

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

HILARY KOZIKOWSKI, et al.,

Petitioners,

v.

MONROE RE, LLC, et al.,

Respondents.

Case No. CL23001194

NEWPORT RESPONDENTS' TRIAL BRIEF

Respondents Monroe RE, LLC a/k/a Monroe Real Estate, LLC and Virginia Health Operations LLC (collectively, "Newport") submit this brief in advance of the trial scheduled for April 11, 2023, and in opposition to the Hearing Memorandum filed by Petitioners Aaron and Hilary Kozikowski, Lawrence and Mary Catherine Thomas, Thomas and Cheryl Wright, Michael and Lynne Wright, William and Beverly Feitshan, and Craig and Addie Palmer (collectively, "Petitioners").

INTRODUCTION

Throughout these proceedings, Petitioners have obscured the relevant facts and issues for decision. To clarify, this case presents only one issue for the Court to decide: whether the BZA correctly upheld the November 16, 2022 Zoning Permit that allowed Newport's planned use of its home at 20173 Gleedsville Road. Newport's other homes in Loudoun County are not relevant to that question. Similarly, Petitioners' speculation about Newport's future activities in those other homes is not relevant to that question. The Court should dispose of these distractions and focus on the narrow appellate question presented by this case, which is whether the Zoning Permit for

20173 Gleedsville Road was properly issued. That is the *only* question that is ripe for decision and within the Court's statutory authority to decide. *See* Va. Code § 15.2-2314.

Because the Zoning Permit is for a single-family dwelling, the starting point for the Court's analysis is the Zoning Ordinance's definition of "Dwelling, Single-Family Detached." Newport's planned use indisputably meets that definition so long as the individuals living there are deemed a "Family." The Ordinance defines "Family" to include any group of people that satisfies Va. Code § 15.2-2291(A). As discussed below, Newport easily meets each statutory element, as the Zoning Administrator and the BZA have already found.

But Petitioners invite the Court to follow them down several rabbit holes. They first mount an attack on a strawman "preemption" defense that Newport has never raised. Although Petitioners devote half their brief to this made-up issue, the parties agree that there is no conflict between § 15.2-2291(A) and the Ordinance, which obviates Petitioners' struggle to fend off the imaginary defense. Next, Petitioners claim that the BZA discriminated against them by allowing Newport, but not Petitioners, to operate a "Congregate Housing Facility." This argument misrepresents the BZA's decision, which allowed Newport to operate a "Dwelling, Single-Family Detached," not a "Congregate Housing Facility." Petitioners also argue that the Zoning Permit became "void" when the VDBHDS licensed Newport to provide mental health residential group home services at more than one location. This argument has no legal support, and it is contrary to the VDBHDS licensing regulations. The Court should reject these ill-conceived distractions.

Finally, Petitioners recycle arguments about the meaning of "reside" in § 15.2-2291(A) and Newport's alleged admission of drug addicts. These arguments are factually and legally baseless. Indeed, on January 5, 2023, The Honorable Donat  L. Bugg of the Fairfax County Circuit Court rejected these identical arguments when Petitioners' counsel (co-counsel in the Fairfax case)

previously raised them against Newport. *See Anders Larsen Tr. v. Virginia Health Operations LLC*, No. CL-2020-5490, at *5 (Fairfax Jan. 5, 2023) (Letter Op.).¹ Judge Bugg held that the claim about drug addicts was “more speculative than factual,” and that the proper remedy was to “report Newport Academy to the VDBHDS when, and if, it acts in violation of its license and treats substance abuse at its property.” As to the meaning of “reside,” Judge Bugg rejected “Petitioners[’] challenge that the children are not residents of the Newport Academy.” *Id.* at *6. This Court should adopt Judge Bugg’s reasoning and reject Petitioners’ arguments.

At bottom, Petitioners’ arguments are irrelevant, misleading, and stale. More importantly, Petitioners have no evidence to satisfy their burden of overcoming the presumption of correctness that applies to the BZA’s decision. This Court should affirm.

ARGUMENT

I. The Court Should Not Allow Petitioners to Raise Arguments and Authorities About Newport’s Proposed Operations for the First Time in a Reply Brief or at Trial.

There is a conspicuous disconnect between Petitioners’ brief and their proposed trial presentation. Their brief *never* mentions Newport’s alleged operations at its three houses, whereas their discovery responses suggest this will be their focus at the hearing. In a footnote, Petitioners concede this disconnect, stating that their claim about Newport’s supposed operations “will be presented in more detail at the hearing.” *See* Petitioners’ Br. at 9 n.4. But “a footnote located in a pretrial brief” does not preserve an argument. *See Singson v. Commonwealth*, 46 Va. App. 724, 748 (2005). If Petitioners have arguments and authorities to show that Newport’s operations will violate the law, they were obligated to raise them in their opening brief. When the undersigned identified this problem to Petitioners’ counsel in a meet-and-confer, Petitioners’ counsel

¹ Judge Bugg’s letter opinion is attached as Exhibit 1.

acknowledged that “this was a good point.” Nevertheless, it appears Petitioners intend to raise arguments that they purposefully chose not to include in their opening memorandum. That is improper, because Newport “has no meaningful opportunity to address arguments and authorities raised for the first time in a reply brief.” *Jeter v. Commonwealth*, 44 Va. App. 733, 740 (2005).

II. Newport’s Use of Its House at 20173 Gleedsville Road Satisfies § 15.2-2291(A), and the BZA’s Finding on This Issue Is Presumed to Be Correct.

The BZA found that Newport’s use of its house satisfied the elements of § 15.2-2291(A).² These elements include: (i) “no more than eight individuals”; (ii) suffering from “mental illness”; (iii) with “one or more resident or nonresident staff persons”; (iv) at a house for which “[VDBHDS] is the licensing authority.” The BZA’s finding that Newport satisfies each element is entitled to a presumption of correctness, which Petitioners must overcome by a preponderance of the evidence. *See* Va. Code § 15.2-2314; *see also Board of Zoning Appeals of City of Alexandria v. Fowler*, 201 Va. 942, 948-49 (1960) (reversing circuit court that “substituted its own independent judgment for that of the Board”). Petitioners have not, and cannot, meet that burden.

As to the first element, Newport’s license limits the house to five residents. *See* R. at 1259.³ Second, Newport’s house is licensed to provide only “mental health services.” *See id.* Third, it is undisputed that “one or more resident or nonresident staff persons” work at the house. *See id.* at 71. Fourth, VDBHDS is the licensing authority for 20173 Gleedsville Road, as proven by the license itself. *See id.* at 1258. None of these statutory elements is genuinely in dispute.

Instead, Petitioners argue that an exclusion for “addiction” applies, and that the individuals at Newport’s home do not “reside” there.⁴ The BZA rejected both arguments, *see* BZA Hr’g Tr.

² The statute, Va. Code § 15.2-2291, is attached as Exhibit 2.

³ All citations to the record are to the certified and bates-stamped record in BZA APPL-2022-0005.

⁴ Petitioners make passing reference to a prior argument that “commercial” entities fall outside the scope of § 15.2-2291(A). *See* Petitioners’ Br. at 5. But they fail to cite a shred of evidence to overturn the BZA’s express finding that

at 218-19, 226 (1/26/23),⁵ because they are legally and factually wrong, as discussed below. *See supra* Argument §§ IX-X. The BZA’s findings on these two issues are presumed to be correct.

III. Because Newport Satisfies § 15.2-2291(A), Its Use Necessarily Meets the Ordinance’s Definition of “Dwelling, Single-Family Detached,” Which Is Allowed By-Right.

Newport’s satisfaction of the statute means that it also satisfies the Zoning Ordinance. Newport’s house is zoned AR-1. *See R.* at 1440. The by-right uses for AR-1 properties are listed in Table 2-102 of Article 2 of the Ordinance,⁶ and they include “Dwelling, single family detached.” Article 8 defines a “Dwelling, Single-Family Detached” as “[a] residential dwelling unit, other than a portable dwelling, designed for and occupied by one family”⁷ As relevant here, Article 8 defines “Family” as “[a]ny group identified in Section 15.2-2291 of the Code of Virginia.”⁸ In sum, because Newport satisfies § 15.2-2291(A), its proposed use is also allowed by-right under the Ordinance.

IV. The Court Must Reject Petitioners’ Invitation to Ignore § 15.2-2291(A) and the Ordinance’s Definition of “Dwelling, Single-Family Detached.”

Petitioners incorrectly argue that the analysis “begins and ends” with the Ordinance’s definition of “Congregate Housing Facility.”⁹ Petitioners’ Br. at 2-3. By limiting the analysis to the definition of “Congregate Housing Facility,” they ask the Court to ignore § 15.2-2291(A), because the statute is not incorporated into that definition. That line of reasoning is flawed. Even if “Congregate Housing Facility” were the starting point for the analysis,¹⁰ it cannot be the end.

“Section 15.2-2291(A) of the Code of Virginia does not distinguish between commercial and noncommercial uses.” BZA Hr’g Tr. at 218.

⁵ The January 26, 2023 BZA hearing transcript is attached as Exhibit 3.

⁶ Table 2-102 of the Ordinance is attached as Exhibit 4.

⁷ The Ordinance’s definition of “Dwelling, Single-Family Detached” is attached as Exhibit 5.

⁸ The Ordinance’s definition of “Family” is attached as Exhibit 6.

⁹ The Ordinance’s definition of “Congregate Housing Facility” is attached as Exhibit 7.

¹⁰ The definition of “Congregate Housing Facility” is not the starting point for the analysis. Arguably, it is not even part of the analysis. As Petitioners correctly observe, the Zoning Permit, which is the subject of this appeal, does not

This is because the definition of “Congregate Housing Facility” excludes “single-family dwelling[s].” As discuss above in Argument § III, Newport’s house is a single-family dwelling.¹¹ Thus, even if the analysis “begins” with “Congregate Housing Facility,” as Petitioners incorrectly contend, it “ends” with the definition of “Dwelling, Single-Family Detached.”

V. Although the Parties Agree That There Is No Conflict Between § 15.2-2291(A) and the Zoning Ordinance, the Statute Would Prevail If Any Such Conflict Did Exist.

Petitioners’ lead argument, which comprises half their brief, addresses a fabricated preemption defense that Newport does not make. *See* Petitioners’ Br. at 2-7. The Ordinance properly accounts for § 15.2-2291(A) through its definition of “Family,” which, in turn, is incorporated into the definition of “Dwelling, Single-Family Detached.” That said, if any conflict did exist, BZA Member Moiz correctly acknowledged the axiomatic “supremacy” of state law. *See* BZA Hr’g Tr. at 219; *see also* Va. Code § 1-248; *Sinclair v. New Cingular Wireless PCS, LLC*, 283 Va. 567, 576 (2012) (“[W]hen a statute enacted by the General Assembly conflicts with an ordinance enacted by a local governing body, the statute must prevail.”).

Moreover, the Ordinance properly harmonizes the definitions of “Dwelling, Single-Family Detached” and “Congregate Housing Facility” by making them mutually exclusive. The Board of Supervisors eliminated any overlap between the two uses by excluding single-family dwellings from the definition of “Congregate Housing Facility.” As a result, a single-family dwelling, such as Newport’s house, can never fall within the definition of “Congregate Housing Facility.” The Court should disregard Petitioners’ attempt to knock down a non-existent preemption defense.

include “any mention of the Zoning Ordinance prohibition against Congregate Housing Facilities.” Petitioners’ Br. at 4. Petitioners also point out that the BZA’s motion to uphold the Zoning Permit “omits any reference to the Zoning Ordinance prohibition on Congregate Housing Facilities.” *Id.* Given these undisputed facts, the definition of “Congregate Housing Facility” is not part of this appeal and need not be addressed by the Court.

¹¹ Tellingly, in numerous briefs and arguments, Petitioners have *never* addressed the exclusion of “single-family dwellings” from the definition of “Congregate Housing Facility,” which is dispositive to their case.

VI. There Is No Discrimination or Unequal Treatment, Because the BZA Did Not Authorize Newport to Operate a “Congregate Housing Facility.”

Petitioners next argue that the BZA discriminated against them by purportedly allowing Newport to operate a “Congregate Housing Facility” without allowing Petitioners to do the same.¹² *See* Petitioners’ Br. at 7-8. This argument misstates the BZA’s decision, which did not authorize Newport to operate a “Congregate Housing Facility.” Rather, the BZA affirmed the Zoning Permit, which authorized Newport to operate a “SFD/GROUP HOME,” i.e. a single-family dwelling, in accordance with § 15.2-2291(A). *See* R. at 1292. Petitioners’ misrepresentation of the BZA’s decision underscores the weakness of their position.

VII. The Court Cannot Issue an Advisory Opinion About Newport’s Other Two Houses, Which Are Not Permitted and Are Not Part of This Case.

Recognizing that they have no evidence to overcome the BZA’s finding as to 20173 Gleedsville Road, Petitioners instead seek an advisory opinion about Newport’s other two houses at 20179 Gleedsville Road and 20191 Gleedsville Road. Noticeably, however, Petitioners cite no evidence proving how Newport will operate its other two houses. *See generally* Petitioners’ Br. Nor do they cite a single legal authority to support their baseless contention that Newport’s hypothetical use of its other houses will violate the law. *See generally id.* These omissions alone provide sufficient grounds for the Court to reject Petitioners’ argument.

The Court should also reject Petitioners’ argument because it is not ripe. Newport has never sought permits for the other two houses; the Zoning Administrator has never issued permits for the other two houses; and the BZA has never addressed any permits for the other two houses.

¹² There are other problems with Petitioners’ equal protection claim. For example, Petitioners lack standing to make such a claim because, even if Newport had obtained a permit for a “Congregate Housing Facility” (it did not), Petitioners never sought, nor were they denied, a permit to do the same. *See Wilkins v. West*, 264 Va. 447, 459 (2002). Also, the Fourteenth Amendment claim is beyond the Court’s statutory authority under Va. Code § 15.2-2314. *See City of Emporia Board of Zoning Appeals v. Mangum*, 263 Va. 38, 43-44 (2002).

There is no guarantee that *any* of these things, let alone *all* of them, will ever occur. Even if they do all occur, Petitioners can appeal the BZA's decisions to this Court at the appropriate time. As BZA Chairman Gorham Clark explained: "When that comes up, [the Zoning Administrator will] get to make a decision, and we'll get to handle our review." BZA Hr'g Tr. at 227. The Court cannot short-circuit this process by opining about two non-permitted properties in the first instance based on speculation and conjecture.

VIII. The Zoning Permit Is Not "Void."

Petitioners' argument that the Zoning Permit is "void" demonstrates a material misunderstanding of the licensing process. The VDBHDS's licensing process is governed by 12 Va. Admin. Code § 35-105-30.¹³ Each provider "shall be licensed to provide specific services." § 35-105-30(B). Newport is licensed as "a provider of mental health services." *See R.* at 1398. Newport has only one VDBHDS "License Number" (3517), which covers all its houses throughout the Commonwealth. *See id.* at 1398-1401. Under that one License Number, the VDBHDS provides separate "Service License Numbers" for each type of "service" that Newport offers. *See* § 35-105-30(C).

Each Service License Number has a corresponding "Addendum." *See id.* Newport has three Service License Numbers with three corresponding Addendums. *See R.* at 1398-1401. Each Addendum identifies the "specific locations" where the specified services can be provided. *See* § 35-105-30(C). Here, Addendum 1 identifies 20173 Gleedsville Road and 20179 Gleedsville Road as locations where Newport can provide "mental health residential group home service for adults." *See* License Modification of 1/17/23. Addendum 2 identifies a Fairfax location where "mental health hospitalization for children and adolescents with serious mental illness" can be provided.

¹³ 12 VAC Section 35-105-30 is attached as Exhibit 8.

See R. at 1400. Addendum 3 identifies the same Fairfax location where “mental health intensive outpatient service for children and adolescents with serious mental illness” can be provided. *See id.* at 1401.

According to Petitioners, the fact that Newport is licensed to provide the same services at two locations renders its Zoning Permit “void.” *See* Petitioners’ Br. at 8-9. This argument is baseless. Petitioners do not (and cannot) cite a single authority that “voids” a zoning permit for one home merely because the VDBHDS authorizes another home to provide the same services. Under Petitioners’ nonsensical theory, a healthcare provider could never offer the same services at more than one location within the Commonwealth. The Court should summarily reject this specious argument.

IX. Patients at Newport’s Home “Reside” There Within the Meaning of § 15.2-2291(A).

The BZA rejected Petitioners’ argument that Newport’s residents do not “reside” at the home. *See* BZA Hr’g Tr. at 219, 226. Petitioners cite no evidence to overcome that finding. Instead, they contend that Newport’s residents cannot “reside” at the home unless they “integrate into the community” and “treat the facility as a home.” *See* Petitioners’ Br. at 9. These supposed requirements are speculative and nonexistent; neither finds any support in the only two cases cited by Petitioners.

In Petitioners’ first case, *Board of Supervisors of Fairfax Cty. v. Board of Zoning Appeals of Fairfax Cty.*, No. 150970, et al., 1997 WL 1070562 (Fairfax Apr. 7, 1997) (“*Kaleidoscope*”), the circuit court made no finding that the abused children “integrated into their communities” or “treated the facility like a home.” Petitioners’ second case, *Long v. Ryan*, 71 Va. 718 (1878), is a 145-year old decision in which the Supreme Court never mentioned “integration into the

community” or “treating a facility like a home” as relevant to the analysis. Petitioners, once again, have made up requirements and misrepresented these two cases as lending support.¹⁴

The only Virginia case directly on point, which Petitioners fail to discuss in the context of this argument, is the recent decision in *Anders Larsen Trust*, No. CL-2020-5490. There, Judge Bugg considered the circumstances of a nearly identical Newport facility in Fairfax and concluded that “[t]he BZA’s determination that the children of the Newport Academy are residents of the facility was not a violation of the spirit or the purpose of the zoning ordinance or of the FHA.” He therefore rejected the argument that “the children are not residents of the Newport Academy.”

Here, the undisputed testimony is that Newport “tr[ies] to create a very family-like, comfortable, serene environment in a single-family residence.” R. at 846. During their stays at Newport’s homes, residents “sleep” there, “eat meals with other residents in a family-style setting,” and associate with other residents in “common areas.” R. at 481-82, 499. These are all legal indicia of a residence. See *Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1220 (9th Cir. 2012) (identifying “the elements generally associated with a family residence: sleeping spaces, bathroom and kitchen facilities, and common areas”).

Petitioners also suggest that the length of stay is a relevant factor, observing that Newport’s residents stay “between 30 and 90 days.” Petitioners Br. at 9. Many decisions have determined that stays equal to or less than those of Newport’s residents fall within the meaning of “reside.” See, e.g., *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1215 (11th Cir. 2008) (“on average six to ten weeks”); *Lakeside Resort*, 455 F.3d at 158 (“average stay at the proposed facility at 14.8 days”); *Connecticut Hosp. v. City of New London*, 129 F. Supp. 2d 123, 134 (D. Conn. 2001) (“one

¹⁴ Petitioners’ counsel tried this same tactic with the BZA by citing *Long v. Ryan*, 71 Va. 718 (1878) during that hearing. See BZA Hr’g Tr. at 190. But BZA Chairman (and practicing attorney) Gorham Clark, who had earlier found that Petitioners’ counsel abused the BZA’s process, saw through this misleading citation. See *id.* at 226 (rejecting “the hundred-year-old case” as inapplicable in determining the meaning of reside).

to three months”). Significantly, these decisions include the only two Virginia cases on point. *See Anders Larsen Trust*, No. CL-2020-5490 at *5 (“30 to 90 days”); *Kaleidoscope*, 1997 WL 1070562 at *1 (“no more than sixty days”).¹⁵

Indeed, courts have held that facilities much less permanent in nature than Newport’s homes are nonetheless considered to be “residences” within the meaning of fair housing law. *See, e.g., United States v. Columbus Country Club*, 915 F.2d 877, 881 (3d Cir. 1990) (holding that summer “bungalows” are within the FHA); *United States v. Massachusetts Indus. Fin. Agency*, 910 F. Supp. 21, 24 (D. Mass. 1996) (holding that a “school” designed to “diagnose, treat, and educate emotionally disturbed adolescents” falls within the FHA); *Hernandez v. Ever Fresh Co.*, 923 F. Supp. 1305, 1308 (D. Or. 1996) (finding that “the FHA is applicable to a temporary farm labor camp”).

Finally, Petitioners contend that Newport’s residents do not qualify for protection under § 15.2-2291(A) because they have an “intent upon entering to return to their homes.” *See* Petitioners’ Br. at 10. Courts routinely reject this argument. *See, e.g., Cohen v. Twp. of Cheltenham, Pa.*, 174 F. Supp. 2d 307, 322 (E.D. Pa. 2001); *Lauer Farms, Inc. v. Waushara Cty. Board of Adjustment*, 986 F. Supp. 544, 559 (E.D. Wisc. 1997); *Villegas v. Sandy Farms, Inc.*, 929 F. Supp. 1324, 1328 (D. Or. 1996).

Considering the above, the Court should follow Judge Bugg’s rationale and reject Petitioners’ argument that Newport’s residents do not “reside” at the home.

¹⁵ BZA Member Edward Moffett, who voted in the minority not to uphold the Zoning Permit, indicated that he might change his mind if someone “can show me anything that formally defines residency as being—I don’t know—a week, two weeks, whatever.” BZA Hr’g Tr. at 221. The cases supporting such residency are cited herein.

X. The Addiction to Controlled Substances “Exclusion” in § 15.2-2291(A) Does Not Apply.

The BZA rejected Petitioners’ argument that Newport’s residents are drug addicts and therefore outside the scope of § 15.2-2291(A). Petitioners cite “R. Tab. 1.”¹⁶ as the *only* purported evidence to overcome the BZA’s finding. *See id.* Ironically, this evidence proves exactly the opposite of what Petitioners contend. In its September 22, 2021 request for a zoning determination, Newport explained:

Newport Academy will not seek to operate drug rehabilitation facilities at the Properties, nor provide detoxification services or other substance abuse treatment. 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.

R. Tab. 1. Similarly, in his e-mail exchange with Craig Palmer, Newport’s COO, Jameson Norton, explained: “[W]e do a very thorough screening process involving several layers of assessments conducted by licensed clinicians, the client[s] themselves, and their family (independently). We also receive full clinical and behavioral reports from licensed providers” R. Tab. 1. Mr. Norton further informed Mr. Palmer that “[u]se of drugs/alcohol” is one of many “exclusionary criteria” for admission to the house. R. Tab. 1. This evidence accords with the statements of Newport’s CEO, Joe Procopio, that each resident undergoes “a rigorous application and assessment,” which includes testing by a “clinician” to determine “whether the potential resident is eligible for residency.” R. at 483. During their stays, residents are “routinely drug tested” and

¹⁶ Presumably, this citation refers to Tab 1 of the BZA Record in APPL-2021-003, which consists of: (i) Petitioners’ application for appeal; (ii) the brief of Petitioners’ counsel; (iii) the Zoning Determination; (iv) a hand-drawn map; (v) Newport’s request for a zoning determination; (vi) the County’s application intake form; (vii) the *Kaleidoscope* decision; (viii) an e-mail exchange between Jameson Norton and Craig Palmer; (ix) a document purporting to be a printout from Newport’s website; (ix) the transcript from the January 22, 2020 Fairfax BZA hearing; and (x) a written statement by Joe Procopio.

anyone possessing or using drugs is “subject to administrative discharge.” *Id.* Thus, Petitioners’ only evidence supports Newport’s position instead of their own.

This evidence, however, is largely irrelevant because it bears no relationship to any specific individuals. It is well-settled that determining addiction involves a “client-by-client inquiry.” *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 918 (4th Cir. 1992). Although Petitioners bear the burden of proof on this issue, they cite no evidence to show that any of Newport’s individual residents suffers from addiction. The petitioners in *Anders Larsen Trust* similarly relied on evidence that was “more speculative than factual,” leading Judge Bugg to conclude: “Petitioners certainly may report Newport Academy to the VDBHDS when, and if, it acts in violation of its license and treats substance abuse at its property. However, based on the record in this matter, the Court does not find that such a [BZA] decision was based on insufficient evidence.” This Court should likewise reject Petitioners’ non-specific and speculative assertions as insufficient to overturn the BZA’s decision.

Setting aside this failure of proof, Petitioners’ legal interpretation of “addiction” in § 15.2-2291(A) is wrong. Federal courts have held that “addiction,” as used in the analogous Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, applies only to individuals who are *currently* addicted to controlled substances. *See, e.g., Harmony Haus Westlake, LLC v. Parkstone Prop. Owners Ass’n*, 851 F. App’x 461, 463 (5th Cir. 2021); *Cornerstone Residence, Inc. v. City of Clairton*, 754 F. App’x 89, 91 (3d Cir. 2018); *Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1156 (9th Cir. 2013). Additionally, the “addiction” exclusion does not apply when it is a secondary diagnosis, so long as the individual has a qualifying primary diagnosis. *See, e.g., Easter Seal Soc’y of N.J., Inc. v. Township of N. Bergen*, 798 F. Supp. 228, 230 (D.N.J. 1992) (applying FHA even though residents had “a secondary diagnosis of substance abuse”). Therefore, even if Newport’s

residents were previously addicted to a controlled substance, or currently have a secondary diagnosis of addiction, they still fall within the protection of § 15.2-2291(A).

XI. The Validity of the Zoning Permit Does Not Deprive Petitioners of Their Multiple Enforcement Remedies If Newport Violates the Law in the Future.

As already discussed, Petitioners' insistence that Newport will violate the law in the future is premature and speculative. By arguing about what Newport may or may not do down the road, Petitioners are conflating the validity of the Zoning Permit, which is the subject of this appeal, with subsequent enforcement actions. Petitioners have at least two remedies available to them if Newport violates its VDBHDS license or the Zoning Ordinance in the future. First, 12 Va. Admin. Code § 35-105-80¹⁷ allows Petitioners to file a complaint with the VDBHDS, which triggers the agency's obligation to investigate the alleged violation. Second, Section 6-502(F)¹⁸ of the Ordinance allows Petitioners to file a complaint with the Zoning Administrator, which triggers his or her obligation to investigate the alleged violation. Thus, Petitioners are adequately protected if Newport violates the permit, the license, or any other law in the future. However, such a supposed future violation cannot be presumed as a basis for overturning the Zoning Permit as part of this BZA appeal.

CONCLUSION

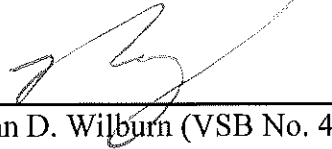
For the reasons discussed, the Court should affirm the BZA and dismiss Petitioners' appeal with prejudice.

¹⁷ 12 VAC Section 35-105-80 is attached as Exhibit 9.

¹⁸ Section 6-502(F) of the Ordinance is attached as Exhibit 10.

Dated: March 31, 2023

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that, on March 31, 2023, I caused the foregoing document to be served via electronic and first-class mail on the following counsel of record:

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Exhibit 1



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RETIRED JUDGES

January 5, 2023

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Re: *Anders Larsen Trust et al. vs. Virginia Health Operations LLC, et al.*
Case No. CL-2020-5490

Dear Counsel:

This matter originally came before the Court on December 10, 2020, for oral argument on Petitioners' challenge to a decision by the Board of Zoning Appeals ("BZA"), which upheld the

Zoning Administrator's decision that the proposed use of the property located at 1318 Kurtz Road meets the definition of and is most similar to a Group Residential Facility.

Prior to the December 10, 2020 hearing, the Court heard preliminary arguments from the Commonwealth of Virginia who filed a motion to submit an amicus brief regarding the Fair Housing Act ("FHA") and the Virginia Zoning Ordinance. Upon hearing the arguments of all counsel, the Court accepted the amicus brief filed by the Commonwealth.

The Court ruled via letter opinion on February 16, 2021, that the Petitioners lacked standing to pursue their challenges to the BZA decision. On March 9, 2021, a Final Order dismissing the appeal was entered. Petitioners timely appealed the Final Order to the Virginia Supreme Court. On June 15, 2022, the Supreme Court reversed and remanded the matter for further proceedings on the merits of Petitioners' challenges. The parties submitted supplemental written briefs and appeared for additional oral argument on December 1, 2022. Having taken the matter under advisement and after reviewing the memorandum of law and arguments submitted by counsel, the Court issues the following opinion affirming the decision by the Board of Zoning Appeals.

BACKGROUND

On August 21, 2019, the Zoning Administrator issued a determination in response to several requests made by various neighbors located adjacent or near the Property. The Zoning Administrator determined that the proposed use of the Property met the definition and is most similar to a group residential facility. Three owners of neighboring property which abutted the subject Property, appealed the determination by the Zoning Administrator on September 20, 2019. Anders Larson Trust; Desch, Duval and Hein; and Victor and Janet Tsou, reported to the Board of Zoning Appeals (Hereinafter "BZA") for a public hearing on January 22, 2020.¹ The appeal hearing lasted several hours and was continued to March for a final decision. On March 11, 2020, the BZA issued its decision affirming the decision of the zoning administrator by a vote of 4-2.

On April 10, 2020, Petitioner's Tsou and Petitioners Trust, Desch and Hein filed separate complaints to this Court seeking to overturn the decision of the BZA. Petitioners Trust, Desch and Hein argued that the decision of the BZA was wholly wrong in affirming the determination of the Zoning Administrator because Newport Academy will be treating drug addiction in addition to mental health illness, which would be in direct violation of Virginia Code. (Trust Compl. ¶¶ 64-75). Further Petitioners allege that Newport Academy's license from the VDBHDS is not dispositive proof of its group residential facility status. (Trust Compl. ¶¶ 76-85). Finally, Petitioners argue that the clients who will be treated at Newport academy will not

¹ This Court will refer to Anders Larson Trust; Desch, Duval and Hein; and Victor and Janet Tsou as "Petitioners" throughout this opinion for ease of reference.

“reside” at the facility as that term is defined in Virginia. (Trust Compl. ¶¶ 86-91).² Petitioners’ supplemental brief after remand raised additional challenges and arguments related to the “business operations” and “commercial use” of the Property. *See* Pet’rs Suppl. Mem. 5.

ANALYSIS

I. Standard of Review

A party who has been aggrieved, either jointly or severally, by a decision of the BZA may file with the Clerk of the Circuit Court a petition alleging the grounds on which it has been aggrieved. Va. Code § 15.2-2314. Upon presentation of such petition, the Court must allow for a writ of Certiorari. *Id.* The Court has the power to reverse or affirm, either in part or in whole, or may modify the decision of the BZA. *Id.* The Court shall hear any argument on questions of law *de novo*. *Id.* In the case of an appeal challenging a decision by the BZA in affirming a determination of a Zoning Administrator, the findings, and conclusions by the BZA are presumed correct. *Id.* A party challenging this presumption must show by a preponderance of the evidence that the BZA erred in its decision. *See Adams Outdoor Advertising, L.P. v. Board of Zoning Appeals of City of Virginia Beach*, 274 Va. 189, 195 (2007). The challenging party must prove that the BZA applied erroneous principles of law or show where the decision of the Board was plainly wrong and in violation of the purpose and intent of the zoning ordinance. Va. Code § 15.2-2314.

However, it is noted that though a party may rebut this presumption, this evidentiary standard applies only to questions surrounding the sufficiency of the record to prove a particular fact. *Adams*, 274 Va. at 195. When the question is one of law, it is on the appealing party to show that the decision by the BZA was plainly wrong and in violation of the purpose and intent of the zoning ordinance. *Id.* (quoting *Trustees of Christ & St. Luke’s Episcopal Church v. Bd. of Zoning Appeals of City of Norfolk*, 273 Va. 375 (2007)).

II. Property Classification as a “Group Residential Facility”

Virginia defines a residential facility as “any group home or other residential facility for which the Department of Behavioral Health and Developmental Services (“VDBHDS”) is the *licensing authority* pursuant to this Code.” Va. Code § 15.2-2291(A) (emphasis added). Logic dictates that the VDBHDS is the appropriate administrative body to determine whether a particular facility will meet the statutory standard of treating mentally ill individuals.

Petitioners appeal argues BZA applied the wrong principle in that the licensure by the VDBHDS was dispositive, but the hearing transcript shows that the BZA went to great lengths to address the definition challenge as opposed to solely relying on licensure. Based on the complete reading of the transcript of the BZA hearing, the Court does not find that the BZA based its

² Petitioners Tsou presented substantially similar arguments in their own separate complaint which was consolidated with the Trust Petition. Therefore, this Court will refrain from referencing those arguments in the background as they would be duplicative.

decision on the dispositive nature of the license. The BZA determination walked through the various definitions at issue and how the proposed use of the Property lined up with those definitions. Members of the BZA noted during the decision hearing their contemplation of the evidence for and against the presence of ongoing substance abuse treatment. It was noted a number of times during the decision hearing that the proposed use may in fact be a hybrid that the ordinances did not clearly account for. Both BZA members that voted for and against the Petitioners stated that this particular case was “a difficult case of everybody” and “a very close call.” *See* Bd. of Zoning Appeals Tr. 4:19-20; 8:22; 22:13-15; 24:11-13; 26:18-21 (March 11, 2020).

The BZA’s decision affirming the Zoning Administrator’s determination was founded upon a careful review of the facts with reasonably articulated analysis, and thus should not be reversed by the Court. The BZA took careful consideration in the definition of “residential facility” versus “congregate living facility” and they stated that there was a lot of compelling testimony on both sides. Petitioners challenge seeks to have the Court substitute its judgment for that of the BZA and the Court is not in that position.

A large part of the new arguments raised by Petitioners after remand, and not a part of the original writ, goes to the commercial use of the Property. This argument goes to the same challenge of the determination of the Property’s use as a group residential facility. Petitioners challenge that the commercial and business aspect of the use of the Property makes it fit the definition of a continuing care facility. Virginia Code § 15.2-2291(A) and the definition of a group residential facility do not appear to differentiate between for profit and nonprofit property. Given the absence of a distinction between for profit and nonprofit, the Court finds that the commercial and business use challenge is not sufficient grounds for the Court to reverse the decision of the BZA. The Court finds that it was not shown by a preponderance of the evidence that the BZA applied erroneous principles of law or that the BZA was plainly wrong and in violation of the purpose and intent of the zoning ordinance.

III. Substance Abuse Determination

Virginia Code § 15.2-2291(A) states that the definition of mental illness or developmental disability does not include individuals who are currently using or addicted to illegal substances. *See* Va. Code § 15.2-2291(A). Petitioners argue that statements made by a Newport Academy’s Counsel at the BZA public hearing are proof that Newport Academy will house clients who are either currently using or addicted to illegal substances. Specifically, Petitioners point to a statement by Newport Counsel, that Newport seeks to treat “the whole person”, and any treatment of a Newport resident who is actively using will take place at a non-Newport facility. *See* BZA Record at 1720, pg. 107. Newport Academy specifically stated in at the BZA public hearing that any individuals who have been found to use or have in their possession an illegal substance, that person will be subject to removal proceedings. *See* BZA Record at 1721, pg. 110. The presumption provided to the BZA’s decision, and by extension, the presumption which this Court must follow, is a compelling one and for that decision to be

modified the Court must find that the sufficiency of the record from the BZA was not enough for that administrative body to make the findings it did.

The Court does not find that the record was insufficient in that regard. Petitioner's arguments that Newport Academy will treat individuals who currently use or are addicted to illegal substances are more speculative than factual. This Court, as well as courts throughout the United States, have vehemently opposed granting consideration, relief, or even standing based merely on speculation. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (stating that a party must show injury in fact for Article III standing and how it cannot be based on speculation); *Tittsworth v. Robinson*, 252 Va. 151 (1996) (excluding expert testimony that was otherwise speculative or was based on assumptions and speculative evidence).

While the Court certainly appreciates the level of concern Petitioners show for their neighborhood, the BZA was presented with facts and arguments that resulted in two hearings, both of which lasted for several hours, and after consideration, affirmed the decision of the Zoning Administrator with a vote of 4-2. Petitioners certainly may report Newport Academy to the VDBHDS when, and if, it acts in violation of its license and treats substance abuse at its property. However, based on the record in this matter, the Court does not find that such a decision was based on insufficient evidence. Therefore, Petitioners appeals are denied on this ground.

IV. Residency of Newport Clients

When determining the meaning of resident or residence in Virginia we look at the context in which the term is used. *USSA Cas. Ins. Co., v. Hensley*, 251 Va. 177, 181 (1996). In the context of the FHA this term is afforded its ordinary meaning. *See United States v. Hughes Memorial Home*, 396 F. Supp. 544, 549 (W.D. Va. 1975). This Court has determined that residence under the context of the FHA is defined as “[the] temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit.” *See Bd. of Supervisors of Fairfax Cnty. v. Bd. of Zoning Appeals of Fairfax Cnty.*, 1997 WL 1070562, *1 at *4 (Fairfax Cir. Apr. 7, 1997).

In *Board of Supervisors*, a group home acting in collaboration with the Fairfax County Department of Family Services housed eight (8) mentally ill children for a maximum of up to sixty (60) days. *Id.* at *1. One of the issues before the court in *Board of Supervisors* was whether the children at the group home were residents. *Id.* The court noted that while the children were not permanent residents of the group home, their stay was certainly more than a transient visit because for those two months, they lived and returned home to the facility. *Id.* at *4.

The Court is tasked with answering a similar question of determining whether the BZA applied erroneous principals of law and were plainly wrong in determining that the clients of Newport Academy were residents. While the residents of Newport Academy have a place to return to unlike the children in *Board of Supervisors*, the children here will still be living at the Newport facility for a period of 30 to 90 days, assigned chores and daily tasks to complete. *See*

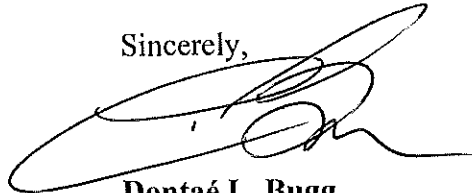
BZA Record at 483, 692. Indeed, this is more than just a temporary sojourn or transient visit as the children will attend school and return to Newport Academy. *Id.* at 767-68. The BZA's determination that the children of the Newport Academy are residents of the facility was not a violation of the spirit or the purpose of the zoning ordinance or of the FHA. Therefore, the Court will not reverse or modify the determination of the BZA, based on Petitioners challenge that the children are not residents of the Newport Academy.

CONCLUSION

When reviewing the entire record on appeal and considering the arguments made by Counsel, the Court finds that Petitioners have not met their burden of showing that the BZA erred in its decision. Further, the Court finds that the Petitioners have not met their burden of proving that the BZA applied erroneous principles of law or showing that the BZA's decision was plainly wrong and in violation of the purpose stated within the ordinance. For these reasons, the Court affirms the ruling by the BZA in affirming the determination of the Zoning Administrator.

A copy of the Circuit Court's Order is enclosed. This matter is removed from the Court's January 6, 2023 docket.

Sincerely,



Dontaé L. Bugg
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia

Enclosure

Exhibit 2

West's Annotated Code of Virginia
Title 15.2. Counties, Cities and Towns (Refs & Annos)
Subtitle II. Powers of Local Government
Chapter 22. Planning, Subdivision of Land and Zoning (Refs & Annos)
Article 7. Zoning (Refs & Annos)

VA Code Ann. § 15.2-2291

§ 15.2-2291. Assisted living facilities and group homes of eight or fewer; single-family residence

Effective: July 1, 2014

[Currentness](#)

A. 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.

B. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. 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 assisted living facility or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

Credits

Acts 1997, c. 587, eff. Dec. 1, 1997; Acts 1998, c. 585; Acts 2007, c. 813; Acts 2008, c. 601; Acts 2009, c. 813; Acts 2009, c. 840; Acts 2010, c. 796; Acts 2010, c. 847; Acts 2012, c. 476; Acts 2012, c. 507. Amended by Acts 2014, c. 238.

VA Code Ann. § 15.2-2291, VA ST § 15.2-2291

The statutes and Constitution are current through the 2023 Regular Session cc. 1, 18, 19, 271, 272, 342, 346, 408 & 409.

Exhibit 3

In the Matter of:

**APPL-2022-0005:
Appeal of Zoning Permit #Z20643250001
for a Group Home in AR-1 a**

BZA hearing

January 26, 2023

Casamo

**Court Reporting
Videography
Videoconferencing**

Phone: 703-837-0076
Fax: 703-837-8118
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V I R G I N I A:
LOUDOUN COUNTY BOARD OF ZONING APPEALS

IN RE: APPL-2022-0005)
Zoning Permit No. Z20643250001)

* * * * *

The above-entitled matter came on for
public hearing on Thursday, January 26, 2023,
commencing at 6:52 p.m., at The Loudoun County
Government Center, 1 Harrison Street, SE, Leesburg,
Virginia, before Audra A. Gilbert, Court Reporter
and Notary Public.

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A P P E A R A N C E S

ON BEHALF OF THE COUNTY:

HUGH GREEN, ESQUIRE
NICHOLAS LAWRENCE, ESQUIRE
Loudoun County Attorney's Office
1 Harrison Street, SE
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(703) 777-0307

ON BEHALF OF THE APPELLANTS:

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(Appearances continued on the following page.)

1 A P P E A R A N C E S (continued):

2

3 ON BEHALF OF THE APPLICANT:

4 JOHN D. WILBURN, ESQUIRE

5 McGuire Woods

6 1750 Tysons Boulevard

7 Suite 1800

8 Tysons, Virginia 22102-4215

9 (703) 712-5000

10

11 MEMBERS OF THE BOARD PRESENT:

12 GORHAM CLARK

13 EDWARD P. MOFFETT

14 IBRAHIM A. MOIZ

15 BRIAN J. WALKER

16 ROBERT KELLY GRAY - (Appearing remotely)

17

18 ALSO PRESENT:

19 MICHELLE M. LOHR, Deputy Zoning Admin.

20 MARK STULTZ, Zoning Administrator

21 CHRISTOPHER BARTOLOMUCCI, Esquire

22 STEPHANIE CAPPS, Secretary

<p style="text-align: right;">Page 4</p> <p style="text-align: center;">P R O C E E D I N G S - - - - -</p> <p>GORHAM CLARK: All right. Now, the next item on the agenda, because we've changed it -- it was original Item Number 3, now Item Number 2 -- Appeal 2022-0005. The Little River Election District and Michelle Lohr is going to be speaking for the staff.</p> <p>MS. LOHR: Good evening, members of the Board of Zoning Appeals and members of the public. My name is Michelle Lohr, a deputy zoning administrator, in the department of planning and zoning.</p> <p>Now we're presenting Appeal 2022-5, Zoning Permit Z20643250001: Group Home in AR-1 zoning district, 20173 Gleedsville Road.</p> <p>Appeal 2022-5 is an appeal filed on behalf of 12 appellants regarding the November 16th, 2022, issuance of a zoning permit authorizing a group home with five residents at 21073 Gleedsville Road, Leesburg. The subject property, depicted in yellow on the screen, encompasses approximately 2.26 acres</p>	<p style="text-align: right;">Page 6</p> <p>building and development on November 16th, 2022, because the use was found to meet the zoning ordinance requirements. It is the zoning administrator's decision that the zoning permit was correctly issued and that dwelling single-family detached is permitted use in the AR-1 zoning district, as evidenced by the AR-1 use table shown on the screen.</p> <p>Further, the term "family," within the use name "dwelling single-family detached" is defined in Article 8 of the zoning ordinance to include any group identified in Section 15.2-2291 of the Code of Virginia. Therefore, if the proposed use meets the criteria of Section 15.2-2291, it is permitted as a single-family dwelling in the AR-1 zoning district.</p> <p>Turning to Section 15.2-2291(A) of the Code of Virginia, specific direction is provided as to how zoning ordinances are to treat group homes. We see that residential facilities with no more than eight individuals with mental illness, intellectual disability, or developmental disabilities are to be considered as residential occupancy by a single</p>
<p style="text-align: right;">Page 5</p> <p>and is zoned AR-1, Agricultural Rural - 1, under the revised 1993 Loudoun County Zoning Ordinance.</p> <p>By way of background, on October 17th, 2022, a zoning permit application was received from a representative of Newport Academy for a group home on the subject property. This permit was approved and then issued on November 16th, 2022.</p> <p>On November 22nd, 2022, the application for appeal 2022-5 was received by the department of planning and zoning. A more detailed chronological history is on pages 2 through 3 of the zoning administration staff report.</p> <p>As mentioned earlier, the owner submitted an application for a zoning permit for a group home five residents on the subject property within an existing single-family detached dwelling. Included with the application was a copy of a license issued from the Virginia Department of Behavioral Health and Developmental Services, VDBHDS, issued to Virginia Health Operation, doing business as Newport Academy.</p> <p>The zoning permit was issued by the of</p>	<p style="text-align: right;">Page 7</p> <p>family.</p> <p>The code clarifies that mental illness and developmental disabilities shall not include current illegal use of or addiction to a controlled substance. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. And a residential facility is a group home that is licensed by the VDBHDS.</p> <p>The zoning permit was correctly issued, as the proposed use is for five residents, less than the permitted maximum of eight residents. Newport stated it would not operate drug rehabilitation facilities or provide substance abuse treatment at the property, and any resident determined to be using alcohol or other drugs would be subject to immediate discharge. And a license was issued to the Virginia Health Operations, doing business as Newport Academy, identifying Newport Academy as a provider of mental health services and for a mental health residential group home service for adults at</p>

<p style="text-align: right;">Page 8</p> <p>1 the property. Thus the zoning ordinance 2 requirements and the criteria of Section 15.2-2291 3 of the Virginia Code were satisfied.</p> <p>4 In addition, the zoning administrator has 5 consistently opined that uses that meet the zoning 6 ordinance definition of family, including groups 7 identified in Section 15.2-2291, are single-family 8 dwellings and are permitted in the zoning districts 9 for such uses allowed.</p> <p>10 Examples of previous determinations and 11 zoning permits issued for properties to be used by 12 such groups are included in Attachments 14 and 15 of 13 the staff report.</p> <p>14 The appellants made four arguments with 15 which the zoning administrator disagrees: First, 16 the appellants argue that a commercial, 17 treatment-focused use is not allowed in a 18 single-family home within the AR-1 residential uses 19 category. As discussed earlier, the proposed use 20 meets the definition of "family" defined in the 21 zoning ordinance as a group of people living 22 together, consisting of any group identified in</p>	<p style="text-align: right;">Page 10</p> <p>1 business model of Newport Academy is irrelevant, and 2 the BZA should uphold the zoning permit issuance.</p> <p>3 Third, the appellants argue Newport Academy 4 would treat individuals currently addicted to 5 controlled substances; however, Newport Academy 6 represented that it does not seek to operate a drug 7 rehabilitation facility or provide detoxification 8 services or other substance abuse treatment and will 9 not admit a resident who is currently using illicit 10 substances, and any resident who is determined to be 11 using alcohol or other drugs will be subject to 12 immediate administrative discharge.</p> <p>13 Therefore, based on the information 14 provided by Newport Academy, the proposed use would 15 be considered a dwelling, single-family detached, if 16 licensed by VDBHDS.</p> <p>17 Last, the appellants suggest that because 18 the residents receive mental health treatment and 19 will reside there for a limited time, that they 20 would not be residents for purposes of the statute. 21 However, the appellants failed to cite any Virginia 22 Code or Zoning Ordinance requirement that supports</p>
<p style="text-align: right;">Page 9</p> <p>1 Section 15.2-2291 of the Code of Virginia. 2 Therefore, a dwelling single-family detached use 3 includes any group identified in Section 15.2-2291.</p> <p>4 The zoning permit approves the group home 5 of five individuals for mental health services, 6 licensed by VDBHDS. Under the zoning ordinance, it 7 is considered residential occupancy by a single 8 family and is a permitted use in the AR-1 zoning 9 district.</p> <p>10 Second, the appellants argue that because 11 the use is a commercial, treatment-focused use, it 12 is precluded from the AR-1 residential uses 13 category. The zoning administrator disagrees in 14 that Section 15.2-2291 does not distinguish between 15 commercial and noncommercial residential facilities. 16 In fact, a Virginia General Assembly bill, proposed 17 in 2000, sought to amend Section 15.2-2291 to 18 distinguish between for-profit and nonprofit 19 residential facilities. That bill did not pass.</p> <p>20 Further, the attorney general opined that 21 the proposed amendment would violate the Virginia 22 Fair Housing Law, thus the purported commercial</p>	<p style="text-align: right;">Page 11</p> <p>1 that position.</p> <p>2 Again, the statute defines any VDBHDS 3 licensed group home to be a residential facility for 4 purposes of zoning. In a recent identical zoning 5 challenge to Newport Academy in Fairfax County, the 6 Fairfax Circuit Court, in affirming the Fairfax 7 County BZA, rejected the same arguments raised by 8 these appellants in this case. The judge noted that 9 the residents of the group home staying 30 to 10 90 days is more than a transient visit, as they must 11 return to Newport. The Court affirmed the Fairfax 12 BZA decision that the children staying at Newport 13 Academy are residents are residents. Therefore, the 14 residents' duration of stay for treatment is not 15 relevant to any issue before the BZA.</p> <p>16 At this time I turn the floor over to 17 Senior County Attorney Hugh Green to discuss the 18 property owner's arguments.</p> <p>19 MR. GREEN: Hi. Good evening, Members of 20 the Board. My name is Hugh Green, County Attorney. 21 Just one point that I would like to bring 22 to the attention of the board: In the property</p>

<p style="text-align: right;">Page 12</p> <p>1 owner's submissions, it asks that the board uphold 2 the zoning permit; however, they also ask the board 3 from refraining making a decision on this appeal 4 because your prior dismissal is pending. That's 5 21-003. However, you know, this matter is factually 6 distinct from that appeal that we have an issued 7 permit, which is a final decision of the zoning 8 administrator. There's no court order staying the 9 proceedings today, and 2312 directs you to issue a 10 decision in 90 days. Therefore, we'd ask that a 11 decision be rendered. 12 If the board has any questions regarding 13 that pending circuit court case, Mr. Nick Lawrence, 14 County Attorney, represents the county in that 15 matter is here tonight and can answer your 16 questions. 17 And the second point is, as Ms. Lohr 18 pointed out, the submissions by the property owner 19 provides the supplemental authority regarding the 20 Fairfax County case, which is essentially the same 21 arguments that were rejected by the Fairfax BZA and 22 subsequently the Fairfax Circuit Court.</p>	<p style="text-align: right;">Page 14</p> <p>1 a couple. 2 GORHAM CLARK: Mr. Moffett. 3 EDWARD MOFFETT: Really, I just want to 4 understand the procedural policy -- well, where we 5 are right now. 6 As I understand it, the circuit court found 7 standing for the applicants in this case. So the 8 standing issue is totally out of the way now, right? 9 MR. GREEN: Well, the circuit court hasn't 10 issued an order on -- 11 EDWARD MOFFETT: But, during the hearing, 12 I'm aware that the circuit court said, 13 unquestionably, they have standing, so there's no -- 14 there's no issue there -- well, I'm sure they did. 15 MR. GREEN: With all due respect, 16 Mr. Moffett, I can ask the county attorney, 17 Mr. Lawrence, to talk about the specifics. I -- 18 EDWARD MOFFETT: No, that's okay. There's 19 no question about standing. 20 But, as I understand, the circuit court is, 21 right now -- currently, the circuit court is only 22 going to consider the issue of whether the previous</p>
<p style="text-align: right;">Page 13</p> <p>1 Thank you. 2 MS. LOHR: So, in conclusion, the zoning 3 administrator respectfully requests that the BZA 4 uphold the issuance of Zoning Permit Z20643250001 5 and deny Appeal 2022-5. Contrary to the appellants' 6 arguments, the zoning permit satisfied the zoning 7 regulations and the Virginia Code as: (1) dwelling, 8 single-family detached is a use permitted in the 9 AR-1 zoning district; (2) the use of a group home of 10 five individuals constitutes a family as defined by 11 Article 8 of the zoning ordinance and Section 12 15.2-2291(A) of the Code of Virginia; and VDBHDS 13 issued a license for a mental health residential 14 group service for adults to operate at the property. 15 Therefore, the Board of Zoning Appeals must 16 deny the appeal and affirm Zoning Permit 17 206435325000. 18 This concludes staff presentation, and we 19 are available to answer questions. 20 GORHAM CLARK: Thank you, Ms. Lohr. 21 Are there any questions for the county? 22 EDWARD MOFFETT: Mr. Chairman, I have just</p>	<p style="text-align: right;">Page 15</p> <p>1 ruling here that this was an advisory opinion was 2 correct or not and that the Court may or may not 3 rule on the merits of the case and that the Court is 4 pretty much looking to this board to make a 5 decision. 6 That's my understanding of the procedural 7 posture; is that correct? 8 MR. GREEN: Again, I can certainly -- 9 Mr. Lawrence, who's available, can talk to that. 10 Again, I've been to a number of the 11 hearings, but I don't have a full command of exactly 12 what the Court is expecting. 13 All I do know is that the Court has not 14 ruled on the matter, and I would actually invite 15 Mr. Lawrence, if he can give that perspective, from 16 the County's perspective, of what the arguments are 17 and where that sits right now. 18 EDWARD MOFFETT: Well, I'm pretty confident 19 that's the case. But if the board wants to hear 20 more -- but I just wanted to make sure that we were 21 all aware of the posture of this case right now. 22 GORHAM CLARK: Is this Mr. Lawrence?</p>

<p style="text-align: right;">Page 16</p> <p>1 MR. LAWRENCE: Yes, sir.</p> <p>2 GORHAM CLARK: Okay. So let's hear from</p> <p>3 you in response to the question.</p> <p>4 MR. LAWRENCE: I think the board,</p> <p>5 Mr. Moffett, ought to view these as separate, the</p> <p>6 one you have already made a decision on and that's</p> <p>7 on appeal to the circuit court. This is a separate</p> <p>8 act by the zoning administrator. It's a separate</p> <p>9 appeal. And I would -- I would suggest that you</p> <p>10 rule on it as it's in front of you.</p> <p>11 It is true and correct that the Court has</p> <p>12 not made any decision in the other matter. There</p> <p>13 have been several hearings, but we're awaiting a</p> <p>14 final decision from Judge Sheridan.</p> <p>15 EDWARD MOFFETT: Great. Thank you.</p> <p>16 What the Court there did find is that the</p> <p>17 appellants here have standing under the law?</p> <p>18 MR. LAWRENCE: There's -- there's two</p> <p>19 concepts of standing that were raised in the prior</p> <p>20 hearing. One of them, I agree entirely, is not at</p> <p>21 issue here because, in the prior hearing, you heard</p> <p>22 testimony from the folks regarding their proximity</p>	<p style="text-align: right;">Page 18</p> <p>1 and tomorrow the Court could come back and say we</p> <p>2 were right or wrong on the other hearing and both of</p> <p>3 those can exist in the same world.</p> <p>4 So I think we're finally getting to the</p> <p>5 point that was raised last spring: Let's get to the</p> <p>6 issue in the matter. We have a ruling, and I don't</p> <p>7 know how we don't rule without a stay.</p> <p>8 EDWARD MOFFETT: Totally agree.</p> <p>9 GORHAM CLARK: Okay. All right. Any other</p> <p>10 questions with regard to staff here in the room?</p> <p>11 (No response.)</p> <p>12 GORHAM CLARK: Mr. Gray, do you have any</p> <p>13 questions for staff?</p> <p>14 ROBERT KELLY GRAY: I do. And this goes to</p> <p>15 the county attorney.</p> <p>16 We appear to be isolating our ruling this</p> <p>17 evening on a single application for a single home.</p> <p>18 The neighbors in the area point to the procurement</p> <p>19 of the potential for one or two other homes that</p> <p>20 will be similarly utilized and whose boundaries are</p> <p>21 continuous to the one under consideration tonight.</p> <p>22 My question to you is: When does this</p>
<p style="text-align: right;">Page 17</p> <p>1 to the property where Newport wants to establish</p> <p>2 this facility. And that's -- that's the concept of</p> <p>3 standing that's discussed by the supreme court of</p> <p>4 the Friends of the Rappahannock case, which is, you</p> <p>5 know, are they close enough to be affected. So</p> <p>6 that's --</p> <p>7 EDWARD MOFFETT: That certainly applies</p> <p>8 here.</p> <p>9 MR. LAWRENCE: I don't think the County has</p> <p>10 even raised that as an issue here because of prior</p> <p>11 information.</p> <p>12 EDWARD MOFFETT: All right. Thank you.</p> <p>13 I just wanted to make sure we're not going</p> <p>14 to have a question of standing again.</p> <p>15 GORHAM CLARK: No. I think quite the</p> <p>16 opposite, in fact. Part of the arguments I recall</p> <p>17 from the previous hearing was, if we ruled the way</p> <p>18 we would, there wouldn't be this hearing, and I</p> <p>19 think the fact that we're here demonstrates that</p> <p>20 that is clearly not true.</p> <p>21 I think it's an entirely separate question.</p> <p>22 I think we could rule one way or the other tonight,</p>	<p style="text-align: right;">Page 19</p> <p>1 permit application for a single group home merge</p> <p>2 into a conglomerate discussion when the other two</p> <p>3 homes are taken into account?</p> <p>4 MR. GREEN: Mr. Gray, we're dealing with --</p> <p>5 and there's not a conglomerate nature with respect</p> <p>6 to this permit. So as the board -- this particular</p> <p>7 permit has been appealed to this property.</p> <p>8 Now, whether or not the owners of the other</p> <p>9 associated homes decide to seek a similar zoning</p> <p>10 permit to operate a group home, that is a distinct</p> <p>11 and separate determination which could be appealed.</p> <p>12 And that's what's being appealed here tonight is a</p> <p>13 specific permit with respect to a specific piece of</p> <p>14 property.</p> <p>15 GORHAM CLARK: That's because those would</p> <p>16 be permits for uses on parcels that are separate</p> <p>17 than these? Every one requires its own zoning</p> <p>18 permit, and in this situation, if it were a group</p> <p>19 home, it would have to meet the requirements for the</p> <p>20 zoning district.</p> <p>21 MR. GREEN: Correct.</p> <p>22 GORHAM CLARK: Each one on their own merit?</p>

<p style="text-align: right;">Page 20</p> <p>1 MR. GREEN: That's correct.</p> <p>2 GORHAM CLARK: You can't go on along to a</p> <p>3 previous group, other than to suggest, You passed it</p> <p>4 once -- you approved it once, you should approve it</p> <p>5 this time? There is nothing per se that applies --</p> <p>6 no rights pass to any other parcel out of this use</p> <p>7 analysis on this application?</p> <p>8 MR. GREEN: If that's the question, yes.</p> <p>9 GORHAM CLARK: Okay.</p> <p>10 MR. GREEN: Each determination is a</p> <p>11 separate decision with a separate operative set of</p> <p>12 facts. Although they may be related to one another,</p> <p>13 that's what we're here to ask. That's what is being</p> <p>14 appealed tonight and the decision is whether it was</p> <p>15 issued in error or not so, yes.</p> <p>16 GORHAM CLARK: Any follow-ups, Mr. Gray?</p> <p>17 ROBERT KELLY GRAY: No.</p> <p>18 I mean, essentially, the thing that</p> <p>19 concerns me is that we rule on the application, the</p> <p>20 appeal before us, and then, subsequently -- and</p> <p>21 Newport has already declared, as I understand it,</p> <p>22 the intent to procure two additional properties that</p>	<p style="text-align: right;">Page 22</p> <p>1 MR. HAMPSHIRE: Thank you, sir.</p> <p>2 Gifford Hampshire for the applicants -- the</p> <p>3 appellants here.</p> <p>4 I need to clarify the previous</p> <p>5 conversation: We were before you last spring on a</p> <p>6 zoning determination, and this board ruled that it</p> <p>7 did not -- that that matter was not ripe because it</p> <p>8 was not accompanied by a zoning permit. We took</p> <p>9 issue with that, and that's one of the issues that's</p> <p>10 on appeal right now. However, that zoning</p> <p>11 determination, which is part of our appeal and is</p> <p>12 part of the record in this case, involves not just</p> <p>13 one property, but three properties.</p> <p>14 And if you look at the zoning permit that</p> <p>15 is before you tonight, you will see on the second</p> <p>16 page, on A-1219, related applications that include</p> <p>17 the zoning determination that was before you last</p> <p>18 spring and also the appeal from that here to this --</p> <p>19 to this body. So the zoning determination involving</p> <p>20 three properties that were intended to be used</p> <p>21 together, as described by the applicant -- by the</p> <p>22 landowner, is very much before you, and that zoning</p>
<p style="text-align: right;">Page 21</p> <p>1 are immediately adjacent to the property under</p> <p>2 consideration; and if I heard you correctly, we have</p> <p>3 no ability to take that into consideration tonight;</p> <p>4 and only and if Newport procures those properties,</p> <p>5 the adjacent homeowners can come back and argue a</p> <p>6 conglomeration type of appeal.</p> <p>7 Is that what I'm hearing from you?</p> <p>8 MR. GREEN: I mean, do you -- part of it,</p> <p>9 to be fair, we're talking what and if they -- the</p> <p>10 adjacent owners Newport does own the adjacent</p> <p>11 properties do with them is in the future. Right</p> <p>12 now, we're dealing with a discreet set of facts with</p> <p>13 a discreet permit.</p> <p>14 If, in the future, other permits are issued</p> <p>15 which sought to be challenged under certain</p> <p>16 theories, then that would be addressed then, but</p> <p>17 that's what is under consideration tonight.</p> <p>18 ROBERT KELLY GRAY: Okay. Thank you.</p> <p>19 GORHAM CLARK: Any other questions?</p> <p>20 (No response).</p> <p>21 GORHAM CLARK: All right, then. Let's move</p> <p>22 on to the appellant, Mr. Hampshire.</p>	<p style="text-align: right;">Page 23</p> <p>1 determination is a basis upon which this zoning</p> <p>2 permit has been issued.</p> <p>3 If you look at this zoning permit, you will</p> <p>4 not see any determination in it. You will just see</p> <p>5 a bunch of language about the code sections, and you</p> <p>6 will see it signed by the zoning administrator, but</p> <p>7 it's dependant upon the validity of the use on the</p> <p>8 property, as well as the use of the other two</p> <p>9 properties to which it is assembled on the zoning</p> <p>10 determination.</p> <p>11 And that is precisely why we are appealing</p> <p>12 on the same basis, the very same basis that was</p> <p>13 before you last April that you did not decide, and</p> <p>14 you did not decide it because there was not a zoning</p> <p>15 permit. Now there's a zoning permit. But the issue</p> <p>16 is: Is that zoning determination correct? It's the</p> <p>17 same issue that was before you last spring. It's</p> <p>18 the same issue that's before the circuit court, and</p> <p>19 it's before you now.</p> <p>20 And, with respect to that, the issue there</p> <p>21 is the same issue -- the issue tonight is the same</p> <p>22 issue as before: Does 15.2-2291 compel a commercial</p>

<p style="text-align: right;">Page 24</p> <p>1 use in an AR-1 zone when the zoning administrator 2 herself has decided that it's a congregate housing 3 facility not allowed in the AR-1 zone? 4 The basic argument of the zoning 5 administrator and Newport is: Because of 2291, it's 6 allowed, whereas it wouldn't be otherwise. 7 Now, if you look at this attorney general 8 opinion that I've handed up -- I think you should 9 have it in hard copy. I asked that it be handed 10 up -- Newport and the County cite that attorney 11 general opinion. But that attorney general opinion 12 states that it is clearly the policy of the 13 Commonwealth, as expressed in Virginia Fair Housing 14 Law, to provide fair housing throughout the 15 Commonwealth to all citizens, regardless of 16 handicap, and to that end prohibit discriminatory 17 practices with respect to what? With respect to 18 residential housing. 19 The issue in that -- in the legislation 20 that was discussed in that opinion was not 21 commercial versus noncommercial. It was whether a 22 residential facility could be operated -- had to be</p>	<p style="text-align: right;">Page 26</p> <p>1 against in what? Residential housing. The only 2 thing that 2291 does is to prevent discrimination in 3 residential housing. It does not sanction and there 4 is no language in the statute that says that it 5 sanctions commercial uses in the AR-1, quite to the 6 contrary. As the attorney general has said, it is 7 about prohibiting discrimination in residential 8 housing. 9 The last sentence in 2291 is instructive. 10 What it says there is that a residential facility is 11 defined as any group home or other residential 12 facility. And if you look in the record in this 13 case, if you look at a A-292, you will see a letter 14 from Jae Benz, who is the director of licensing in 15 the department of behavioral health, who says, Keep 16 in mind, it is important to clarify that the 17 department has no control over local zoning 18 ordinances, zoning permits issued by local 19 governments. 20 So the County and Newport are just wrong in 21 suggesting that anything in the legislative history 22 or the attorney general or the statute itself</p>
<p style="text-align: right;">Page 25</p> <p>1 operated for profit or not for profit. That relates 2 to the tax status of the entity operating the 3 residential facility. It has absolutely nothing to 4 do with what is going on on the property. And the 5 attorney general here emphasizes that this is all 6 about discriminating -- excuse me -- prohibiting 7 discrimination in residential housing. It has 8 nothing to do and no sanction for commercial use. 9 So it's not a question of an exception for 10 a commercial uses. It's what does 2291 mean? What 11 is the limitation? And the condition -- and what 12 the board needs to focus on is operative language of 13 that statute which says that no conditions more 14 restrictive than those imposed on residences 15 occupied by persons related by blood, marriage, or 16 adoption shall be imposed on that facility. And so 17 that is what's intended. 18 And the brief of the amicus curiae, which 19 is found at Appendix 988, recited the recommendation 20 of the language from the joint subcommittee that 21 specifically addressed the problem that was forced 22 on group homes where they were being discriminated</p>	<p style="text-align: right;">Page 27</p> <p>1 somehow allows commercial uses in the AR-1 zone. It 2 does not. Quite to the contrary: It's for 3 residential housing. 4 And so what we have to do, then, is to look 5 at what is going on here, because what is going on 6 here, as proposed by Newport, is a commercial -- and 7 is found by the zoning administrator herself in the 8 zoning administration, which, again, relates to all 9 three properties -- and you're going to get another 10 zoning permit based on that zoning determination -- 11 is proposing commercial treatment activities. The 12 zoning administrator herself found it to be 13 congregate housing facilities. 14 So with respect to consistent practice, 15 that was mentioned. That case -- that is controlled 16 by St. Luke's Episcopal Church, and says that a 17 consistent administrative practice by an official 18 charged with interpreting the ordinance is entitled 19 to great weight. If you look at the examples that 20 are set forth on pages 1245 through 1252 in the 21 materials, you will see they have nothing to do with 22 commercial treatment uses.</p>

<p style="text-align: right;">Page 28</p> <p>1 So there's nothing that had to do with -- 2 for example, on the Beach Road case, housing for 3 retired veterans that provided meals and 4 supervised -- and nurse aides were there to 5 supervise, so it had nothing to do with commercial 6 housing. 7 The other basis is the addiction to a 8 controlled substance. The County misstates our 9 argument. Our argument is not with respect to 10 treatment or detoxification services. It's based on 11 the clear language of the statute that says that 12 addicts cannot be allowed on the property. 13 And, in that regard, it's important to note 14 the language of the statute that says that 15 disability shall not include current illegal use or 16 addiction to controlled substances. 17 Mr. Clark, you and I had in colloquy last 18 time about whether that is trumped by the fact that 19 they may also be mentally ill. But if you look at 20 this language, mental disability shall not include 21 addiction to controlled substances. So it can't be 22 any part of the diagnosis.</p>	<p style="text-align: right;">Page 30</p> <p>1 with one property or are we dealing with three 2 properties? Again, the zoning determination upon 3 which this zoning permit is based, based upon the 4 law of this body saying it wasn't ripe until there 5 was a zoning permit, relates to three properties 6 that are proposed to be used together, and they -- 7 Newport itself describes the use on those 8 properties. 9 And we submit, for the reasons I have 10 stated, that the congregate housing use of even one 11 of these properties, as found by the zoning 12 administrator herself, is not allowed in the AR-1 13 zone; and, for the reasons I stated, 2291 does not 14 make it allowed in the AR-1 zone because it deals 15 with residential uses. 16 But what you're going to hear tonight from 17 my clients is the -- basically pointing out the 18 evidence in the record and basically what they have 19 seen in the community of the plans of Newport to 20 assemble these properties and use them as one campus 21 together. And what you have to be -- what you 22 should take note of is the definition of "use" in</p>
<p style="text-align: right;">Page 29</p> <p>1 And there is uncontradicted evidence in 2 this case that 6 percent of the residents across the 3 nation have a primary diagnosis of mental illness 4 and 20 percent have a secondary -- excuse me -- 6 5 percent of the primary diagnosis of addiction, 6 substance abuse, and 20 percent have a secondary 7 diagnosis. That, in and of itself, is enough to 8 disqualify. 9 With respect to "reside," there is a split 10 of authority across the country; however, the rule 11 in this state appears to be out of Fairfax from 12 1997. I submit to you that Judge Bugg in Fairfax 13 simply got it wrong in reading that case. That case 14 is still within the appeal period. 15 What he failed to recognize in that case is 16 that Judge Bach, 20-some years ago, said that it has 17 to be a case where the residents have no other home 18 to return to, are there indefinitely, and they look 19 to it to be their home. 20 Finally, I want to make the Board of Zoning 21 Appeals aware -- and this goes back to the question 22 at the beginning with respect to: Are we dealing</p>	<p style="text-align: right;">Page 31</p> <p>1 the zoning ordinance which relates to how properties 2 are intended to be used -- utilized, and Newport is 3 clearly intending to utilize these properties 4 together in a campus, to the detriment of my clients 5 and their quality of life in an AR-1 low-density 6 residential zone. 7 And I ask you to listen carefully to their 8 testimony because they have invested their life 9 savings in their homes. They have relied upon the 10 AR-1 district, and their concerns should be heeded. 11 Thank you very much. 12 GORHAM CLARK: Perfect timing, 13 Mr. Hampshire. Did you practice that? 14 You slid in to home base right as the ball 15 is coming into the catcher. 16 MR. HAMPSHIRE: Right. And I should say: 17 I'm here to answer any questions. 18 GORHAM CLARK: Okay. Thank you. 19 Are there any questions for Mr. Hampshire? 20 EDWARD MOFFETT: Mr. Chairman, I do, of 21 course. 22 GORHAM CLARK: Okay.</p>

<p style="text-align: right;">Page 32</p> <p>1 EDWARD MOFFETT: Quite honestly, in putting 2 my cards on the table, the argument that you make 3 that is most appealing to me is "reside." 4 And I read that Fairfax County case. As I 5 remember it, those were kind of -- not homeless kids 6 but disturbed kids who really had nowhere else to 7 turn. 8 MR. HAMPSHIRE: Right. 9 EDWARD MOFFETT: And, as I understand it 10 here, people are going to be in and out of this 11 facility, and that, to me, just being right up 12 front, is not residing in the same way that I 13 thought in the -- I'm not going to deal with the 14 commercial thing because, to me, that's kind of a 15 stretch. But I really am concerned about "reside." 16 Because the statute talks about reside and 17 residential facility, and I just personally -- first 18 of all, did I characterize that Fairfax County case 19 correctly? 20 What the judge there pretty much said is 21 that these poor children, they really have nowhere 22 else to go at this point in time --</p>	<p style="text-align: right;">Page 34</p> <p>1 And the evidence in this case and in the 2 record with respect to Sylvia Woodard Lambert, I 3 think her name is, in the record -- and this was a 4 paper that was admitted in the last hearing -- is 5 that the very purpose of this facility is to locate 6 it near the homes, real homes, of the people who are 7 going to be using it. So they -- and as much -- and 8 she states much to do about integrating the entire 9 family into the treatment and integrating the 10 residents back into their own home at the end of 45 11 or 90 days. 12 So the point -- it's a matter of intent. 13 When these young women come to this home, they have 14 no intention of treating it as their home. They're 15 coming there to be treated, and they know they're 16 going back to their real home. In fact, that's the 17 whole reason for siting this facility near their 18 homes. So it's not a residential situation. 19 EDWARD MOFFETT: Thank you. 20 GORHAM CLARK: Questions to the right? 21 BRIAN WALKER: No, sir. 22 IBRAHIM MOIZ: No.</p>
<p style="text-align: right;">Page 33</p> <p>1 MR. HAMPSHIRE: That's right. 2 EDWARD MOFFETT: -- on the residents issue; 3 is that correct? 4 MR. HAMPSHIRE: That's correct. And I'll 5 cite for the record: It's page A-28 of the record. 6 It's page -- well, it's -- I'll find the page 7 numbers, but it's on A-28. 8 And what the Court says there, While the 9 children's stay at Kaleidoscope is not permanent, it 10 is not a transient visit. Despite the fact that the 11 children live at Kaleidoscope for no more than two 12 months during this period of stay, they are 13 residents, similar to the homeless individuals in 14 Woods -- which is Woods versus Foster, which was an 15 Illinois case that the Court relied upon. The 16 Kaleidoscope children have nowhere else to return to 17 and no other home. Therefore, consistent with the 18 legislative history and the mandate of the statutes 19 for this Court is to define the term "reside" in 20 this case. It does not require permanency. You 21 don't have to be there forever. But when you are 22 there, you need to regard the facility as your home.</p>	<p style="text-align: right;">Page 35</p> <p>1 GORHAM CLARK: Mr. Gray, any questions for 2 Mr. Hampshire? 3 ROBERT KELLY GRAY: No. I think he 4 summarized it very well. 5 Thank you. 6 GORHAM CLARK: All right. I have three, 7 Mr. Hampshire. 8 MR. HAMPSHIRE: Yes, sir. 9 GORHAM CLARK: In your materials and in 10 your argument today, again, you use the word 11 "compel" to say that the County's interpretation 12 compels commercial in AR-1. 13 And I'm -- I want to make sure I 14 understand: I don't think you mean compels that 15 every instance must be commercial. I think what you 16 mean to say is that clearly -- their interpretation 17 clearly permits commercial. It doesn't compel it. 18 MR. HAMPSHIRE: That's right. What I mean 19 be that, Mr. Clark, is that -- 20 GORHAM CLARK: It compels them to allow it. 21 MR. HAMPSHIRE: Right. We have an odd 22 situation here which is, by the way, the reverse of</p>

<p style="text-align: right;">Page 36</p> <p>1 the Fairfax situation. The Fairfax Zoning 2 Administrator in the Judge Bugg case decided that 3 the use was residential, and Judge Bugg made a big 4 deal out of the fact that, in his opinion -- we 5 disagreed with it -- but in his opinion, the basis 6 of that determination was based on the language of 7 the zoning ordinance, and, therefore, he wasn't 8 going to disturb that.</p> <p>9 In this case we have the exact mirror 10 image: We have a zoning administrator who has 11 decided the use is not allowed by a zoning 12 ordinance, because it's a congregate housing 13 facility, but goes further to say --</p> <p>14 GORHAM CLARK: That's Fairfax. 15 MR. HAMPSHIRE: No. In this case, the 16 Loudoun County Zoning Administrator has decided, in 17 the zoning determination I referred to, that the use 18 is a congregate housing facility that is not allowed 19 in the AR-1 zone, semicolon, however, comma -- 20 GORHAM CLARK: Oh, got it. 21 MR. HAMPSHIRE: -- she says, Because, 22 however, is it is under 2291, it must be allowed</p>	<p style="text-align: right;">Page 38</p> <p>1 intention to stay? 2 MR. HAMPSHIRE: I don't think I -- well, 3 the law that I'm aware of is what I mentioned, the 4 Kaleidoscope case from 1997 and, more recently, the 5 Judge Bugg case, which we think misinterpreted the 6 earlier case. 7 But with respect to the Judge Bach case 8 from 1997, as I just read, it's not a requirement 9 that there be an indefinite intention or, to say it 10 another way, an intention to stay in the property 11 indefinitely. But one has to have the intention 12 when one goes on to the property to treat it as 13 their home. And if you're going into a property 14 with the idea that right from the outset -- the 15 minute you walk through that door, right from the 16 outset, you're anticipating of going home at the end 17 of treatment, 45 to 90 days, you don't have that 18 intent. And it's demonstrable you don't have that 19 intent because the whole purpose is not to come to 20 live, it's to come to get treatment for a limited 21 period of time. 22 GORHAM CLARK: All right. That's helpful.</p>
<p style="text-align: right;">Page 37</p> <p>1 because it meets the definition of family. 2 By "compel" what I mean is it compels a 3 different result than if you just read the zoning 4 ordinance, and, hence, what both the County and 5 Newport are really saying is: It doesn't matter 6 what we're doing on the property. It doesn't matter 7 that we're conducting commercial uses. Because of 8 2291, you are compelled to allow it in contradiction 9 to the zoning ordinance, the zoning ordinance 10 definition of congregate housing facility. And we 11 say there is nothing in 2291 that compels that 12 result. 13 GORHAM CLARK: Thank you. That's great. I 14 do think I do understand that. 15 All right. So the next question is -- and 16 I'm not asking you to give me free legal advice, 17 but I'm a practicing lawyer and I have a question 18 revolving around the question of residency. 19 Are you aware of any law that stands for -- 20 in Virginia that stands for the proposition that 21 it's anything other than an indefinite intention to 22 stay? I'm going to dwell here with an indefinite</p>	<p style="text-align: right;">Page 39</p> <p>1 I think I understand that argument. 2 All right. And where I think you finally 3 got me is this question of residence, which we're 4 talking about the AR-1 district, a residential 5 district, where you have to have a dwelling where 6 the dwelling has to meet the requirements for 7 family, one of which shoehorned into this is "see 8 any group identified under 15.2-2291," because 9 lawyers can make the day seem the night by defining 10 anything as anything they wish, right? 11 And the -- coming down to, essentially, the 12 exception to the rule of traditional families in 13 residential settings, as described by (A) and (B), 14 we've got this special rule for residential 15 facilities with no more than eight people with 16 mental illness, intellectual disability, or 17 developmental disabilities, but the general assembly 18 specifically tells us that mental illness and 19 developmental disability -- it doesn't include 20 intellectual disability, but I don't see a 21 connection there -- does not include illegal use or 22 addiction to a controlled substance.</p>

<p style="text-align: right;">Page 40</p> <p>1 So if it's a residential use for people 2 with addiction, I think it takes them out of that 3 definition; therefore, they're not in the shoehorn; 4 therefore, they're not in the definition of the AR-1 5 district; therefore, that's not a single-family 6 dwelling use under AR-1. 7 Did I state it fairly? 8 MR. HAMPSHIRE: Correct. If they are -- if 9 part of their diagnosis includes addiction to a 10 controlled substance, irrespective of what kind of 11 treatment they might get on the property, if they 12 are addicted when they walk through that door and 13 they haven't complied with the requirements of the 14 Southern Management Corporation case, which is at 15 A-359 of the materials, which requires a period of 16 treatment, rehabilitation, and a period of 17 abstinence prior to being admitted, then they are 18 addicts, and then they shouldn't be on the property. 19 Because what the general assembly is 20 saying, I would submit, is you don't let somebody on 21 the property who's got a substance abuse problem and 22 then deal with it later. You make sure they're not</p>	<p style="text-align: right;">Page 42</p> <p>1 whether there is a specific prohibition in our 2 zoning permit that was issued. 3 But, again, I think, from a County 4 perspective, before we would issue a permit, because 5 of the reference to the Code of Virginia for the 6 group home, or that definition, we rely upon the 7 licensing agency to kind of make the determination: 8 Do they meet that criteria? 9 GORHAM CLARK: I see. 10 MR. STULTZ: If they meet the criteria, 11 they get a license. If they get a license, we refer 12 to them as meeting that section, and therefore, we 13 can issue the permit. 14 GORHAM CLARK: So you sort of say this last 15 sentence in the same paragraph we've been talking 16 about is really important: For purposes of this 17 subsection, "residential facility" is one that's 18 determined by the state agency. Sort of, it's not 19 your job, not your pay grade. It's somebody else's? 20 MR. STULTZ: Right. 21 GORHAM CLARK: All right. Mr. Hampshire, 22 can you address that?</p>
<p style="text-align: right;">Page 41</p> <p>1 addicted in the first place before they go on the 2 property, because bad things are going to happen, 3 even if they're otherwise mentally ill. 4 GORHAM CLARK: Or could. 5 MR. HAMPSHIRE: Could happen, in their 6 judgment. 7 GORHAM CLARK: Right. Okay. 8 MR. HAMPSHIRE: So that is what that is 9 intended to do. 10 GORHAM CLARK: I find that compelling. 11 So this is really back to the County: 12 There's been something talked about if someone is 13 caught using, you know, they're out. 14 Is there something in the permit, either 15 the state permit or your permit, that disallows 16 use -- or residency or occupation by anyone who has 17 an addiction to a controlled substance? 18 I know they clearly address the active use, 19 so I'm not asking about that. 20 MR. STULTZ: It is my understanding -- and 21 I don't know -- I'd have to go back and look at the 22 permit. I don't know whether Michelle can answer</p>	<p style="text-align: right;">Page 43</p> <p>1 Is there any limitation in the Department 2 of Behavioral Health and Developmental Services of 3 licensing action on which the County's relying that 4 specifically prohibits not only current illegal drug 5 use on the property but the presence of people who 6 are not yet post addiction -- post treatment? 7 MR. HAMPSHIRE: Well, I'm going to answer 8 your question, Mr. Clark, but part of it really 9 relates to the zoning permit, and I would like to 10 point out: The zoning permit is A-1218 of the 11 materials, and I'd just like to make the point there 12 is nothing whatsoever in that permit about anything 13 having to do, other than a recitation of the code 14 section at issue to 2291, and a requirement that 15 state licensure be maintained. So there is nothing 16 there. 17 With respect to the state agency 18 responsible for licensing, I think the point I would 19 like to make in response to your question is that 20 that is a fundamentally different issue than what 21 we're -- than what the BZA has jurisdiction over and 22 what the zoning administrator has jurisdiction over.</p>

BZA hearing

<p style="text-align: right;">Page 44</p> <p>1 The zoning administrator is required to 2 interpret the zoning ordinance as limited by 3 15.2-2291. And so irrespective of what the state 4 agency might be doing, when the zoning administrator 5 is reviewing an application for a zoning permit, one 6 of the things as required of the zoning 7 administrator is to determine that the use is legal, 8 and in this case that was done through the zoning 9 determination that was before us last April. 10 But, as part of that determination, there 11 should have been a determination in this case as to 12 whether or not Newport intends to admit people who 13 are addicted to controlled substances. And in this 14 case there was evidence, through the request for the 15 zoning determination itself, that Newport proposed 16 to admit such people by the omission in that request 17 of any mention of the fact that people would be 18 screened for rehabilitation and a period of 19 abstinence before they're even on the property. 20 So we think that the zoning determination 21 that was before you last spring, upon which this 22 zoning permit is based and other zoning permits will</p>	<p style="text-align: right;">Page 46</p> <p>1 state, it would meet our definition of family and 2 then, therefore, would be permitted as a 3 single-family dwelling. 4 So that's the actual determination. 5 MR. HAMPSHIRE: And I believe I said that. 6 I believe that that's our whole point is that 7 there's nothing -- our whole point and our whole 8 argument really is: There is nothing in 15.2-2291 9 that provides that this type of use, which is 10 admittedly a commercial housing facility, should be 11 allowed by virtue of 2291, for the reasons I've 12 stated, because it's not a residential housing use. 13 MR. STULTZ: And just for clarification, 14 Chair, the reference to determination should have 15 correctly been advisory opinion. 16 MR. HAMPSHIRE: Well, we disagree with 17 that, too. 18 MR. STULTZ: We understand. 19 MR. HAMPSHIRE: That's one of the issues in 20 circuit court. 21 And if I may just clarify the record for 22 what's before the circuit court right now?</p>
<p style="text-align: right;">Page 45</p> <p>1 be based in the future, should have determined that 2 the use was not allowed based on the request because 3 there was no screening of people to make sure they 4 weren't addicts before they came on the property in 5 the first place. 6 But it's a fundamentally different issue 7 from whatever the state agency is doing as far as 8 keeping that license in place. All the zoning 9 ordinance says is, is you've got to have a license 10 in place. 11 GORHAM CLARK: So -- yeah, Mr. Stultz? 12 MR. STULTZ: Just to clarify: I know that 13 a couple times the statement's been made that the 14 zoning determination determined that this use is a 15 congregate housing facility not permitted. That was 16 a part of the determination. But a key part of the 17 determination was also, however, if it is found to 18 be a group home licensed by the state, then it would 19 be permitted under that state code provision and the 20 definition of family in the ordinance. 21 So the determination, in the end, found 22 that as long as it's a licensed facility by the</p>	<p style="text-align: right;">Page 47</p> <p>1 Number one, the circuit court did find that 2 we have standing, in part because the Anders Larsen 3 case came out of the Virginia Supreme Court that 4 held that people, just like these folks in Loudoun 5 and Fairfax, had standing, because that was 6 contested. But the circuit court has not ruled on 7 either whether this body was correct in ruling that 8 the opinion was advisory, or not ripe, if you will, 9 or the substance of the matter that this body did 10 not rule on. 11 We've -- and we asked -- and Mr. Wilburn 12 will confirm this -- we asked the circuit court to 13 rule on both issues, and we said that just because 14 the BZA didn't rule on the substantive issue, you 15 are not prohibited from doing so, because of the 16 statute under 15.2-2314, you have jurisdiction to 17 reverse/modify the BZA opinion. 18 So the Court has declined to do any of 19 that. The only decision the Court has made is we do 20 have standing. Standing -- I will take issue with 21 Mr. Lawrence -- standing is different from ripeness. 22 Standing relates to legal interest in the</p>

<p>1 proceedings. Ripeness is what you-all ruled. You 2 said that -- and we disagree with it, 3 respectfully -- you said that the zoning 4 determination was not ripe because it wasn't 5 accompanied by a zoning permit. And so that's a 6 ripeness issue, not a standing issue. 7 GORHAM CLARK: I think I'd agree with that. 8 All right. So one last question, and then 9 I'll let us drag on: Would it be your view -- I 10 have the permit here in front of me which 11 includes -- as you say, it sets out the Virginia 12 Code section that defines the group homes, and then 13 it says that the residential -- for purposes of this 14 subsection, mental illness and developmental 15 disability shall not include, all the way down to 16 controlled -- I'm sorry -- addiction to controlled 17 substances. 18 So the -- if we dispose of all other issues 19 and we get down to this question about the fear that 20 there's a -- well, I'll even say a great 21 probability, not just a possibility, that people in 22 this congregate setting, in this -- will relapse or</p>	<p>Page 48</p>	<p>1 relapse, according to the federal circuit -- to the 2 federal court out of the Fourth Circuit in the 3 Southern Management case is rehabilitation before 4 you enter the property and a period of abstinence of 5 some amount. 6 The record shows, both through the request 7 for the determination and the issuance of the 8 determination, that neither one of those things was 9 a prerequisite to admission in this facility. 10 So that in and of itself, to answer your 11 question, is enough to kick this facility out of the 12 protection of 2291. 13 GORHAM CLARK: In the statement "permit 14 comment," I think you would say means, pretty 15 clearly, that's not the -- that's maybe the permit 16 equivalent of dicta. It's not the permit. The 17 permit is URAR-1 and, by the way, here's some 18 thoughts, here's some comments? 19 MR. HAMPSHIRE: Let's see. Where -- well, 20 Mr. Clark, what are you referring to? I've got the 21 permit in front of me. 22 GORHAM CLARK: So on A-2 in my binder</p>	<p>Page 50</p>
<p>1 at least be severely agitated as they're trying to 2 relapse, right, that because the permit excludes 3 that, would your clients be able to come back when 4 they found someone who was -- I don't know -- 5 demonstrably addicted to controlled substances? 6 MR. HAMPSHIRE: Well, number one, the 7 permit doesn't exclude that. That's our point is 8 the permit in no way, because it's based on the 9 request for the zoning determination, and the zoning 10 determination only states that the applicant will 11 not be engaging in detoxification services or drug 12 treatment on-site. That is a different question -- 13 and that's why the disjunctive is used in the 14 statute. That is a different question than whether 15 or not people, even if they're not using, even if 16 they're not being treated, are addicted. 17 And addiction has been defined by the 18 Southern Management case I mentioned with the record 19 number a second ago as being dependant upon a 20 substance, with the possibility that you might 21 relapse at any time. And the only way to make sure 22 that you're not -- and that you're less likely to</p>	<p>Page 49</p>	<p>1 right -- I think it's the attachment to your 2 appeal -- 3 MR. HAMPSHIRE: Okay. 4 GORHAM CLARK: -- is the Zoning Permit 5 Z20643250001. 6 MR. HAMPSHIRE: Okay. Yes, sir. Right. 7 GORHAM CLARK: And there's the permit and 8 then there's, you know, zoning group home. It's a 9 zoning permit only, so on. And then there's "permit 10 comments." 11 And your position is, I think -- I'm taking 12 your position is that the inclusion of the statutory 13 provision under, Zoning permit is approved with a 14 condition that the use maintain licensure by the 15 Virginia Department of Behavioral Health and 16 Developmental Services pursuant to the revised 1993 17 Zoning Ordinance, and then there's just things 18 listed. 19 MR. HAMPSHIRE: Right. It's just stuff. 20 You know, there's no analysis. There's no sort of, 21 Therefore, we find that, or anything like it. It's 22 just --</p>	<p>Page 51</p>

<p style="text-align: right;">Page 52</p> <p>1 GORHAM CLARK: And that's at least thin 2 gruel for your people to come back and say, I found 3 an admitted addict standing in the front asking for 4 needles to feed his habit. That's going to be a 5 difficult appeal for that person because we've got 6 to relitigate all of this stuff again because it 7 just simply says it's a group home under AR-1 and 8 permitted.</p> <p>9 MR. HAMPSHIRE: Right. And if you look at 10 the -- and this was our point in the last appeal is 11 that if you look at the last page under Zoning 12 District Number 1, it says, Zoning acreage, zoning 13 purpose, and then it says NVR related applications. 14 And Related Application Number 1 is the zoning 15 determination upon which this permit is based, what 16 was before you last spring; and Number 2 is the last 17 BZA appeal, the hearing in April.</p> <p>18 And so that's why point is that this piece 19 of paper is an administratively issued document by 20 the department of building and code development. 21 The zoning administrator has signed off on it. But 22 one of the things -- in order to issue a zoning</p>	<p style="text-align: right;">Page 54</p> <p>1 come in. And the general assembly in 15.2-2291 has 2 prohibited that, and therefore, this facility, until 3 they include screening as part of their program is 4 not allowed.</p> <p>5 GORHAM CLARK: All right. And I supposed 6 it's arguable that --</p> <p>7 ROBERT KELLY GRAY: Roy.</p> <p>8 GORHAM CLARK: Yes, Mr. Gray?</p> <p>9 ROBERT KELLY GRAY: Yep. May I ask one 10 follow-on question, please?</p> <p>11 GORHAM CLARK: Please.</p> <p>12 ROBERT KELLY GRAY: I'm going back to the 13 November 29th, 2021, deputy zoning administrator's 14 advisory opinion, and I'm quoting from the staff 15 report: She believed that the Newport Academy was 16 an operated group home in the AR-1 district if each 17 home was separately licensed as a group home by the 18 department -- the Virginia Department of Behavioral 19 Health and Developmental Services.</p> <p>20 GORHAM CLARK: Mr. Gray, you're garbled 21 again. Please be mindful of your mic. 22 And would you repeat that?</p>
<p style="text-align: right;">Page 53</p> <p>1 permit under the Loudoun County Code, it should be 2 obvious, it's kind of obvious, you've got to find 3 that the use is actually allowed. And how do you do 4 that? You either buy the property and wait and see 5 if you have a problem later, or when you apply for a 6 zoning permit -- which is not a smart thing to do -- 7 or you do what Newport did in this case, being a 8 well-advised and prudent purchaser, they asked for a 9 zoning determination way back when in November, I 10 think it was, of 2021 or 20 -- yeah, 2021, and then 11 that way, if 30 days goes by and it's not appealed, 12 you're in good shape. The problem was it was 13 appealed, and it was appealed by my clients.</p> <p>14 So what I'm trying to say is: The 15 analysis, the facts upon which this piece of paper 16 called a zoning permit is based is the zoning 17 determination, and the zoning determination did not 18 make a distinction between the treatment on-site and 19 addiction, which it should have. It should have 20 said, Newport, by its own description, is proposing 21 to admit people who are addicted to controlled 22 substance because they're not screened before they</p>	<p style="text-align: right;">Page 55</p> <p>1 ROBERT KELLY GRAY: Okay. It goes back to 2 the -- Michelle's advisory opinion of 2021, and what 3 it said in that is that Newport could operate a 4 group home in the AR-1 district if each home 5 was properly licensed as a group home by the 6 Virginia Department of Behavioral Health and 7 Developmental Services.</p> <p>8 Did -- it looks like she was anticipating 9 that these homes would be separated as opposed 10 to (inaudible), and I'd like to get the plaintiff's 11 attorney opinion on that line.</p> <p>12 MR. HAMPSHIRE: Yes, sir. Thank you for 13 the opportunity, because I ran out of time to 14 mention that in my opening -- in my remarks.</p> <p>15 What you will see and through the testimony 16 of my clients in the public hearing time -- and I 17 think Newport will admit this -- is that they have 18 not a license for each facility, that the license 19 they have procured from the Virginia Department of 20 Behavioral Health and Developmental Services is one 21 license for all facilities, so it's actually in 22 contradiction to that requirement in the zoning</p>

<p style="text-align: right;">Page 56</p> <p>1 determination and also the representation in the 2 staff report that you have before you tonight that 3 they are separately licensed or that the -- I don't 4 know if it's in the staff report, but it's certainly 5 in the zoning determination that they had to be 6 separately licensed. 7 And what that shows you is that they are 8 indeed intended to be used together, as an 9 assemblage, as a campus. So we can't pretend, 10 through some sort of fiction, that this zoning 11 permit that is before us tonight is some sort of 12 isolated case that has no relation to the other 13 properties. 14 They bought these properties together; they 15 submitted the request for zoning determination based 16 upon the use of the properties together; and the 17 zoning administrator issued her determination based 18 upon the fact they were proposed to be used 19 together. 20 Beyond that, you'll hear they are together. 21 They -- I think they share a septic field. I think 22 they share facilities. And it makes since that</p>	<p style="text-align: right;">Page 58</p> <p>1 want to put words into your mouth, but I will. 2 As I understand your primary argument, 3 primary, I'm just going to say not you're only 4 argument, is that what is being proposed here is not 5 a residential facility for purposes of 2291 because 6 (A) the commercial nature of it; and (B) because 7 there's no indefinite intent to make that the home. 8 Am I correct in that? Because I think it's 9 important. 10 I understand all these other issues, but, 11 to me, that's the key issue here: Is this going to 12 be a residential facility? Because that's what 2291 13 is modeling as the thing to be aspired to, to let 14 these people live like a single family would live in 15 a facility. 16 Do I have your argument correct? 17 MR. HAMPSHIRE: You do. You do. 18 And it relates to what you have before you 19 in that attorney general opinion and also the amicus 20 curiae brief, and that is that the whole intent 21 behind the Fair Housing Act Amendments of 1988 and 22 Virginia Code Section 15.2-2291 that is was modeled</p>
<p style="text-align: right;">Page 57</p> <p>1 Newport would want to buy property like this. 2 But this -- this presents an interesting 3 question under the statute, and that is, if you look 4 at 2219, even if you think I'm wrong about 5 everything I've just said, this statute only allows 6 eight or less folks in a residential facility. 7 What Newport is really doing is assembling 8 these properties under the same license to have at 9 least three times that many, plus all the staff, 10 plus all the workers that are going in and out. And 11 what do you think that does to the quality of life 12 in that area? What do you think that does to the 13 AR-1 zone? It fundamentally transforms it. 14 And, again, these people have invested 15 their life savings in a residential zone. 16 GORHAM CLARK: Follow-up, Mr. Gray? 17 (No response.) 18 GORHAM CLARK: Mr. Gray? 19 ROBERT KELLY GRAY: Yes. Go ahead. Go 20 ahead. 21 GORHAM CLARK: Okay. Mr. Moffett. 22 EDWARD MOFFETT: Mr. Hampshire, I don't</p>	<p style="text-align: right;">Page 59</p> <p>1 on them, Virginia's response to those acts, is to 2 prevent discrimination in what? Discrimination in 3 housing. 4 What was going on was that localities 5 like -- not like Loudoun County but other localities 6 were imposing special permit requirements on group 7 homes that they didn't impose on homes occupied by 8 people, regular families. That's the bottom line to 9 this. That's what was intended to be stopped. 10 And it's confirmed by the attorney 11 general's opinion, it's confirmed by the brief from 12 the amicus curiae, and the Fairfax case: That's the 13 evil. Loudoun County doesn't do that. Loudoun 14 County treats everybody the same, to its credit. 15 It says, in the AR-1 zone, nobody, nobody 16 can operate a congregate housing facility in the 17 AR-1, whether you are a traditional family or a 18 group home family. There are no special permit 19 requirements imposed upon group home families. 20 That's where it stops. 21 What it does not do is give a superior 22 right to group home families, big corporations who</p>

<p>1 propose to provide treatment to do things that 2 traditional families can't. Traditional families 3 cannot operate a congregate housing facility in 4 their homes. They'd have the zoning department on 5 them in a flash. So why does Newport get to do it? 6 Just because it's a big corporation? No. That's 7 not right. And there is nothing in 2291 that says 8 they get to do it.</p> <p>9 That's my argument.</p> <p>10 EDWARD MOFFETT: Okay. Thank you.</p> <p>11 GORHAM CLARK: So just one more -- I think 12 I've pieced together something that's compelling to 13 me.</p> <p>14 The County's been clear that they're 15 hanging their hat on -- I got a nod, at least, 16 Beyond our pay grade. If the state licenses it, 17 then it's, for purposes of this subsection, a group 18 home. And that same code section talks about mental 19 health, addiction for controlled substances is not 20 included.</p> <p>21 When I go back and look at -- I think all 22 roads lead back to the state license, and I think</p>	<p>Page 60</p> <p>1 permitted sometimes, and this says, Bed capacity 2 licensed: 5. Then there's a License Number 2 and 3 there's a License Number 3 including mental health 4 intensive outpatient services for children and 5 adolescents with serious mental illness. Bed 6 Capacity: Zero. License Number 2, Bed Capacity: 7 Zero.</p> <p>8 It seems to me that the only thing the 9 state has licensed that involves residential 10 capacity is the first of their three licenses: the 11 home. If you need treatment, you can't stay there, 12 or maybe you can come in and get something 13 outpatient, but you can't stay in a bed.</p> <p>14 And while I am not -- while I don't find 15 your argument about the intention to stay and all of 16 that stuff compelling, I find this interesting that 17 if you wanted to do intensive outpatient services 18 for somebody who had an addiction, the license 19 doesn't even purport to allow them to stay there 20 overnight. And if -- and I absolutely agree with 21 the judge that it's a -- you know, it's a place 22 you're going to reside or dwell. If you're not</p>
<p>Page 61</p> <p>1 this hinges on Mr. Moffett's focusing on the 2 question of the residency, because, in the end, 3 that's what we're dealing with here: It's a 4 residential, AR-1 district.</p> <p>5 And the -- so tell me if you adopt this 6 argument -- if it is your argument -- did I just 7 make it up and do you like it, or you've had this 8 all along and I've just been missing it for nine 9 months?</p> <p>10 MR. HAMPSHIRE: I'll give you credit if I 11 can.</p> <p>12 GORHAM CLARK: I don't want credit. 13 This license -- to maintain and operate, 14 see addendum for listing of licensed services, and 15 there are three. And I find it interesting -- and 16 I'd like to know what your point is, and I'll ask 17 the owners what their view is -- Number 1, mental 18 health, residential group home services.</p> <p>19 Now, I think I see through the question of 20 the congregate care and all of that stuff, but be 21 that as it may, we've got a zoning ordinance in the 22 state statute talking about group homes being</p>	<p>Page 63</p> <p>1 staying the night, you're certainly not dwelling. 2 You may be alive.</p> <p>3 Am I -- does that dog hunt?</p> <p>4 MR. HAMPSHIRE: I -- let me see if I 5 understand your question, Mr. Clark.</p> <p>6 So you're pointing to what's at A-1326 7 and 1327?</p> <p>8 GORHAM CLARK: Where I see it is in your 9 Binder 3, A-1185, Attachment 6.</p> <p>10 MR. HAMPSHIRE: Okay.</p> <p>11 GORHAM CLARK: It's a nice pretty color 12 copy of the Commonwealth of Virginia's license.</p> <p>13 MR. HAMPSHIRE: Right. Right. Okay. I've 14 got it in black and white here.</p> <p>15 GORHAM CLARK: 1186 -- -85, -86, -87, and 16 -88.</p> <p>17 MR. HAMPSHIRE: Okay. I think we're 18 looking at the same thing. It's the license, and it 19 attaches the Gleedsville Road property as one and 20 then it attaches a property in Fairfax at 8280 21 Willow Oaks? Is that what you're looking at?</p> <p>22 GORHAM CLARK: That's correct. That's</p>

<p style="text-align: right;">Page 64</p> <p>1 correct. I see.</p> <p>2 MR. HAMPSHIRE: Okay. Yeah.</p> <p>3 GORHAM CLARK: Oh, I see. So License 3, so</p> <p>4 this is your point that these are -- that this is a</p> <p>5 license for more than one facility, the other two of</p> <p>6 which don't have any residential --</p> <p>7 MR. HAMPSHIRE: Well, I mean --</p> <p>8 GORHAM CLARK: Or no bed capacity.</p> <p>9 MR. HAMPSHIRE: That's not reflected here,</p> <p>10 but you're going to hear that tonight in the</p> <p>11 testimony of my clients, that the license -- this</p> <p>12 license actually includes not only what's listed</p> <p>13 here but also the two other properties, at least</p> <p>14 according to their research.</p> <p>15 I think the way I'd like to respond,</p> <p>16 though, is going back to the language of the</p> <p>17 statute. Because what Newport and the County would</p> <p>18 like to say is -- and what they have to say in order</p> <p>19 to make their argument hang together is that somehow</p> <p>20 the Virginia Department of Behavioral Health and</p> <p>21 Developmental Services, under the last sentence of</p> <p>22 15.2-2291, determines what is a residential facility</p>	<p style="text-align: right;">Page 66</p> <p>1 Administrator.</p> <p>2 And if you are residential, then you are</p> <p>3 eligible for licensing. But the Virginia General</p> <p>4 Assembly has not abdicated local zoning control to</p> <p>5 the Virginia Department of Behavioral Health and</p> <p>6 Developmental Services to determine what is</p> <p>7 residential in the first place. That's my point.</p> <p>8 And there's nothing in the statute that</p> <p>9 indicates that.</p> <p>10 GORHAM CLARK: Would anybody else like to</p> <p>11 ask a question? I know I've asked a thousand.</p> <p>12 IBRAHIM MOIZ: You asked the last one.</p> <p>13 GORHAM CLARK: I asked enough?</p> <p>14 IBRAHIM MOIZ: No.</p> <p>15 GORHAM CLARK: All right. I don't know</p> <p>16 if -- we apparently didn't wear you out,</p> <p>17 Mr. Hampshire, but you've --</p> <p>18 MR. HAMPSHIRE: Thank you, sir.</p> <p>19 GORHAM CLARK: You did well.</p> <p>20 MR. HAMPSHIRE: Appreciate it.</p> <p>21 GORHAM CLARK: Thank you very much.</p> <p>22 All right. Do we have someone speaking for</p>
<p style="text-align: right;">Page 65</p> <p>1 for the purpose of licensing. And we see from the</p> <p>2 attorney general's opinion and we see from the</p> <p>3 statement from Jae Benz I refer to and we see from</p> <p>4 the history of the statute that that's not the case.</p> <p>5 What the sentence does not say in the</p> <p>6 last -- in the last part of it, the last part of the</p> <p>7 statute, it does not say that the department</p> <p>8 determines what is residential. It says that, For</p> <p>9 the purpose of this subsection, residential facility</p> <p>10 means any group home or other residential facility</p> <p>11 for which, for which the department is a licensing</p> <p>12 authority.</p> <p>13 So you have to be a residential facility</p> <p>14 first. And who determines what's residential and</p> <p>15 what's commercial? Not the Department of Behavioral</p> <p>16 Health and Developmental Services. We see that</p> <p>17 through the AG opinion that says it's not a local</p> <p>18 zoning ordinance, and we see that through Jae Benz's</p> <p>19 statement that this department doesn't deal with</p> <p>20 local zoning. Who determines whether it's</p> <p>21 residential in the first place is Loudoun County</p> <p>22 and, primarily, the Loudoun County Zoning</p>	<p style="text-align: right;">Page 67</p> <p>1 the owner today?</p> <p>2 MR. WILBURN: Yes.</p> <p>3 GORHAM CLARK: Would you please introduce</p> <p>4 yourself, please.</p> <p>5 MR. WILBURN: Yes, sir. Good evening. My</p> <p>6 name is John Wilburn. I'm an attorney with McGuire</p> <p>7 Woods. We represent the owner in this case.</p> <p>8 I think we had a PowerPoint prepared to</p> <p>9 show --</p> <p>10 GORHAM CLARK: Can we get our clock?</p> <p>11 MR. WILBURN: -- if we can access that as</p> <p>12 well?</p> <p>13 And you can go to Slide 8, if we can.</p> <p>14 I want to -- I'll go through the reasons</p> <p>15 why that the zoning administrator and county staff</p> <p>16 got their decision correct here.</p> <p>17 And, in fact, the decision that the zoning</p> <p>18 administrator and county staff reached is the same</p> <p>19 decision that was reached in Fairfax by a zoning</p> <p>20 administrator, a BZA, and the circuit court on</p> <p>21 appeal. All of the arguments you've heard here</p> <p>22 today were rejected by every other body that heard</p>

<p style="text-align: right;">Page 68</p> <p>1 them, but there are some -- there are some 2 statements of fact that I want to clear up that 3 Mr. Hampshire leaned into pretty heavily, and I 4 think it confuses the discussion because they're 5 just demonstrably not accurate. 6 The first is: Mr. Hampshire said that 7 there are three licenses and made much of the fact 8 that we've obtained three licenses for these 9 properties, and therefore, they should be considered 10 together. That's just not true. There is simply 11 one license that's been obtained, not three. There 12 are no licenses for these other properties. I'm not 13 even sure -- I don't think there's been an 14 application, even, for those licenses. 15 What Mr. Hampshire was citing to in the 16 exhibit, if we look closely, if we look closely, the 17 first page of the exhibit shows the license that I'm 18 referring to -- oh, I'm sorry. If you would go to 19 8. 20 So this is a blow-up of the license that 21 applies to the single property that's at issue on 22 this permit appeal. Mr. Hampshire pointed to and</p>	<p style="text-align: right;">Page 70</p> <p>1 2005 attorney general's opinion. In fact, two 2 attorneys generals have looked at this issue, and 3 both attorneys generals have opined that there is no 4 distinction between a for profit or a commercial 5 function and a nonprofit or a noncommercial 6 function. 7 And both attorneys generals' opinions -- 8 the first was an amicus brief that was actually 9 filed by the attorney general's office in the case 10 that we handled in Fairfax, the case that was 11 discussed earlier. And in that case Mr. Hampshire 12 and other counsel represented landowners who 13 advanced the identical argument that they are here, 14 and that is that the statute does not include 15 commercial activity. 16 And, there, it was such a significant issue 17 that the attorney general's office weighed in and 18 filed an amicus brief on that point and explained 19 that that is simply not what the statute says. The 20 statute refers to, in its plain language -- and if 21 we can go to Number 6, please, Slide 6. 22 The plain language of the statute refers to</p>
<p style="text-align: right;">Page 69</p> <p>1 generated some discussion about other licenses, but 2 if you look at those -- in particular, Mr. Clark, 3 because you had a question about these -- when you 4 look at these, the address for the first one is the 5 Leesburg -- the Gleedsville Road, Leesburg property, 6 and that's the only one that's at issue and the only 7 one for which we have a license. 8 The others that was discussed and that 9 Mr. Hampshire suggested would apply to the others, 10 if you look at the address, these are Fairfax 11 facilities. These aren't any of the properties that 12 we own in Loudoun County. They're not part of the 13 permit. All of that discussion about this being a 14 compilation of properties that should be considered 15 in the aggregate based on licenses that we've 16 obtained, it simply doesn't apply. We don't have 17 licenses for these other properties, and 18 Mr. Hampshire is pointing to licenses for other 19 properties in another county. So it's just simply 20 wrong. 21 Mr. Hampshire also pointed to and passed up 22 a copy of a 2005 attorney general's opinion -- a</p>	<p style="text-align: right;">Page 71</p> <p>1 all, to all -- and the ordinance does as well -- to 2 all group homes. And Mr. Hampshire read language 3 from the 2005 opinion. He stopped before what I 4 think is the penultimate sentence. And what it says 5 there is: Nothing in Virginia housing law 6 distinguishing between nonprofit and for-profit 7 group home or residential facility. It goes on to 8 say that to make that distinction would be a direct 9 conflict of the intent of the law. 10 So contrary to the argument of counsel -- 11 and I consider Mr. Hampshire a friend, and he's a 12 fantastic lawyer, doing a great job for his clients 13 here, but the attorney generals clearly weighed in 14 in direct opposition to the argument that is being 15 made and advanced here. 16 And what they did say is that this statute 17 that was adopted more than 20 years ago, and by that 18 I mean 15.2-2291. The specific purpose of that 19 statute was to address a mental health crisis, not 20 just in the Commonwealth, but across the country, 21 and to make available, specifically in residential 22 areas, treatment facilities of a particular size</p>

<p style="text-align: right;">Page 72</p> <p>1 because studies showed that they were more 2 effective. It was more effective to take young 3 people and put them in a nice home, for a nice area 4 for treatment rather than warehouse them down at 5 Virginia Beach or Richmond. And that's where -- 6 that's the origin of this statute. 7 And, in both instances, when attorneys 8 generals weighed in, they specifically rejected the 9 argument that this was limited to nonprofit. 10 Additionally, now -- and I'll talk a little 11 bit about the Fairfax case. 12 I want to go back to, if I can, just the 13 beginning of this, and I want to walk through why it 14 is that staff got this exactly correct. 15 So -- go to the next slide, please. And 16 next slide. I apologize. I thought I might be able 17 to -- and next slide. I'm going to skip over some 18 of what we've already done. 19 The -- this is the zoning ordinance, 20 Article 8, and it refers to -- and I think the 21 parties agree to this -- in order to be entitled to 22 operate as dwelling, single-family detached, you</p>	<p style="text-align: right;">Page 74</p> <p>1 And I'll come back to this, but there was 2 much discussion about drug addiction versus mental 3 illness. And under the Virginia system, when you 4 apply for licensing, you can apply either for mental 5 health treatment or substance abuse treatment, and 6 they're exclusive of each other. In this instance, 7 we applied -- my client applied for mental health 8 treatment license, and that's what they received. 9 They have no right to take in people that are drug 10 addicts and provide treatment or rehabilitation for 11 them. The suggestion that that's what they'll do is 12 factually -- is simply factually wrong. It's also 13 legally impermissible. So they will be treated for 14 mental illness. 15 The third criteria is there will be one or 16 more resident or nonresident staff persons. My 17 client has already submitted testimony on that. The 18 County has acknowledged that. So that requirement 19 is satisfied. 20 And then VDBHDS has to issue a license. 21 Can we go to the next slide? 22 Here's the license. The license actually</p>
<p style="text-align: right;">Page 73</p> <p>1 have to constitute a family. And I think Chairman 2 referred to the definition of family. You can see 3 Item A is your traditional concept of family. B is 4 unrelated people, not more than four. But Loudoun 5 County, following the enabling legislation that was 6 required -- 15.2-2291 -- adopted C as well: Any 7 group identified under that statute, 15.2-2291. 8 So if you meet the definition, if you meet 9 the requirements of that statute, then you are a 10 family, and you have the right to occupy a 11 residential dwelling. 12 Can we go to the next slide, please. And 13 the one after that. Sorry for the speed. 14 This is the operative statute, and it 15 imposes, essentially, four requirements to apply. 16 And if we go to the next slide. 17 There is no disagreement over these. 18 There have to be no more than eight 19 individuals. That's satisfied because our license 20 is for five. 21 They have to be treated for mental illness. 22 Our license is specific to mental illness.</p>	<p style="text-align: right;">Page 75</p> <p>1 shows that three of these requirements are satisfied 2 right on the face. You can see bed capacity of 3 five. It's licensed as a mental health -- it 4 actually says mental health residential group home. 5 And that language "group home," if you recall 6 earlier, it's right in the statute, that last line 7 of the statute which refers to group home. And I'll 8 come back to that. 9 Next slide, please. 10 So you can see, I'll move quickly. We are 11 licensed. That's the second element. 12 Next slide. 13 Referring to the testimony of my client, 14 which is part of the record, that the third element 15 will be satisfied, one or more resident or 16 nonresident staff persons. 17 Next slide. 18 And Element 4 is satisfied by virtue of 19 this license. 20 So we meet all of the elements that are 21 necessary to occupy the property. 15.2-2291 is 22 satisfied.</p>

<p style="text-align: right;">Page 76</p> <p>1 Can we go to the next slide, please.</p> <p>2 And I want to refer back to the definition:</p> <p>3 Any group identified in 15.2-2291 of the code. My</p> <p>4 client has easily satisfied the four requirements,</p> <p>5 the four elements of 15.2-2291, and as a result,</p> <p>6 they're by right.</p> <p>7 If we can look at the next slide, please.</p> <p>8 And you'll see this on the Zoning Table</p> <p>9 2-102.</p> <p>10 So I do want to turn to the appellants'</p> <p>11 arguments. And I've talked briefly about commercial</p> <p>12 exception -- if we can go next slide.</p> <p>13 2291 doesn't include any exception. It</p> <p>14 doesn't include any limitation. When we look at the</p> <p>15 language, it actually refers to all.</p> <p>16 If we can go to Slide 6, please, up. I</p> <p>17 want to pull that language up. Here we are.</p> <p>18 And, again, this is the operative section.</p> <p>19 You see it two places: In the top of it, it says,</p> <p>20 Zoning ordinances -- are referring here to</p> <p>21 Loudoun -- for all purposes shall consider a</p> <p>22 residential facility in which no more than, and</p>	<p style="text-align: right;">Page 78</p> <p>1 residential, those have been rejected by the</p> <p>2 attorney generals twice. They've been rejected</p> <p>3 appropriately in Fairfax and by the Honorable Judge</p> <p>4 Bugg who recently decided this issue in January.</p> <p>5 GORHAM CLARK: I'm going to need you to</p> <p>6 wrap up.</p> <p>7 MR. WILBURN: Oh, yes, sir. I apologize.</p> <p>8 I will -- one last point I want to make:</p> <p>9 With regard to the drug issue, it really is a red</p> <p>10 herring, and the reason I say that is there is no</p> <p>11 intent to bring anybody in who's drug addicted. The</p> <p>12 testimony of the prior hearing, which was</p> <p>13 incorporated, is we will screen those people out.</p> <p>14 What the landowners are asking you to do is</p> <p>15 say, Because it's possible that somebody would have</p> <p>16 a secondary diagnosis of drug addiction, that we</p> <p>17 can't have a permit or operate at all. What the</p> <p>18 County's permit does is it limits us. We can</p> <p>19 operate so long as we're in compliance with</p> <p>20 15.2-2291, which doesn't allow us to bring people in</p> <p>21 who are drug addicted. That's our intention.</p> <p>22 To answer your question to opposing counsel</p>
<p style="text-align: right;">Page 77</p> <p>1 those are requirements that I talked about.</p> <p>2 And then at the bottom we've underlined,</p> <p>3 For purposes of this Subsection 2291, residential</p> <p>4 facility means any group home or other residential</p> <p>5 facility for which the department of behavioral</p> <p>6 health and sciences issued a license.</p> <p>7 It's undisputed we've been issued a</p> <p>8 license. By virtue of the statute, that means we</p> <p>9 are a residential facility. Much of counsel's</p> <p>10 argument is to persuade you that, because there's a</p> <p>11 commercial function, it's not a residential</p> <p>12 facility. But that argument fails for two reasons:</p> <p>13 One, the statute simply defines it as -- regardless</p> <p>14 what it might otherwise look like, the statute says</p> <p>15 that if you get a license for a mental health group</p> <p>16 home -- and I've shown that license. That's the</p> <p>17 license that we have -- that by virtue -- by</p> <p>18 operation of law, you are a residential facility.</p> <p>19 And so we are that.</p> <p>20 And then, again, the arguments that are</p> <p>21 made elsewhere that -- well, you really -- there's a</p> <p>22 commercial function. You're not traditionally</p>	<p style="text-align: right;">Page 79</p> <p>1 earlier: If there's a person who is drug addicted,</p> <p>2 we move them out. But if, for some reason, that</p> <p>3 didn't happen, the zoning administrator would have</p> <p>4 enforcement rights. And, of course, we're monitored</p> <p>5 by the licensing body, so they check on us</p> <p>6 throughout the year. Out license is subject to</p> <p>7 yearly renewal or not. But the zoning administrator</p> <p>8 would have enforcement action against us for</p> <p>9 operating outside of our permit and outside of our</p> <p>10 zoning if we're not in compliance with 15.2-2291, so</p> <p>11 that's a prerequisite.</p> <p>12 And I'd urge you not to assume that we'd be</p> <p>13 in violation of it when there is literally no</p> <p>14 evidence that that would be the case.</p> <p>15 I apologize for exceeding my time.</p> <p>16 GORHAM CLARK: No. Thank you for wrapping</p> <p>17 up promptly.</p> <p>18 Mr. Moffett.</p> <p>19 EDWARD MOFFETT: Give me your definition --</p> <p>20 you kind of skipped over one element of 2291,</p> <p>21 "reside."</p> <p>22 MR. WILBURN: Reside, yeah. I</p>

<p style="text-align: right;">Page 80</p> <p>1 appreciate --</p> <p>2 EDWARD MOFFETT: Give me your definition of</p> <p>3 reside.</p> <p>4 MR. WILBURN: Well, fortunately, there's an</p> <p>5 abundance of case law on reside in the context of</p> <p>6 the Fair Housing Act, and what the law says is</p> <p>7 reside is contextual. The traditional definition of</p> <p>8 reside is the one that Mr. Clark mentioned, and that</p> <p>9 is, I live someplace with an intention to remain</p> <p>10 there indefinitely. But Fair Housing Act law and</p> <p>11 the law rising out of the statute says, That's not</p> <p>12 workable and wouldn't be consistent with the</p> <p>13 intention.</p> <p>14 So the case law -- and we've cited it in</p> <p>15 our brief. It's uniform. What it means is: Does a</p> <p>16 person, while they're being treated at a particular</p> <p>17 location, do they treat it as their residence? And</p> <p>18 the indicia of that are the following: Do they</p> <p>19 sleep there? Do they have a bedroom? Do they sleep</p> <p>20 there? Do they take their meals there? Do they go</p> <p>21 there after treatment? That's what -- that's what</p> <p>22 the test is. And there is no split of authority on</p>	<p style="text-align: right;">Page 82</p> <p>1 cases come out the way that landowners' counsel is</p> <p>2 suggesting that you do it.</p> <p>3 So to answer your question -- I apologize</p> <p>4 for being longwinded -- the indicia that the Courts</p> <p>5 have found is: Do you stay there at night? Do you</p> <p>6 sleep there at night? Do you take meals there?</p> <p>7 During the course of your treatment, is that where</p> <p>8 you go? Is that where you stay?</p> <p>9 And that's the -- that's the testimony</p> <p>10 that's been submitted to the board with regard to</p> <p>11 our operations here.</p> <p>12 EDWARD MOFFETT: So you could have up to 12</p> <p>13 groups of residents there every year or more?</p> <p>14 MR. WILBURN: You say --</p> <p>15 EDWARD MOFFETT: You said the average stay</p> <p>16 is 30?</p> <p>17 MR. WILBURN: Is 47 days.</p> <p>18 EDWARD MOFFETT: I assume that if a, quote,</p> <p>19 resident wants to leave after two weeks, out that</p> <p>20 person goes, in comes another one, right?</p> <p>21 MR. WILBURN: Yeah, they could. The</p> <p>22 average stay is 30 to 90. I think a more pinpoint</p>
<p style="text-align: right;">Page 81</p> <p>1 that. That authority is uniform across the country.</p> <p>2 And so, when you apply that, when you apply</p> <p>3 those factors to what we're doing here, that's --</p> <p>4 the definition of reside is, I think, easily met.</p> <p>5 The testimony before you is that these</p> <p>6 residents would be there roughly 30 to 90 days, with</p> <p>7 an average stay of 47 days. Judge Bugg found</p> <p>8 that -- on the same facts -- that the definition of</p> <p>9 reside was consistent with Virginia law and Fair</p> <p>10 Housing Act law.</p> <p>11 There are no cases that say to the</p> <p>12 contrary. There's a suggestion -- Mr. Hampshire</p> <p>13 argues that Judge Bach in 1997 found that you can't</p> <p>14 have another home, and that's simply not what that</p> <p>15 case said.</p> <p>16 In that case, Judge Bach was looking at the</p> <p>17 issue of reside, and one fact that he noted was that</p> <p>18 these were effectively orphans; they had no home.</p> <p>19 And he said, of course, in that circumstance, the</p> <p>20 definition is easily met.</p> <p>21 But there's a plethora of cases where the</p> <p>22 issue of reside is litigated, and none of those</p>	<p style="text-align: right;">Page 83</p> <p>1 is 47.</p> <p>2 So, using those numbers, let's say the</p> <p>3 group of five here. There are five who are</p> <p>4 licensed. Let's say they each stay 40 days. You</p> <p>5 could have roughly, you know, 11 groups of five come</p> <p>6 through over the course of a year or some variation</p> <p>7 of that number.</p> <p>8 EDWARD MOFFETT: But their intent always is</p> <p>9 to go back home, right?</p> <p>10 MR. WILBURN: Their --</p> <p>11 EDWARD MOFFETT: And that's their families'</p> <p>12 intent, too, right?</p> <p>13 MR. WILBURN: Their intent may be to go</p> <p>14 home, but the way the law defines reside in the</p> <p>15 context of the statute is not, Do I have another</p> <p>16 home to go to? The theory that if you have another</p> <p>17 home to go to somehow deprives you of residence for</p> <p>18 the purpose of the statute has been repeatedly</p> <p>19 rejected. The test is: While I'm getting</p> <p>20 treatment, do I sleep there? Do I eat there? Is</p> <p>21 that where I go during treatment, even if I have</p> <p>22 another place to go?</p>

<p style="text-align: right;">Page 84</p> <p>1 And so what it really prevents is 2 somebody -- you know, let's say my daughter has an 3 anxiety issue. It would prevent me from sending her 4 to the facility on a daily basis and coming home. 5 That's not allowed. That's not reside. But if my 6 daughter is an inpatient there to treat her anxiety 7 issue and she stays 30 days or 40 days and she has a 8 room and she takes her meals there, under the law, 9 that is reside. And that -- and the line of cases 10 on that is very clear. 11 The confusion sometimes comes up -- and the 12 cases explain this -- because the traditional 13 definition of reside is the one that was mentioned 14 earlier, which is, for residents in Loudoun County 15 or Leesburg, it's where do I live with an intent to 16 remain indefinitely. But that's not the -- that not 17 how reside is interpreted under the Fair Housing 18 Act. 19 EDWARD MOFFETT: Couldn't you have 20 congregate housing where people are staying for a 21 period of time also? 22 MR. WILBURN: By definition -- it's</p>	<p style="text-align: right;">Page 86</p> <p>1 Give me the line. 2 MR. WILBURN: Well, you know, what the 3 Courts have said is that there's no -- there's no 4 bright-line rule, but what they said is it can't be 5 transient. It can't be like a hotel where I check 6 in for a night and leave. But it's got to be 7 something where I -- where I am there for some 8 indefinite period of time -- not indefinite. I'm 9 sorry. It can't be transient period of time. It's 10 a place where I intend to take my meals; I intend to 11 sleep during the period of my treatment. 12 And so Courts have said that as little as 13 14 days -- the shortest period of time under the 14 case law Courts have said is 14 days is enough to 15 satisfy the residency requirement. So I'm not aware 16 of a residency stay that's shorter than that, but we 17 do know, from the abundance of case law, that 18 somebody going inpatient for treatment for as few as 19 14 days is deemed a resident for that purpose. 20 And, here, the testimony is that the 21 average stay would be 47 days. 22 ROBERT KELLY GRAY: May I ask a question?</p>
<p style="text-align: right;">Page 85</p> <p>1 possible, but by definition, this is not that. 2 And the reason is congregate housing, by 3 definition, does not include related people. So by 4 definition, it has to be two things, one of which is 5 the people can't be related. But when you look at 6 the statute -- and this is where the zoning 7 administrator and the staff got it exactly 8 correct -- it says, right up there, that they shall 9 be deemed a single family. And so by virtue of the 10 fact that, statutorily, they're a family, they're 11 outside the definition of congregate housing. 12 And so that's why -- that's why the zoning 13 administrator's writing on this issue was a hundred 14 percent correct. What she wrote -- and I'm 15 paraphrasing -- was: This would normally be 16 congregate housing because these individuals are not 17 related, right? But the statute, the statute deems 18 them to be treated as a single family by operation 19 of law. Therefore, it's not congregate housing, and 20 it is, instead, single-family dwelling. 21 EDWARD MOFFETT: What is your test -- when 22 is it a stay -- when does a stay become residing?</p>	<p style="text-align: right;">Page 87</p> <p>1 GORHAM CLARK: Yes, please. 2 ROBERT KELLY GRAY: Is there a distinction 3 to be drawn -- and I'm piggybacking on Mr. Moffett's 4 question -- between a residential facility -- and 5 I'm not talking about now congregate. I'm talking 6 about a single residential house where you meet the 7 limited number of individuals that reside in that 8 house but for an extended period of time. 9 In other words, I think we all know that 10 there exists in the country, in the state, and in 11 the county homes that people reside almost in 12 perpetuity, and a distinction between that and a 13 home in which they reside for a period of time for 14 the purposes of treatment? 15 MR. WILBURN: If -- yeah, if I understand 16 your question, there is a distinction, and there's 17 the -- the distinction in law is between the 18 traditional definition of reside, in that if I move 19 to -- I live in Leesburg, so when I moved to 20 Leesburg, I intended to live here indefinitely until 21 I change my residence to someplace else. That's the 22 historic definition of reside.</p>

<p style="text-align: right;">Page 88</p> <p>1 But in the context of the Fair Housing Act 2 and this statute, every Court has interpreted it 3 differently. They say it's contextual. And in 4 order to effectuate the intent of the legislative 5 body to give voice to this important public purpose 6 that a stay as short as 14 days, even when you're 7 full well going back home, full well going back 8 home, but if you're going to stay there for 14 days 9 or more, and during that time period you sleep there 10 and you take your meals there, that you satisfy the 11 residency definition. 12 And you can sort of -- 13 ROBERT KELLY GRAY: Yeah. I'm -- I think 14 you missed the point of my question, and I'll try to 15 be -- the question is the difference between a 16 residential facility and a (inaudible). 17 GORHAM CLARK: Repeat yourself, Mr. Gray. 18 ROBERT KELLY GRAY: Okay. The distinction 19 I'm looking for is the difference between a 20 residential facility or a residential home and a 21 home that is used for treatment. 22 GORHAM CLARK: Try again.</p>	<p style="text-align: right;">Page 90</p> <p>1 licensing body licenses you as a group residential 2 facility. I don't want to overlook that point, but, 3 you know, the license itself is for a group 4 residential facility of less than eight, and so that 5 creates the distinction between if we want to 6 operate a residential treatment facility or a group 7 facility within the statute, you have to have eight 8 or fewer; you have to have people that will be there 9 at least 14 days and sleep over and take their 10 meals; you have to have a nonresident person there; 11 and you have to have a license that specifies you as 12 a residential group home. All of which we have. 13 A typical Inova facility that maybe has 50 14 beds won't have any of those elements, but they also 15 wouldn't have the by-right opportunity to locate. 16 And so that's -- that's the distinction, if 17 I understand the question. 18 ROBERT KELLY GRAY: Okay. But I -- you're 19 getting there. 20 I look at the category of individuals with 21 mental illness, intellectual disability, 22 developmental disability, there is a distinction</p>
<p style="text-align: right;">Page 89</p> <p>1 ROBERT KELLY GRAY: Try again? 2 GORHAM CLARK: Yes. 3 ROBERT KELLY GRAY: Okay. Distinguish for 4 me, please, the difference between a residential 5 facility and a treatment facility. 6 MR. WILBURN: I understand -- I think I 7 understand. I think I understand. 8 There're different type of treatment 9 facilities. We understand that. And your -- if you 10 want to qualify as a residential facility, as 11 opposed to a typical treatment, so that you would 12 have the benefit of the by-right zoning, for 13 example, the difference would be the number -- for 14 example, the number of patients you would have. 15 So there are -- there are inpatient 16 treatment facilities located in Loudoun County and 17 elsewhere that will take, you know, 10, 20, 50, a 18 hundred people. They don't qualify. Those are 19 treatment facilities, but they're not residential 20 facilities because they don't meet the definition of 21 15.2-2291 which has a cap on eight. 22 It also has a requirement that the Virginia</p>	<p style="text-align: right;">Page 91</p> <p>1 that you draw, I believe, between facilities or 2 (inaudible) group homes that may meet the 3 (inaudible) that you describe, but they are provided 4 only with maintenance-type living conditions as 5 opposed to treatment, and I think that's a 6 distinction (inaudible). 7 GORHAM CLARK: You think that's a 8 distinction? 9 ROBERT KELLY GRAY: A distinction between 10 maintenance of a home with mental illness, et 11 cetera, and treatment-situated people. 12 MR. WILBURN: I see. I see. 13 I don't know -- I'm not sure I follow 14 exactly, but I understand that there's -- I mean, 15 our purpose and our license and our mission here 16 under the statute is treatment of young -- of young 17 people with mental health issues, and that's what 18 2291 empowers and that's what the license -- the 19 specific license that we obtained relates to. 20 So that's -- that's what our expectation 21 would be in terms of treatment plan, would be to 22 actually treat those with depression or anxiety or</p>

<p style="text-align: right;">Page 92</p> <p>1 other mental health issues within the scope of our 2 license.</p> <p>3 There is no expectation of treating or 4 residing within or having people that are drug 5 addicted or drug treatment. That is simply not 6 permitted and we don't have a license to do it and 7 that's not -- that's not what the County has 8 permitted.</p> <p>9 So, again, I think I missed some of the 10 question, and I hope I didn't misunderstand it.</p> <p>11 ROBERT KELLY GRAY: Okay. I'll leave it at 12 that.</p> <p>13 MR. WILBURN: Yeah. I apologize if I 14 missed it.</p> <p>15 GORHAM CLARK: Gentlemen, any questions? 16 BRIAN WALKER: No, sir.</p> <p>17 GORHAM CLARK: I'd like you to address this 18 question, because I think there's, in my mind, 19 possibly a simpler way of addressing this question 20 of the congregate home and the group home that's for 21 a family.</p> <p>22 I appreciate, I believe, your point, which</p>	<p style="text-align: right;">Page 94</p> <p>1 GORHAM CLARK: They do.</p> <p>2 MR. WILBURN: -- there's primacy. 3 Article -- Title 1 of the Virginia Code, right at 4 the very beginning, is the law that provides that 5 the primacy of the general assembly and the acts of 6 the general assembly and the Virginia Code over any 7 inconsistent zoning or local ordinance.</p> <p>8 I don't think these are inconsistent 9 because Loudoun County did, I think, the right 10 thing, and they incorporated into the definition of 11 family 15.2-2291.</p> <p>12 But if there is a -- if there is an 13 inconsistency and you sort of trace through to see 14 what congregate housing is, the code section is 15 primary on this. And it says, if you meet those 16 requirements, it shall be treated as residential 17 occupancy by a single family, and that's plain and 18 unambiguous. And to ignore that, I think, is 19 inconsistent with Title 1 of the code and primacy 20 concepts.</p> <p>21 But, you know, I don't know how that 22 language could be read any differently. There is no</p>
<p style="text-align: right;">Page 93</p> <p>1 is a sharp distinction that if you meet the 2 definition of family, you are categorically not a 3 group home. But even if I was weak on that, 4 wouldn't I still have a problem of, well, first, 5 having to try to reconcile two different county 6 ordinances in a way in which they were consistent 7 but, in any event, never in contravention of state 8 housing -- fair housing law or federal fair housing 9 law which, seems to me, regardless of whether or not 10 there's any -- I don't -- do you -- are you saying 11 that it doesn't really matter if there's a 12 distinction at the county level because this section 13 that takes us back to the state statute bypasses all 14 of that; that you are a family and, therefore, 15 dwelling in AR-1, single-family residential, if you 16 meet the code section -- and any of the groups in 17 2291?</p> <p>18 MR. WILBURN: Correct. And I should have 19 made that point. I think the state statute and the 20 Loudoun County Zoning Ordinance are harmonious. I 21 think that they work together. But if they don't, 22 if they don't --</p>	<p style="text-align: right;">Page 95</p> <p>1 exception to it. It says, If you meet these 2 elements, you shall be treated as residential 3 occupancy by a single family. And then if you look 4 at the bottom of that, it says, If there's any 5 doubt, for purposes of this subsection, residential 6 family means any group home licensed by the 7 Commonwealth -- I'm paraphrasing. And we've shown 8 the license. We have the license from the 9 Commonwealth as a residential group home.</p> <p>10 So the language of the statute matches 11 exactly with the license, and I think it's equally 12 consistent with the zoning ordinance.</p> <p>13 And so, you know, we'd urge -- we'd urge 14 the board to affirm, you know, the issuance of the 15 permit. We think the zoning administrator, her 16 analysis was spot on, and the submission by County 17 is equally solid. And I -- and I do think it's 18 meaningful, to the extent that there's persuasive 19 authority, that every other entity that has looked 20 at this same issue, the same statute and the same 21 issue, including our operations and our licenses, 22 has reached the same conclusion. They've rejected</p>

<p style="text-align: right;">Page 96</p> <p>1 those arguments.</p> <p>2 And I'm certainly sympathetic to landowner</p> <p>3 views on these things and where people want, you</p> <p>4 know, new facilities and infrastructure and that</p> <p>5 type of thing to be located. I understand that.</p> <p>6 I'm a resident here, too. I live here, and I</p> <p>7 certainly understand all of that. But the statute</p> <p>8 allows for this, plainly does, and it does serve an</p> <p>9 important public function.</p> <p>10 And we think that the individuals at the</p> <p>11 county who looked at this got it right and that the</p> <p>12 permit was properly issued.</p> <p>13 But that's a longwinded say of saying,</p> <p>14 You're correct. If there's inconsistency, the</p> <p>15 statute governs.</p> <p>16 IBRAHIM MOIZ: If I can -- if I can real</p> <p>17 quick jump in?</p> <p>18 GORHAM CLARK: You can have one.</p> <p>19 IBRAHIM MOIZ: You're glossing over the</p> <p>20 unlined -- the section that's not underlined about</p> <p>21 the mental -- sorry -- about the drug addiction,</p> <p>22 substance abuse and drug addiction.</p>	<p style="text-align: right;">Page 98</p> <p>1 What the permit and what the zoning</p> <p>2 administrator and what the statutes say is: So long</p> <p>3 as we comply with that, we can operate. It is</p> <p>4 theoretically possible -- we screen for this, and we</p> <p>5 try not to have individuals with an addiction</p> <p>6 problem in there, but if something slipped</p> <p>7 through -- again, that's entirely speculation --</p> <p>8 they'd be removed by us; and if they weren't removed</p> <p>9 by us, we'd be subject to license revocation or</p> <p>10 discipline from the State or the zoning</p> <p>11 administrator acting on it.</p> <p>12 So the hypothetical that you gave about</p> <p>13 somebody out on the street or there's a -- you know,</p> <p>14 some reason to believe that there's a drug-addicted</p> <p>15 person or drug-using person, it's reported,</p> <p>16 presumably, to the licensing body and to the zoning</p> <p>17 administrator, both of whom have their own</p> <p>18 enforcement powers.</p> <p>19 So that's how I think that's resolved. We</p> <p>20 don't disagree that that section has a limitation in</p> <p>21 it. What we're suggesting is they're -- the</p> <p>22 landowners ask you to assume that we will violate</p>
<p style="text-align: right;">Page 97</p> <p>1 MR. WILBURN: Yeah, and I don't mean --</p> <p>2 IBRAHIM MOIZ: Appellants' -- no.</p> <p>3 MR. WILBURN: Okay.</p> <p>4 IBRAHIM MOIZ: I'm saying appellants'</p> <p>5 counsel is honing in on that.</p> <p>6 If I'm reading this how you want me to, and</p> <p>7 I believe it's the correct way, that's more a</p> <p>8 directive to the department that there's controlled</p> <p>9 substance treatment facilities and there's mental</p> <p>10 illness, and these two are not to be conflated</p> <p>11 together. Is that accurate? Am I reading --</p> <p>12 MR. WILBURN: That's correct --</p> <p>13 IBRAHIM MOIZ: -- your reading --</p> <p>14 MR. WILBURN: I think, if I understand you,</p> <p>15 that's correct.</p> <p>16 And the landowners' argument would mean</p> <p>17 we'd never be able to operate because they say it's</p> <p>18 possible, it's possible that when you admit a young</p> <p>19 man who suffers from severe anxiety, that it's</p> <p>20 possible that he also has been or is addicted to</p> <p>21 alcohol, whether he's using or not. And -- but</p> <p>22 that's entirely speculative.</p>	<p style="text-align: right;">Page 99</p> <p>1 it, and, you know, with that assumption, we would</p> <p>2 never be able to operate. We intend not to violate</p> <p>3 it. We take steps to not violate it. We've been</p> <p>4 operating in Fairfax County for two and a half hours</p> <p>5 without violating it. And so we expect to do that</p> <p>6 here.</p> <p>7 But if, for some reason -- no systems are</p> <p>8 perfect. If some reasons we didn't, then there are</p> <p>9 multiple administrative bodies who could take</p> <p>10 enforcement action against us.</p> <p>11 GORHAM CLARK: Thank you.</p> <p>12 So I guess I'm asking you to give an</p> <p>13 admission against interest as your client's</p> <p>14 authorized representative that it is your view that</p> <p>15 it would be a -- that a reviewing body, whether it's</p> <p>16 the state or us or the zoning administrator, if a</p> <p>17 question arises as to whether or not somebody in the</p> <p>18 group under -- where residency is permitted under</p> <p>19 Section C, a group identified under 15.2-2219, who</p> <p>20 is addicted to a controlled substance, that that's a</p> <p>21 fair hearing. Maybe he is addicted or she is</p> <p>22 addicted or maybe she's not. Maybe there's a</p>

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<p style="text-align: right;">Page 100</p> <p>1 violation or not. But, categorically, that's a 2 question to be reviewed, because if it's determined 3 that one of the people is, in fact, being permitted 4 to constitute a part of the group who is addicted, 5 aside from using, addicted to a controlled 6 substance, you're bound -- your client is going to 7 be bound to address that on that very narrow merits 8 question.</p> <p>9 MR. WILBURN: Yeah. What I'm saying is we 10 screen for that, but if somebody makes it through 11 the screen and they have a problem that puts them in 12 violation of this section, we place them out because 13 we don't do that treatment.</p> <p>14 GORHAM CLARK: You have to comply.</p> <p>15 MR. WILBURN: Yeah, we have to comply. And 16 so what -- I don't mean to keep going.</p> <p>17 But the answer is: We have to comply with 18 that requirement, but as we sit here today, it's a 19 theoretical violation of a statute. And the 20 argument is that, We think you're going to violate 21 it. Because a lot of people who have, presumably, 22 anxiety issues are drug addicts, you're going to</p>	<p style="text-align: right;">Page 102</p> <p>1 the licensing body who has its own review and 2 enforcement mechanism, and you have the County on 3 the land use side. And they have sort of separate 4 looks into this, but if we're in violation, I mean, 5 our right to operate by-right arises through this 6 statute, which includes in it that caveat.</p> <p>7 So if we violate the statute, you know, I 8 think it would be a -- it would be an enforcement or 9 review mechanism. You know, we hope that -- I won't 10 get into sort of the speculation about complaints, 11 but, presumably, it would be a complaint based on 12 something.</p> <p>13 But the premise of your question to me is: 14 Do we have to comply? Yes. And if we don't comply, 15 are there enforcement mechanisms? Yes. We intend 16 to comply. We screen for compliance. If there's 17 somebody who slips through and we learn of it, we 18 out place them. We remove them from the program. 19 But if somehow all of those systems fail, there's 20 two levels of enforcement that can occur, one at the 21 state level and one at the local level on the 22 land-use basis.</p>
<p style="text-align: right;">Page 101</p> <p>1 violate this and not comply with your license or the 2 statute, so you shouldn't get to operate at all. 3 And we fully intend to comply.</p> <p>4 GORHAM CLARK: So you asked for a permit 5 for a group home of five residents, and you did not 6 ask for permission to put in that group home people 7 who are addicted to controlled substances?</p> <p>8 MR. WILBURN: That's -- that's right.</p> <p>9 GORHAM CLARK: And it's your view that the 10 permit issued by the County does not allow you to 11 include in that group home people who are addicted 12 to controlled substances?</p> <p>13 MR. WILBURN: I think that's presupposed by 14 the reference to the statute, yes.</p> <p>15 GORHAM CLARK: Okay. And that if there's a 16 violation of that, there are remedies, subject to 17 legal interpretation and factual establishment, but 18 there is recourse?</p> <p>19 MR. WILBURN: Yeah. I think that -- and I 20 think this is where the county -- I'm sorry. The 21 county -- I apologize -- the landowners' attorney 22 and I agree that you have two bodies here: You have</p>	<p style="text-align: right;">Page 103</p> <p>1 GORHAM CLARK: So, by extension, if 2 somebody suspects that there's a likelihood or a 3 high likelihood that there will be underage 4 premarital sex going on on the property, which would 5 be -- let's establish -- agree, against some 6 statute, you would be forced to comply with -- there 7 would be recourse for someone bringing that to the 8 attention of the public authorities, but all of 9 those things that may happen on the property are 10 inapposite to the question of whether the federal 11 fair housing law under, which the Virginia fair 12 housing law, under which this local statute, under 13 which this permit hang is that we must view a group 14 home for mental health, where there is no addiction 15 or open drug use or ongoing drug use, as a family, 16 therefore, single-family residential.</p> <p>17 MR. WILBURN: Yes. And if I can expound on 18 that just briefly: You know, the drug addiction 19 issue is not the only limitation here. We are 20 limited by license to five residents. So, for 21 example, if we had eight or we had seven, somebody 22 sees -- counts our seven people, they report that,</p>

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<p style="text-align: right;">Page 104</p> <p>1 and we would be in -- there are a lot of ways where, 2 theoretically, we could violate the statute or the 3 license. We don't intend to, but I think I'm -- I'm 4 trying to provide assurance that if you violate the 5 limitations of that statute, it's subject to 6 enforcement. 7 And so could be a drug addiction question 8 or it could be you have more than five residents 9 there or, hypothetically, we don't have a resident 10 or nonresident person on staff. So there's elements 11 to those, any one of which, if we violate, I believe 12 the County would have an opportunity to take 13 enforcement action and, depending on the nature of 14 the violation, perhaps the state agency. 15 But you should not assume violations as a 16 basis to revoke the permit. 17 EDWARD MOFFETT: Mr. Chairman, real quick. 18 What are your plans? Didn't Newport buy 19 two other houses on Gleedsville Road? 20 MR. WILBURN: We did buy other houses. 21 I've got to be careful not to -- 22 EDWARD MOFFETT: What is your intent with</p>	<p style="text-align: right;">Page 106</p> <p>1 took that into consideration as part of theirs. And 2 now I understand we're down to one home, but what I 3 would just kind of like to know is: Is this the 4 first step -- is this the first shoe that's going to 5 drop if we approve this? And what about those other 6 two houses? I think we're owed an answer on that 7 because the original hearing was all about that. 8 MR. WILBURN: And I'll let Mr. Allen 9 address that, but to -- I can answer it to this 10 extent: That that's why I think, in the original 11 hearing, the board got it correct, because it really 12 was speculative. There was no permit, and that was 13 part of the reason that you didn't decide it. And 14 what we ultimately ended up pursuing is a license so 15 far on one, which doesn't have eight -- which was 16 theoretically before you last time -- it has five 17 and not three properties but one. 18 So that's why I think the board got it 19 correct the last time, to not speculate on future 20 plans that have not been -- and I'd urge, here, it's 21 really the same issue that plans today may not be 22 the plans tomorrow, but I'm happy to have Newport</p>
<p style="text-align: right;">Page 105</p> <p>1 regard to those houses? Are we going to be seeing 2 another application for another group home? 3 MR. WILBURN: We may. And here's where 4 I've got to be careful is: My retention here is on 5 this permit. I may have to pass the question to 6 other counsel for Newport. 7 We may apply -- I think, generally, the 8 plan would be to perhaps, you know, apply for 9 permits and license on these others, but I'm -- I'm 10 guessing. My role here was with respect to this 11 permit application. 12 I can pass this to Mr. Allen who is also 13 counsel for Newport, if you want, but I don't know 14 that I know the answer with certainty. 15 Would you like someone else from Newport to 16 address it? 17 EDWARD MOFFETT: Well, I'd like -- yeah, I 18 would. 19 MR. WILBURN: Okay. 20 EDWARD MOFFETT: Because our whole April 21 hearing was based upon the permit and the context of 22 three homes there, and a lot of these landowners</p>	<p style="text-align: right;">Page 107</p> <p>1 address this issue. 2 This is Newport's CEO. I think he spoke to 3 you last time. 4 JOE PROCOPIO: Mr. Moffett, to answer your 5 question -- I'm Joe Procopio. In the CEO for 6 Newport Healthcare. It's good to be back with you. 7 Our intentions are to move forward with all 8 three homes. Today, we're here addressing the 9 single home that's before you today with the single 10 permit where we will treat five clients in that 11 residential group home. 12 Our intentions are -- and we already have 13 applied for at least one license for one of the 14 second homes that is under construction, and we will 15 seek a permit to open that home as well, and we'll 16 do the same with the third home. 17 EDWARD MOFFETT: Okay. Thank you. 18 GORHAM CLARK: Mr. Gray, any other 19 questions? 20 ROBERT KELLY GRAY: No. 21 GORHAM CLARK: Gentlemen, any questions? 22 (No response.)</p>

<p style="text-align: right;">Page 108</p> <p>1 GORHAM CLARK: All right. Then that takes 2 us to the end of the county, the appellant, and the 3 applicant. 4 If there is no objection, we've been at 5 this for 2 hours and 38 minutes. I'd like to 6 declare a 7-minute recess. Start back sharply at 7 8:45 so that we can take bio breaks. 8 (A recess was taken.) 9 GORHAM CLARK: Mr. Gray, are you back with 10 us? 11 (No response.) 12 GORHAM CLARK: Kelly, are you back? 13 ROBERT KELLY GRAY: Yeah, I'm here. 14 GORHAM CLARK: Excellent. Thank you. 15 All right. We have finished the formal 16 presentations, and we're now to the public comment 17 section. 18 And in order to, again, be respectful of 19 everyone's time, make sure everyone gets their three 20 minutes but that we try to not get people falling 21 asleep in their seats, I'd like to try to keep it 22 moving.</p>	<p style="text-align: right;">Page 110</p> <p>1 seen tonight is very important to the health and 2 safety of our communities. 3 I am not a client of Mr. Hampshire, as many 4 of you here tonight, but I am a client of the 5 Catoctin District or, so to speak, an employee 6 because I am elected by them as a member of the 7 board of supervisors. 8 I represent landowners like those here 9 today that reside in the Agricultural R-1 District. 10 I do not speak for the board of supervisors but only 11 my views as the supervisor from the district where 12 this use was originally proposed but now in the 13 Little River District. 14 It is clear to me that the AR-1 District 15 intends residential uses as -- at low densities, 16 consistent with the rural character of the area. In 17 my opinion, it does not intend commercial 18 treatment-based uses like that -- like the zoning 19 administrator herself found to be proposed by 20 Newport when she determined found that congregate 21 housing facilities were advised, as is mentioned 22 tonight, were not allowed in AR-1.</p>
<p style="text-align: right;">Page 109</p> <p>1 So what I'd like to do is call the first 2 speaker, ask that speaker to pick a podium, left or 3 right. That's up to you. Don't care. But then I'm 4 going to call the second speaker, and you're on 5 deck, just like in baseball. And if you would 6 please get up and get at the open podium, wait until 7 the first speaker has finished. We'll see if there 8 are any questions, and then we'll dismiss the prior 9 speaker. I'll invite the next person on deck to 10 come down to that podium, and then we'll turn our 11 attention to the second speaker, okay? 12 So I appreciate your cooperation on that, 13 and I'm sure everybody else in the room does as 14 well. 15 All right. So our first speaker in the 16 public hearing is Supervisor Kershner from Catoctin 17 District. 18 And on deck is Lynne Wright. 19 CALEB KERSHNER: Good evening, Chair Clark 20 and other members of the Board. Thank you for your 21 service to our community here in Loudoun County. 22 Your work is often -- goes unnoticed, but as we have</p>	<p style="text-align: right;">Page 111</p> <p>1 From my perspective, allowing commercial 2 treatment uses to AR-1 areas could well act like a 3 cancer on the AR-1 District, fundamentally changing 4 the residential nature and the neighborhoods in that 5 AR-1. Big corporations like Newport that are funded 6 by investors will pay over market price for these 7 homes, buying them up in groups, as was mentioned 8 tonight, to assemble into treatment campuses. And 9 that, ladies and gentlemen -- or gentlemen -- excuse 10 me -- is exactly what we have seen, as we heard from 11 the president of Newport himself with the plans to 12 go forward two other that are together. 13 Precisely because the commercial treatment 14 use is taking places there are antithetical to the 15 character of the neighborhood as determined by the 16 zoning administrator. The neighbors will want to 17 move away, as is already happening, and the cycle 18 will continue, like a cancer moving through the AR-1 19 until the character of some of these neighborhoods 20 and other places in AR-1 is changed. 21 So what is really going on, in my opinion, 22 is that Newport will use these three homes together</p>

<p style="text-align: right;">Page 112</p> <p>1 to coordinate commercial treatment centers with 3 2 times, up to 3 or 24 residents, potentially, which 3 is higher than the code will allow, and this will -- 4 and this is much like a hospital. And we heard a 5 lot about the whole residential treatment, but a 6 hospital is not residential. Nursing homes are 7 residential.</p> <p>8 In my view, neither the U.S. Congress, nor 9 the fair -- under the fair housing amendments of 10 '88, nor the general assembly under Code 2291 11 intended to usurp the power of local governments to 12 define -- to change the zoning ordinance who's 13 qualified as residential.</p> <p>14 I have many other things to say, but I have 15 30 seconds left. So one thing I would point out is 16 that all that is required is that localities not 17 discriminate against group home families by 18 requiring a special use permit, a special exception 19 from group homes. We're not, for none is required 20 of residential homes for traditional families.</p> <p>21 In my view, Loudoun County has complied 22 with the limitation by providing the congregate</p>	<p style="text-align: right;">Page 114</p> <p>1 determination from the DPZ in a letter dated 2 September 22nd, 2021, they stated they wanted to 3 operate a residential rehabilitation center for 4 adolescents ages 12 to 17. By the time of our first 5 BZA hearing last April, that had changed to treating 6 18-to-26-year-old female patients. As of this 7 month, their website lists residential treatment in 8 Loudoun County for both male and female adults, ages 9 18 to 32.</p> <p>10 An executive of Newport told one of the 11 adjacent residents, a mother with two young 12 daughters, that Newport absolutely would not have 13 male patients in any of the three houses they 14 purchased, yet last week they issued a license from 15 VDBHDS for a second house at the compound to 16 rehabilitate 18-to-32-year-old male patients.</p> <p>17 This patient is 150 feet from that 18 resident's toddler playground. There appears to be 19 no required oversight from the DPZ, Loudoun County 20 Department of Mental Health, Substance Abuse & 21 Development, and little, if any, from the Virginia 22 Department of Behavioral Health and Developmental</p>
<p style="text-align: right;">Page 113</p> <p>1 housing use in homes for both group and family and 2 traditional homes alike.</p> <p>3 Thank you very much for your time.</p> <p>4 GORHAM CLARK: Thank you.</p> <p>5 Any questions for the speaker, Mr. Gray? 6 (No response.)</p> <p>7 GORHAM CLARK: Thank you, Mr. Kershner.</p> <p>8 CALEB KERSHNER: Thank you very much for 9 your time.</p> <p>10 GORHAM CLARK: All right. Our next speaker 11 is Lynne Wright.</p> <p>12 On deck is Michael Wright. If you would 13 please come to the podium on my right.</p> <p>14 Ms. Wright.</p> <p>15 LYNNE WRIGHT: My name is Lynne Wright. My 16 family has lived on Gleedsville Road for the past 17 25 years.</p> <p>18 Tonight, I want to address the many 19 inconsistencies Newport institute has submitted to 20 the planning and zoning board, to the Gleedsville 21 Road neighborhood, and to the public in general.</p> <p>22 When Newport first inquired about a zoning</p>	<p style="text-align: right;">Page 115</p> <p>1 Services regarding changes to the stated patient age 2 or gender at private facilities. The difference 3 between 12-to-17-year-old adolescents and 4 18-to-32-year-old men and women is significant.</p> <p>5 Newport has stated they will not be 6 treating patients diagnosed with substance abuse, 7 since that is prohibited in AR-1 zoning. So it's 8 curious that their website lists residential 9 rehabilitation treatment programs for adults with 10 cooccurring or secondary disorders, such as eating 11 disorders and substance abuse.</p> <p>12 One of their executives did state to an 13 adjacent resident that they will not be testing 14 incoming patients for substance abuse before 15 admitting them for treatment. Instead, they plan to 16 discharge anyone they discover abusing substances 17 while in the residential program. How can they 18 guarantee no incoming patients are not substance 19 abusers if they don't test them?</p> <p>20 Until very recently, their website listed 21 treatment programs for residential adults for 22 substance abuse, alcohol abuse, drug abuse, opioid</p>

<p style="text-align: right;">Page 116</p> <p>1 abuse, and prescription drug abuse. That pretty 2 much covers all the bases, doesn't it? Once again, 3 there was no oversight from Loudoun County to assure 4 substance abusers are not residing in our 5 neighborhood. 6 Newport is trying to pass themselves off as 7 three separate group homes to work around the zoning 8 regulations prohibiting congregate housing, yet the 9 one license they obtained from the state has now 10 been extended to include another of the three 11 properties, not the regulated separate licenses they 12 should have for each property. 13 And do you know of any other group home in 14 Loudoun County that's listed on luxuryrehab.com? 15 Sounds like a group home. 16 Why is no one in the DPZ or DMHSAD 17 concerned with these inconsistencies and safety 18 concerns? 19 Thank you. 20 GORHAM CLARK: Please stay for a second. 21 Any questions of Ms. Wright? 22 (No response.)</p>	<p style="text-align: right;">Page 118</p> <p>1 Gleedsville Road, which is on the northern boundary 2 of the properties involved. 3 I'm not a lawyer, but, as a layman, if it 4 walks like a duck, talks like a duck, it's a duck. 5 There's been great discussion about the 6 fact that they've got three separate homes. We're 7 not talking about three separate homes here, for 8 that matter. The houses in question were built as a 9 family compound. They were sold as a compound. And 10 all intents and purposes, if allowed to operate, 11 they will act as a compound. 12 The other elephant that's in the room that 13 hasn't been addressed by Newport is the 10 acres 14 that are vacant which they also purchased. So while 15 they may say that there are three houses there, odds 16 are that they'll be looking at the 10 acres to build 17 on. 18 With congregate housing, there would be 19 stricter regulations to operate out of a commercial 20 facility than three residential family homes that 21 have blanket by-right federal protections, as 22 Newport's seeking.</p>
<p style="text-align: right;">Page 117</p> <p>1 GORHAM CLARK: Mr. Gray, any questions? 2 (No response.) 3 GORHAM CLARK: Thank you very much. 4 Mr. Write, you're next. 5 Kathleen Fallon, please proceed to the 6 podium on my left. 7 ROBERT KELLY GRAY: (Inaudible.) 8 GORHAM CLARK: We didn't understand that? 9 Can you hear us, Kelly? 10 (No response.) 11 GORHAM CLARK: I think we have microphone 12 problems. 13 ROBERT KELLY GRAY: Yeah, no. I can hear 14 you, Randy -- or -- Roy. 15 GORHAM CLARK: Okay. 16 ROBERT KELLY GRAY: I'll just -- if I have 17 something to say, I'll chime in. 18 GORHAM CLARK: Okay. Thank you very much. 19 Appreciate that. 20 Mr. Wright. 21 MICHAEL WRIGHT: Okay. My name is Michael 22 Wright, and with my wife, Lynne, we live at 20133</p>	<p style="text-align: right;">Page 119</p> <p>1 We've all seen this model operate 2 throughout the U.S. If you look at Connecticut, if 3 you look at California, it's the same deal: They 4 get a small footprint, and then they expand. 5 For this reason, I would ask you to 6 reconsider this situation that is involved. This is 7 a congregate housing facility. 8 Thank you. 9 GORHAM CLARK: Thank you, Mr. Write. 10 Any question for Mr. Write? 11 (No response.) 12 GORHAM CLARK: Mr. Gray? 13 EDWARD MOFFETT: Roy, he said that he would 14 chime in. 15 GORHAM CLARK: I know but I don't know that 16 he hears me, so if I don't get an affirmative -- 17 ROBERT KELLY GRAY: I hear you. I just 18 said I will jump in if I have a question. 19 GORHAM CLARK: All right. 20 ROBERT KELLY GRAY: Otherwise, just 21 consider that I don't have a question. 22 GORHAM CLARK: Any time you have a</p>

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<p style="text-align: right;">Page 120</p> <p>1 question, then. I won't bug you. Thank you.</p> <p>2 Next at the microphone to my right will be</p> <p>3 Aparna Madireddi.</p> <p>4 And Kathleen Fallon next.</p> <p>5 Thank you.</p> <p>6 KATHLEEN FALLON: Thank you.</p> <p>7 Good evening. My name is Kathleen Fallon,</p> <p>8 and I address you today as a Leesburg resident, a</p> <p>9 trauma survivor, a parent, and a professional who</p> <p>10 facilitates equine-assisted services in Leesburg for</p> <p>11 individuals with invisible injuries such as anxiety,</p> <p>12 depression, self-harm, suicidal ideation, traumatic</p> <p>13 brain injury, and posttraumatic stress.</p> <p>14 I speak in strong support of Newport</p> <p>15 Healthcare's establishment of residential mental</p> <p>16 health treatment facilities in Leesburg. The</p> <p>17 services provide by Newport Healthcare are needed in</p> <p>18 Loudoun County. According to the 2022 Loudoun</p> <p>19 Community Health Needs Assessment, mental health</p> <p>20 problems such as depression, anxiety, stress, and</p> <p>21 suicide were identified by nearly half of all survey</p> <p>22 respondents as top health issues in our community.</p>	<p style="text-align: right;">Page 122</p> <p>1 intermediate step between acute care hospitalization</p> <p>2 and returning home where, for many, these</p> <p>3 experiences of trauma originate and persist. This</p> <p>4 venture is all about community. It is about</p> <p>5 creating lasting change and true healing that meets</p> <p>6 the most vulnerable members of our community where</p> <p>7 they are. It helps them to access their own healing</p> <p>8 resources. To welcome Newport Healthcare into</p> <p>9 Loudoun County is to invest in authentic connections</p> <p>10 in our community.</p> <p>11 Thank you.</p> <p>12 GORHAM CLARK: Thank you.</p> <p>13 Any questions?</p> <p>14 (No response.)</p> <p>15 GORHAM CLARK: Thank you very much.</p> <p>16 APARNA MADIREDDI: Good evening.</p> <p>17 GORHAM CLARK: Aparna --</p> <p>18 APARNA MADIREDDI: Good evening. Aparna</p> <p>19 Madireddi. I'm from the Catoctin District.</p> <p>20 GORHAM CLARK: Let me call the next one up.</p> <p>21 Cheryl Wright is on deck to my left.</p> <p>22 Please start. Thank you.</p>
<p style="text-align: right;">Page 121</p> <p>1 The young adults who Newport Healthcare</p> <p>2 will serve at these facilities are our sons and</p> <p>3 daughters, our siblings, our friends, and our</p> <p>4 neighbors. These are the people who put on a brave</p> <p>5 face, who put one foot in front of the other until</p> <p>6 they absolutely can no longer do so. Precisely</p> <p>7 because their circumstances are normal, by all</p> <p>8 outward experiences, these individuals often do not</p> <p>9 ask for help until they've reached a point of</p> <p>10 desperation. These are young adults who hurt</p> <p>11 themselves, no others.</p> <p>12 Experiences of trauma, such as those</p> <p>13 treated by Newport, cause people to feel different,</p> <p>14 broken, and disconnected. A community-based</p> <p>15 facility such as Newport Healthcare contributes to</p> <p>16 the safety and self-efficacy of the individuals who</p> <p>17 reside there and also enhances the safety of our</p> <p>18 communities by ensuring that these young adults feel</p> <p>19 connected and valued and see a path toward future</p> <p>20 hope and healing.</p> <p>21 Residential care in a small group,</p> <p>22 community-based environment is a critical</p>	<p style="text-align: right;">Page 123</p> <p>1 APARNA MADIREDDI: Good evening. Aparna</p> <p>2 Madireddi. I'm from the Catoctin District.</p> <p>3 Loudoun County is talking about regulating</p> <p>4 short-term rentals because it feels these rentals</p> <p>5 are disruptive for the residents, and this is</p> <p>6 despite the fact some of these rentals actually have</p> <p>7 been preserving the history of the region, some of</p> <p>8 them blend in pretty harmoniously in the communities</p> <p>9 they are in. But, despite that, there is talk of</p> <p>10 regulating them.</p> <p>11 Then how come a big for-profit corporation</p> <p>12 like Newport gets a free pass when it comes to</p> <p>13 zoning when their presence in our community is going</p> <p>14 to be equally disruptive for us, the residents? How</p> <p>15 come we, the residents, are here tonight, yet again,</p> <p>16 trying to dissuade a change that is essentially</p> <p>17 going to benefit only a big corporation, not us, the</p> <p>18 residents.</p> <p>19 Newport tried to get a zoning change done</p> <p>20 in Fairfax County, and they were unsuccessful. What</p> <p>21 made them think they were going to be successful</p> <p>22 here in Loudoun County? From Fairfax County to</p>

<p style="text-align: right;">Page 124</p> <p>1 Loudoun County, what shifted in their favor? 2 If you're going to allow them to do what 3 they want to do here, it's going to open the doors 4 for other big businesses to just come in and ask for 5 the same things or maybe even more. Is this what 6 Loudoun County is going to be known for now? Anyone 7 with deep pockets can just waltz into this county 8 and get their wishes fulfilled? 9 I urge you to not accommodate Newport's 10 request. 11 Thank you. 12 GORHAM CLARK: Thank you. 13 Any questions? 14 Please don't walk away. You may have 15 questions. 16 Any questions? 17 (No response.) 18 GORHAM CLARK: I'm sorry I turned you 19 around. 20 On deck, to my right, is Larry Thomas. 21 Ms. Wright, you are next. 22 CHERYL WRIGHT: Hi. Good evening. My name</p>	<p style="text-align: right;">Page 126</p> <p>1 gamble with our safety and set a damaging precedent 2 across all AR-1 zones when you have the affidavit 3 detailing these admissions? It speaks volumes to us 4 that Loudoun is indifferent to misuse that puts 5 residents at risk. 6 Fairfax zoning stopped Newport from 7 misusing a row of three homes in McLean and, still, 8 you treat us with disdain. As this point, to say 9 that these homes will operate separately is an 10 insult to our intelligence or a level of ignorance 11 that should embarrass you. 12 It makes business sense to unify them, and 13 you won't be checking, which is why Newport demanded 14 all three homes, plus the 10-acre lot, when only two 15 homes were ever listed for sale. The buyer, Monroe 16 Real Estate, LLC, says it all: private equity eager 17 to scoop up and misuse rows of homes while zoning's 18 mission is to protect from misuse, or at least it 19 was. 20 Additionally, residential septic systems 21 are not designed for heavy use. In fact, the only 22 way Loudoun could issue this permit was by applying</p>
<p style="text-align: right;">Page 125</p> <p>1 is Cheryl Wright. My property is next to Newport's 2 proposed campus, on land which once belonged to my 3 husband's great-grandfather. 4 Now that a circuit court judge has 5 determined this community does have standing, we 6 hope you will listen. Loudoun should not allow a 7 foreign, private equity owned, commercial rehab 8 company to operate out of a family compound. 9 It is a row of three homes behind a gated 10 entrance on a single width pipestem driveway. They 11 share a pond, walking paths, a parking area, a pool, 12 tennis courts, a golf course, and more. The septic 13 field of this home is in the front yard of another, 14 exactly why the real estate listing for them 15 described one estate with two homes on it. The 16 gated compound was designed to function as a single 17 facility and was used that way by every owner before 18 this nonsense. 19 Newport's COO, Jameson Norton, clearly and 20 confidentially stated that the homes would share a 21 chef and a nurse. How does that not end the 22 conversation? Why are you letting this company</p>	<p style="text-align: right;">Page 127</p> <p>1 nonresidential wastewater use calculation. So here 2 we are debating your permit for a residential use 3 that relies on nonresidential septic calculations? 4 No Loudoun residents could ever dream of getting 5 away with that. We are hounded by our septic 6 system -- excuse me -- we are hounded about our 7 septic systems and held to strict standards that, 8 again, don't seem apply here. 9 And what about them totally changing the 10 rural atmosphere and the poor wildlife? Wonder what 11 the deer, fox, and squirrels think of the god-awful 12 looking fence that they put up? Is that fence 13 either to keep patients from of wandering out, as 14 history has shown, or from wandering eyes looking 15 in? What is it that they're hiding? 16 A psychiatric campus for adult men and 17 women should be near a hospital like Loudoun's new 18 mental health center is, not next to a gun range. 19 I'm concerned for the safety and long-term 20 consequences for my family and my community if you 21 allow this blatant misuse to happen. 22 Thank you.</p>

<p style="text-align: right;">Page 128</p> <p>1 GORHAM CLARK: Any questions? 2 (No response.) 3 GORHAM CLARK: Thank you very much. 4 Susan Rau will be on deck to the podium to 5 my left. 6 Mr. Thomas. 7 LARRY THOMAS: Could I have slide 22 in our 8 presentation? 9 ROBERT KELLY GRAY: Roy, Kelly here. 10 GORHAM CLARK: Yes, sir. 11 ROBERT KELLY GRAY: Everything is 12 distorted. I'm not able to determine anything that 13 is being said. 14 GORHAM CLARK: Okay. I will ask the 15 speakers to make sure they adjust the microphones 16 and speak directly into them. 17 Let's do a little test. Mr. Thomas, would 18 you say the Gettysburg Address or something -- 19 LARRY THOMAS: How about I just start, and 20 if he's having a problem, I'll adjust it, okay? 21 GORHAM CLARK: Is that better, Mr. Gray? 22 (No response.)</p>	<p style="text-align: right;">Page 130</p> <p>1 microphone? 2 UNKNOWN SPEAKER: Old-school. 3 UNKNOWN SPEAKER: I know it's old-school, 4 but it works. 5 GORHAM CLARK: That's true. But there's a 6 law about what he has to do and maybe it would be 7 recorded and all of that stuff. 8 LARRY THOMAS: I don't know if it would 9 help maybe if he tries to just disconnect and 10 reconnect. 11 GORHAM CLARK: Okay. Kelly, we'll give you 12 a moment. Would you just disconnect and join the 13 meeting again? 14 (Discussion off the stenographic record.) 15 (Pause in the proceedings.) 16 ROBERT KELLY GRAY: I can hear you now. 17 GORHAM CLARK: Okay. You're hearing me. 18 All right. Can -- 19 LARRY THOMAS: Mr. Gray, can you hear me? 20 ROBERT KELLY GRAY: I can hear you. 21 LARRY THOMAS: All right. 22 GORHAM CLARK: Thank you, Lord, whoever did</p>
<p style="text-align: right;">Page 129</p> <p>1 GORHAM CLARK: Can you hear me, Mr. Gray? 2 (No response.) 3 GORHAM CLARK: Kelly. 4 ROBERT KELLY GRAY: I know you're calling 5 me, but I can barely understand you. 6 GORHAM CLARK: Okay. So that's a change 7 from earlier this evening? You could hear us better 8 before? 9 (No response.) 10 GORHAM CLARK: Is there anything you can do 11 technically over there? 12 STEPHANIE CAPPS: Not really. I didn't 13 change -- I didn't touch anything. 14 GORHAM CLARK: Oh, I'm not accusing you. 15 STEPHANIE CAPPS: Oh, I know. I'm just 16 saying I didn't change anything. I mean, I can turn 17 everything up. 18 GORHAM CLARK: Do you have your earbuds in, 19 Kelly? 20 (No response.) 21 UNKNOWN SPEAKER: Why don't you call him 22 and put him on speakerphone and put it next to the</p>	<p style="text-align: right;">Page 131</p> <p>1 it. 2 All right. Mr. Thomas, you've got three 3 minutes, so -- 4 LARRY THOMAS: Thank you. 5 My name is Larry Thomas. And in follow-up 6 to Mr. Hampshire's statement concerning congregate 7 housing, there is only one license that has been 8 issued for the two houses on Gledsville Road: 9 20173 and 20179. On the screen is a screenshot of 10 that license, and it shows the two locations. 11 The top location, on the bottom, says 12 Gledsville. That's 20173. The legacy house is 13 20179. I confirmed this in a conversation with 14 Ms. Tina Whitfield-Johnson on Monday at 2:45, and 15 she said -- she gave me all that information. It's 16 confirmed. And she is with the Virginia Department 17 of Behavioral Health and Developmental Services. 18 So I actually came here, though, to talk 19 about the septic issues that are occurring. 20 The application which they submitted did 21 not -- the application for residential septics does 22 not include a wastewater calculation, only the</p>

BZA hearing

<p style="text-align: right;">Page 132</p> <p>1 number of bedrooms. To pass the state's septic 2 approval, a wastewater calculation was used, which 3 is only applicable in a nonresidential use, and this 4 is stated in the letters from Jason Purdy of the 5 health department, November 10th and December 14th, 6 2022, to Newport; and it's also in the Loudoun 7 County Health Department document titled 8 "Requirement for on-site sewer systems and change of 9 use or new nonresidential use properties, only 10 commercial." 11 Newport's Gleedsville Road properties are 12 AR-1 residential. And, earlier, they had table 13 2.2-102 up. This table provides the uses. And what 14 Newport has proposed does not fall under any of 15 these uses. It's commercial and it's congregate. 16 By allowing this nonresidential calculation 17 to be used, you are discriminating against the 18 private homeowner who has built, is building, or 19 modifying a home in Loudoun County that uses this 20 septic system. If this calculation is allowed for 21 residential properties, you're telling me that I can 22 knock down my house, build a ten-bedroom house, on a</p>	<p style="text-align: right;">Page 134</p> <p>1 number of 8-hour shifts to 14, magically fitting the 2 maximum allowable usage; once again, though, not 3 including all the support staff. The zoning permit 4 should never have been approved because of this. 5 The Loudoun County Health Department did 6 not know that this residence was being used as a 7 short-term inpatient hospital until they met -- 8 until I met with him. The property slopes downward 9 50 feet to Big Branch Creek. Excess of water usage 10 in this septic will cause these septic eventually 11 to fail; when they fail, the effluence from the 12 fields will contaminate surface water, Lower Goose 13 Creek Watershed, Big Branch Creek, and the ground 14 water for the drinking wells in our water system. 15 GORHAM CLARK: Please wrap up. 16 LARRY THOMAS: I will. Thank you. 17 Loudoun County needs to uphold these codes 18 to avoid this potential disaster. 19 Thank you. 20 GORHAM CLARK: That was prompt. Thank you. 21 LARRY THOMAS: Well, you told me to wrap 22 up.</p>
<p style="text-align: right;">Page 133</p> <p>1 three-bedroom septic field, and submit a calculation 2 based on my wife and I being the only people in the 3 house. Based on my wife and I being the only people 4 in the house and then rent out the other ten 5 bedrooms. And who would be the wiser? Nobody would 6 be checking on it. 7 This is why this regulation exists, to 8 prevent me from doing this, and it also exists to 9 prevent Newport from doing what they're doing. The 10 wastewater calculation submitted by Newport is 11 consultant -- for the 20173 property did not contain 12 any staffing sheets. The calculation was 13 inconsistent with the staffing sheets submitted to 14 the state for which they obtained their license, 15 which showed a maximum of 19, 8-hour shifts per day, 16 not including housekeeping, maintenance, security, 17 family, visitors. 19 shifts, 8 hours per day, plus 18 inpatients exceeded the maximum allowable limits for 19 the septic field. 20 The state health department PE agreed with 21 me. Newport, when questioned, submitted new 22 staffing sheets. The staffing sheets reduced the</p>	<p style="text-align: right;">Page 135</p> <p>1 GORHAM CLARK: Any questions for 2 Mr. Thomas? 3 (No response.) 4 GORHAM CLARK: All right. Is Susan Rau in 5 the room? 6 UNKNOWN SPEAKER: No. She had to go. 7 GORHAM CLARK: Okay. Then I would like to 8 call Caroline Schiralli to the podium to my left, 9 and on the left will be Addie Palmer to the podium 10 on the right. 11 Thank you. 12 Ms. Schiralli. 13 CAROLINE SCHIRALLI: Good evening. My name 14 is Caroline Schiralli. I live at 20473 Gleedsville 15 Road. I've been a resident on Gleedsville Road 16 since 2017. 17 Let me tell you a story, except it's not a 18 once-upon-a-time story. It's a story from 2019. 19 In 2019, a company called Newport bought a 20 row of three houses on Davidson Road in Fairfax. 21 They tried to sell the county that they were 22 separate group homes, but Fairfax County Zoning</p>

<p style="text-align: right;">Page 136</p> <p>1 Administrator Leslie Johnson came out and actually 2 did a site visit. After her visit, she issued a 3 letter of determination to Newport. 4 Here is a clip from that letter, and I 5 quote: The Davidson properties will physically and 6 functionally operate as a single facility that 7 provides housing and general care for up to 24 8 clients on a temporary basis, including extensive 9 on-site supportive services, such as special care 10 and treatment in a supervised setting, with on-site 11 counselors and other staff. This use is most 12 similar to a congregate living facility. It is not 13 permitted by right on the Davidson properties. 14 Does this sound familiar? After that 15 letter, Newport tucked tail, sold the three homes, 16 and moved on to try to same farce in Loudoun. 17 Loudoun zoning erred by telling Newport that they 18 could operate separate by-right group homes without 19 first doing a site visit. Leslie Johnson didn't 20 make that mistake. She recognized that the 21 operation Newport was attempting was run not at all 22 by separate group homes, but rather a campus for</p>	<p style="text-align: right;">Page 138</p> <p>1 Any questions for Ms. Schiralli? 2 (No response.) 3 GORHAM CLARK: Thank you very much. 4 On deck to my left will be Craig Palmer. 5 Ms. Palmer, you're next. 6 ADDIE PALMER: Thank you. My name is Addie 7 Palmer. I live 200 feet from Newport's campus. 8 After my husband retired from the military, 9 we built our forever home next to our son and 10 daughter-in-law. Since their first baby was born, 11 we lived every grandparent's dream, watching our 12 grand-babies grow up. We have every intention to 13 live the rest of our lives there. 14 We never imagined a \$47 billion company 15 would try to take over our neighborhood to use as a 16 rehab campus. We are an A-1. We thought we were 17 once friends with the sellers of the property that 18 sold to Newport. When we brought up questions, they 19 said, in quote, We have it in writing that Newport 20 will only treat young females at this location. 21 Someone lied. Because the house that looks down on 22 to my granddaughter's playground appears to be</p>
<p style="text-align: right;">Page 137</p> <p>1 congregate housing facility. 2 You could say to yourself, Well, that's 3 Fairfax and this is Loudoun and we have different 4 zoning laws, which is true, and in fact, our zoning 5 laws for AR-1 District are stricter than those in 6 Fairfax. Newport could not have applied for -- 7 could have applied for a special exemption permit to 8 operate on Davidson Road, but they didn't, and 9 that's not even an option here in Loudoun, as you 10 know. Congregate housing facilities are simply not 11 allowed, period. 12 Furthermore, Fairfax and Loudoun is tied to 13 the same state code, state code that protects 14 by-right group homes. But if Fairfax County could 15 recognize that trying to use three homes to operate 16 a group facility for 24 patients is not a by-right 17 endeavor, how does Loudoun not see the same? Are we 18 not tied to the same state code? 19 I hope you will write the conclusion of the 20 story by following Fairfax's precedent. 21 Thank you. 22 GORHAM CLARK: Thank you.</p>	<p style="text-align: right;">Page 139</p> <p>1 slated for a 18-to-32-year-old men seeking treatment 2 from anything from PTSD, drugs, and sexual 3 addiction. 4 I do have the website handouts that list 5 what they will be doing, if you would like to see 6 them. 7 You are telling me, Loudoun County, you are 8 going to allow this untrustworthy company to put 9 32-year-old men that may have sexual addictions next 10 to my 4- and 2-year-old granddaughters? Right next 11 to their playground? 12 We have lost all faith or trust in this 13 company. They have said they would do this or do 14 that and they wouldn't allow things, and now they 15 have. They told us, the CEO -- on a phone call with 16 my husband and I and my son and daughter, he told 17 us, Jameson, that you do not drug test. So how 18 would you know, if someone is coming in for one 19 thing, if they're addicted to drugs if you don't 20 even test? How would anyone find out? There is no 21 safety net. There is nothing to protect us. 22 Even Phyllis Randall says, As a mental</p>

<p style="text-align: right;">Page 140</p> <p>1 health therapist, I agree this is not a group home, 2 and Newport agrees that it's not a group home, but 3 slates -- states, Laws allow their use. 4 This is not a group home. We all agree. 5 Please put congregate campus in a safe place, for 6 the community and for those paying for Newport's 7 services. 8 My husband defended our country for 9 25 years. I believe it is fair to say that we 10 deserve to have a safe and peaceful place to retire, 11 just as much as Newport patients deserve privacy, 12 safe environment, and quality healthcare sold to 13 them. We are not against recovery. We are against 14 a private equity company again targeting a 15 residential location not zoned for that use. 16 How would you feel? Would you feel safe 17 with your families and homes next to them? 18 Please stop this. 19 GORHAM CLARK: Any questions for 20 Ms. Palmer? 21 (No response.) 22 GORHAM CLARK: Thank you, Ms. Palmer.</p>	<p style="text-align: right;">Page 142</p> <p>1 requirements. 2 Why does a \$47 billion company, who would 3 avoid all oversight and commercial taxes if declared 4 by-right and residential zoned get priority over the 5 law-abiding residents? 6 I've had friends seek treatment for PTSD in 7 facilities for residential areas far away from 8 residential areas to focus on getting better, not 9 against treatment, but in the right spot. Why would 10 you put combat related PTSD patients next to a gun 11 range? Why? 12 When we had a conversation with the COO in 13 December '21, he said nothing of that, that 14 combat-related PTSD would be treated there, and he 15 said it's fine with the facility to be by a range 16 with gunfire. Why do they not take TRICARE if 17 treating vets? 18 The COO also told us, in detail, to my 19 family, basically how the homes would share staff, 20 the opposite of group homes. If you have one place 21 cooking for three homes, how is that separate? 22 Newport even coached Dave Dussalt, the</p>
<p style="text-align: right;">Page 141</p> <p>1 On deck is Dylan Arthur for the podium to 2 my right. 3 Next is Craig Palmer. 4 CRAIG PALMER: Can we get slide 26 shown? 5 All right. I am Craig Delta, a hundred 6 percent combat veteran at Delta Diamond Lane. I am 7 here to oppose a congregate housing facility in my 8 backyard. 9 As a small business owner in Loudoun 10 County, I am subject to many rules and regulations. 11 Some are: One employee, other than members of 12 family, residing on the premises shall be permitted 13 to work on-site. No retail sales on the premises 14 other than items handcrafted on the premises. The 15 home occupation shall not generate more than ten 16 additional vehicle trips, five found round trips per 17 day, including deliveries. No retail sales are 18 permitted from the premises other than that that 19 meet the definition of handcrafting. No customers 20 are permitted to come to the residence in relation 21 to its use, which include any completion of 22 paperwork to comply with background check</p>	<p style="text-align: right;">Page 143</p> <p>1 previous owner, on how to communicate with the 2 County to get the initial letter from the county 3 zoning office that Newport could operate. How is 4 that not unethical? David Dussalt said he had it in 5 writing from the COO that it would be young girls on 6 the property, not 18-to-32-year-old males with drug 7 addiction, sexual addiction, and combat PTSD in a 8 neighborhood where my granddaughters play. 9 Are you going to allow them to avoid 10 commercial taxes, willfully and intentionally break 11 our strictest AR-1 zoning code after failing to fool 12 McLean and put their clients next to my range on a 13 blind curve of a dangerous road overlooking what 14 will soon be a brewery, all while jeopardizing 15 celebrated nonprofit for the disabled, AFLO? 16 If so, tell us, and say it loud for all the 17 AR-1 zones to hear. Loudoun County is more worried 18 about being sued by a foreign corporation that 19 markets themselves as luxury campuses and the money 20 they spent than upholding the rules and regulations 21 that the County wrote and supporting the residents 22 and the money we spent.</p>

<p style="text-align: right;">Page 144</p> <p>1 Newport bought the three homes. They want 2 all three to run in this manner. That is a 3 congregate house, congregate facility, luxury 4 campus. 5 Thank you. 6 GORHAM CLARK: Any questions for 7 Mr. Palmer? 8 (No response.) 9 GORHAM CLARK: Thank you, Mr. Palmer. 10 On deck is Louis Bergeron, to my left. 11 Mr. Arthur, you're next. 12 DYLAN ARTHUR: Dylan Arthur, 20560 Woodcock 13 Court, Leesburg. 14 Thank you for allowing me to speak here 15 tonight and object to the intended use of Loudoun 16 residential neighborhoods by Newport Healthcare, 17 furthermore, a row of three homes, as stated 18 tonight. 19 The citizens of Loudoun spoke for four 20 hours last April only to have some refuse to debate 21 the merits and countless issues brought up. 22 Officials, please, they now have their permits.</p>	<p style="text-align: right;">Page 146</p> <p>1 every person who goes on that property: patients, 2 staff, and vendors alike, as well as any person who 3 drives by the three homes connected by a narrow 4 single driveway. This location known for accidents 5 on a blind corner where people have been recorded 6 doing well over 20 miles an hour above the speed 7 limit, in some cases double. 8 VDBDH permits have around 30 personnel per 9 home. We're talking nearly a hundred cars per day 10 in and out of there, not including large vehicles. 11 People have been med-flighted out of the field next 12 door to this property for the same danger. By 13 allowing this, your name could be associated with 14 whomever could be or not be killed or seriously 15 injured as a result of this location. 16 Constantly reporting to his location by the 17 county will be a detriment to the safety of the 18 entire county already stretched then. Bottom line, 19 people are going to get hurt here because of the 20 intended use in a specific location. 21 Finally, the company is a snake in the 22 grass. They cannot be trusted. They have stated</p>
<p style="text-align: right;">Page 145</p> <p>1 They're licensed, as you wanted, so I hope you show 2 the people of this room, the county, that you serve 3 the people, at least fully debate this here tonight. 4 You can count on the outcome of this 5 hearing being broadcast tomorrow in the print, news, 6 and other media, far reaching beyond the county 7 limits. People across the country will hear how 8 well the representatives of Loudoun County address 9 the concerns of our citizens. 10 First, this exact format was attempted in 11 Fairfax County, and the County shut it down as 12 congregate housing not permitted by the county 13 statute. In Loudoun, our zoning is more strict, as 14 mentioned previously, so why is the County rolling 15 out the red carpet? This congregate use has not 16 been allowed anywhere in the country. This will set 17 precedent for every neighborhood across the country, 18 HOAs included. Please don't associate your name 19 with that poor decision. 20 Second, I served in the Marines as a police 21 officer and now a permanently disabled veteran. 22 This location will be a major safety concern for</p>	<p style="text-align: right;">Page 147</p> <p>1 they would only be treating women and now added 2 language on their website -- look it up -- that 3 states adult men, men's home opening in Loudoun. 4 Following Joe Procopio's statement about 5 this location being peaceful for patients, they will 6 now be treating veterans with combat PTSD next to a 7 licensed active gun range. Are you kidding me? 8 No veteran recovering from PTSD, especially 9 that from combat, should be treated next to an 10 active gun range, which is one of many in that 11 neighbor because they are allowed in AR-1. How many 12 veterans recovering from this same trauma would 13 panic in fear, have flashbacks, and could be 14 endangered, mentally or physically, as a result. 15 Thank them for their service by saying no 16 here tonight and enforce the county regulations as 17 written. 18 Thank you. 19 GORHAM CLARK: Thank you. 20 Any questions for Mr. Arthur? 21 (No response.) 22 GORHAM CLARK: Thank you, Mr. Arthur.</p>

<p style="text-align: right;">Page 148</p> <p>1 On deck is Scott Boddie.</p> <p>2 Mr. Bergeron, you're next.</p> <p>3 LOUIS BERGERON: Thank you. I'm Louie</p> <p>4 Bergeron, Navy veteran, Gleedsville resident.</p> <p>5 Imagine beautiful neighborhoods with safe</p> <p>6 streets, but not in Loudoun County, in Nashville,</p> <p>7 Tennessee, where Newport's executives Jameson Norton</p> <p>8 and Joe Procopio live. Did they open a treatment</p> <p>9 facility near them? No.</p> <p>10 Newport wants to operate here. They want</p> <p>11 to operate in your neighborhood. They flew here.</p> <p>12 You drove. The company doing business as Newport is</p> <p>13 really Monroe Real Estate, LLC. Every single deed,</p> <p>14 the three houses, all Monroe Real Estate, LLC. And</p> <p>15 Onex, a Canadian private equity firm whose managing</p> <p>16 director, Josh Houseman, sits up in Manhattan while</p> <p>17 we fight for our homes, our livelihoods, and our</p> <p>18 slice of the American dream down here.</p> <p>19 I'm sure they intend to acquire more and</p> <p>20 more residential real estate in Loudoun, but</p> <p>21 Newport's use is congregate. It is not a Loudoun</p> <p>22 AR-1, and the claim that they will operate as</p>	<p style="text-align: right;">Page 150</p> <p>1 a community-based healthcare. They could have been</p> <p>2 open and operating in one of those zones today for</p> <p>3 the last year, for the last 18 months, but Newport</p> <p>4 deliberately chose a zone where congregate housing</p> <p>5 is so incompatible it isn't even listed in the use</p> <p>6 table.</p> <p>7 Client's would be miles away from urgent</p> <p>8 care but feet away from an active gun range, as we</p> <p>9 just heard. This is the opposite of community-based</p> <p>10 care. Raise your hand if you've heard gunfire in</p> <p>11 the Gleedsville area or seen cars go way too fast on</p> <p>12 Gleedsville Road. Raise them up.</p> <p>13 (Show of hands.)</p> <p>14 LOUIS BERGERON: Traffic monitors show a</p> <p>15 thousand cars a day race past Newport's entrance on</p> <p>16 Gleedsville Road. I have clocked cars at 80 --</p> <p>17 sorry -- 78 miles per hour. I've got the data. Let</p> <p>18 me know.</p> <p>19 Anyone supporting mental health should be</p> <p>20 the loudest voices demanding a safe location for</p> <p>21 treatment in the 26 permitted areas and zones within</p> <p>22 this county for congregate. But let's get real:</p>
<p style="text-align: right;">Page 149</p> <p>1 separate facilities is laughable. But Loudoun</p> <p>2 zoning gave them exactly what they wanted, and if</p> <p>3 the BZA upholds their bogus by-right status of three</p> <p>4 homes together, they will purchase as many homes in</p> <p>5 Loudoun as billion-dollar backed companies can buy,</p> <p>6 flying clients from around the country.</p> <p>7 Slide here: Advertising availabilities on</p> <p>8 Luxury Rehab with no regard for our neighborhood.</p> <p>9 Can you go to slide 29, please.</p> <p>10 Virginia has no saturation and no</p> <p>11 separation protections against clustering.</p> <p>12 Newport's not dumb. Their C-suite execs and lawyers</p> <p>13 in Nashville and New York City have put a bull's-eye</p> <p>14 on Northern Virginia as the key to corporate growth</p> <p>15 strategy. Loudoun officials are opening the</p> <p>16 floodgates by allowing out-of-state businesses -- by</p> <p>17 favoring out-of-state businesses over residents, but</p> <p>18 this can change tonight.</p> <p>19 Slide 6, please.</p> <p>20 We support mental health. There are 26</p> <p>21 zones that allow congregate use and care in Loudoun</p> <p>22 County in the manner that Newport intends to do for</p>	<p style="text-align: right;">Page 151</p> <p>1 Newport is doing this to prove a point, to test the</p> <p>2 fence after being denied for a three-house project</p> <p>3 in Fairfax County. This whole year has been so</p> <p>4 costly and so painful, all due to Loudoun not</p> <p>5 admitting a mistake in a quickly determination</p> <p>6 letter in November of 2021.</p> <p>7 But tonight is an opportunity for the BZA</p> <p>8 to correct that mistake, to do what is right, to</p> <p>9 protect our future, to fix this dangerous mistake.</p> <p>10 We are your neighbors. We pay taxes. We</p> <p>11 vote. We are here for the long haul.</p> <p>12 GORHAM CLARK: Please wrap up.</p> <p>13 LOUIS BERGERON: Pull the permit and</p> <p>14 redirect Newport to a congregate zone where it's</p> <p>15 allowed and proper. If you do, it's a tax write off</p> <p>16 for them, at most; for us, it's everything we've</p> <p>17 worked for.</p> <p>18 Thank you so much.</p> <p>19 GORHAM CLARK: Any questions for,</p> <p>20 Mr. Bergeron?</p> <p>21 (No response.)</p> <p>22 GORHAM CLARK: Thank you, Mr. Bergeron.</p>

<p style="text-align: right;">Page 152</p> <p>1 On deck is Greg Masucci -- I hope I didn't 2 mess that name up too bad. 3 Mr. Boddie, you're next. 4 SCOTT BODDIE: My name is Scott Boddie. 5 I'm a resident of Loudoun County and a business 6 owner in the South Dulles District, and I'm happy to 7 be here. 8 For almost 30 years, I've helped other 9 small businesses and property owners, including 10 representations at BZAs in Arlington, Fairfax, and 11 Loudoun, but that's not why I'm here tonight. For 12 me, it's personal. 13 We're not talking about big corporate 14 interests or out-of-state money manipulating our 15 community, and we're not talking about outcast 16 rehabs of society and outcasts in rehab. In many 17 cases, these are our best and brightest who need to 18 find a better way to live, and that takes some time. 19 It takes a change in habitat. It takes a home. 20 They want to be there. They want to do the 21 work. The ones who stay for two weeks don't want to 22 be there. The ones that go with intention to stay</p> <p style="text-align: right;">Page 153</p> <p>1 for a duration want to be for four to six months. 2 Insurance cuts them short. If you want to talk 3 about big corporate interest, that's a different 4 discussion. 5 A lot of it is what our own sons, 6 daughters, and friends, their friends are dealing 7 with right now. My own son had a student career, 8 accepted by the Academies of Loudoun to their 9 four-year engineering program. That ended in the 10 middle of the pandemic while we were struggling to 11 help him out of his mental crisis, and there was 12 zero local support outside of full hospitalization; 13 which, I might add, Inova Fairfax inpatient refused 14 to discharge him because there was no home for him 15 until Newport found a place 350 miles away in 16 Connecticut to provide a home for my son. 17 I can say, with a good amount of certainty, 18 that without the residential program Newport offered 19 us, that one of my two kids may not be here today. 20 As a result, my daughter who is here with 21 me, is a professional welder on a construction site, 22 and my son is back at the Academies in their nursing</p>	<p style="text-align: right;">Page 154</p> <p>1 program. In fact, he got accepted to VCU for their 2 medical program. So another question: While he is 3 at VCU, is he residing there? I hope he comes home. 4 We all know that probably at some point he is going 5 to come back to my home. 6 For some cases, Newport's residential. The 7 specific way they do it is the only method that 8 works, and this is the only setting that works. 9 This is exactly the appropriate place for this. 10 Look, I get it: If I didn't understand 11 exactly how Newport works and why their method is 12 different, I wouldn't want it in my backyard either. 13 What I do know about this company is that everyone 14 I've met, from their leaders to their therapists, 15 has such genuine empathy and care and concern for 16 each other, for their clients, for the parents, long 17 into years of alumni programs that parents come and 18 speak out. Who speaks out about their mental health 19 issues and being in residential treatment? Nobody. 20 Newport's clients do. My children do. My family 21 does. 22 Newport is going to prove to be a good</p> <p style="text-align: right;">Page 155</p> <p>1 neighbor. They're going to show how a new method of 2 treatment is the right way to do it. 3 And, as a result, I'm going to support 4 Lynne and Michael Wright's farm because my brother 5 has serious developmental disabilities, and I admire 6 their purpose. I am also going to support Newport 7 Healthcare opening in our county. 8 GORHAM CLARK: Any questions for 9 Mr. Boddie? 10 (No response.) 11 GORHAM CLARK: Thank you, Mr. Boddie. 12 On deck is Melissa Taliaferro. 13 Mr. Masucci, you're next. 14 GREG MASUCCI: Hello. Thank you for the 15 opportunity to speak. My name is Greg Masucci. I'm 16 a Loudoun County resident. I'm the cofounder of A 17 Farm Less Ordinary, which you've heard about. 18 We are -- we employ people with cognitive 19 disabilities at the Wrights' farm, which is adjacent 20 to the parcels in question that Newport has 21 acquired. 22 I'm also the father of a very profoundly</p>
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<p style="text-align: right;">Page 156</p> <p>1 autistic, nonspeaking boy who will almost certainly 2 require a permanent home, permanent group housing 3 opportunity in the future after my wife and I pass 4 on, so I think I'm quite qualified to speak on this 5 subject matter. So I'll speak from -- just from the 6 part of A Farm Less Ordinary and as a parent of 7 someone that this law was meant to help. 8 I'm concerned not just about the dangerous 9 precedent that would be set here by allowing this to 10 go forward, but because AFLO's largest growing field 11 is about 150 feet from the nearest home and about 12 20 feet from the 10 acres they also bought, which 13 they're not talking about. 14 For us, nothing is more important than the 15 safety and wellbeing of our growers. They have some 16 pretty profound disabilities, and that makes them a 17 vulnerable population. AFLO takes this very 18 seriously. In fact, everyone who steps foot on our 19 property, including our employees, volunteers, and 20 visitors, must complete a complete background check, 21 employees are drug screened. However, we'll have no 22 such assurances from our perspective new neighbors.</p> <p style="text-align: right;">Page 157</p> <p>1 Sadly, many people living near the current 2 Newport facilities have submitted letters describing 3 numerous public disturbances, runaways, constant 4 sirens. Here, all it takes is one incident, one 5 person looking to make a scene or seek help in a 6 manic state to create irreparable harm to one of 7 AFLO's very vulnerable employees or its programs. 8 This is a gross zoning issue -- a gross zoning 9 misuse, at best, and a real danger, at worst. 10 The other side will suggest that this is 11 simply a NIMBY argument or a NIMBY defense, but if 12 that were true, the rights and the community around 13 them would have never allowed AFLO to operate there 14 to begin with. I mean, after all, we're a farm with 15 people with disabilities. 16 If Newport opens, AFLO may have no choice 17 but to leave due to parental concerns, liability, 18 and insurance concerns, which is a very real 19 concern. I'm the executive director and the one who 20 does the budgets. I mean, would it be okay with you 21 if your disabled child were 150 feet away from a 22 campus -- treatment campus with 24-short-term adult</p>	<p style="text-align: right;">Page 158</p> <p>1 clients seeking treatment for unknown mental and 2 behavioral issues? Not many parents would be cool 3 with that. 4 So our programs would be in real jeopardy, 5 and it's a sad reality that simply reenforces why 6 commercial treatment campuses are not zoned to 7 operate in neighborhoods. Calling a commercial 8 campus a group home facility does not make it so. I 9 know because my wife and I are trying to start a 10 group home ourselves for our son, Max. And it's 11 very complicated and an extremely arduous process 12 with multiple agency oversights, as we believe it 13 should be, because we tried to do a residential 14 inpatient for our farm originally. 15 This is an end around that system. They're 16 just basically trying avoid that kind of oversight. 17 This law was intended to help people like our son 18 establish themselves in the community on a permanent 19 basis, not for people who revolve in -- revolve in 20 and out every six weeks. There is simply no 21 community -- no community in that, and community is 22 what will make the people like our son successful in</p> <p style="text-align: right;">Page 159</p> <p>1 a true group-home situation; people who know that 2 our son, Max, shouldn't be out alone and could get 3 into trouble; people who care for him and people who 4 care about him; a community which he would be 5 actively participating in. 6 Our son is nonspeaking, but he is still 7 incredibly social. And it breaks my heart to think 8 of him all alone somewhere because this group 9 housing concept has been so poisoned by big 10 corporations exploiting the law for profits so 11 carelessly that no one will want to allow the people 12 like my son who truly need it into their 13 communities. 14 GORHAM CLARK: Please wrap up. 15 GREG MASUCCI: Let's get real here: 16 Staying somewhere for 45 days is not a home. People 17 who stay somewhere for 45 days do not have ties to 18 the community, nor any loyalty or responsibility to 19 our community. Why would they? 20 And just, in closing, I wanted to say: 21 Mr. Wilburn's assertions that three homes will not 22 be used collectively as a treatment center and that</p>
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<p style="text-align: right;">Page 160</p> <p>1 the inpatients will not be using substances, despite 2 not being drug tested, when we know that NIH states 3 that 20 percent of mental health patients have 4 comorbidities of addiction, substance abuse issues, 5 all of that from Mr. Wilburn has about as much 6 credibility as porcine aviation. 7 Thank you. 8 GORHAM CLARK: Any questions for 9 Mr. Masucci? 10 (No response.) 11 GORHAM CLARK: Thank you, Mr. Masucci. 12 Next on deck is Jennifer Kordonski. 13 Melissa Taliaferro. 14 MELISSA TALIAFERRO: Yes. 15 GORHAM CLARK: Did I pronounce that right? 16 MELISSA TALIAFERRO: Yes, sir. You got it. 17 You're one of the rare, the rare few. Thank you. 18 GORHAM CLARK: I knew a Taliaferro. 19 MELISSA TALIAFERRO: My name is Melissa 20 Taliaferro. I live less than a mile from the homes 21 on Gleedsville Road, my husband and I, along with 22 our five children.</p>	<p style="text-align: right;">Page 162</p> <p>1 voluntarily resides or lives, taking their meals, 2 spending the nights in a supportive and comfortable 3 environment designed and implemented by for-profit 4 providers, which is not unlike any of the other 5 medical treatment that we typically receive in our 6 local community. 7 Statistics in Virginia: 1.15 million 8 adults in Virginia have a mental health condition. 9 That is more than two and a half times the 10 population of Loudoun County. 264 adults have a 11 serious mental illness such as bipolar disorder or 12 schizophrenia. 13 What happens when we deny access to 14 counseling and therapy? Crisis, inpatient stays, 15 suicide attempts, and suicide deaths. 16 In Virginia in 2020, 1,243 lives were lost 17 to suicide. And on January 14th, 2023, a 18 17-year-old Loudoun County high school student who 19 lived in this community, in an adjacent 20 neighborhood, took his own life. His name is Jacob 21 Sean Buscher. This is happening near us, to members 22 who already exist in our community. We're not</p>
<p style="text-align: right;">Page 161</p> <p>1 I don't anticipate any adverse impact of 2 approving Newport Academy to operate there. In 3 fact, I think it's more detrimental if we limit 4 access to care to those already in our community who 5 are suffering from behavioral healthcare issues. 6 I wanted to define and differentiate the 7 inpatient and residential levels of care, as many 8 are confusing the two, whether out of ignorance or 9 attempt to influence. 10 Inpatient in our society is the highest 11 level of treatment, often involuntary, AKA temporary 12 detainment, with 24-hour monitoring in a secured, 13 locked unit, treating patients who are suicidal, 14 homicidal, manic, and experiencing psychosis. Those 15 being held on a detainment order receive care in an 16 inpatient facility. This is not an inpatient 17 facility. 18 What is residential treatment? Designed to 19 be therapeutic, rehabilitative, helping the patient 20 treat their mental health condition, not designed 21 for patients experiencing crisis, psychosis, or 22 mania. Delivered in a home where the patient</p>	<p style="text-align: right;">Page 163</p> <p>1 talking about importing people from other 2 communities. We're talking about treating our 3 children, our neighbors, our friends, and our family 4 members. 5 In 2022 December, Governor Youngkin 6 unveiled his three-year plan to transform Virginia's 7 behavioral health system. The third pillar of the 8 plan states, We will ensure that we can serve people 9 by expanding capacity throughout the behavioral 10 healthcare system, including precrisis and 11 postcrisis support by expanding the use of 12 community-based care. This is community-based care. 13 And government funding is completely insufficient to 14 support the demand that has continually risen, 15 particularly in response to COVID-19. We need 16 private investment to help solve this crisis. 17 So here I stand, surrounded by selfishness 18 with neighbors objecting to the developmental 19 facilities that will help treat those already in our 20 community, and for what actual reason? It's hard to 21 tell. Is this about the zoning? Is this about 22 bias? No one has successfully outlined how or why</p>

<p style="text-align: right;">Page 164</p> <p>1 they feel these residents, secluded on 25 acres, 2 would jeopardize those who live or work nearby. 3 It's all speculation. 4 GORHAM CLARK: Please wrap up. 5 MELISSA TALIAFERRO: These potential 6 patients already live among us, and I hope that you 7 will help them gain access to care so that we can 8 avoid additional future crises for people in our 9 community. 10 Thank you. 11 GORHAM CLARK: Thank you. 12 Any questions for, Ms. Taliaferro? 13 (No response.) 14 GORHAM CLARK: Thank you, Ms. Taliaferro. 15 Next on deck is Sarah Hoffman, to the 16 podium to my right. 17 And Jennifer Kordonski is next. 18 JENNIFER KORDONSKI: Hi. Thank you. 19 I come here tonight as a parent of a child 20 who attended Newport as a residential treatment 21 program, and then we followed through with the 22 continuity of care with Newport for partial</p> <p style="text-align: right;">Page 165</p> <p>1 hospitalization, which is what we call a day 2 hospital, eight hours a day of care, and then 3 intensive outpatient. 4 I've heard a lot of things today that 5 really break my heart: saying that these people are 6 a cancer on our community, saying that they are a 7 safety issue, that my children -- their children are 8 dangerous, you know, are concerned that they will 9 not be safe. 10 I promise you: My daughter is not a 11 cancer. She comes from a happy, loving, supportive 12 home. When she was 13 years old, she started with 13 anxiety. COVID hit and anxiety turns into isolation 14 and lack of socialization and depression. And that 15 turned into my 14-year-old child attempting to take 16 her life. This is the reality of the world we are 17 living in. There is a mental health crisis. There 18 is a crisis of access to care. 19 When I tell you that children and adults 20 are being warehoused in ERs for days because there 21 are no beds to take them, I am not lying. This is 22 not a news story. I am living roof.</p>	<p style="text-align: right;">Page 166</p> <p>1 When I tell you that when a bed is finally 2 found, people are there for three days, three days, 3 that is it, and they are sent home: no care, no 4 treatment, no medication. 5 This is -- I tried everything with my 6 daughter. She is not defiant. She wanted help. 7 She is one of the bravest people that I know. I 8 took my 15-year-old child across the country to 9 California and left her there. She is the bravest 10 person that I know, to have done that, and she was 11 begging for help: Mommy, please. It hurts so much. 12 I want to get better. I just don't know how. 13 And that was after hospitalization, day 14 hospitals, dialectical behavioral therapy, regular 15 therapy. The only thing that literally saved my 16 daughter was Newport. 17 She is back home today, after taking a 18 semester off of high school to get better. She is 19 back in high school. She is slated to graduate on 20 time. It is all because she had three months -- 21 really, ten weeks -- of care in a residential 22 program where she could learn the skills she needed</p> <p style="text-align: right;">Page 167</p> <p>1 to manage her anxiety, to deal with her depression, 2 to learn how to -- skills that she needed, coping 3 strategies for the world, to get diagnosed properly. 4 You go to an ER and a doctor comes in for 5 five minutes and tells you that, you know, your 6 child has this or this person has that. They need 7 the time and they need it in a safe, comfortable 8 environment, not an institutional setting. 9 GORHAM CLARK: Please wrap up. 10 JENNIFER KORDONSKI: I'm sorry? 11 GORHAM CLARK: Please wrap up. 12 JENNIFER KORDONSKI: I'm all done. 13 GORHAM CLARK: Okay. Any questions for, 14 Ms. Kordonski? 15 (No response.) 16 GORHAM CLARK: Thank you, Ms. Kordonski. 17 Next up on the podium to my left is Anthony 18 Virgilio. 19 So we're now looking for Sarah Hoffman. 20 SARAH HOFFMAN: Hi. How are you? 21 GORHAM CLARK: How are you? 22 SARAH HOFFMAN: My name is Sarah Hoffman.</p>
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<p style="text-align: right;">Page 168</p> <p>1 I live on Gleedsville Road. 2 May I please have Slide 24. 3 First, I'd like to say: We've already 4 proven that two of the homes are on the same state 5 issued license. Page 2 of Loudoun zonings own staff 6 report states: Newport could operate a group home 7 in the AR-1 district if each home was separately 8 licensed as a group home by VDBHDS. I don't know 9 how that doesn't end the conversation, but here we 10 are. 11 Secondly, we have the COO, via affidavit, 12 describing in detail how they would share resources. 13 There will be a nurse for the whole collective group 14 for each house during the daytime. There is going 15 to be about ten support staff, the chef, sous chef. 16 We won't have two in every house; we'll generally 17 have one working kitchen that will make food, and 18 then each of the other houses will heat it up, where 19 only one is doing the hard lifting and the other two 20 are just -- you know, they have meals on-site on the 21 other two, but we do a lot of the back-end 22 preparation in only one of the houses, in direct,</p>	<p style="text-align: right;">Page 170</p> <p>1 saying one thing and doing another. 2 May I please have Slide 12. 3 Each and every one of the job descriptions 4 that we could find online for the Leesburg location 5 was very blatant about sharing resources across the 6 homes, exactly their plan in Fairfax and what they 7 have been cited for in Orange Acres, California. 8 This is their MO. This is not an anomaly. 9 In assigned houses -- this is the 10 housekeeper job description -- clean all the 11 facilities. It couldn't be more obvious. 12 Can I please have slide -- well, you know 13 what? We could do that all day. I've got so many 14 job descriptions in there. I highly recommend you 15 looking at that PowerPoint at some point. 16 I'm the daughter of a hundred percent 17 disabled veteran. I do not take kindly to private 18 equity trying to again misuse housing protections 19 for the disabled. 20 Can I please have slide 31. 21 Loudoun zoning issued a residential permit 22 predicated on a nonresidential septic calculation.</p>
<p style="text-align: right;">Page 169</p> <p>1 direct opposition to what the CEO testified to you 2 in April and again today. 3 I would also like to go to slide 20, 4 please. 5 Currently, features of one home are being 6 advertised as amenities of another. On the website 7 luxuryrehab.com, there's a photo showing tennis 8 courts. But, as we know, from zonings own aerial, 9 the tennis courts belong to 2019. They are not 10 2013's tennis courts. 11 If we could go to Slide 21, we can show 12 that that is intentional. Jameson Norton stated to 13 neighbors, We would try to use the tennis courts for 14 all of them. I don't know how the licensing group 15 is going to look at that. 16 Well, we know how Joe Procopio looks at 17 that: Residents will have access to only one home 18 that they reside within. There will be no 19 commingling of clients between houses. Each house 20 will operate independent of one another. They will 21 not be congregate living by definition. 22 Newport seems to have written the book on</p>	<p style="text-align: right;">Page 171</p> <p>1 It's fascinating logic. You see here on the left? 2 That's Newport's numbers. Their original staff list 3 that was submitted to VDBHDS that we pulled with a 4 FOIA request had 23 staff total, 19 at their peak. 5 They had also made a separate request to add two 6 more bedrooms. This is all to a home that is a 7 four-bedroom perk. They are out of their depth when 8 it comes to septic in Loudoun County. 9 Those of us on septic and those of us who 10 understand how the homes slope down -- and, 11 Mr. Clark, you asked me last time for a topography 12 map when I told you about it turns into a bit of a 13 holler when I was here last time. We have that for 14 you. 15 The topography map is Slide Number 32. It 16 shows a sleep decline. The poop will literally roll 17 downhill if they break that septic, and other 18 people's wells and other people's septic will be 19 compromised. Again, I highly recommend that you 20 look through this PowerPoint. 21 GORHAM CLARK: Would you please wrap up. 22 SARAH HOFFMAN: Yes, I will.</p>

<p style="text-align: right;">Page 172</p> <p>1 They are also running an experiment with 2 us. We are going to be the backdrop for a raised 3 age. The age used to be 24 to 26. Within the last 4 month, they raised it to 32. This is an experiment 5 with our lives. Men and women, both 32. The care 6 coordinators who make \$17 -- by the way, a liveable 7 wage in Northern Virginia is \$20 minimum. You 8 should raise that. Because the care coordinators 9 two first job descriptions are (1) what to do if a 10 client leaves and runs the property: Follow them 11 until further assistance can be provided; (2) verbal 12 deescalation techniques to have them redirect their 13 behaviors if there is imminent physical danger to 14 themselves or others -- 15 GORHAM CLARK: You do need to wrap up. 16 SARAH HOFFMAN: -- this is negligent. 17 Thank you. 18 GORHAM CLARK: Okay. Thank you. 19 Any questions for, Ms. Hoffman? 20 (No response.) 21 GORHAM CLARK: Thank you, Ms. Hoffman. 22 On deck is Katie Rowand.</p>	<p style="text-align: right;">Page 174</p> <p>1 the country. 2 The facility on Gleedsville precisely 3 parallels a previous attempt by Newport to develop 4 and operate a congregate facility. They also 5 included three homes in on Davidson Road in McLean, 6 Virginia. In 2019 Fairfax zoning, sitting exactly 7 where you are today, assessed the developer's 8 application, determined the use was for a congregate 9 facility and not a group home, and voted unanimously 10 to deny Newport's application. 11 The congregate elements Fairfax zoning 12 specified mirror those of the Gleedsville homes in 13 the following seven ways: Renovations prior to 14 receiving a permit; shared staffing positions for 15 all the homes within the facility; single-point 16 access to the facility; facility fencing creating a 17 compound-like look, and public statements from 18 corporate executives; the facility parking was joint 19 parking; and the state licensing for the facility 20 wasn't for one home but for multiple homes. The 21 same things apply here today to Loudoun County. 22 Fairfax County stopped Newport from</p>
<p style="text-align: right;">Page 173</p> <p>1 And next is Anthony Virgilio. 2 ANTHONY VIRGILIO: Before I start, I have a 3 copy of my presentation, as well as a slide that I'd 4 like to have passed out to the members of the 5 committee. 6 Let me start. 7 My name is Tony Virgilio. I live at 20487 8 Oatlands Chase Place. My family and I are directly 9 and adversely impacted by the Newport zoning 10 application. There is a big difference between what 11 Newport has applied for to date and what they are 12 doing there today and what they intend to do in the 13 future, as confirmed today, unfortunately, by their 14 CEO. 15 This application is clearly for a large 16 corporate congregate facility and not a group home 17 proposed by Newport and as defined by Virginia 18 Commonwealth and federal laws. 19 You know, there's a hotel chain called 20 Residence Inn, but you don't get to reside there if 21 you don't pay, and that's the same thing with 22 Newport's facilities all over the world, all over</p>	<p style="text-align: right;">Page 175</p> <p>1 operating in McLean in 2019 for these reasons, and 2 today each of these reasons apply to the congregate 3 facility proposed for Gleedsville. 4 Let me briefly explain the seven items you 5 see on the comparison sheet in front of you. 6 First, Newport has already completed 7 extensive construction prior to permitting. 8 Second, per affidavits of their CEO, 9 statements, submissions, and job applications, there 10 will be one executive director, one medical 11 director, one clinical director, a chef, a teacher, 12 and maintenance and support staff at the facility, 13 not at each home. If so, there will be more support 14 people at each home than there are people residing 15 there. 16 A single-point access: Just like the 17 McLean facility, one point of access via a 18 single-lane pipe stream -- pipestem driveway. 19 Facility fencing: A solid six-foot high 20 PVC fence, which Fairfax zoning described as a 21 physical and visual barrier, which creates the 22 appearance of a completely enclosed facility.</p>

<p style="text-align: right;">Page 176</p> <p>1 Public statements from the corporation, 2 just as you heard from their CEO today, meetings in 3 McLean and now your meeting here tonight, that the 4 facility will have one security guard, other shared 5 staff and resources, and would be operated as -- and 6 applied for individually but operated as a 7 congregate facility. 8 Facility parking: Their CEO confirmed to 9 McLean that the property required -- would have to 10 pave over an entire yard for parking at the facility 11 because there would be so many cars and other 12 traffic there. 13 State licensing: Newport state license for 14 McLean was written for only one facility but 15 specified more than one address. Similarly, here we 16 have a situation in Loudoun County for Gleedsville 17 where they clearly intend to develop one single 18 congregate facility because there are multiple homes 19 that are included in that. As their CEO has 20 confirmed tonight, the three homes are all part of 21 the Gleedsville facility. 22 Fairfax determined that the McLean</p>	<p style="text-align: right;">Page 178</p> <p>1 It's time for you to end this charade and 2 wasting our time and money fighting against a 3 congregate facility which absolutely does not belong 4 in our neighborhood. 5 Thank you. 6 GORHAM CLARK: Thank you. 7 Any questions for Mr. Virgilio? 8 (No response.) 9 GORHAM CLARK: Thank you, Mr. Virgilio. 10 Next on deck is Mike Taylor, to the podium 11 to my left. 12 Katie Rowand, is she here? 13 (No response.) 14 GORHAM CLARK: All right. Mr. Taylor, we'd 15 like you to come up quickly. 16 And on deck is Abigail Abraham. 17 MIKE TAYLOR: Mr. Chairman, members of the 18 board, thank you for hearing everything tonight. 19 My name is Mike Taylor, resident of the 20 Catoctin District. 21 Before anybody thinks I'm not sympathetic 22 to mental health issues, in 1988 I took the call</p>
<p style="text-align: right;">Page 177</p> <p>1 property, that this use is most similar to a 2 congregate facility, not a group home, which would 3 not be permitted by by-right and requires a special 4 permit. 5 The same state and federal laws should 6 apply -- 7 GORHAM CLARK: Please wrap up. 8 ANTHONY VIRGILIO: -- here in Loudoun 9 County, just like they do in Fairfax County. 10 Our zoning code completely prohibits any 11 congregate use without a special exception. Loudoun 12 officials who support Newport's congregate facility 13 know this. They either have their blinders on or 14 they're trying to pass this off -- the Gleedsville 15 facility as group homes, a series of them, which 16 they are clearly not. 17 This is not grandma taking in her orphaned 18 mentally ill child -- 19 GORHAM CLARK: I do need you to wrap up. 20 ANTHONY VIRGILIO: Yes. 21 GORHAM CLARK: You're well past your time. 22 ANTHONY VIRGILIO: Okay. Sorry.</p>	<p style="text-align: right;">Page 179</p> <p>1 from my parents asking me to go identify my 2 brother's body in Winchester, so I've been there. 3 However, in my career I've always dealt 4 with the other side of these issues. A lot of 5 people have referred to Newport's website. Look at 6 all the different treatments they offer. Look at 7 all the insurance they take. I've had firsthand 8 experience: Your Honor, I'll stipulate to your 9 finding on my client committing the aggravated 10 malicious wounding, but it's all due to his anxiety. 11 And my client has good health insurance that will 12 cover up to 180 days of inpatient treatment, so 13 before you impose sentence, I'd ask you to allow his 14 voluntary commitment. And it happens. 15 A facility just north of Leesburg, I was 16 out one night, along with a bunch of other deputies, 17 and we had somebody that had figured out that, in a 18 facility not designed for it, if you pull the fire 19 alarm, the doors unlock. As I'm sitting there with 20 another investigator, going through the patient 21 records, trying to figure out where these children 22 might be going, we realized quickly, We didn't need</p>

<p style="text-align: right;">Page 180</p> <p>1 a bloodhound for a lost child. We needed patrol 2 dogs that could handle some bite work. 3 And, personal experience, I still have a 4 stalker, even after I retired. He caused the 5 evacuation of this building twice due to bomb 6 threats. His attorney played the same game, wiped 7 out the kid's college fund, but, Hey, my client has 8 insurance that will cover inpatient treatment. 9 Don't send him to jail. 10 So they sent him to Rockville, Maryland, to 11 a fixed mental health facility where he promptly 12 pulled a knife on the staff and got to meet the 13 Montgomery County SWAT team. 14 You're talking about putting something in a 15 neighborhood that's going to be subject to this same 16 abuse. I have no issues with people that are 17 legitimately seeking help. But, unfortunately, the 18 attorneys and the insurance companies and the 19 healthcare providers, if you want to call them that, 20 they know exactly what they're doing. The facility 21 north of Leesburg was actively marketing to the 22 attorneys with these services.</p>	<p style="text-align: right;">Page 182</p> <p>1 facility in the neighborhood. 2 While I think it is misguided to consider 3 Newport a permitted residential facility as defined 4 in 15.2-2291 as opposed to congregate housing, 5 that's actually not the thrust of my comments 6 tonight. 7 My objection is that the business cannot be 8 allowed to operate because it cannot obtain the 9 necessary permitting under Loudoun County Zoning 10 Requirement 5-400, which enumerates the permitting 11 requirements for running a business in a residential 12 area, and those permits are, in fact, required. 13 15.2-220 -- 2291(A) says no condition more 14 restrictive can be imposed on a residential 15 facility, assuming that it meets the definition, but 16 it doesn't say that they can be less restrictive, 17 which means they have to comply or should have to 18 comply with 5-400. So it's not the case that any 19 residential facility is inherently a business that 20 would violate the permitting requirements of 5-400. 21 I can and surely you all can envision scenarios in 22 which such residential facilities could operate</p>
<p style="text-align: right;">Page 181</p> <p>1 So be very careful. You're going to pop 2 something into a neighborhood that is completely 3 incompatible. And it's going to lead to additional 4 buying up of houses in other spots around the 5 county, and you'll be hearing from the people in 6 Beacon Hill and Shenstone and Farmington on the 7 Green and Hyde Park about what's getting popped into 8 their neighborhood. 9 Thank you for your time. 10 I'll cut it in 2, 1, there we go. 11 GORHAM CLARK: Any questions for 12 Mr. Taylor? 13 (No response.) 14 GORHAM CLARK: Thank you, Mr. Taylor. 15 Christal Golston is on deck next, to the 16 podium to my right. 17 Abigail Abraham, you are next. 18 ABIGAIL ABRAHAM: Thank you. 19 My name is Abigail Abraham. I live 20 approximately a half a mile from the proposed 21 development on Gleedsville Road. I'm speaking an 22 objection to the operation of Newport's rehab</p>	<p style="text-align: right;">Page 183</p> <p>1 without violating those conditions. 2 And the conditions, as I say, of 5-400 are, 3 in fact, required. 15.2-2291 doesn't supercede 4 those requirements. It only supercedes for a 5 legitimate residential facility, the issue of 6 multiple people, up to eight, no relation to one 7 another living in a house, which living situation 8 would otherwise be in violation of the residential 9 limits and requirements of consanguinity imposed by 10 zoning. 11 So think for a moment and realize that it's 12 not possible that such a situation as Newport is in 13 would exempt them from those requirements, because 14 that would mean that the particular kind of business 15 and only that particular kind of business would have 16 more rights to their property use that has no 17 business permitting required under 5-400 than I 18 would as an owner and resident for my own purposes 19 or for any other business I might entertain. And 20 that can't be right. Not only is that not the plain 21 language of the law; that can't be the intent 22 eminent.</p>

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<p style="text-align: right;">Page 184</p> <p>1 My understanding of how Newport operates 2 leads me the conclusion they cannot, under any 3 circumstances, qualify for a business permit under 4 5-400. Subsection A requires that the use of the 5 dwelling unit for the home occupation is incidental 6 and subordinate to the use of the dwelling unit for 7 residential purposes, and that's just not true. 8 And subsection C says one employee or 9 full-time equivalent, other than members of the 10 home, occupation operators, family residing on the 11 premises -- which doesn't apply here -- shall be 12 permitted to work on site. And, again, from the 13 services that Newport says it will put in, that is 14 also not what will happen and, indeed, it can't 15 happen if they're to obtain and retain their license 16 from VDBHDS, nor can it happen if they fulfil what 17 they say they will do in their treatment plans. 18 So it doesn't make sense. They have to 19 have a business license. My recollection is that, 20 at the earlier hearing in April, one of you 21 gentlemen was asking about other permitting, and I 22 thought that that also came up at the circuit</p>	<p style="text-align: right;">Page 186</p> <p>1 values are the number one reason that hundreds of 2 clients from my firm move to Loudoun County every 3 single year. I can guarantee you that Newport's 4 commercial campus will bring significant 5 depreciation of property values to all the homes 6 within its vicinity. 7 But this is not just going to affect those 8 of us that are close by; it will have a snowball 9 effect on other communities from the fear that this 10 could happen to them, too. Allowing Newport's 11 campus will have an overarching depreciation effect 12 on Loudoun County as a whole. 13 We've already submitted research showing 14 the valuation of approximately 12 percent for 15 properties closest to Newport's location on Kurtz 16 Road in McLean from 2018; and if Loudoun County sets 17 this precedent, Newport and any company with their 18 same business model would have a green light to buy 19 up clusters of residential homes and use them as 20 commercial treatment facilities. 21 This has happened in Orange Acres, 22 California, where Newport just purchased their</p>
<p style="text-align: right;">Page 185</p> <p>1 court -- and I may be wrong -- but nobody has been 2 talking about the requirements under that provision 3 of the Loudoun County zoning requirement, and they 4 shouldn't be exempt from it. So where are those 5 permits? 6 Thank you very much. 7 GORHAM CLARK: Thank you. 8 Any questions for Ms. Abraham? 9 (No response.) 10 GORHAM CLARK: Thank you. On deck is 11 Christopher Bartolomucci. 12 Next is Christal Golston. 13 CHRISTAL GOLSTON: Good evening. My name 14 is Christal Golston, and I live in the closest 15 subdivision next to Newport's property, on Browns 16 Creek Place in Leesburg. I am speaking against the 17 Newport Healthcare facility. 18 I've been a resident of Loudoun County for 19 30 years and a real estate broker here for almost 20 20 years. I have seen and been a part of the 21 amazing growth that Loudoun County has experienced, 22 and I know firsthand that the real estate property</p>	<p style="text-align: right;">Page 187</p> <p>1 twelfth home in the same small town. Those 2 residents have said their home prices have been 3 negatively affected there as well. Not only with 4 this commercial campus negatively affect the value 5 of our homes, it will erode the character of our 6 AR-1 District. It will set a precedent threatening 7 the same for other AR-1 zones like Beacon Hill, 8 Shenstone, Big Woods, Long Meadow, Kings Crossing, 9 Raspberry Falls, and all subdivisions that have an 10 AR-1 or AR-2 designation. 11 There is also a concern within our 12 community about disturbances generated from a 13 24-client compound with 14 to 19 staff per home. 14 This is an average of 70 people, clients, 15 therapists, counselors, and maintenance staff going 16 in and out of a commercial treatment facility all 17 day long in a residential area. If they succeed in 18 allowing a commercial congregate facility by-right 19 use, there will be no restrictions, no permits, 20 nothing to abide by, and it will be the first of 21 many commercial campuses amongst the family homes in 22 Loudoun.</p>

<p style="text-align: right;">Page 188</p> <p>1 I teach the Virginia Fair Housing laws, and 2 I guarantee you that these laws and the Americans 3 With Disabilities Act were never intended to allow 4 commercial treatment facilities deemed congregate to 5 operate where they should not. 6 Thank you. 7 GORHAM CLARK: Thank you. 8 Any questions for Ms. Golston? 9 (No response.) 10 GORHAM CLARK: Thank you, Ms. Golston. 11 Next on deck is Cheryl Wright again, this 12 time for Tom Wright. 13 Mr. Bartolomucci. 14 CHRISTOPHER BARTOLOMUCCI: Thank you. My 15 name is Chris Bartolomucci. With my cocounsel, 16 Mr. Hampshire, I'm an attorney for the appellants in 17 this matter, and I want to thank the board for 18 addressing this important issue tonight. 19 I intend to speak to a single issue: the 20 residency issue -- and I'll be brief. 21 The bottom line is this: Newport treatment 22 centers are not residential facilities, and Newport</p>	<p style="text-align: right;">Page 190</p> <p>1 hospital, and Newport's visitors are like hotel 2 guests or hospitals, but that doesn't make you a 3 resident. 4 When a tourist comes to Leesburg and stays 5 in a local hotel, even for a few weeks, we don't 6 call that person a resident. If that tourist gets 7 hurt and has to stay at a local hospital, even for a 8 few weeks, we don't call that person a resident. 9 Now, Black's Law Dictionary defines a 10 resident as someone whose presence within the state 11 is not merely transitory in nature, but Newport 12 guests are merely transitory. They don't meet the 13 legal or the common sense definition of residents. 14 And this has been the law in Virginia for 15 more than a century, and I would cite you to the 16 case of Long versus Ryan, in 1878, in which the 17 Virginia Supreme Court said that residents is 18 contradistinguished from the mere temporary locality 19 of existence. 20 And I'll close on this note: You don't 21 become a resident merely by eating and sleeping 22 somewhere. Every hotel guest who saunters down to</p>
<p style="text-align: right;">Page 189</p> <p>1 guests are not residents. The statute at issue -- 2 Section 2291 -- applies to a residential facility in 3 which no more than eight individuals with mental 4 illness reside. 5 Residency, thus, is referred to twice in 6 the statute, emphasizing the importance of that 7 requirement, yet Newport's treatment centers are not 8 residential facilities, and the visitors who stay in 9 those facilities temporarily for treatment are not 10 residents. Newport's facilities are nonresidential 11 treatment centers for short-term patients or guests. 12 Newport's visitors come for a few weeks to 13 receive treatment. When their insurance runs out, 14 they go home. They go back to where they came from. 15 If you are only staying for as long as your 16 insurance pays for your stay, you are not a 17 resident. 18 Newport patients have no intention of 19 staying here permanently. They have no intention of 20 staying here on a long-term basis. They have no 21 intention of staying here for more than a few weeks. 22 A Newport treatment center is like a hotel or a</p>	<p style="text-align: right;">Page 191</p> <p>1 the lobby and eats the free breakfast would be a 2 resident under that standard. That is not the test 3 that this board should apply. 4 Thank you. 5 GORHAM CLARK: Any question for 6 Mr. Bartolomucci? 7 (No response.) 8 GORHAM CLARK: Thank you, sir. 9 MR. GREEN: Mr. Chair, Mr. Chair. 10 GORHAM CLARK: I'm sorry? 11 MR. GREEN: I'm sorry to interrupt. I just 12 want to be clear: I believe that the gentleman that 13 just spoke was the attorney for the appellants. 14 Was that the function of the actual 15 argument in case in chief, each side is allowed ten 16 minutes? Is that -- was that a public comment, or 17 was it part of his ten minutes? Because I think 18 it's a fair question, not because I'm going to -- I 19 just want to figure out from the board what the 20 position is with respect to the attorney for the 21 appellants arguing the case in chief here. 22 GORHAM CLARK: What's your position on that</p>

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<p style="text-align: right;">Page 192</p> <p>1 Mr. Bartolomucci? 2 MR. BARTOLOMUCCI: I signed up to speak, 3 and I spoke. 4 I think there was -- I was not aware of any 5 prohibition of attorneys speaking in this portion of 6 the board hearing. 7 GORHAM CLARK: Sir, you specifically 8 identified yourself as counsel -- cocounsel with 9 Mr. Hampshire on behalf of your client. 10 Can the County sign up and have everyone in 11 this building? 12 I feel you've abused our process. 13 MR. BARTOLOMUCCI: I don't think it's abuse 14 of the process. 15 GORHAM CLARK: I mean, is there an apology? 16 MR. HAMPSHIRE: Mr. Clark, let me just fill 17 you -- Mr. Bartolomucci is cocounsel with me in the 18 circuit court case, and that's what I think he 19 intended to say. 20 He is here speaking as a citizen. He is 21 also a resident in the area. And so when he said 22 that he was cocounsel, he is cocounsel in the</p>	<p style="text-align: right;">Page 194</p> <p>1 three minutes to try and save it. Three minutes for 2 50 years that the Fitchhands (phonetic) have lived 3 here, 45 years for the Krummwittys (phonetic), 38 4 years for the Thomases, and so many others. 5 Can I have Slide 2, please. 6 The community that will be destroyed isn't 7 full of McMansions like the ones being debated. 8 They are modest homes where families have raised 9 their children and stayed to retire. 10 My family has been part of the Gleedsville 11 Road community since 1987 -- 1897. I remember going 12 to my great-great-grandparents', my 13 great-grandparents', and grandparents' farm as a 14 child. They live in a house now owned by Lynne and 15 Michael Wright where A Farm Less Ordinary operates. 16 It's hard for me to understand how, without 17 any thought of or notice to we the people who pay 18 your salaries, have made such an incredibly 19 impactful decision for my community and opened all 20 our neighbors to this misuse. 21 Michelle Lohr, when you sent your letter of 22 determination and then realized that you made a</p>
<p style="text-align: right;">Page 193</p> <p>1 circuit court case. He is not acting as counsel in 2 this proceeding. 3 GORHAM CLARK: But he is sitting next to 4 you? 5 MR. HAMPSHIRE: He is. 6 GORHAM CLARK: Do you think I'm an idiot? 7 MR. HAMPSHIRE: No, sir. 8 GORHAM CLARK: You've abused us, so have a 9 seat. 10 MR. BARTOLOMUCCI: I disagree, but I will 11 sit. 12 GORHAM CLARK: Well, your agreement is not 13 required. 14 Cheryl Wright right is next. 15 On deck is Susan Cox. 16 TOM WRIGHT: Thank you for letting my wife 17 talk for me. I hope you guys remember this is 18 Gleedsville Road we're talking about. 19 CHERYL WRIGHT: How many of you have built 20 a community? When I sat down to write this speech, 21 it occurred to me that after several generations of 22 my family building the Gleedsville community, I get</p>	<p style="text-align: right;">Page 195</p> <p>1 mistake, why didn't you adjust it? You had a 60-day 2 window when you asked the county attorney's office 3 for counsel. Soon we received a united response 4 from all of our officials. They circled the wagons. 5 We were told by the county attorney that stated -- 6 had stated Newport would operate by-right. We were 7 told to just give up, that Ms. Lohr's determination 8 wasn't a determination, just advice, and we were 9 denied standing. 10 BZA Members, this is your chance to right 11 this wrong. We have given you compelling legal 12 arguments and to reverse the permit based on both 13 misinterpretation of 2291 and, even worse, clear 14 intentions to operate congregate housing in AR-1. 15 Canadian private equity group Onex owns 16 Newport. Onex has over \$40 billion in assets. They 17 can afford to operate in commercial areas where 18 emergency medical services are easily accessible and 19 where congregate campus use is welcomed. They can 20 choose to be a complement to communities, rather 21 than destroying neighborhoods and successful 22 nonprofits for the disabled, AFLO.</p>

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<p style="text-align: right;">Page 196</p> <p>1 But money talks these days, louder than 2 integrity, louder than character, and loud enough to 3 make sacrificing your honor and reputation seem 4 worth it. 5 And if Onex is hellbent on adding these 6 homes to a residential real estate portfolio, 7 dodging commercial taxes, and avoiding all 8 oversight, they can appeal your denial to the 9 circuit court. 10 After everything we've shared, you should 11 feel confident that they don't have a case. Why 12 else would they try so hard to get my neighbors and 13 I to avoid these BZA hearings? 14 To them, we are just a spreadsheet entry, a 15 gamble to maximize profits for investors. To us, 16 it's our homes, our lives, our history, our 17 everything. 18 Please make the right decision for 19 Loudoun's future. 20 GORHAM CLARK: Thank you. 21 Any questions for Mr. Wright, through 22 Mrs. Wright?</p>	<p style="text-align: right;">Page 198</p> <p>1 SUSAN COX: Hi. My name is Susan Cox. I'm 2 a resident of Loudoun County. I live in Sterling, 3 Virginia. 4 I believe residential property is zoned for 5 residential use and not for commercial interest for 6 a reason. I believe there are better solutions to 7 care for our needy individuals. 8 If you don't sincerely want a conglomerate 9 next to your home, don't grant this zoning to the 10 corporation. If you do want this, please be 11 considerate to the residents who live closest to 12 this. They don't want this. They have valid 13 concerns. I don't think it is fair to the 14 residents. 15 With all the emphasis on equity and equal 16 outcomes, I'm afraid this will come to set up a 17 precedent, and every neighborhood will come to have 18 these facilities in residential neighborhoods. 19 Stand for the true residents who truly reside there, 20 not for potential corporate greed. 21 I worry this will sacrifice the residents' 22 and community's needs to those of the corporation.</p>
<p style="text-align: right;">Page 197</p> <p>1 (No response.) 2 TOM WRIGHT: Thank you. 3 GORHAM CLARK: Thank you for your time. 4 I feel like I need to address the gross 5 violation of our procedures by Mr. Bartolomucci. 6 Unless there's any objection from the 7 remainder of the Board, in order to apply the 8 concept of fairness, I'm going to give the County 9 three minutes to rebut at the end of the 10 presentation. 11 We have four more people scheduled, and I'm 12 going to allow you to address three more minutes, 13 okay? 14 Any objection? 15 (No response.) 16 GORHAM CLARK: Thank you very much. 17 All right. Next is Susan Cox and Kieran 18 Fallon will be on deck, to the podium to my right. 19 SUSAN COX: Your Honor, do I just start? 20 GORHAM CLARK: Please, ma'am. 21 SUSAN COX: Yes. 22 GORHAM CLARK: Please state your name.</p>	<p style="text-align: right;">Page 199</p> <p>1 I worry about conglomerates and fancy lawyer 2 language. I don't want anyone to pull a fast one. 3 I also have some safety concerns because 4 I've been informed that where Newport exists, there 5 is some crime and decreased security. There are 6 reports of patients that might run away. Families 7 with young children are concerned for their safety. 8 People are concerned that it won't end up 9 being a good neighbor, but they're there to take 10 advantage of tax credits, charging over \$2,000 per 11 patient per day. Look in California where the 12 business started. There are now a dozen homes in a 13 neighborhood. It is saturated with them, and it 14 brings problems -- the business will bring problems 15 with them, making the neighborhood -- certain home 16 sales undesirable. People will have trouble selling 17 their homes except to Newport, of course, for a 18 reduced price. 19 People saved their whole lives to move 20 here, and they do not want this one company to have 21 the power to change what they saved for. 22 Thank you for this consideration. Fairfax</p>

<p style="text-align: right;">Page 200</p> <p>1 County said no. Loudoun can say no also. 2 Even though I don't speak legalese, please 3 take into account my -- the sentiment of my 4 statement. 5 I am grateful for your attentiveness and 6 careful consideration. 7 Thank you very much. 8 GORHAM CLARK: Thank you. 9 Any questions for Ms. Cox? 10 (No response.) 11 GORHAM CLARK: Thank you, Ms. Cox. 12 Next on deck, at the podium to my left, 13 will be Suzanne Ager. 14 And, Mr. Fallon, you're next. 15 KIERAN FALLON: Thank you. 16 I speak to you as a resident of Leesburg 17 who lives near an inpatient mental health facility 18 that serves people with acute mental illness like 19 described by an earlier participant here. That is 20 not what Newport proposes, and I speak in favor of 21 Newport's proposal. 22 The statute in question clearly provides</p>	<p style="text-align: right;">Page 202</p> <p>1 to live in a home indefinitely. Examples include 2 members of the Armed Services, diplomats, 3 individuals on temporary work assignments, and 4 students. Relying on such a standard to decide this 5 case could have significant unintended consequences 6 for these and other groups. 7 The Virginia Legislature had the courage to 8 enact protections for exactly this type of mental 9 health residential facility to ensure that these 10 facilities could provide critical services to our 11 residents. 12 I ask you to have the same courage to 13 follow the law and approve this proposal. 14 Thank you. 15 GORHAM CLARK: Any questions for 16 Mr. Fallon? 17 (No response.) 18 GORHAM CLARK: Thank you, Mr. Fallon. 19 On deck is Debbie Virgilio. Please proceed 20 to the podium on my right. 21 Ms. Ager. 22 SUZANNE AGER: Thank you. My name is</p>
<p style="text-align: right;">Page 201</p> <p>1 that group homes of this nature are considered 2 residential facilities, so, by law, they fit the 3 zoning requirements for the area in question. 4 Now, some have said that the fact that the 5 homes are a commercial enterprise should disqualify 6 them. This is a red herring. Section 2291 7 explicitly recognizes that one or more staff persons 8 can and should reside at the home. The term "staff" 9 clearly contemplates employees, which means that 10 there's an employer overseeing the residents of the 11 facility. So the statute, by its terms, allows 12 commercial group homes and considers them to be 13 residential for these purposes. 14 Others have claimed that the homes 15 shouldn't be considered residential because the 16 patients likely will have no intent to live there 17 indefinitely. As the lawyer from McGuire Woods so 18 eloquently stated, that is not the standard for the 19 zoning purposes or for the Fair Housing Act and 20 these purposes. And I would caution you on relying 21 on such a standard in deciding this matter. 22 Many county residents do not have an intent</p>	<p style="text-align: right;">Page 203</p> <p>1 Suzanne Ager. I'm a real estate agent in Loudoun 2 County and a resident as well. 3 Nobody here is debating the value and the 4 need for residential treatment facilities, but 5 that's different than a group home as defined in 6 15.2-2291. The point of the argument against 7 Newport is that it's a psychiatric residential 8 treatment facility, posing as a group home to take 9 advantage of a less expensive, less regulated 10 residential zone. Loudoun should allow them to 11 operate but in the proper zone. 12 The disAbility Law Center of Virginia is a 13 nonprofit organization that was created when the 14 Virginia Government transitioned the Virginia Office 15 For Protection and Advocacy out of the state. In 16 the disAbility Law Center of Virginia's document 17 entitled "How to file a complaint about abuse and 18 neglect in community residential settings," they 19 group residential group home and psychiatric 20 residential treatment facilities as similar, but 21 they make this very important distinction -- and 22 this is a document I can leave with you. I don't</p>

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<p style="text-align: right;">Page 204</p> <p>1 have a slide. I can -- but this is what it says 2 verbatim on this document from that organization: A 3 residential group home -- residential group homes 4 are for children and adults with severe mental, 5 emotional, and behavioral disabilities who need 6 24-hour supervision to live in the community. 7 They don't say to stay in the community. 8 They specifically say to live in the community. A 9 psychiatric residential treatment facility provides 10 specialized, highly organized, intensive and planned 11 therapeutic interventions. They are licensed by the 12 Virginia Department of Behavioral blah, blah, blah, 13 blah, blah. 14 But, to me, that seems to be a big debate 15 that's going on today, and it seems pretty clear 16 that they are designating two separate types of 17 residential facilities. A group home is not 18 intended to be used as a psychiatric residential 19 treatment facility. 20 In all of Newport advertising, they call 21 them -- they call themselves a residential treatment 22 center. On their website, on Psychology Today's</p>	<p style="text-align: right;">Page 206</p> <p>1 to let this happen, as you've heard many people say 2 to tonight, you're just -- the public will have 3 absolutely zero faith and trust in the zoning 4 ordinance and the zoning administration. 5 Thank you. 6 GORHAM CLARK: Any questions for Ms. Ager? 7 (No response.) 8 GORHAM CLARK: Thank you, Ms. Ager. 9 Finally, last speaker on the list before we 10 return back to the County, Debbie Virgilio. 11 DEBBIE VIRGILIO: I'm Debbie Virgilio. I 12 live at 20487 Oatlands Chase Place for the last 13 27 years. My husband has been there for 40 years. 14 I want to thank all of you for being here this 15 evening. 16 The second thing is that you're facing two 17 different problems here. The one is: Is the land 18 suitable for this size housing to go in? And, after 19 living there, no, it's not. They are on sewer and 20 well, septic tank and well. The land will not hold 21 it. It will destroy the wells around it and 22 contaminate them. You haven't probably looked at</p>
<p style="text-align: right;">Page 205</p> <p>1 website, they are labeled, of their own admission, 2 as a treatment center. They do not call themselves 3 a group home. 4 We all know this is a Trojan horse. I 5 don't understand what is going on here. The fact 6 that this company is threading the needle, calling 7 themselves a group home, when they are clearly a 8 transient psychiatric residential treatment facility 9 is -- I mean, it just seems so clear, and the County 10 is letting them do it. They call themselves a 11 treatment center to the outside world, but on a 12 zoning permit, they lie and call themselves a group 13 home. Why? To make as much profit as possible, to 14 be able to run a commercial business out of a 15 residential zone. Residential property is a lot 16 less expensive than commercial property. 17 The County spent millions and millions of 18 dollars of taxpayers' dollars rewriting our zoning 19 ordinance, but that is going to be a meaningless 20 document if we allow -- knowingly allow applicants 21 to miscategorize or misrepresent their business in 22 order to get around the zoning ordinance. I mean,</p>	<p style="text-align: right;">Page 207</p> <p>1 that. 2 They definitely -- the roads are not there. 3 Half the time I have to look to my -- a mile down 4 the road to see if I can get out the main road that 5 we live off of onto Gleedsville, and for the last 6 25 years, I haven't gotten VDOT to put up a stop 7 sign for the people going north on Gleedsville to 8 avoid the accidents that are continuously happening. 9 The curve that they live on, the deer traipse 10 across, the snowdrifts come, and there have been 11 many people through the years, when we had snow, 12 that we dragged out of snowdrifts. 13 So your first problem is: Is the land 14 suitable for the people? 15 The second one: Is what they're proposing 16 to do right for the area? No, it is not right for 17 the area. 18 They will not put up fencing large enough 19 to keep the people in, to keep the bear -- we still 20 have bear. We still have bobcat. We still have 21 fox. These are wild animals that we are used to 22 dealing with, the people that live out there, but</p>

<p style="text-align: right;">Page 208</p> <p>1 these are people -- and these are people that walk 2 out and have the residents follow them because they 3 cannot restrict them. Is this safe for them? Is -- 4 everything about this is wrong for this area. 5 My grandson wanted to put our chicken eggs 6 out for sale, and I called the County and I could 7 not get a permit to put my eggs out for sale, but 8 these people can put a permit -- get through with 9 the permits to put in this type of facility in an 10 area where we've gone from AR-1, AR-3, AR-20, AR-15, 11 and it's constantly changing every time the 12 comprehensive plan is changed. 13 The family that built these houses built 14 one for their father, one for their father-in-law 15 and mother -- the father was paraplegic -- and for 16 them and their six children, and that was all it was 17 built for, and they were deceived. 18 Because I talk to them at least once a 19 month now, and they are furious that they sold to 20 them for this reason, even though they got an 21 inflated price for the property. 22 So I hope that you make the right decision</p>	<p style="text-align: right;">Page 210</p> <p>1 mental health resources available in the 2 Commonwealth. And I will appear at any hearing of 3 this sort if it provides an opportunity to increase 4 the resources available in the state and, candidly, 5 keep more people like my daughter alive. 6 So it struck me that the hearing is -- 7 we've provided an opportunity to learn a little bit 8 more about mental health and mental health 9 resources, and so I want to share a bit of what 10 we've learned: We did not know that the front door 11 to most mental health services is the emergency 12 room. Five emergency room visits later, we know. 13 We did not know that ER room recommendations to go 14 to an inpatient facility may be met with the 15 complete absence of hospital beds in a 120-mile 16 radius, so there are no alternatives to standing in 17 the emergency room. 18 We did not know that hospital stays are for 19 crisis control and for intensive diagnostic 20 management and that real treatment takes place in 21 residential treatment facilities like is being 22 proposed here in intensive outpatient programs and</p>
<p style="text-align: right;">Page 209</p> <p>1 not only for the residents, but also for the county 2 and what's going to happen to our future. This was 3 a lovely county that's turning into a mess. And you 4 can control that, and I hope that you do. 5 Thank you very much. 6 GORHAM CLARK: Any questions for 7 Ms. Virgilio? 8 (No response.) 9 GORHAM CLARK: All right. We have one new 10 speaker, Susan Winckler, please. 11 Thank you. 12 SUSAN WINCKLER: Hello. My name is Susan 13 Winckler, and thank you for the opportunity to 14 provide a comment today. I speak in support of the 15 Newport facility. 16 If this hearing was in February of 2020 or 17 even November of 2020, it probably wouldn't have 18 entered my consciousness. At that time my family 19 had only limited exposure to the mental health 20 resources available in Virginia, but now, in 21 February 2023 -- almost February 2023 -- we have 22 deep and sustained exposure to the true deficit of</p>	<p style="text-align: right;">Page 211</p> <p>1 in partial-hospitalization programs. 2 We did not know that you could actually 3 spend more time on waiting lists than in getting 4 actual care. That's how long the waiting lists are. 5 We did not know that residential treatment 6 facilities look like a residential home and that 7 when you go to pick up your daughter after 8 60 days -- actually, she was 72 days -- we had to 9 confirm the address because it wasn't 10 distinguishable from other homes in the area. 11 We did not know that residential treatment 12 facilities are an essential tool in treating a 13 chronic condition and that, in fact, you do reside 14 in these facilities. You eat there. You sleep 15 there. You do not know when you will be departing 16 because it depends -- your date of discharge depends 17 on your progress and your improvement so that you 18 could go somewhere else safely. 19 We also did not know that a battle with 20 post-traumatic stress disorder is, in fact, an epic 21 war that will go on for years. And I'm confident we 22 are going to continue to use Virginia's mental</p>

<p style="text-align: right;">Page 212</p> <p>1 health services, and I hope that there are 2 facilities like Newport available so that when our 3 daughter needs them again, which is quite likely, in 4 treating a chronic condition, that she would have an 5 opportunity to use them. 6 Thank you. 7 GORHAM CLARK: Any questions for 8 Ms. Winckler? 9 (No response.) 10 GORHAM CLARK: Thank you. 11 UNKNOWN SPEAKER: Yeah. I want to know 12 where she lives. 13 GORHAM CLARK: The questions aren't for 14 you, sir. 15 UNKNOWN SPEAKER: Does she live in the 16 area? 17 GORHAM CLARK: The questions aren't for 18 you, sir. 19 UNKNOWN SPEAKER: Or is she from another 20 county or what? 21 GORHAM CLARK: Thank you. Order, please. 22 All right. Are there any other public</p>	<p style="text-align: right;">Page 214</p> <p>1 of Virginia, they would be in violation of their 2 state permit, but they also would be in violation of 3 the zoning ordinance. So I would have the ability 4 to coordinate, hopefully, with the State, and we 5 could, you know, address the issue of nonconformity, 6 if that occurs. 7 So I think it -- you know, for me, that's 8 kind of the key here in terms of the way the zoning 9 ordinance was interpreted. 10 I think a lot of the public speakers make 11 good points. They talk about potential impacts and 12 things of that nature. But, based on the law, I 13 feel like that the decision was proper and accurate 14 in this case. 15 The other thing I know was touched on was 16 the group -- the three different homes that may end 17 up coming in for group home permits as well. We are 18 only dealing with the one permit that has been 19 approved. I would say that any additional permit 20 that does come in for a group home, we would look at 21 those to make sure they're operating independently 22 from one another. They're not able to share</p>
<p style="text-align: right;">Page 213</p> <p>1 speakers who haven't spoken yet? 2 (No response.) 3 GORHAM CLARK: All right. The County has 4 three minutes to address the impropriety from 5 earlier. 6 MR. STULTZ: Thank you for the opportunity, 7 Mr. Chair. 8 Just to kind of reiterate: I think, from 9 my position as zoning administrator, I'm tasked with 10 interpreting the zoning ordinance. And I think, 11 based on the arguments made in our staff report, 12 that when you look at the definition of family in 13 the zoning ordinance, it clearly includes those 14 group homes that fall under the code section, 15 Virginia Code Section 2291. 16 So the way I interpret the ordinance is: 17 If the State deems the use to be a group home per 18 that section of the ordinance and issues a license, 19 that I do not have the discretion to deny the permit 20 for that use. 21 Now, granted, if, in fact, we do find that 22 they're not operating in conformance with the Code</p>	<p style="text-align: right;">Page 215</p> <p>1 resources or combine into a compound of some kind. 2 That would not be permitted. So that would be 3 something that would be reviewed when additional 4 permits do come in, if they come in, for additional 5 group homes. 6 I know that, you know, the Code of Virginia 7 also doesn't have any regulations that requires 8 separation for group homes, so if they did, I'm sure 9 they wouldn't issue those permits if they didn't, 10 you know, meet a separation requirement and whatnot, 11 so -- which would, again, prevent me from issuing 12 the permits. 13 So I just wanted to touch on those points 14 from my perspective. I appreciate the opportunity 15 to do that. 16 I'll ask you: Did you have anything you 17 wanted to add or -- 18 MR. GREEN: No. Thanks. Thank you for -- 19 the Board and the Vice Chair for your time. 20 I just think that, you know, looking at the 21 totality of the facts and the law, that the Board 22 should uphold the zoning permit in this case.</p>

<p style="text-align: right;">Page 216</p> <p>1 Thank you.</p> <p>2 GORHAM CLARK: Thank you.</p> <p>3 Okay. I have no additional speakers, so I</p> <p>4 will declare the public hearing closed.</p> <p>5 And now we move on to debate.</p> <p>6 Is there a motion?</p> <p>7 IBRAHIM MOIZ: Mr. Chair, I'd like to make</p> <p>8 a motion.</p> <p>9 GORHAM CLARK: Okay.</p> <p>10 IBRAHIM MOIZ: I move that the board of</p> <p>11 zoning appeals uphold the November 16, 2022,</p> <p>12 issuance of zoning permit Z20643250001 and deny</p> <p>13 APPL-2022-0005 based upon the following findings:</p> <p>14 The subject property is located at 20173</p> <p>15 Gleedsville Road, Leesburg, Virginia, in Loudoun</p> <p>16 County, and more particularly identified as PIN</p> <p>17 315302419.</p> <p>18 The subject property is zoned AR-1 under</p> <p>19 the revised 1993 Loudoun County Zoning Ordinance.</p> <p>20 Monroe RE, LLC, is the owner of the subject</p> <p>21 property. On or about October 17, 2022, Joseph</p> <p>22 Procopio, chief executive officer of Monroe RE, LLC,</p>	<p style="text-align: right;">Page 218</p> <p>1 individuals with mental illness, intellectual</p> <p>2 disability, or developmental disabilities reside,</p> <p>3 with one or more resident or nonresident staff</p> <p>4 persons, as residential occupancy by a single</p> <p>5 family. For the purposes of this subsection, mental</p> <p>6 illness and developmental disability shall not</p> <p>7 include current illegal use" or addiction -- "use of</p> <p>8 or addiction to a controlled substance as defined in</p> <p>9 § 54.1-3401. No conditions more restrictive than</p> <p>10 those imposed on residences occupied by persons</p> <p>11 related by blood, marriage, or adoption shall be</p> <p>12 imposed on such facility. For purposes of this</p> <p>13 subsection, "residential facility" means any group</p> <p>14 home or other residential facility for which the</p> <p>15 Department of Behavioral Health and Developmental</p> <p>16 Services is the licensing authority pursuant to this</p> <p>17 Code."</p> <p>18 Section 15.2-2291(A) of the Code of</p> <p>19 Virginia does not distinguish between commercial and</p> <p>20 noncommercial uses.</p> <p>21 Finally, Zoning Permit Z20643250001</p> <p>22 complies with the zoning ordinance.</p>
<p style="text-align: right;">Page 217</p> <p>1 submitted a zoning permit application for use of a</p> <p>2 group home for five residents on the property.</p> <p>3 Included within the zoning permit</p> <p>4 application was a copy of a license issued to</p> <p>5 Virginia Health Operations, LLC, doing business as</p> <p>6 Newport Academy, by the Virginia Department of</p> <p>7 Behavioral Health and Developmental Services for a</p> <p>8 mental health residential group home service for</p> <p>9 adults at the property.</p> <p>10 On November 16, 2022, the Loudoun County</p> <p>11 Department of Building and Development issued Zoning</p> <p>12 Permit Z20643250001 for the property. A quote,</p> <p>13 dwelling, comma, single-family detached, including</p> <p>14 manufactured housing, unquote, is a permitted use</p> <p>15 within AR-1 Zoning District, pursuant to Table 2-102</p> <p>16 of Section 2-102 of the zoning ordinance.</p> <p>17 The definition of family within Article 8</p> <p>18 of the ordinance includes any group identified in</p> <p>19 Section 15.2-2291(A) of the Code of Virginia.</p> <p>20 Section 15.2-2291(A) of the Code of Virginia states,</p> <p>21 "Zoning ordinances for all purposes shall consider a</p> <p>22 residential facility in which no more than eight</p>	<p style="text-align: right;">Page 219</p> <p>1 GORHAM CLARK: Is there a second?</p> <p>2 BRIAN WALKER: I second.</p> <p>3 GORHAM CLARK: All right. Mr. Moiz, would</p> <p>4 you like to speak to your motion?</p> <p>5 IBRAHIM MOIZ: I think at the end what the</p> <p>6 county attorney -- county attorneys summarized --</p> <p>7 and they summarized it best, right? There are,</p> <p>8 understandably, issues on -- from the appellants'</p> <p>9 side; however, under the supremacy clause we have to</p> <p>10 uphold, I believe, what the law is. And the law is</p> <p>11 very clear as to what a resident's defined and that</p> <p>12 the applicants -- the application passes that test.</p> <p>13 EDWARD MOFFETT: Mr. Chairman.</p> <p>14 GORHAM CLARK: Yes, sir.</p> <p>15 EDWARD MOFFETT: I'm not going to support</p> <p>16 the motion for variety of reasons.</p> <p>17 What's clear to me is that from all the</p> <p>18 testimony presented today is that this is not a</p> <p>19 residential facility within the meaning of 2291.</p> <p>20 And I'd like to preface that by saying that</p> <p>21 no one here is questioning the need for people to</p> <p>22 get mental health, no one. But, as one person has</p>

<p style="text-align: right;">Page 220</p> <p>1 noted, I think he said there were 24 districts or 2 zoning districts within Loudoun County where Newport 3 could properly locate this facility. And I'm sure 4 that any one of those districts would be perfectly 5 profitable for Newport to locate a facility as -- 6 and also benefit those poor people who so 7 desperately need psychiatric assistance. 8 I had an uncle -- I've said this in the 9 previous one -- who was in a group home. He was a 10 schizophrenic, and he was in a group home in Orange 11 for years, but that was a true group home. He was 12 there to stay. 13 Here, I don't think the spirit of 2291 14 contemplated a place where it says no more than 15 eight individuals; but if every 45 days you're going 16 to have a new group of individuals coming in, is 17 that consistent with no more than eight? 18 And -- and the question is, to me, the law 19 is not clear on what does "reside" mean. If you can 20 point to me a statute that says that, I'd like to 21 know. But I think that what 2291 really said was: 22 If you have a group of people, like my uncle, and</p>	<p style="text-align: right;">Page 222</p> <p>1 the grounds that this is simply not a residential 2 facility within the meaning of 2291. 3 GORHAM CLARK: Thank you. 4 Any other debate? 5 BRIAN WALKER: I -- I support the motion, 6 hence my second. 7 I guess, for me, it looked -- in my mind 8 it's clearly like we're here about zoning. There 9 was a lot of other things that were brought up about 10 health department concerns that would be related to, 11 you know, septics and things like that, a license 12 from the state about behavioral health, but those 13 have been issued, and our task was to talk about 14 zoning. And I think that, on that task, like we've 15 been shown, that this is in compliance. 16 GORHAM CLARK: Mr. Gray, do you have 17 anything to say? 18 ROBERT KELLY GRAY: Yeah. Beforehand, I 19 would ask that my colleagues and staff turn off 20 their microphones so I can get through this clearly 21 without having to repeat myself. That way we may 22 minimize the feedback.</p>
<p style="text-align: right;">Page 221</p> <p>1 they intend to be there under constant care for a 2 pretty long period of time, that's what we're 3 talking about. I just don't think that they 4 anticipated, in the AR-1 District, a place where 5 people would be rotating in and out and getting 6 intensive courses of treatment and other amenities, 7 perhaps. 8 So, to me, for all of those reasons -- and, 9 once again, if you can show me anything that 10 formally defines residency as being -- I don't 11 know -- a week, two weeks, whatever, then I'd like 12 to see it, but we haven't seen it. And, to me, this 13 is clearly -- under the facts presented and the 14 testimony, which I thought was fantastic on both 15 sides here, this, to me, is clearly a congregate 16 facility. 17 And, once again, there are numerous 18 districts within Loudoun County, other than AR-1, 19 where Newport can establish this facility, help the 20 people who desperately need it, and make a profit. 21 And, for those reasons, I would uphold the 22 appeal, over turn the zoning administrators, rest on</p>	<p style="text-align: right;">Page 223</p> <p>1 GORHAM CLARK: That could be right. 2 Ed, would you turn off your microphone? 3 EDWARD MOFFETT: Sure. 4 ROBERT KELLY GRAY: Okay. Anticipating it 5 occur, at the outset, I would like to commend 6 Mr. Moffett, because he had epitomized and vocalized 7 pretty much many of my thoughts. And I would also 8 like to commend the attorneys on both sides of this 9 question on their presentations and on their ability 10 to respond to a group of wide-ranging questions over 11 a protracted period. 12 There's also been a lot of testimony on 13 both sides of the issue from folks in attendance, 14 and I appreciate everything that you folks had to 15 say. 16 Some have demonstrated -- I'm sorry? 17 GORHAM CLARK: No one said anything. 18 ROBERT KELLY GRAY: Can you still hear me? 19 GORHAM CLARK: Yes, we can. You're loud 20 and clear. 21 MR. STULTZ: Yeah. Nobody said anything, 22 Mr. Gray.</p>

<p style="text-align: right;">Page 224</p> <p>1 ROBERT KELLY GRAY: Say again?</p> <p>2 GORHAM CLARK: No one said anything.</p> <p>3 MR. STULTZ: You can go ahead and talk.</p> <p>4 ROBERT KELLY GRAY: Well, is anybody going</p> <p>5 to hear me?</p> <p>6 MR. STULTZ: Yeah. We hear you fine.</p> <p>7 GORHAM CLARK: We've been hearing every</p> <p>8 word.</p> <p>9 ROBERT KELLY GRAY: Okay. I'll go back to,</p> <p>10 like I said, there's been a lot of testimony -- I'm</p> <p>11 getting feedback now.</p> <p>12 GORHAM CLARK: If it makes you feel better,</p> <p>13 we're not hearing it. We're hearing you loud and</p> <p>14 clear.</p> <p>15 ROBERT KELLY GRAY: Okay. There's been a</p> <p>16 lot of testimony on both sides of the issue, and I</p> <p>17 appreciate everyone in attendance for that</p> <p>18 contribution.</p> <p>19 Some of them demonstrated (inaudible) with</p> <p>20 the laws and the ordinances we have to look to and</p> <p>21 work with as we (inaudible). Sometimes we do get</p> <p>22 frustrated, and as (inaudible), we, unfortunately,</p>	<p style="text-align: right;">Page 226</p> <p>1 I intend to support the motion.</p> <p>2 I do believe we got a good exposition by</p> <p>3 Mr. Murphy of the correct contextual definition</p> <p>4 about residential, which is not the hundred-year-old</p> <p>5 case that I'm dealing with as an estate planning</p> <p>6 lawyer or with a probate matter that I'm literally</p> <p>7 currently dealing with, trying to figure out a man</p> <p>8 who had one foot in North Carolina and one foot here</p> <p>9 in Loudoun County. It's a different residential</p> <p>10 under the Federal Fair Housing Act, the Virginia</p> <p>11 Fair Housing Law, and I think even under a</p> <p>12 straightforward reading of the county law.</p> <p>13 What I hear, sincerely and wholeheartedly</p> <p>14 and passionately, from many people in the room is</p> <p>15 that, really, I construe it as the County got it</p> <p>16 wrong, that the county law should be different, that</p> <p>17 there should be more restrictions or different</p> <p>18 districts or whatever.</p> <p>19 On the question of this being a congregate</p> <p>20 facility or consolidation of three, that remains to</p> <p>21 be seen, and the county zoning administrator has</p> <p>22 already told us that they're not going to be</p>
<p style="text-align: right;">Page 225</p> <p>1 have to be (inaudible) given, and we have no way to</p> <p>2 substitute our judgment for those (inaudible) and</p> <p>3 the board of supervisors (inaudible) guidance.</p> <p>4 If this were a one-off residential group</p> <p>5 home and a true (inaudible) of what I believe a</p> <p>6 group home is, I would (inaudible) support, but</p> <p>7 Newport, in my opinion, has taken advantage of an</p> <p>8 advisory opinion of the County to morph the single</p> <p>9 unit into what can only be described as a three-unit</p> <p>10 congregate opportunity.</p> <p>11 Knowing their plans, (inaudible) tonight, I</p> <p>12 can't vote (inaudible). And I'm concerned that if</p> <p>13 we, as a body, affirm this permit tonight, that we</p> <p>14 do ourselves a great disservice. We will be dealing</p> <p>15 with the (inaudible) Newport initial application</p> <p>16 evolves into more significant conversations about</p> <p>17 congregate housing.</p> <p>18 And that's it.</p> <p>19 GORHAM CLARK: All right. Thank you.</p> <p>20 I intend --</p> <p>21 MR. STULTZ: Microphone, Mr. Clark.</p> <p>22 GORHAM CLARK: Oh, thank you.</p>	<p style="text-align: right;">Page 227</p> <p>1 permitted to be consolidated. But all of that is</p> <p>2 speculative, anyway. When that comes up, he'll get</p> <p>3 to make a decision, and we'll get to handle our</p> <p>4 review.</p> <p>5 My point here is that while I'm very</p> <p>6 sympathetic to everybody here with their views on</p> <p>7 both sides, we don't make the law. We didn't make</p> <p>8 the federal law. We don't make the Virginia Fair</p> <p>9 Housing Law. We don't make the county law. The</p> <p>10 board of supervisors makes that law. Our job is to</p> <p>11 apply it.</p> <p>12 And, in my view, there is just no way to</p> <p>13 read these -- I understand it's not the clearest</p> <p>14 thing in the world. We've got to take a lens of</p> <p>15 federal law, focus it through state law, focus it</p> <p>16 through county law, or, actually, in reverse order,</p> <p>17 then an interpretation of a person and well-spoken</p> <p>18 and sincere views on all the sides.</p> <p>19 But my feeling is that the zoning</p> <p>20 administrator did the right thing in a tough case,</p> <p>21 and that his permit issuance should be upheld.</p> <p>22 GORHAM CLARK: Okay. Any other debate?</p>

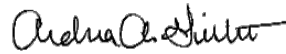
BZA hearing

<p style="text-align: right;">Page 228</p> <p>1 (No response.)</p> <p>2 GORHAM CLARK: If not, let's go to a vote.</p> <p>3 All those in favor of the motion to deny</p> <p>4 the appeal please say "aye."</p> <p>5 IBRAHIM MOIZ: Aye.</p> <p>6 BRIAN WALKER: Aye.</p> <p>7 GORHAM CLARK: Aye.</p> <p>8 Those opposed, "nay."</p> <p>9 EDWARD MOFFETT: Nay.</p> <p>10 ROBERT KELLY GRAY: Nay.</p> <p>11 GORHAM CLARK: Mr. Gray, is that a "nay"?</p> <p>12 All right. The motion --</p> <p>13 ROBERT KELLY GRAY: I think you should take</p> <p>14 a voice member -- Roy, just to make sure</p> <p>15 (inaudible).</p> <p>16 GORHAM CLARK: Would you like us to do a</p> <p>17 rollcall, Kelly?</p> <p>18 UNKNOWN SPEAKER: You don't care about the</p> <p>19 citizens of this town.</p> <p>20 GORHAM CLARK: Please, silence. We're</p> <p>21 conducting business here.</p> <p>22 Mr. Kelly, would you like us to do a</p>	<p style="text-align: right;">Page 230</p> <p>1 UNKNOWN SPEAKER: You should be ashamed of</p> <p>2 yourselves.</p> <p>3 UNKNOWN SPEAKER: Can I call each of you</p> <p>4 when they have a hundred people going in and out of</p> <p>5 there?</p> <p>6 GORHAM CLARK: Thank you for your time and</p> <p>7 participation --</p> <p>8 UNKNOWN SPEAKER: Is that a "yes"?</p> <p>9 GORHAM CLARK: -- in our civic process.</p> <p>10 UNKNOWN SPEAKER: How do you sleep at</p> <p>11 night, Clark?</p> <p>12 GORHAM CLARK: Okay. We have several other</p> <p>13 agenda items that we need to --</p> <p>14 (Unreportable cross-talk from the</p> <p>15 audience.)</p> <p>16 GORHAM CLARK: Please. Order, please.</p> <p>17 Please, please remain in order.</p> <p>18 UNKNOWN SPEAKER: No order.</p> <p>19 GORHAM CLARK: We were respectful and</p> <p>20 listened to you speak.</p> <p>21 UNKNOWN SPEAKER: You're out of order.</p> <p>22 GORHAM CLARK: Please, do I need to call</p>
<p style="text-align: right;">Page 229</p> <p>1 rollcall?</p> <p>2 ROBERT KELLY GRAY: Yes, please.</p> <p>3 GORHAM CLARK: Okay. Mr. Moiz, you made</p> <p>4 the motion. For or against?</p> <p>5 IBRAHIM MOIZ: For.</p> <p>6 GORHAM CLARK: And -- I'm sorry.</p> <p>7 BRIAN WALKER: Walker.</p> <p>8 GORHAM CLARK: Mr. Walker, for or against?</p> <p>9 BRIAN WALKER: For.</p> <p>10 GORHAM CLARK: Mr. Moffett?</p> <p>11 EDWARD MOFFETT: Against.</p> <p>12 GORHAM CLARK: Mr. Moffett.</p> <p>13 And Mr. Gray?</p> <p>14 ROBERT KELLY GRAY: Against.</p> <p>15 GORHAM CLARK: Mr. Gray.</p> <p>16 And Mr. Clark votes in favor for.</p> <p>17 That's 3-to-2. Motion passes.</p> <p>18 Unknown.</p> <p>19 UNKNOWN SPEAKER: Shameful.</p> <p>20 UNKNOWN SPEAKER: Can I ask you a question?</p> <p>21 GORHAM CLARK: No, you can't. We're</p> <p>22 already past time.</p>	<p style="text-align: right;">Page 231</p> <p>1 the sheriff?</p> <p>2 (Unreportable cross-talk from the</p> <p>3 audience.)</p> <p>4 (Off the record at 10:55 p.m.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

CERTIFICATE OF REPORTER

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I, Audra A. Gilbert, do hereby certify that the foregoing proceedings were taken by me in stenotype and thereafter reduced to typewriting under my supervision; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



Audra A. Gilbert

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Exhibit 4

**TABLE 2-102:
AR-1 AGRICULTURAL RURAL-1 DISTRICT USE TABLE
P = PERMITTED S = SPECIAL EXCEPTION M=MINOR SPECIAL EXCEPTION**

USE CATEGORY	USE TYPE	AR-1 DISTRICT	ADDITIONAL REGULATIONS FOR SPECIFIC USES
	Commercial winery with 20,000 square feet or less	P	Section 5-625
	Commercial winery, over 20,000 square feet	S	Section 5-625
	Equestrian Event Facility	P	Section 5-630
	Farm machinery repair	P	Section 5-630
	Farm machinery sales, rental and service	P	Section 5-615
	Feed and Farm Supply Center	P	Section 5-630
	Nursery, commercial	S	Section 5-605
	Stable, Livery	P	Section 5-630
	Stable, Private	P	Section 5-630
Animal Services	Animal hospital	P	Section 5-631
	Kennel	S	Section 5-606
	Kennel, Indoor	M	Section 5-606
RESIDENTIAL USES			
Household Living	Accessory dwelling (accessory to single family detached dwelling)	P	Section 5-613
	Dwelling, single-family detached, including manufactured housing	P	May divide property in accordance with Section 2-103 Development Options.
	Portable Dwelling/Trailer Construction	P	
Group Living	Co-housing	P	
	Convent or monastery	P/S	Section 5-656
	Dormitory, seasonal labor	M	Section 5-632
	Rooming house	P	

Exhibit 5

Dwelling, Stacked Multi-Family: A vertical and horizontal grouping of dwelling units, where at least one dwelling unit within the grouping contains 2 or more stories and is situated over or under another dwelling unit. Each unit has its own ground floor external entrance or shares its entrance with only an adjacent unit. Stacked Multi-family dwelling units are commonly referred to as stacked townhomes, one over twos, and two over twos.

Dwelling, Portable: A modular unit built on a chassis, having wheels or designed to be transported on wheels, with body width exceeding eight (8) feet or body length exceeding 32 feet and designed to be used as a dwelling when attached to a permanent foundation and when connected to the required utilities.

Dwelling, Quadruplex: One of four (4) buildings, arranged or designed as dwellings, located on abutting walls without openings and with each building having a separate lot, with minimum dimensions required by district regulations.

Dwelling, Single-Family Attached: A duplex, triplex, quadruplex, or townhouse dwelling unit.

Dwelling, Single Family Detached: A residential dwelling unit, other than a portable dwelling, designed for and occupied by one family only and not structurally connected or attached to any other dwelling.

Dwelling, Temporary: A portable dwelling, but not necessarily attached to a permanent foundation.

Dwelling, Townhouse: One of a group of three or more attached single-family dwelling units, each of which may be located on a single, undivided lot or all of which may be located on the same lot. Each townhouse dwelling unit is attached to at least one other townhouse dwelling unit by a wall that serves as a generally vertical boundary for both units, with each such unit extending from ground to roof, with no dwelling unit directly above another dwelling unit. Each townhouse dwelling unit consists of multiple floors or levels, with each unit having its own ground floor external entrance or sharing its entrance with only an adjacent unit.

Dwelling, Triplex: One of three (3) buildings, arranged or designed as dwellings, located on abutting walls without openings and with each building having a separate lot, with minimum dimensions required by district regulations.

Dwelling Unit: One room, or rooms connected together, constituting a separate unit for a single-family owner occupancy or rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

E

Easement: A grant of interest in real property by the owner to, or for the use by, an abutting landowner, the public, or another person or entity, including both easements appurtenant and easements in gross.

Ecological Integrity: Maintenance of the structure and functional attributes characteristic of a particular locale, or ecosystem, including normal variability.

Ecosystem: A complex network of organic communities and their interaction with their environment.

Exhibit 6

Eco-tourism: Tourism activities and facilities which focus on visitation and observation of or education about natural history, indigenous ecosystems, native plant or animal species, natural scenery, or other features of the natural environment. Eco-tourism may include cultural activities related to such activities or work projects that tend to conserve or safeguard the integrity of a natural feature, habitat or ecosystem. Facilities for eco-tourism may include recreational outfitters. Eco-tourism tends to result in a minimal or positive impact on the features observed or visited or tends to produce economic benefits from conservation.

Education: Facilities for the education of students, including public and private schools at the primary, elementary, middle, or high school level, vocational and technical schools. Accessory uses include play areas, cafeterias, recreational and sport facilities, auditoriums, and before- or after-school day care.

Educational Institution: Any college, university, secondary or higher educational facility beyond high school without an on-campus housing facility which meets applicable State requirements to award degrees and primarily teaches usable skills that prepare students for employment in a profession or trade.

Educational or research facilities use related to the agriculture, horticulture and animal husbandry uses in the district: A facility for the investigation, testing, or demonstration of, or for training or educating persons in, products and processes related to agriculture, horticulture, or animal husbandry, including biotechnical agriculture, veterinary, soil, plant and animal sciences.

Electric Generating Plant and Transmission Facility/ Utility Generating Plant or Transmission Facility: A plant for the production of electricity, including appurtenant yards, equipment and facilities for the storage of fuels, water, transmission lines, exhaust stacks, and/or utility substation. This use also includes ground-mounted solar energy generation facilities and other types of solar energy generating panels that provide service for on-site use and to off-site users.

Enfront: To face or to be opposite across a street.

Equestrian Event Facility: A commercial facility for equine activities and events including teaching equestrian skills, participating in equestrian competitions, exhibitions, or other displays of equestrian skill. Accessory uses may include offices, storage areas, caretaker's quarters, and caring for, breeding, boarding, riding, or training horses associated with the Equestrian Event Facility use.

Erected: Shall be taken to mean constructed, reconstructed, moved or structurally altered.

E

Facilities Standards Manual (FSM): The Facilities Standards Manual of Loudoun County.

Facility for lessons in dance, gymnastics, judo and sports training: A school primarily devoted to giving instructions in, musical, dramatic, artistic, terpsichorean, martial arts or similar sports or other special subjects, but not including (a) a child care center or family day care home; or (b) a riding school, however designated.

Fairground: A parcel or tract of land used as the site of any fair, exposition or public display.

Family: A group of people living together consisting of:

- a. One or more persons related by blood or marriage together with any number of natural, foster, step or adopted children, domestic servants, nurses and therapists and no more than two roomers or boarders; or
- b. No more than 4 unrelated persons;
- c. **Any group identified in Section 15.2-2291 of the Code of Virginia.**

Farm based tourism: Tourism events which focus on visitation of farms, including organized farm tours and participatory farm vacations.

Farm co-op: A facility used by an organization of farm producers for co-operative technical and marketing assistance, which may include a central market place where farmers can deliver products for pick-up by consumers but not a wholesale distribution center.

Farm machinery repair: A commercial enterprise for the repair of equipment normally or routinely used on farms and gardens, and related parts, tools and accessories, but not of non-farm equipment or materials.

Farm machinery sales, rental and service: An establishment for the sale, rental, and/or service of equipment normally or routinely used on farms and gardens, and related parts, tools and accessories, but not of non-farm equipment or materials.

Farm Market: A principal use which includes the sale of aquacultural, horticultural or agricultural products, including nursery stock, perennial, annuals, bulbs, mulch, compost, dried flowers, Christmas trees and greens, fresh produce, honey, cider, and similar agricultural products.

Farm Market (off-site production): A principal use which includes the retail sale of aquacultural, horticultural or agricultural products, including nursery stock, perennial, annuals, bulbs, mulch, compost, dried flowers, Christmas trees and greens, fresh produce, honey, cider, and similar agricultural products. A Farm Market (off-site production) may or may not be located on the site of ongoing agricultural, horticultural or aquacultural activity. This use may include the sale of products from one or more vendors.

Fee Simple Ownership: The complete ownership interest in real property; the ownership of the entire “bundle” of rights attached to real property.

Feed and Farm Supply Center: A commercial enterprise engaged in the provision of animal feed, bedding and accessories, and farm and garden supplies (such as seed, fencing, hardware, pesticides, and fertilizer) to agricultural, horticultural, and/or animal husbandry operations, but not an enterprise where more than 10% of the floor area or display or storage area utilized for the enterprise is devoted to heavy equipment and machinery; a “feed-and-seed” store

Feedlot: An enclosure (including a lot, yard, building, or corral) in which animals fed for slaughter are confined, that is used for more than 30 days in one-year period, with or without an area for the raising of crops, forage or other vegetation and upon which animals fed for slaughter are allowed to graze or feed. A "feedlot" does not include any area where animals are held for slaughter by a processor for a period of 30 days or less.

Exhibit 7

Concept Development Plan (CDP): Part of a rezoning application (ZMAP) or of a zoning concept plan amendment application (ZCPA). The concept development plan may consist of both a visual and a written representation depicting the layout and/or design of the development, and all associated proffers. When the concept development plan is approved through the legislative process, the plan then becomes binding on the developer and his successors in interests.

Conference and Training Centers: Facilities used for business or professional conferences, seminars, and training programs, which may include accommodations for sleeping, eating and recreation.

Congregate Housing Facility: A structure other than a single-family dwelling where more than four (4) unrelated persons reside under supervision for special care, treatment, training or similar purposes, on a temporary or permanent basis.

Conservancy Lot: A lot, excluding the hamlet/cluster lots, open space and/or hamlet green/square, which will remain as large parcel(s), the bulk of which is in permanent open space easement and a portion of which may be designated a building area.

Contiguous: Touching, abutting, or adjoining at the border or immediately across the street.

Continuing Care Facility: This type of facility may consist of three (3) types of care, or any one or two types:

- a. Congregate Living Facility: a facility which provides independent living which may be affiliated with, or located near health care facilities.
- b. Adult Assisted Living: a facility for people who cannot live independently and who need assistance with daily chores and housekeeping.
- c. Nursing Home: a facility for individuals who require specialized nursing care on a regular basis but who do not need to be hospitalized.

Contractor Service Establishment: Establishment for the installation and servicing of such items as air conditioners, electrical equipment, flooring, heating, painting, plumbing, roofing, tiling, ventilation, establishment for the planting and maintenance of gardens, grounds and yards, such as landscape contractors and lawn maintenance services, and construction and demolition services. Retail sales to the general public are not permitted except as an accessory use.

Convenience Food Store: A commercial establishment designed and intended to serve daily or frequent trade needs of the surrounding population, characterized by the retail sale of food and other household products, the rapid turnover of customers and a high traffic/trip generation.

Convent: A structure used for the purpose of housing persons on a permanent basis who are not members of a family as defined in this Ordinance and who constitute a religious community typically consisting of nuns, priests, monks, or other similar religious personnel. For the purpose of this definition the terms convent and monastery are interchangeable and shall have the same meaning. Assembly for worship services may be conducted in conjunction with the convent use but only for the residents of the

Exhibit 8



KeyCite Yellow Flag - Negative Treatment

Proposed Regulation

Virginia Administrative Code

Title 12. Health

Vac Agency NO. 35. Department of Behavioral Health and Developmental Services (Refs & Annos)

Chapter 105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (Refs & Annos)

Part II. Licensing Process (Refs & Annos)

12 VAC 35-105-30

12 VAC 35-105-30. Licenses.

Currentness

A. Licenses are issued to providers who offer services to individuals who have mental illness, a developmental disability, or substance abuse (substance use disorders) or have brain injury and are receiving residential services.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Assertive community treatment (ACT);
2. Case management;
3. Clinically managed high-intensity residential care or Level of care 3.5;
4. Clinically managed low-intensity residential care or Level of care 3.1;
5. Clinically managed population specific high-intensity residential or Level of care 3.3;
6. Community intermediate care facility-MR;
7. ICF/IID;
8. Residential crisis stabilization;
9. Nonresidential crisis stabilization;

10. Day support;
11. Day treatment, includes therapeutic day treatment for children and adolescents;
12. Emergency;
13. Group home and community residential;
14. Inpatient psychiatric;
15. Intensive in-home;
16. Medically managed intensive inpatient service or Level of care 4.0;
17. Medically monitored intensive inpatient treatment or Level of care 3.7;
18. Medication assisted opioid treatment;
19. Mental health community support;
20. Mental health intensive outpatient;
21. Mental health outpatient;
22. Mental health partial hospitalization;
23. Psychosocial rehabilitation;
24. Residential treatment;
25. Respite care;
26. Sponsored residential home;
27. Substance abuse intensive outpatient;

28. Substance abuse outpatient;
29. Substance abuse partial hospitalization;
30. Substance abuse residential treatment for women with children;
31. Supervised living residential; and
32. Supportive in-home.

C. A license addendum shall describe the services licensed, the disabilities of individuals who may be served, the specific locations where services are to be provided or administered, and the terms and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of individuals each residential location may serve at a given time.

Credits

Statutory Authority: §§ 37.2-302 and 37.2-400 of the Code of Virginia.

Historical Notes: Derived from Virginia Register Volume 18, Issue 18, eff. September 19, 2002; amended, Virginia Register Volume 19, Issue 24, eff. September 18, 2003; Volume 23, Issue 10, eff. February 21, 2007; Volume 28, Issue 5, eff. December 7, 2011; Volume 36, Issue 22, eff. August 1, 2020; Volume 39, Issue 11, eff. February 17, 2023; **Errata**, 39:14 VA.R. 2041 February 27, 2023.

Official Virginia Administrative Code, current through 39:14 VA.R February 27, 2023, and fast-track regulations current through 39:14 VA.R February 27, 2023.

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12 VAC 35-105-30, 12 VA ADC 35-105-30

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Exhibit 9



KeyCite Yellow Flag - Negative Treatment

Proposed Regulation

Virginia Administrative Code

Title 12. Health

Vac Agency NO. 35. Department of Behavioral Health and Developmental Services (Refs & Annos)

Chapter 105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (Refs & Annos)

Part II. Licensing Process (Refs & Annos)

12 VAC 35-105-80

12 VAC 35-105-80. Complaint investigations.

Currentness

The department shall investigate all complaints regarding potential violations of licensing regulations. Complaint investigations may be based on onsite reviews, a review of records, a review of provider reports or telephone interviews.

Credits

Statutory Authority: § 37.2-203 of the Code of Virginia.

Historical Notes: Derived from Virginia Register Volume 18, Issue 18, eff. September 19, 2002.

Official Virginia Administrative Code, current through 39:14 VA.R February 27, 2023, and fast-track regulations current through 39:14 VA.R February 27, 2023.

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Exhibit 10

Section 6-500

Enforcement and Penalties.

6-501

Zoning Administrator. The Zoning Administrator shall have the authority and the duty to ensure that all buildings and structures and the use of all land complies with the provisions of this Ordinance.

6-502

General Provisions.

- (A) Any building or structure erected contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Ordinance or the provisions of any approval granted by the County under this Ordinance shall be a violation of this Ordinance and the same is hereby declared to be unlawful.
- (B) Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this ordinance, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of the provisions of this Ordinance or the provisions of any approval granted by the County under this ordinance shall be subject to the enforcement provisions of this Section.
- (C) In addition to the remedies provided in this Section, the Zoning Administrator may initiate injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation or attempted violation of this Ordinance. At any time after the filing of an injunction or other appropriate proceeding to restrain, correct, or abate a zoning ordinance violation and where the owner of the real property is a party to such proceeding, the Zoning Administrator or governing body may record a memorandum of lis pendens pursuant to Section 8.01-268 of the Code of Virginia. Any memorandum of lis pendens admitted to record in an action to enforce the zoning ordinance shall expire after 180 days. If an enforcement proceeding is initiated against the owner of the real property and such owner subsequently transfers the ownership of the real property to an entity in which the owner holds an ownership interest greater than 50 percent, the pending enforcement proceeding shall continue to be enforced against the owner
- (D) Upon his becoming aware of any violation, the Zoning Administrator shall serve notice of such violation on the person committing or permitting the same, and the land owner, and if such violation has not

ceased within such reasonable time as the Zoning Administrator has specified in such notice, he shall institute such action as may be necessary to terminate the violation.

- (E) If the person responsible for the alleged violation denies that a violation exists, he may appeal the decision of the Zoning Administrator pursuant to the provisions of Section 6-1700 of this Ordinance.
- (F) **Whenever a violation occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the cause and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record such complaint, investigate, and take action thereon as provided by this Ordinance.**
- (G) The zoning administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and, if such testimony establishes probable cause that a zoning ordinance violation has occurred with respect to the use or occupancy of a dwelling, may request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purposes of determining whether violations of the zoning ordinance exist. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant.

6-503

Criminal Violations.

- (A) Any violation of the provisions of this Ordinance that results in physical harm or injury to any person shall be deemed a criminal misdemeanor and, upon conviction thereof, punishable by fines as provided in Section 15.2-2286 of the Code of Virginia, as amended. Each day during which the violation is found to have existed shall constitute a separate misdemeanor offense. If the violation is uncorrected at the time of conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by fines as provided in Section 15.2-2286 of the Code of Virginia, as amended.
- (B) Owners and tenants of affordable dwelling units pursuant to Article 7 of this Ordinance who shall falsely swear or who shall execute an affidavit or certification required by Article 7 of this Ordinance knowing the statements contained therein to be false shall be guilty of a Class II misdemeanor and shall be subject to a fine up to \$1,000.00.