslie B. Johnson
Fairfax County Zoning Administrator
RE: June 4, 2019 Zoning Determination Request for 1318 Kurtz Road
August 5, 2019
Page 5

state statutes and with the Zoning Ordinance. Indeed, the definition of the term “medical care facility” is reserved for institutional uses, including hospitals and medical schools providing inpatient medical care, and is plainly inconsistent with the type of residential mental health treatment proposed for the Kurtz Property. Group residential facilities are solely under the purview of VDBHDS, per § 37.2-408(B) of the State Code which makes VDBHDS “... the single licensing agency ... for group homes or residential facilities” Thus, VDBHDS’ sole regulating authority over group residential facilities renders equally nonsensical the erroneous suggestion that Newport Academy’s proposed use could also require a Certificate of Public Need from the Virginia Department of Health.

The Hampshire Letter also claims that because the proposed treatment at the Kurtz Property includes that of “substance abuse,” it is a congregate living facility. Hampshire Letter at 7. As Newport Academy has made clear, Newport Academy is not a drug rehabilitation facility nor does Newport Academy provide “detoxification”, which is the type of care a congregate living facility provides. Recognition and treatment of substance abuse issues through counseling services for a troubled adolescent in a group residential home do not fall within the Ordinance’s definition of a congregate living facility.

More importantly, a determination from you that the Kurtz Property is a medical care facility or congregate living facility, as the Hampshire Letter suggests, would impermissibly replace the statutory role assigned to VDBHDS under § 15.2-2291. As explained in the *Board of Supervisors* case discussed on Page 3, “a plain reading of [§ 15.2-2291 and the Zoning Ordinance] suggests that proper licensing by the DMH [predecessor to VDBHDS] of a mental health treatment facility is dispositive of the fact that the licensed facility is treating mental persons with an illness.” *Id.* at *6. Because “[l]ogic dictates that the administrative body with the most qualified personnel determine whether or not facilities are eligible for group home status,” *id.*, the Zoning Administrator lacks the authority to make any other determination, whether to call the proposed use of the Kurtz Property a medical care facility or congregate care facility.

For all these reasons, Newport Academy’s proposed use of the Kurtz Property can properly be characterized only as a group residential facility in accordance with § 2-502 of the Fairfax County Zoning Ordinance.

We are available to discuss these issues further with you if you wish.

Leslie B. Johnson
Fairfax County Zoning Administrator
RE: June 4, 2019 Zoning Determination Request for 1318 Kurtz Road
August 5, 2019
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Sincerely yours,



Sean F. Murphy
McGuire Woods LLP
1750 Tysons Boulevard, Suite 1800
Tysons, VA 22102
Tel: 703/712-5487
Fax: 703/712-5243
sfmurphy@mcguirewoods.com



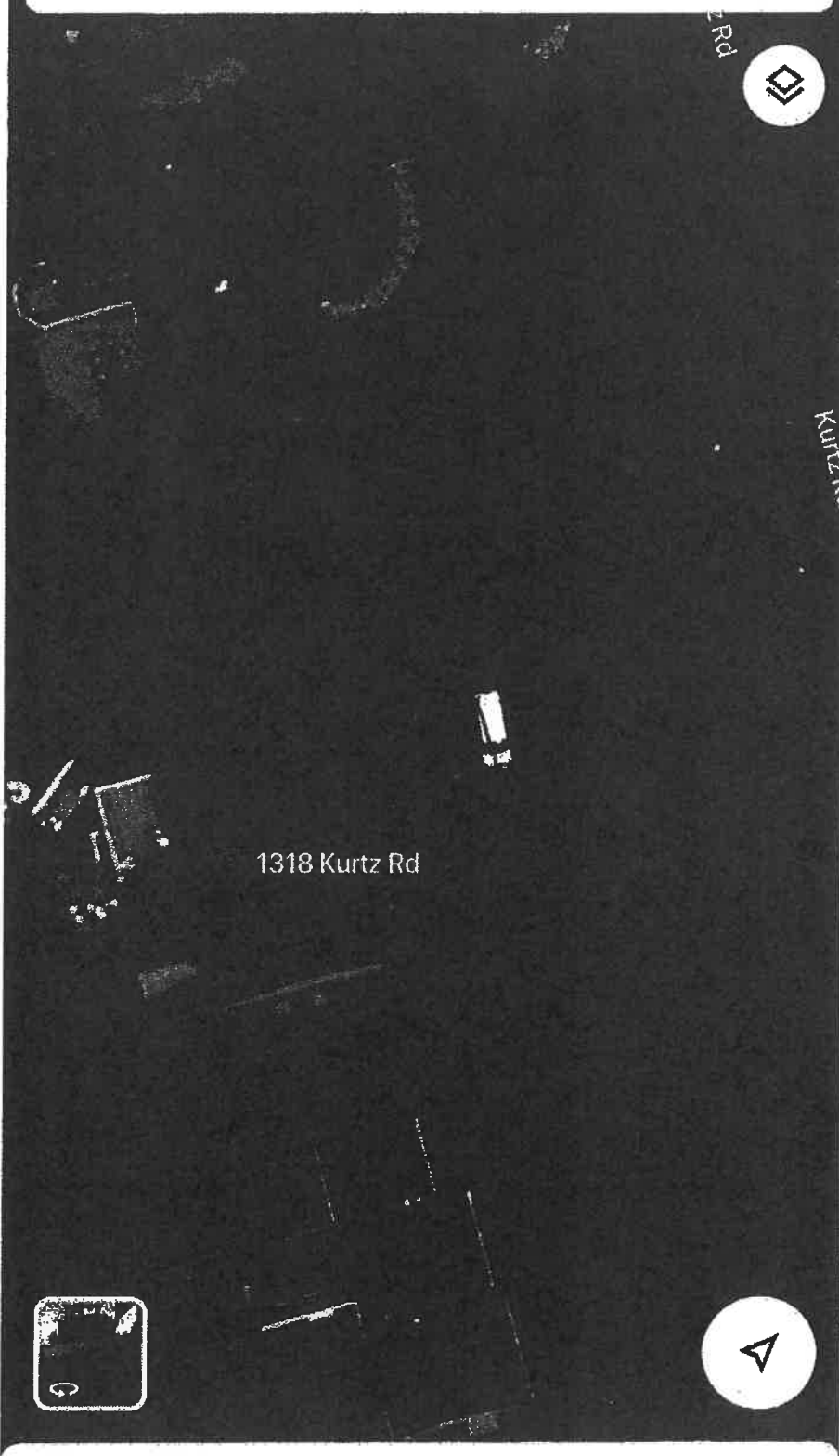
Michael Allen
Relman, Dane & Colfax, PLLC
1225 19th Street, N.W., Suite 600
Washington, D.C. 20036
Tel: 202/728-1888
Fax: 202/728-0848
mallen@relmanlaw.com

cc: Laura S. Gori

4:50




1318 Kurtz Rd



1318 Kurtz Rd

1318 Kurtz Rd, McLean, VA 22101

 4 hr 41 min



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 (sfmurphy@mcguirewoods.com & mallen@relmanlaw.com)

July 19, 2019

Mr. Sean F. Murphy
McGuire Woods LLP
1750 Tysons Boulevard, Suite 1800
Tysons, VA 22102

Mr. Michael Allen
Relman, Dané & Colfax, PLLC
1225 19th Street, N.W., Suite 600
Washington, DC 20036

Re: June 28, 2019 Letter Re: 1318 Kurtz Road
Tax Map Ref: 30-2 ((13)) 36
Zoning District: R-2
Salona Village, Lot 36

Dear Mr. Murphy and Mr. Allen:

I'm writing in response to your June 28, 2019, letter, which requested that I find Newport Academy's proposed use of 1318 Kurtz Road to be a group residential facility rather than an inpatient treatment center or medical care facility.

I have reviewed the revised license application submitted by Virginia Health Operations, LLC, d/b/a Newport Academy to the Virginia Department of Behavioral Health and Developmental Services (VDBHD) for a Mental Health Children's Residential Service to be located at 1318 Kurtz Road. Before responding to your June 28 letter and the other requests for a zoning determination about that property, I have several questions about the operational characteristics of the proposed facility at Kurtz Road. In particular:

- What is the minimum and maximum length of stay for an individual at this facility?
- What is the maximum number of resident and non-resident staff that will be onsite at any given time (next to each number, please indicate whether resident or nonresident)?
- Does Newport Academy intend to use any independent therapists, counselors, instructors, or other independent contractors at this location who are not on Newport Academy's staff, and if so, how many?



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

Mr. Sean F. Murphy
Mr. Michael Allen
July 19, 2019
Page 2

- What percentage and total floor area of the facility will be used as office space for staff, including but not limited to offices for the Executive Director/Clinical Director, Individual Therapists, Family Therapists, Care Coordinators, the Residential Coordinator, counselors and medical staff?
- Please provide a floor plan that shows the areas to be used specifically for staff offices.
- Does Newport Academy currently have any local off-site office space where its business operations are conducted?
- How will parking for staff and visitors be managed and accommodated on the property, particularly during shift changes?
- What is the maximum number of cars anticipated at any one time?
- Will employees or visitors park on the street?
- How will parking be managed for family events and visits?

Your prompt response to these questions is appreciated so that I may finalize my review of your request as well as other requests concerning the proposed use of the property. If you have any questions related to the specifics of this request, please feel free to contact me.

Sincerely,

Leslie Johnson

for Leslie Johnson
Zoning Administrator

cc: RE Monroe LLC; 1318 Kurtz Road; McLean, Virginia 22101 (property owner)

McGuireWoods LLP
1750 Tysons Boulevard
Suite 1800
McLean, VA 22102-4215
Phone: 703.712.5000
Fax: 703.712.5050
www.mcguirewoods.com

Sean F. Murphy
Direct: 703.712.5487

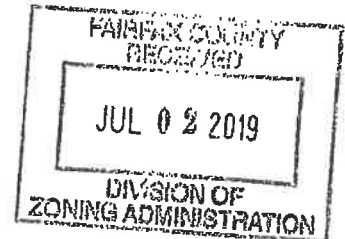
McGUIREWOODS

sfmurphy@mcguirewoods.com
Direct Fax: 703.712.5243

June 28, 2019

BY ELECTRONIC AND FIRST CLASS MAIL

Leslie B. Johnson
Fairfax County Zoning Administrator
Department of Planning and Zoning
Zoning Administration Division
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035-5505



Re: June 4, 2019 Zoning Determination Request for 1318 Kurtz Road
Tax Map Ref: 30-2 ((13)) 0036

Dear Ms. Johnson:

We again write you on behalf of Virginia Health Operations, LLC ("VHO") and Monroe LE, LLC ("Monroe"), which we collectively refer to as "Newport Academy", with respect to the properties at 1620, 1622, and 1624 Davidson Road (the "Davidson Properties"), and at 1318 Kurtz Road (the "Kurtz Property")(collectively the "Newport Properties").

For the reasons outlined below, we ask that you deny the request of Katie Zimmerman and Christiane Lourenco in their June 4, 2019 "Zoning Determination Request for Psychiatric Residential Treatment Facility" (the "June 4 Letter"). They ask you to make a determination that Newport Academy's proposed operations on the Newport Properties constitute "Medical Care Facilities" as set forth in § 20-300 of the Zoning Ordinance of Fairfax County, Virginia (the "Zoning Ordinance").¹ Instead, we reiterate our request in our June 10, 2019 letter (the "Newport Letter"), that you revise your existing determination, and find that the proposed use for each of the Newport Properties is a group residential facility.

Newport Academy's proposed uses for the Newport Properties are consistent with § 15.2-2291 of the Code of Virginia. As discussed more fully in the Newport Letter, the Virginia Department of Behavioral Health and Development Services ("VDBHDS") alone is empowered to determine whether an applicant meets the requirements for licensure. Absent a contrary determination from VDBHDS, we maintain that you lack the authority to classify the Newport Properties as a medical care facility. As we articulated in the Newport Letter, once VDBHDS grants a license, Virginia Code §15.2-2291 conclusively establishes that a group home for eight (8) or fewer residents is a "residential facility." Such a group home would, *ipso facto*, be a

¹ While the June 4 Letter switches between use of "Medical Care Facility" and "Medical Treatment Facility" we understand the authors to reference "Medical Care Facility" as it is defined in the Zoning Ordinance, whereas Medical Treatment Facility is not.

Leslie B. Johnson
Fairfax County Zoning Administrator
RE: June 4, 2019 Zoning Determination Request for Newport Properties
June 28, 2019
Page 2

“Group Residential Facility” as that term is defined in §20-300 of the Fairfax County Zoning Ordinance. Moreover, once it qualified as a “Group Residential Facility,” it would be excluded from the definition of “Medical Care Facility” in §20-300 of the Zoning Ordinance. Your May 15, 2019 Use Determination (the “Determination”) departs dramatically from the Zoning Administrator’s long-established interpretations and applications of the Zoning Ordinance.

The rationale of the June 4 Letter, while unpersuasive, amplifies existing concerns that discriminatory views of neighborhood opponents and others seek to influence your determinations regarding the Newport Properties, urging that you substitute your determination for the judgment of VDBHDS as to what qualifies as a group residential facility. While the Newport Letter highlights why such discriminatory action would be in violation of state and federal laws prohibiting discrimination on the basis of disability², it would also contradict the County’s own stated position, in previous litigation concerning group residential facilities for adolescents, that “the General Assembly and the Board of Supervisors [entrusted VDBHDS] . . . with the task of determining what facilities would be eligible.”³

Any discretion you may have under §18-103 of the Zoning Ordinance must be exercised reasonably, consistently, and in conformance with state and federal law. Because the June 4 Letter requests actions in conflict with that legal authority (and with longstanding County interpretation and application of the Zoning Ordinance), you cannot grant the request contained in the June 4 Letter.

A. Newport Academy’s Mission

Newport Academy’s proposed uses for the Newport Properties are driven by the expanded need for group residential facilities for adolescents with mental health issues. As Jamison Monroe shared with you and others at the April 24 public forum, recent studies indicate troubling statistics for children between the ages of 12 and 17. As he reported, there is an overall 60% increase in reports of major depression over the past six years, correlating with significant increases in suicidal thoughts, plans, and events for children 18 and older. Despite these increases, about 59% of children suffering from depression do not receive any treatment.

Children from Virginia, including Fairfax County, are already being served by Newport Academy outside of Virginia. Newport Academy is responding to requests from families and treatment professionals to provide more residential options in Northern Virginia to address the high rate of untreated depression and other mental health issues in the community. Additional

² As discussed in the Newport Letter, such discrimination violates laws including the Virginia Fair Housing Law, § 36-96.1 *et seq.* of the Code of Virginia; the federal Fair Housing Act, 42 U.S.C. §3604(f); the Americans with Disabilities Act, 42 U.S.C. § 12132; and the Rehabilitation Act of 1973, 29 U.S.C. § 794.

³ *Post-Trial Memorandum of the Board of Supervisors, the Zoning Administrator, Alternative House, Inc., and the Northern Virginia Partnership for Children*, pg. 17; a copy of the Memorandum is attached.

group residential facilities like Newport Academy in Northern Virginia are necessary, so that adolescents can receive appropriate therapy in close proximity to their parents, siblings, existing support systems and their personal healthcare providers

B. June 4, 2019 Letter from Katie Zimmerman and Christiane Lourenco

The June 4 Letter claims, inaccurately, that you decided that the proposed use of the Davidson Properties "as psychiatric residential treatment facilities" was most similar to a congregate living facility rather than a group residential facility under the Zoning Ordinance.⁴ Focusing on this topic of psychiatric residential treatment facilities, the authors of the June 4 Letter direct your attention to unrelated provisions of the Virginia Administrative Code, 12VAC30-130-850, which provides a definition of "inpatient psychiatric facilities." This definition is irrelevant. Indeed, the regulation from which it is drawn pertains to the Virginia Medicaid program, not licensure.

Taken in total, the June 4 Letter asserts that there is a "valid argument" that the Newport Properties are "in fact Medical Treatment Facilities pursuant to Fairfax County Zoning." That assertion is incorrect.

C. Medical Care Facilities

Contrary to the June 4 Letter, the term "Medical Care Facility" cannot be applied to the Newport Properties, as it conflicts with unambiguous State statutory language and with the Zoning Ordinance. The latter, at §20-300, defines that term as follows:

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

⁴ While the June 4 Letter is correct in that the Determination states that the proposed use of the Davidson Properties is most like a congregate living facility, there is no discussion of the proposed use as "psychiatric residential treatment facilities." See below for further discussion.

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

This definition is targeted towards institutional uses including hospitals and medical schools providing inpatient medical care, and is plainly inconsistent with the type of residential mental health treatment proposed for the Newport Properties. Further supporting this conclusion are the additional requirements that §9-303.3 of the Zoning Ordinance imposes on medical care facilities. There, the Zoning Ordinance states, “[a]ll applications for medical care facilities shall be filed at the same time as the application for a State Medical Facilities Certificate of Public Need,” which is an entirely different regulatory scheme. This is plainly inconsistent with VDBHDS’ role in licensing and regulating group residential facilities, which is the proposed use for the Newport Properties.

The Virginia Department of Health’s Office of Licensure and Certification is the body statutorily tasked with issuing such Certificates, consistent with the regulations of §32.1-102.1 et seq. of the State Code. By contrast, group residential facilities are solely under the purview of VDBHDS, per §37.2-408(B) of the State Code which makes VDBHDS “... the single licensing agency ... for group homes or residential facilities” VDBHDS’ sole regulating authority over group residential facilities makes it impossible that Newport Academy’s proposed use could also require a Certificate of Public Need from the Virginia Department of Health.

D. A Determination That These Properties Are Medical Care Facilities is Inconsistent with the State and Local Provisions Allowing Group Residential Facilities

Much like your decision in the Determination that the Davidson Properties constitute a single, 24-resident “congregate living facility,” a determination that the Newport Properties are medical care facilities would supplant the statutory role assigned to VDBHDS under § 15.2-2291. Furthermore, it is in contradiction to the County’s own position in previous litigation with respect to the legislative intent of relevant portions of the State Code and the Zoning Ordinance, which, as remedial laws, must be construed liberally.⁵

We observed in the Newport Letter that your decision to render a determination absent VDBHDS’ final decision regarding licensure for any of the Davidson Properties was in contrast to the direction the Fairfax County Circuit Court provided in *Board of Supervisors of Fairfax County v. Board of Zoning Appeals*, 1997 WL 1070562 (Fairfax Circuit Ct., April 7, 1997). In that case, the Circuit Court held “a plain reading of [§ 15.2-2291 and the Zoning Ordinance] suggests that proper licensing by the DMH [predecessor to VDBHDS] of a mental health treatment facility is dispositive of the fact that the licensed facility is treating mental persons with an illness.” *Id.* at *6. Because “[l]ogic dictates that the administrative body with the most qualified personnel determine whether or not facilities are eligible for group home status,” *id.*,

⁵ See *infra* the Memorandum, pg. 12.

you lack the authority to make any other determination, whether to call the proposed use of the Newport Properties a medical care facility or congregate care facility.

Indeed, this is the argument your predecessor and the Board of Supervisors made in that case in their *Post-Trial Memorandum of the Board of Supervisors, The Zoning Administrator, Alternative House, Inc. and the Northern Virginia Partnership for Children* (the "Memorandum"), a copy of which has been attached to this letter.

1. Legislative Intent of the General Assembly

On page 9 of the Memorandum, the County states "it is apparent from both the adopted language and the relevant legislative history, the General Assembly intended [§ 15.2-2291] to be ... a limitation on the authority of local governments to restrict the siting of such facilities." The Memorandum states that a subcommittee report proposing the adoption of § 15.2-2291 was even clearer on this matter. While the Federal Fair Housing Amendments Act of 1988 "might require only governmental neutrality toward the disabled," the Memorandum states on page 10, "the subcommittee proposed adoption of [§ 15.2-2291] as a signal 'that the State wishes an affirmative effort rather than neutral treatment alone when it comes to the siting of group homes.'"

The County acknowledges that, in the subcommittee's view, the statute "'sets a clear statewide policy that facilities for eight or fewer mentally disabled individuals are to be regarded as single family uses.'" *Id.* at 10. In footnote 7, the County notes that but for an unrelated change, "the language adopted by the General Assembly was materially the same as that proposed by the subcommittee."

2. Legislative Intent of the Board of Supervisors

The Memorandum then discusses the Board of Supervisors' implementation of related Zoning Ordinance provisions, stating the "legislative history behind the Board's enactment is similarly clear." *Id.* at 10. The staff report your predecessor prepared for the Board described the types of facilities to be allowed by-right under the new ordinance, including "mental health youth group homes; short-term mental health diagnostic facilities for youths; mental health therapeutic homes for children; and homes for recovering drug and/or alcohol abusers." *Id.* As the Memorandum states, the staff report is "evidence of what was before the Board when it adopted the proposed language verbatim; in fact, there is no evidence of a contrary intent by the Board." *Id.* at 11.

Finally, on page 12, the Memorandum underscores the remedial nature of both the state statute and local ordinance provisions related to group residential facilities, noting they are "intended to remove many of the historic obstacles to fair housing for the mentally disabled." Quoting *Carmel v. City of Hampton*, 241 VA. 457, 460, 403 S.E.2d 335, 337 (1991), the County

Leslie B. Johnson
Fairfax County Zoning Administrator
RE: June 4, 2019 Zoning Determination Request for Newport Properties
June 28, 2019
Page 6

insisted that both provisions “are to be construed liberally to remedy the mischief to which they are directed in accordance with the legislature’s intended purpose.” *Id.* Where there is ambiguity in the provisions of either the State Code or the Ordinance, the County argued that “the rule of liberal construction would require [following] the construction that expanded housing opportunities for the mentally disabled, rather than a construction perpetuating discrimination.” *Id.* Application of that rule here, as the County has done before, compels a determination that expands housing opportunities for the mentally disabled and not one that will perpetuate discrimination against them.

Granting the request of the June 4 Letter would be inconsistent with the State Code and Zoning Ordinance, and it would improperly preempt VDBHDS’ determination regarding licensure of any of Newport Academy’s proposed uses across the Newport Properties. Furthermore it is readily apparent that the group residential facilities that Newport Academy proposes to operate, is not a medical care facility seeking to provide inpatient medical care.

Accordingly, we ask that you deny the request of the June 4 Letter to make a determination that the proposed uses of the Newport Properties constitute a medical care facility.

We are available to discuss these issues further with you if you wish.

Sincerely yours,



Sean F. Murphy
McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800
Tysons, VA 22102
Tel: 703/712-5487
Fax: 703/712-5243
sfmurphy@mcguirewoods.com



Michael Allen
Relman, Dane & Colfax, PLLC
1225 19th Street, N.W., Suite 600
Washington, D.C. 20036
Tel: 202/728-1888
Fax: 202/728-0848
mallen@relmanlaw.com

cc: Laura S. Gori

Commonwealth of Virginia

Department of Behavioral Health and Developmental Services

CHILDREN'S RESIDENTIAL FACILITIES

Having demonstrated compliance with the Standards for Children's Residential Facilities for Department of Behavioral Health and Developmental Services, Virginia Health Operations is hereby issued an annual license effective from July 22, 2020 through July 21, 2021, unless revoked for violations of law or applicable regulations or failure to comply with the stipulations cited below. Virginia Health Operations is licensed to operate:

Facility Name(s) Newport Academy - Kurtz Rd Home Location(s) 1318 Kurtz Road
McLean, VA 22101 Gender B Age Range 12-17 Capacity 8

This license is issued in accordance with Chapter 4 of Title 37.2 as amended by section 37.2-408 of the Code of Virginia as amended and applicable rules and regulations of the State Board of Behavioral Health and Developmental Services, and the following limitation(s)

Stipulations
The customers that may be served and the services which may be provided at each location are limited to those listed in Virginia Health Operations application for licensure or certification. A mental health children's residential treatment service for children with serious emotional disturbance

By: Jae Berg Quinn Land
Director of Licensing Commissioner

Issuing Agency: Department of Behavioral Health and Developmental Services
Address: P.O. Box 1797, Richmond, Virginia 23218
Telephone: (804) 786-1747

License Number: 3517-14-004 Date: 9/9/2020



County of Fairfax, Virginia

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

November 2, 2017

Vanessa Vergnetti, ND, PhD
 Chief Executive Officer
 Sagebrush Treatment Center
 7921 Jones Branch Drive, Suite 400
 McLean, Virginia 22102
 RE: Sagebrush Treatment Center
 11740 Plantation Drive
 Tax Map: 6-1 ((1)) 22A
 Zoning District: R-E

Dear Dr. Vergnetti:

This is in response to your October 24, 2017, email and your attorney's October 20, 2017, letter concerning the proposed Sagebrush Treatment Center at 11740 Plantation Drive and whether it could be deemed a group residential facility and permitted by right with no additional zoning approvals. You indicated that our office issued a letter in 2013 for a similar facility on the same street. A copy of the November 22, 2013, letter for the Sagebrush Facility located at 11901 Plantation Drive from Leslie Johnson, Zoning Administrator, is attached.

Based on my conversations and correspondence with you and Mr. Rasmus, your legal counsel, I understand that the proposed facility would operate identically to the Sagebrush Facility located at 11901 Plantation Drive, including a maximum of eight residents, same staffing patterns, and identical drug testing and programming. There would be no nonresident patients coming to the facility. All outpatient clients are treated at the Sagebrush office located at 7921 Jones Branch Drive.

If the proposed residential facility is operated as described above and in accordance with the terms of the letter dated November 22, 2013, including no nonresident patients, the proposed facility is deemed a group residential facility and is permitted by right on the property without any zoning approvals.

This determination is based upon the facts presented above and the applicable Virginia Code and Fairfax County Zoning Ordinance provisions in effect as of the date of this letter. This determination may be modified or revoked, if the facts as presented change, the applicable provisions of the Virginia Code and Zoning Ordinance change, or Sagebrush fails to enforce a zero-tolerance policy regarding the use or possession of drugs or alcohol by its clients. Further,

Department of Planning and Zoning
 Zoning Administration Division
 Ordinance Administration Branch
 12055 Government Center Parkway, Suite 807
 Fairfax, Virginia 22035-5505
 Phone 703-324-1314 FAX 703-803-6372
www.fairfaxcounty.gov/dpz/

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Dr. Vergnetti
Page 2

if the Virginia Department of Behavioral Health and Development Services does not issue a license or revokes the license for the facility at any time, this determination is also subject to revocation.

I trust that this correspondence adequately responds to your request. If you have any additional questions, please feel free to contact me at (703) 324-1314.

Sincerely,



Lorrie Kirst
Senior Deputy Zoning Administrator

Attachment: A/S

cc: John W. Foust, Supervisor, Dranesville District
Leslie B. Johnson, Zoning Administrator
Diane Johnson-Quinn, Deputy Zoning Administrator for Zoning Permit Review Branch

Declan Leonard, Berenzweig Leonard; 8300 Greensboro Drive, Suite 1250,
McLean, VA 22102

Ryen Rasmus, Berenzweig Leonard; 8300 Greensboro Drive, Suite 1250, McLean, VA
22102

Donald E. Rosenthal; 11740 Plantation Drive; Great Falls, VA 22066 (Property Owner)
Erik Seppala; Vice President Eagle Bank; 8245 Boone Boulevard; Tysons Corner, VA
22182