

In the Matter of:

**Loudoun Co. Board of Supervisor's Mtg -
Brd of Zoning Appeals**

Board of Zoning Appeals

April 28, 2022

Casamo

**Court Reporting
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Videoconferencing**

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4	LOUDOUN COUNTY BOARD OF SUPERVISORS
5	BOARD OF ZONING APPEALS MEETING
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17	Thursday, April 28, 2022
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21	1 Harrison Street, SE
22	Leesburg, Virginia 20175

1	BOARD MEMBERS
2	Rory Clark, Chairman
3	E. Page Moffett
4	Jeffrey Sofrenko
5	Brian Walker
6	
7	ASSISTANT COUNTY ATTORNEYS - BZA
8	Hugh Green
9	Michelle Lohr
10	Mark Stultz
11	Carlos Teran
12	
13	ALSO IN ATTENDANCE:
14	Gifford R. Hampshire, Esquire
15	Attorney for Aaron & Hilary Kozikowski
16	
17	Michael Allen, Esquire
18	Attorney for Newport Healthcare
19	
20	Joseph Precopio, CEO, Newport Healthcare
21	
22	

1 CHAIRMAN CLARK: Ten minutes. Other
2 speakers will have three minutes. I'd like to take
3 an opportunity here because one of the cases, 2021-003,
4 has three parties that have aggrieved, the property
5 owner in interest or at least the contract owner in
6 interest and the staff, and the appellate.

7 Unless there's any objection, I'm going to
8 allow all three of those parties to be treated as if
9 principal in the litigation ten minutes each. All
10 other speakers, three minutes.

11 Is there any objection to that?

12 MR. MOFFETT: No.

13 MR. WALKER: No.

14 MR. SOFRENKO: No.

15 CHAIRMAN CLARK: Okay. Then I'll note that
16 there are no objections to that. So we'll have three
17 parties tonight in that case, ten minutes allowance
18 for speaking.

19 Let me say on that note, we see here a
20 timer for speakers and we have an extensive list of
21 folks. I do want to make sure that everybody gets
22 treated respectfully and that they have their time.

1 But I also want to treat respectfully the folks who
2 have not yet spoken. So I may, if I'm not in the
3 middle of making notes, I may just make a note. It's
4 not that I'm trying to cut anybody off or shorten
5 anything, I may just say you've got 30 seconds left
6 as a reminder, because I don't think that you can
7 necessarily see that clock if you're one of the
8 speakers.

9 Before we begin, I'm going to ask everyone
10 to please check their cell phones and turn them off
11 or ensure that it's on silent. Even it being on kind
12 of like it's on an airplane, your phone can interact
13 with the electronic systems here and the record that
14 we keep for appeal purposes. Thank you very much.

15 All right. So let's turn to our agenda.
16 We've got two items that were advertised on the
17 agenda tonight. And I understand there may be a
18 request from the County with regard to the variance.

19 Mr. Stultz, can you tell us about that?

20 MR. STULTZ: Yes, Mr. Chairman. Thank you.

21 Yes, we did get a written request to defer
22 the variance application on the schedule for the

1 meeting this evening due to the representative for
2 the applicant having contracted COVID. So they were
3 not able to make it tonight; so they did ask that we
4 go ahead and defer.

5 Now, given the lateness of their request, I
6 do think that the BZA will make a motion and vote to
7 defer that case, and we're looking to go next month
8 at the May 26th hearing.

9 CHAIRMAN CLARK: All right. Do I hear a
10 motion from any of the members that we defer variance
11 2022-001, the ZCOR variance to the May 26, 2022
12 meeting of the BZA?

13 MR. WALKER: I move.

14 CHAIRMAN CLARK: Okay. Mr. Walker moves.

15 Is there a second?

16 MR. MOFFETT: Second.

17 CHAIRMAN CLARK: Any debate? Any
18 objection? All right. Then without objection, that
19 case is removed from our docket today and everybody
20 just moved up a half an hour or more. All right.

21 Then the next item on our agenda is appeal
22 2021-003 which we're referring to as group homes in

1 the AR1 District, Gleedsville Road. I would ask to
2 be as respectful and move as smoothly as possible and
3 to be respectful of everyone's time and allow them to
4 get to their moment to address the ward. I am going
5 to save a little time by asking, anybody who is going
6 to provide testimony tonight to stand now, and I'm
7 going to swear everyone in collectively.

8 So if you expect to speak tonight on this
9 matter, Appeal 2021-003, would you please stand.

10 (Witnesses were duly sworn by the Chairman.)

11 CHAIRMAN CLARK: Thank you very much. I
12 appreciate that. Okay. So let's move to Appeal
13 2021-003. Staff first.

14 MS. LOHR: Good evening, members of the
15 Board of Zoning Appeals and members of the public. My
16 name is Michelle Lohr, Deputy Zoning Administrator in
17 the Department of Planning and Zoning, and I will be
18 presenting Appeal 2021-003, group homes in AR1
19 Gleedsville Road.

20 Appeal 2021-003 is an appeal filed on
21 behalf of 11 appellants regarding zoning
22 correspondence ZCOR-2021-0233 in which the zoning

1 administrator responded that proposed use would be
2 permitted on each of three subject properties if it
3 meets the definition of dwelling single family
4 detached and the criteria of Virginia code section
5 15.2-2291.

6 Before I discuss the merits of the appeal,
7 I'd like to turn the discussion of two preliminary
8 matters to Mr. Hugh Green, Senior Assistant County
9 Attorney.

10 MR. GREEN: Good evening, members of the
11 board and members of the public. I am Hugh Green,
12 Senior Assistant County Attorney.

13 There's a threshold issue we've asked --
14 we're asking the board to decide tonight, and that
15 has to do with standing. There are two bases for
16 standing which are outlined in our -- in the staff
17 report.

18 As the board is well aware, 15.2-2311
19 states that an appeal to the board may be obtained
20 by any person aggrieved or by any officer of a
21 department or a bureau of locality affected by any
22 decision by the zoning administrator.

1 And so there are two bases of why we
2 believe the appellants lack standing. The first is
3 that ZCOR-2021-0233 is an advisory opinion. I cited
4 three cases up there which stand for the proposition,
5 Vulcan Materials, Crucible, and one that the board
6 might be familiar with, Graydon Manor.

7 The issue there really is that this is, as
8 the Virginia Supreme Court has laid out that, the
9 zoning administrator's communications determination
10 --

11 CHAIRMAN CLARK: Excuse me, I'm sorry.

12 Stephanie, would you make sure the box
13 started. I'm just going to say that's two minutes.

14 SECRETARY: Yes. Sorry, we're having some
15 technical difficulties.

16 MR. GREEN: That essentially, the
17 determination letter can be merely an advisory if
18 there's no pending application. So Vulcan Materials
19 had to do with representations. Crucible had to do
20 with the national written letter, not unlike the one
21 we have which is under appeal tonight, a verification
22 letter.

1 And as the board might be familiar with,
2 Graydon Manor, which was decided last week, April
3 21st, in which the 14-page response on certain zoning
4 questions that the court found there, constitutes
5 merely an advisory opinion. There was no pending
6 application and, therefore, the appellant was not
7 aggrieved. So, in this respect, we would ask that the
8 appellants failed and lacked standing in this regard.

9 The second basis for standing has just been
10 set forth in the Friends of Rappahannock. It's a
11 two-part test, one in which the -- if a party
12 approved does not own the land in question, it must
13 own or occupy the property in close proximity.

14 CHAIRMAN CLARK: I apologize for
15 interrupting again. We need to stop the clock.
16 We've got a technical problem. And I wanted to make
17 sure we're proceeding legally, and we're having
18 trouble with the recording.

19 And what I need to determine is, one, can we
20 fix it quickly. And, if not, are we allowed to conduct
21 the meeting without a recording. If we can't, save
22 your breath and we'll figure out whether we're able

1 to fix the problem or we'll come back. But if we
2 decide that we can't fix the problem and we can
3 legally have the meeting without being recorded, I
4 guess we'll just have to take good notes. Okay.

5 Now, I think I turn back to you. Does the
6 County Attorney's office have an opinion as to
7 whether or not we can conduct the meeting if there's
8 not a recording that's being taken?

9 MR. TERAN: So my understanding is the open
10 meeting requirements do not require broadcasting.
11 Recording minutes need to be taken. I believe we
12 prefer to record these BZA proceedings so that later
13 on, if a transcript is needed, it can be put
14 together. But it's not strictly necessary to conduct
15 the meeting. The meeting just needs to be open to
16 the public and properly advertised.

17 CHAIRMAN CLARK: And an appeal to the
18 circuit court of this would be de novo.

19 MR. TERAN: It is a mixed sort of appeal.
20 Questions of law are de novo, questions of fact. I
21 believe there is a certain standard of clear and
22 convincing evidence. It's not a hundred percent de

1 novo.

2 MR. HAMPSHIRE: Mr. Chairman --

3 CHAIRMAN CLARK: We do have a court

4 reporter.

5 MR. HAMPSHIRE: Yeah, I was just going to
6 mention, we do have a court reporter that's been --
7 that's in attendance tonight that is -- based on the
8 appellants.

9 CHAIRMAN CLARK: (Inaudible.) swear in.

10 MR. HAMPSHIRE: So we do have that.

11 CHAIRMAN CLARK: Okay. So I'm going to ask
12 everyone's indulgence. We're going to do the turn
13 the computer off and turn it on again, trick to see if
14 it works. That shouldn't take us more than a minute.

15 If we have it, then we've got -- then we're
16 double covered. If not, unless there's objection
17 from the board, I think we can go with the sworn
18 court reporter here, especially because the court
19 would have to take hearings.

20 This just means that we'll have to pass on
21 minutes, which we haven't done for a while and we've
22 always had a verbatim transcript. So we may have to

1 have more work if we don't get the recording back.

2 So thank you all for your indulgence. And
3 I apologize. I promise we will reset the clock. You
4 are now down to four minutes and seventeen seconds,
5 eight of those or four of those are on me.

6 (Brief moments off the record.)

7 CHAIRMAN CLARK: Okay. We're good. We'll
8 set the clock to 7 minutes?

9 SECRETARY: Um-hum.

10 CHAIRMAN CLARK: And you're back on, and I
11 believe you were just about to transition to the
12 argument on the particularized harm. But you start
13 where you want, but we were paying attention.

14 MR. GREEN: Thank you very much. To touch
15 on one more point just to close out on this. Because
16 the position of the zoning administrator is ZCOR
17 2021-0233, in this case, did not grant or deny the
18 appellants personal property right. The letter that
19 was requested of the zoning administrator asked
20 respectively what use would be permitted.

21 And the zoning administrator responded
22 saying it could be. There was no pending

1 application. So, therefore, these cases clearly stand
2 for that the proposition that something more is
3 needed for it to be a determination and, thus, trigger
4 15.2-2311.

5 Moving on to the second issue of standing
6 which we've touched on, particularized terms, as Mr.
7 Clark had mentioned. Yes, the position is that the
8 appellants lack standing under 15.2-2311 under the
9 Supreme Court's test in Friends of Rappahannock; it's
10 a two-part test.

11 As I mentioned, it has to be close to the
12 property. The person must own or occupy property in
13 close proximity. And the second, they have to allege
14 facts demonstrating particularized harm, different
15 from the public in general.

16 In this case, as referenced in the staff
17 report, in Friends of Rappahannock, the appellants
18 there, neighbors, there was a quarry with standing
19 gravel, a minor operation going up. And the
20 particularized harms alleged in Friends had to do
21 with noise, garbage, certain environmental concerns.

22 And the Supreme Court said it was too -- it

1 didn't meet the test. The County does concede that
2 the first prong has been met in that they occupy
3 property in close proximity. But it's particularized
4 harm because if I can read it -- and each appellant
5 must demonstrate that -- a reduction in property
6 values, a risk to safety of property because of
7 commercial traffic.

8 In this case, our position is that they
9 lack the particularized harm that the Friends' case
10 requires. And I would like to pause there and ask if,
11 because we're asking this to be decided before we
12 reach the merits, I was going to invite either the
13 appellants or the property owner to speak out if the
14 board wishes to proceed with the full case.

15 CHAIRMAN CLARK: I'll let the board --

16 Do me a favor, stop the speaker's --

17 SECRETARY: Yep.

18 CHAIRMAN CLARK: -- clock because we're
19 back to sort of the board time here.

20 I'll ask for your opinion on this. But it
21 appears to me that these issues break down on the
22 first question about an advisory opinion that that

1 appears to be a purely legal question.

2 The second question about the
3 particularized harm strikes me as one that would be
4 dependent on the particularized harm. And that a
5 hearing on that matter is appropriate to see if any
6 evidence is deduced for that.

7 And then, of course, on the third questions
8 if we get past the first two, the whole enchilada of
9 that, of course, would be subject to everything in
10 the public hearing.

11 So I'm going to ask in order again, to be
12 respectful of everybody's time, to keep things from
13 being confusing, I think the appropriate thing would
14 be to allow every everyone to address all three of
15 these issues, let people introduce whatever evidence
16 is necessary.

17 We may -- I may ask if it's the Board's
18 pleasure, to bifurcate the questions, just handle the
19 first question, the aggrievance on the advisory
20 opinion, debate that. Depending on the answer, maybe
21 proceed to the second questions that may have some
22 factual basis. And then the third, go to the whole

1 enchilada. I know that's a lot.

2 But I'm going to ask you, is there any
3 objection to us proceeding to a full hearing on all
4 of the questions and we'll manage the work of how to
5 breakdown the questions.

6 Any objection? Okay. We'll note that
7 there are no objections to that. So thank you. What
8 we're going to do is turn your clock back on and ask
9 you to please address, I guess as I've so eloquently
10 put it, the whole enchilada. And then we'll ask the
11 other two parties to address them all as well.

12 MR. STULTZ: And, Mr. Chairman, before we
13 begin, I would like to maybe ask if the BZA would
14 grant additional time because, to understand the whole
15 merits of the case, it's probably going to take more
16 than four minutes.

17 CHAIRMAN CLARK: I'm pretty sure.

18 MR. STULTZ: Of course, we would be willing
19 to also allow the others the same additional time
20 that we would need.

21 CHAIRMAN CLARK: How much time do you think
22 you need to do a full presentation?

1 MS. LOHR: We need eight minutes.

2 CHAIRMAN CLARK: Another eight minutes,

3 so --

4 MS. LOHR: Well, not --

5 CHAIRMAN CLARK: -- a total of 18 minutes?

6 MS. LOHR: -- (Inaudible.)

7 CHAIRMAN CLARK: A total of 18 minutes or

8 no, eight minutes from here.

9 MR. STULTZ: Eight minutes from here, so an
10 additional four or five minutes.

11 CHAIRMAN CLARK: Outside of an
12 additional -- so 15 minutes for all parties.

13 Do I hear a motion that we grant the three
14 initial three parties of interest 15 minutes? Any
15 debate? Okay. Any objections? All right. We'll
16 note that that's in this as well.

17 So if you would reset to ten minutes, then
18 we're back to the point at the beginning of the
19 clock.

20 MR. STULTZ: Thank you.

21 MS. LOHR: Thank you. The property subject
22 speak to Appeal 2021-003 are depicted in yellow on

1 the screen. Holler zone AR1 Agricultural Rural 1
2 under the revised 1993 Loudoun County Zoning
3 Ordinance. The subject properties are located 20191,
4 20179, and 20173 Gleedsville Road Leesburg, Virginia
5 and encompass 4.9, 8.01, and 2.26 acres respectively.

6 The complete chronological history of
7 Appeal 2021-003 can be found on the page 3 of the
8 Zoning Administrator's Staff Report. The subject of
9 Appeal 2021-003 is the zoning determination issued a
10 response to requests by representatives of Newport
11 Academy for a determination of the proposed use as
12 described would be considered occupancy of a dwelling
13 single family detached and permitted as a matter of
14 right on each of the subject properties in accordance
15 with Virginia code section 15.2-2291(A) upon
16 appropriate licensure from the Virginia Department of
17 Behavioral Health & Developmental Services, VDBHDS.

18 The proposed use was described as a
19 single-sex group residential facility for no more
20 than eight adolescents with one a more nonresident
21 staff persons. Each of the properties would be
22 licensed by the VDBHDS.

1 Residents would participate in individual
2 therapy, group therapy, academic study, and a variety
3 of other activities. The residents of each facility
4 would not have access to the other two properties.
5 The length of stay would be typically between 30 and
6 90 days.

7 Newport Academy stated it would not operate
8 drug rehabilitation facilities or provide substance
9 abuse treatment at the properties, and any resident
10 determined to be using alcohol or other drugs would
11 be subject to immediate discharge.

12 The zoning administrator acted on the
13 request for determination based on the description of
14 the proposed use presented. ZCOR-2021-233 indicated
15 that a congregate housing facility is a use not
16 permitted in the AR1 zoning district.

17 However, based on the information presented
18 to the zoning administrator, determined that the
19 proposed use would be permitted as a dwelling
20 single-family detached use on each of the subject
21 properties if it meets the definition of family under
22 the zoning ordinance and the criteria of Virginia

1 code section 15.2-2291(A).

2 Article 8 of the zoning ordinance defines

3 dwelling single-family detached as a residential

4 dwelling unit other than a portable dwelling

5 designated for and occupied for one family only.

6 Dwelling single-family detached is a permitted use in

7 the AR1 zoning district as evidenced by the AR1 use

8 table in table 2-102 of section 2-102.

9 A single-family dwelling is defined as an

10 occupation by one family. Family is defined in

11 article 8 of the zoning ordinance as including any

12 group identified in section 15.2-2291. Therefore, if

13 the proposed use meets the criteria of section

14 15.2-2291, it is permitted as a single-family

15 dwelling in the AR1 zoning district.

16 In section 15.2-2291, the Virginia code

17 provides specific direction as to how group homes and

18 residential facilities with eight or fewer

19 individuals with mental illness, intellectual

20 disability or developmental disabilities are to be

21 considered by zoning ordinances.

22 A residential facility meeting the criteria

1 of section 15.2-2291 is considered as residential
2 occupancy by a single family for zoning purposes. No
3 conditions more restrictive than those imposed on
4 residents as occupied by persons related by blood
5 marriage or adoption shall be imposed on such a
6 facility.

7 Therefore, if no more than eight
8 individuals with mental illness, intellectual
9 disability or developmental disabilities reside in
10 each of the subject properties, and each of the
11 residential facilities are licensed by VDBHDS, the
12 subject properties are single-family residential
13 dwellings that are permitted uses in the AR1 zoning
14 district. Thus, the zoning administrator's
15 determination of Mr. Anderson ZCOR-2021-233 is
16 correct, and the board is to uphold the
17 determination.

18 The zoning administrator has consistently
19 opined that uses that meet the zoning ordinance
20 definition of family, including groups identified in
21 section 16.2-2291 are single-family dwellings and are
22 permitted in zoning districts where such use is

1 allowed. Examples of previous determinations and
2 zoning permits issued for properties to be used by
3 such groups are included in (inaudible.) 9 and 10 of
4 the staff report.

5 The appellants make three arguments with
6 which the zoning administrator disagrees. First, the
7 appellant's argument that the use of the property is
8 an alleged commercial treatment focused use is not
9 allowed in a single-family home within the AR1 zoning
10 district is incorrect. As discussed earlier, if the
11 proposed use has not more than eight individuals and
12 residents within one of the groups identified in
13 section 15.2-2291 and is licensed by VDBHDS, it is
14 considered residential occupancy by a single family
15 and has a permitted use in the AR1 zoning district.

16 Second, the appellants argue that 15.2-2291
17 does not mandate commercial uses in residential
18 zones. The zoning administrator disagrees. Section
19 15.2-2291 does not distinguish between commercial
20 and non-commercial residential facilities. In fact,
21 the Virginia General Assembly bill proposed in 2000
22 sought to amend section 15.2-2291 to distinguish

1 between profit and nonprofit residential facilities.

2 That bill did not pass.

3 Further, the Attorney General opined that
4 the proposed amendment would violate the Virginia
5 Fair Housing law. Thus, the purported commercial
6 business model of Newport Academy is irrelevant to
7 the issues before the BZA.

8 Third, the appellants argue that the
9 proposed use is not entitled to protection under
10 section 15.2-2291(A) because the proposed occupation
11 by persons addicted to a controlled substance, and
12 Newport Academy stated in its request that it does
13 not seek to operate a drug rehabilitation facility or
14 provide detoxification services and will not admit a
15 resident who is currently using illicit substances.
16 And any resident who is determined to be using
17 alcohol or other drugs will be subject to immediate
18 administrative discharge.

19 (Brief comment about a slide displayed not heard
20 by the court reporter.)

21 MS. LOHR: Sorry, there's precious time.

22 CHAIRMAN CLARK: Let me remind, everyone.

1 Please silence your phones; turn them off. It not
2 only disturbs the meeting, but it interferes with the
3 recording process.

4 MS. LOHR: Lastly, the appellants suggest
5 that, because the residents receiving mental health
6 treatment will reside there for a lengthy time, that
7 this is somehow a violation. However, the appellants
8 fail to cite any Virginia code or if there is any
9 ordinance requirement that supports that position.

10 Section 15.2-2291 expressly states that no
11 conditions more restrictive than those imposed on
12 residences occupied by persons related by blood,
13 marriage or adoption shall be imposed on such a
14 facility. And, further, a resident's stay or duration
15 for treatment is not relevant to any issue before the
16 BZA.

17 In conclusion, the zoning administrator
18 respectfully requests the Board of Zoning Appeals to
19 uphold ZCOR-2021-223 and deny Appeal 2021-003 as the
20 use would be permitted as a single-family detached
21 dwelling on each property, and as the proposed use
22 meets the definition of family under the zoning

1 ordinance and the criteria of section 15.2-2291(A) of
2 the code of Virginia.

3 If the proposed use has no more than eight
4 individuals and residents within one of the groups
5 identified in section 15.2-2291 and meets the
6 criteria of that section, it is considered
7 residential occupancy by a single family.

8 While a single-family detached is a
9 permitted use in the AR1 zoning district and whether
10 the residential facility is operated by a commercial
11 or a noncommercial entity is not relevant to locate a
12 residential facility on each of the subject
13 properties, then licensure of the VDBHDS is required to
14 meet section 15.2-2291(A).

15 This concludes staff presentation and the
16 zoning administrator respectfully requests the Board
17 of Zoning Appeals upholds ZCOR-2020-233 and deny the
18 Appeal 2021-003.

19 CHAIRMAN CLARK: Thank you very much for
20 the staff report. Very well done. I know we
21 appreciate you being tolerant of the interruptions,
22 but let me turn to the members of the board now, and

1 see if there are any questions for County staff.

2 MR. MOFFETT: Mr. Chairman, I have a number
3 of questions. First of all, while this decision was
4 in progress, the staff was in communication with the
5 owners, not only Newport, but also with the owners of
6 the houses that were going to be up for sale. That's
7 correct, isn't it?

8 In fact, I mean, the owners --

9 MS. LOHR: The requests came from Newport
10 -- the requests came from resident representatives of
11 Newport Academy. The only contact I have with the
12 property owners was they're asking if the
13 determination had been completed yet.

14 MR. MOFFETT: And those property owners
15 were basically saying is we really need this because
16 we want to know whether to sell our houses and to
17 move on; that is correct? I think I saw that in the
18 record.

19 MS. LOHR: That was the only comment, yeah.
20 That's the gist of the conversation that I had with
21 the owner, yes.

22 MR. MOFFETT: All right.

1 MS. LOHR: With one of the owners.

2 MR. MOFFETT: Secondly, is there any
3 indication in the November 29th letter that this is
4 simply an advisory opinion? It's characterized as a
5 determination. It gives appeal rights and everything
6 else. And it's clear, it seems to me, that any
7 number of people rely then and rely now on this
8 letter.

9 So just dealing with the advisory opinion
10 issue, I don't see any language in here
11 characterizing it as such, and it's clear that
12 Newport and everybody else relied on this
13 determination in moving forward; is that a correct
14 characterization?

15 MR. GREEN: In terms of -- if I can just speak
16 to the advisory versus the language in the
17 determination that this is a determination letter,
18 one of the key issues, one of the key aspects of the
19 cases that we had cited in the report is that, even
20 though it makes a determination, you have to look at
21 the substance of it, as well.

22 For instance, Graydon Manor which was just

1 recently decided and I know folks -- because it was
2 just recent, I don't have it before you so I can't
3 provide supplemental information on that. But that,
4 too, also had the determination. The Court said,
5 looking at this in totality, this was an advisory
6 opinion.

7 So, too, with the Crucible case that was
8 decided. They asked for a verification letter and a
9 non-verification letter. So, too, the Court said it's
10 considered advisory because there was something --
11 there has to be something more.

12 And in this case, we look at the
13 perspective of the request to the zoning
14 administrator, as well as the responses. We're
15 thinking buying these properties. Here is the
16 proposal, how do you respond. And the response
17 was --

18 MR. MOFFETT: But isn't it clear --

19 MR. GREEN: -- the interpretation is --

20 MR. MOFFETT: -- the intent of this -- I
21 mean, the clear intent of this is that if you go
22 ahead and apply for the zoning permit using the exact

1 language that you used here, we're going to grant the
2 permit? I mean, that's clear from the letter; isn't
3 it?

4 MR. GREEN: But that doesn't necessarily
5 flow from it; it may or may not. Because no
6 application still has been received or processed,
7 they may not.

8 MR. MOFFETT: All right.

9 MR. GREEN: They may not invest in or they
10 may not buy the property. In other words, there's --
11 it's a speculative process.

12 MR. MOFFETT: But I mean, the letter
13 clearly indicates, it seems to me, that this is what
14 is permitted, and if you file the zoning permit, then
15 it's going to qualify.

16 All right. Let me move on because I have
17 several other questions. I want to make sure that
18 the staff's position is you said that this -- which I
19 think is quite correct -- that this would be a
20 congregate housing facility and would be allowed as a
21 congregate housing facility; right?

22 MS. LOHR: Would be allowed in districts

1 that permit congregate housing.

2 MR. MOFFETT: Exactly, excuse me. So there
3 is an option for them to apply as a congregate
4 housing facility. I think all of us feel for the
5 persons that are going to be using this. I mean, my
6 heart certainly goes out to the folks and to their
7 parents for this, but there is another option open to
8 them.

9 And then, secondly, I want to make sure the
10 staff says is that for this district, the only thing
11 that would allow it is section 15.2-2291. That is
12 correct? That is what the staff's position is; right?

13 MR. GREEN: Correct. And for
14 clarification, Mr. Moffett, the congregate use is not
15 permitted in the AR1 zoning district.

16 MR. MOFFETT: I understand.

17 MR. GREEN: So that -- okay. I thought you
18 said --

19 MR. MOFFETT: I understood it's an option.

20 MR. GREEN: Okay.

21 MR. MOFFETT: But that would presumably be
22 allowed in other district under different

1 requirements so that option is open to Newport. And
2 the only question here tonight is does 15.2-2291
3 allow use of these three residences for this
4 facility. I just want to make sure, okay.

5 15.2-2291 says that only certain people fit
6 the description here, individuals with mental
7 illness, intellectual disability or developmental
8 disabilities. I'm presuming that we're talking about
9 mental illness here and what evidence did Newport
10 present in its letter of September 22, 2021 which
11 formed the basis for your determination.

12 What evidence do they provide that the
13 individuals in these proposed facilities would all be
14 diagnosed, characterized or whatever, as having
15 mental illness. To me, it's not good enough to just
16 say it's mental health symptoms. But in order to
17 invoke 15.2-2291, there has to be some evidence that
18 these individuals are suffering from mental illness,
19 and I don't see anything.

20 MR. GREEN: Well, Mr. Moffett, I think from
21 a determination standpoint or advisory opinion,
22 whatever you want to call it, it would basically be

1 dependent on whether or not this became a licensed
2 facility as to whether it would be permitted on these
3 properties.

4 So regardless of how they portrayed it to
5 us, ultimately it's the call of the state in issuing
6 the license as to whether they meet those criteria.
7 So in the instance where the state would issue a
8 license for this type of use, then the zoning
9 ordinance would permit it as a group home.

10 So it really falls down to whether or not
11 this use gets a license or not. And if it does, it's
12 permitted in a camp because it doesn't meet the
13 criteria that would it not be permitted.

14 CHAIRMAN CLARK: On an actual application?

15 MR. GREEN: Correct.

16 MR. MOFFETT: So there's no evidence in the
17 record that's before us now. And by the way, I think
18 I have this correctly, is that they initially said in
19 this application that this would be adolescents;
20 right?

21 I think in response to at least one
22 landowner here, they said, as well, we may now have

1 people in there 18 to 26. I'm sure I saw that. So
2 the group of people that were initially listed as
3 being here have now shifted; is that correct?

4 MS. LOHR: We don't know that for certain,
5 but that is something that you could ask the
6 representatives in the community. And I do want to
7 point out that we did respond to what was in the
8 letter. And in the letter, it does state that each
9 of the residences would be licensed by VDBHDS as an
10 MH therapeutic group home for children and
11 adolescents with serious emotional disturbance.

12 MR. STULTZ: So, again, it would not be the
13 zoning administer who would make that call. We would
14 just respond that the state does basically.

15 MR. MOFFETT: Are we going to be hearing,
16 Mr. Chairman, from Newport?

17 MS. LOHR: Yes. And to add to that, there
18 is no age requirement in the state code section.

19 MR. MOFFETT: Right. But I just want to be
20 clear. When you issued the letter, there was no
21 concrete evidence presented to you that these
22 individuals in these homes would be characterized as

1 having mental illness; that is correct; right?

2 MR. STULTZ: Again, I think another reason
3 for their argument of the advisory opinion, at the
4 time that they requested the letter, there was no
5 application for license for this facility. There was
6 no zoning permit application submitted for this type
7 of facility. So it was clearly based on the
8 description that was provided by the Newport Academy.

9 And our answer was, again, it really kind of
10 depends if you're licensed under the state provision
11 for a group home; then the zoning ordinance would
12 allow the use as a single-family detached dwelling.
13 So, really, that's really the test for zoning, whether
14 they're a licensed facility.

15 CHAIRMAN CLARK: Any more questions for --
16 Mr. Moffett.

17 MR. MOFFETT: Not for the moment.

18 CHAIRMAN CLARK: Okay.

19 Mr. Sofrenko, Mr. Walker, any questions?

20 MR. WALKER: None.

21 CHAIRMAN CLARK: I do. I believe
22 Mr. Moffett has hit an important point the Board's

1 going to have to be able to get to here. And I think
2 this actually gets right to the question that was
3 before the Supreme Court as to why we don't have
4 appeals over matters that aren't the subject of an
5 application because, it seems to me, that it is
6 arguably in every case, speculative.

7 And I think under the Supreme Court cases,
8 the question is, as the local courts said recently,
9 what's in the letter from the County, not what's in
10 the letter from the applicant. If this was a
11 different question, like a variance application, we'd
12 have to look at what did they ask for and what's the
13 case.

14 The question here seems to me is, do we
15 have a narrow issue on which we can deduce facts and
16 get legal issues and then allow people to have the
17 right to appeal. So here's my question or so here's
18 the point that I get to.

19 When I look at the County Attorney's letter
20 issued -- I'm sorry, the County's letter issued by
21 you -- the substance starts with if. If the use and
22 then it quotes the state statute, if what you apply

1 for meets the state statute, then you're in.

2 The residential facility will require
3 licensing through the Department of Behavioral Health
4 and Department of Developmental Services. To
5 establish that use, you must apply for more permits.
6 And here's my question.

7 If it's decided tonight that, purely as a
8 matter of law and procedure, that this should not go
9 forward tonight because -- on the question of the
10 advisory opinion, however any of the people in the
11 room here consider themselves an aggrieved party, are
12 not done out of justice. They have an opportunity to
13 pursue and come back probably to this body when
14 there's an actual application with actual assertions
15 of what's going to be done on the property with plats
16 and four corners that the County's going to either
17 rule on or for or against; that's my point.

18 The point here is, do the folks who
19 consider themselves aggrieved have an opportunity to
20 come back and address the issue if, in fact, an
21 application is actually filed. But they're not out
22 of court if we decide this issue on an advisory

1 opinion today, and there's an application that
2 follows.

3 MR. GREEN: Yes, and, in short, Mr. Clark,
4 it's premature, but, nonetheless, if there is the
5 application that is granted or even denied, that
6 would be a different set of operative facts.

7 CHAIRMAN CLARK: That's how I read the
8 Supreme Court cases, is does it do people any justice of
9 their day in court. It just says let's do it when we
10 actually have a case and to speak, not a vague letter
11 where we've got to decide are we looking at the
12 applicant's letter or are we looking at the County's
13 letter or whatever; that's how I take it.

14 But I want to make sure that I feel the
15 other board members are clear that if that technical,
16 very narrow decision is made tonight, it doesn't mean
17 anybody here doesn't have their day in court. What
18 they'll actually be is helped because there'll have to
19 be a binding legal assertion as to whether or not
20 there's any drug treatment going on at the facility
21 or whether people who are just simply feeling low get
22 to move into the facility. That they've got to meet

1 some, you know, standard that we can then tear apart
2 at a hearing at that time. All right.

3 Any more, Mr. Moffett? You said at this
4 time.

5 MR. MOFFETT: No, I'll have some more in a
6 bit.

7 CHAIRMAN CLARK: Okay.

8 Then I think we should turn to
9 Mr. Hampshire and the applicants.

10 If you would reset our clock now to 15
11 minutes, Stephanie --

12 SECRETARY: Yep.

13 CHAIRMAN CLARK: -- and we'll here from the
14 appellants.

15 MR. HAMPSHIRE: Good afternoon, Mr.
16 Chairman and members of the Board of Zoning Appeals.
17 I'm Gifford Hampshire from the firm of Blankingship
18 and Keith, and I represent the appellants.

19 Mr. Chairman, both the County and Newport,
20 as you've just heard, have challenged the standing of
21 the adjacent landowners. And I'm grateful for the
22 additional five minutes to deal with the standing

1 issue. I will say very quickly that Vulcan Materials
2 says specifically in the opinion at page head note 2,
3 in the land use context, a landowner may be precluded
4 from a direct judicial attack on the zoning decision
5 if the land owner has failed to exhaust adequate
6 administrative remedies.

7 The Vulcan opinion specifically held that
8 there were no adequate administrative remedies
9 because -- precisely because there was no written
10 determination in that case. And the Vulcan decision
11 cites Rinker versus the City of Fairfax, Gate and
12 Triangle.

13 There are other cases (Inaudible.) Kelly.
14 And I can tell you one thing: the County would be the
15 first one to say that, if we did not appeal this
16 letter, that we were precluded from making a judicial
17 attack on the zoning determination.

18 So to answer your question, Mr. Chairman,
19 we would be precluded from making any sort of contest
20 to the determination if we do not appeal this. And
21 that's not just me saying that. That's the zoning
22 administrator herself saying that in the

1 determination letter which you will see. And that is
2 set forth in Virginia code section 15.2-2311 which
3 says that appellants have a right to appeal a zoning
4 determination.

5 The zoning determination is important in
6 this case precisely because the zoning determination
7 determined that the use was a use by right under -- in
8 the AR1 district if only they got state licensure.
9 So if Newport gets state licensure, the appellants
10 have no recourse if they don't appeal this here today
11 and get a ruling in their favor. And if they didn't
12 appeal, they are precluded from appealing to Circuit
13 Court, so that's one answer.

14 The Crucible case had nothing to do with
15 standing. The Crucible case had to do with vested
16 rights. And what happened in that case -- and I just
17 pulled it up in my phone -- it had to do with whether
18 or not the appellants were entitled to the -- the
19 plaintiffs were entitled to vested rights -- based
20 upon a conversation that occurred in the County
21 building. It had nothing to do with a written
22 determination, a zoning determination.

1 I don't know about what happened in the
2 Gated Triangle case because that just came out -- the
3 Graydon Manor case -- because that just came out.
4 But please be assured that the County would be the
5 first one to say that we are out of court, we didn't
6 appeal this as we have done, and they say so in their
7 letter. So that's one point.

8 So conscious of the time that we have, I'd
9 like to turn the time over to Lynn Wright, who is one
10 of the appellants who's going to testify about how
11 she is aggrieved in this matter.

12 CHAIRMAN CLARK: Thank you.

13 Would you like to testify from a seated
14 position or you may have the podium if you like,
15 whatever makes you more comfortable. Thank you for
16 coming in to participate.

17 And just be clear, you're here speaking
18 officially on behalf of the all of the appellants.

19 MS. LYNN WRIGHT: Good evening. My name is
20 Lynn Wright. My family and I have lived on
21 Gleedsville Road 24 years. Our property borders the
22 three homes in 25 acres that the Newport Healthcare

1 recently purchased for a commercial treatment
2 facility campus.

3 I'm here to express concerns of my family
4 and every adjacent neighbor have around Newport's
5 plans to offer short-term commercial treatment of 24
6 adults in the middle of a residential neighborhood, a
7 facility whose proposed use was initially deemed
8 congregate housing by Loudoun County's Deputy Zoning
9 Administrator and, therefore, not permissible by
10 Loudoun zoning regulations. What changed that?

11 I find it illogical that we, the appellants
12 and the adjacent neighbors, have to defend our
13 standing in this hearing, we who live a stone's throw
14 from this proposed facility. The Friends of the
15 Rappahannock case that Newport would like to cite
16 involve neighbors up and down a river who were not
17 necessarily abutting the operation they were
18 objecting to.

19 Our appellants at all six adjacent family
20 properties would absolutely suffer particularized
21 harm different than the public at large. My backyard
22 is an open area that connects to Newport's backyards

1 and recreation area. One of the homes is 350 feet
2 from mine.

3 All adjacent neighbors have always been
4 able to clearly hear and see the activities of the
5 houses. We can hear the construction workers talking
6 from six acres away. But those were sounds and
7 sights from a family, not from congregate housing
8 campus with 24 patients doing outside activities,
9 deliveries, trash trucks, traffic from nonresident
10 staffers, therapists, and visitors.

11 All adjacent and close neighbors could not
12 help but be affected by changes a commercial
13 operation would bring. It would forever alter the
14 residential neighborhood feel environment and
15 tranquility.

16 We, unlike other homes in Loudoun, will
17 have to deal with any trespassers on our properties,
18 any public disturbances and emergency service
19 responders. On record are recorded disturbances from
20 Newport facilities in McLean. In 2021 alone, there
21 were 110 reported 911 calls from the Bethlehem
22 Connecticut facility.

1 This is not speculation. This is
2 substantiated information from various neighborhoods
3 and law enforcement facilities. This shows a pattern
4 of poor management oversight, a lack of concern about
5 how Newport treatment centers are run, and the kind
6 of neighbors they may be.

7 Last week, the Supreme Court of Virginia
8 heard an appeal regarding a similar question of
9 standing between McLean neighbors, Newport of Fairfax
10 County. There, Justice Kelsey asked quote, "why
11 wouldn't it be enough to establish standing that a
12 commercial enterprise is put in a residential
13 neighborhood and the obvious dislocation of that
14 concept being the particularized harm irrespective
15 whether you can nail down how many people run out or
16 do wicked things. That is a bizarre thing if you're
17 living in a neighborhood and have a commercial
18 enterprise right next door. It obviously has risks
19 associated with it, end quote.

20 We ask the same concern of the BZA today.
21 Additionally, there is the very real matter of the
22 home devaluation. Real estate reports we submitted

1 show an average devaluation of 12 percent for the
2 properties near Newport's current location on Kurtz
3 Road in McLean, despite an increase in home values
4 across McLean. Our home equity will be diminished.

5 There is also the personal concern of my
6 family's ability to continue to safely host a local
7 nonprofit called A Farm Less Ordinary on our land.
8 For three years, A Farm Less Ordinary has
9 successfully provided work opportunity, stability,
10 and purpose to intellectually and developmentally
11 disabled members of our community. More on this
12 later.

13 I ask this of you, in your mind's eye,
14 picture the front of your house. Now, imagine the
15 three houses or buildings on the left, on the right,
16 that have been purchased by a corporation to use as a
17 treatment center for 24 transient adults with
18 behavioral and emotional issues. How concerned would
19 you be?

20 Fairfax County upheld the rules against
21 congregate housing in residential zones when
22 Newport attempted to use a row of three houses to

1 operate 24 client facilities there. We implore you to
2 do the same. Thank you.

3 CHAIRMAN CLARK: Thank you very much.

4 MR. HAMPSHIRE: Mr. Chairman, I'll continue
5 with the time, and I would just like to give a
6 summary of my argument here because time is limited.

7 The zoning administrator herself found the
8 use to be a congregate housing facility. It is
9 defined not to be a single-family home in the
10 definition. The heart of this case is whether a
11 treatment facility must nevertheless be allowed
12 pursuant to Virginia code 15.2-2291.

13 The plain language of that code section,
14 the protection there, applies only to residential
15 facilities. And there's no indication of an intent
16 by the General Assembly to supersede local zoning,
17 very basic principles of local zoning to say separate
18 commercial uses from residential uses.

19 The General Assembly knows how to say that.
20 They didn't say that in this case. Newport's
21 materials moreover show that it is soliciting
22 advertising for people who may not be actively using

1 controlled substances, but who are addicted to
2 controlled substances.

3 The words that he used are substance abuse
4 as a co-occurring diagnosis. That, in and of itself,
5 is enough to disqualify them from the protection of
6 the statute. So the heart of this case began as to
7 whether 15.2-2291 allows for treatment centers,
8 enables it for the protection of treatment centers.

9 If you look at the appendix at page 321,
10 you will see that statute. You will see that
11 residential is used four times. How many times do
12 you see the word commercial used there? None. And,
13 significantly, in the last sentence -- this is
14 critical -- for purposes of this subsection,
15 residential facility means any group home or other
16 residential facility.

17 The General Assembly was clearly talking
18 about protecting pursuant to the Fair Housing Act,
19 disabled people, mentally ill people from
20 discrimination in what? housing, not promoting
21 commercial treatment in residential zones. That's
22 what's going on here.

1 And it's very curious to me to understand
2 how Loudoun County is so willing to divest itself of
3 its zoning power to separate commercial uses from
4 residential uses. But that is what's going on. The
5 plain language of 2291 simply doesn't support their
6 proposition.

7 The purpose, if you look at the purpose of
8 the AR1 district, it is to promote rural economy uses
9 with residential uses allowed in densities consistent
10 with the general open rule character or rural economy
11 uses. And it's consistent with this intent that the
12 Loudoun County Board of Supervisors said that
13 congregate housing facilities because they focus on
14 that kind of treatment, are not allowed in the AR1
15 zone.

16 So how is it that the zoning administrator
17 can say that this use is nevertheless allowed? The
18 only basis, again, to say that is somehow the state
19 law superseded local zoning. Now that's a big deal.
20 It's a big deal to say that the General Assembly has
21 said in this one instance Loudoun County, Fairfax
22 County, Prince William County, you can't separate

1 residential uses from commercial uses; you can't do
2 it.

3 And we don't care what effect it is on the
4 local residents. The General Assembly, again, knows
5 how to say that. They did not say that here. The
6 examples that are cited in support of their case are
7 not. At page 8323, there is an example about
8 community residential care for retired veterans.
9 There was no mention in that case of any sort of
10 treatment at that facility.

11 At 8325, the National Children's Rehab
12 case, that had nothing to do with commercial
13 treatment. In fact, if you look at that 8328,
14 there's a note by the zoning administrator, not
15 enough information, and we're not attorneys and we
16 can't interpret 2291. So why are they doing it now?

17 At 8329, the Potomac Road case, that was
18 not a determination that the use would be allowed,
19 but there was a note that it had to be a residential
20 facility. At 8330, at the bottom, therefore, in order
21 for a what, for a residential facility to fall under
22 state code 2291, and so forth and so on. So it all

1 has to do with a residential facility.

2 The case law with respect to prior
3 interpretations is trustees of Christ and St. Luke's
4 Episcopal Church. And it says that a consistent
5 administrative construction of an ordinance by
6 officials charged with an enforcement is entitled to
7 great weight. There's nothing about these examples
8 that shows a consistent administrative interpretation
9 that commercial uses are allowed in residential homes
10 in an AR1 district; quite to the contrary.

11 Lastly, 2291 explicitly removes protection
12 for a couple things including not just use of
13 controlled substances, but addiction to controlled
14 substances. That in and of itself, if that is
15 present, says that the people who occupy that
16 structure are not entitled to be treated as a family.

17 But the evidence is overwhelming in the
18 record that that is exactly what Newport is doing.
19 There was an admission in the Fairfax case that
20 20 percent of the Newport patients nationwide had a
21 secondary diagnosis of substance abuse. And in the
22 materials in the record, you'll see how they refer to

1 it as substance abuse as a co-occurring disorder.

2 Now, Newport tacitly admits that they have
3 these people here because they talk about drug
4 testing. They talk about how people will be
5 subsequently discharge if they're found to be using.
6 Why do you need to test if people don't have a
7 problem. They know very well that they have a
8 problem that's why they're testing.

9 In the materials we also cite the case of
10 United States versus Southern Management, which is
11 the A214 and A220. That is the Fourth Circuit case
12 that sets forth the standard on how to determine if
13 somebody is addicted, even if not using. And what the
14 Fourth Circuit says is, you have to have a period of
15 abstinence and you have to have some rehabilitation
16 before you can admit somebody into a house and gain
17 the protections of the Fair Housing Act.

18 And we know from the record that Newport
19 does just the opposite. It admits and deals with a
20 problem later. That's not what is intended either by
21 the Fair Housing Act or 15.2-2291 that implements it.

22 So for the argument, again, for the County

1 in Newport to succeed, they have to demonstrate
2 something that is contradicted by the filings, mainly
3 that these people don't have a problem, that they're
4 not addicted.

5 Again, I'm going to conclude where I
6 started, the heart of the case is whether the
7 treatment facility -- excuse me -- whether 15.2-2291
8 provides protection to treatment facilities, whether
9 there was an intent by the General Assembly to
10 supersede local zoning or to provide protection to
11 treatment centers in residential zones.

12 There's no evidence in the plain language
13 of the statute and the legislative history. And the
14 AG opinion that's relied upon had nothing to do with
15 the use on the property. It only had to do with the
16 nature of the entity, whether the entity was a profit
17 or a nonprofit entity. That doesn't speak to what's
18 going on in the property.

19 You can have residential uses that are
20 for profit. You can have commercial uses that are
21 for nonprofit. What matters is what is going on in
22 the property. Thank you.

1 CHAIRMAN CLARK: Thank you, Mr. Hampshire.

2 I'll turn to the Board now. Does anybody
3 have any questions for the appellants?

4 Mr. Moffett, you're scooting forward.

5 MR. MOFFETT: Sir?

6 MR. HAMPSHIRE: Yes, sir.

7 MR. MOFFETT: My understanding would be is
8 that -- bear with me here for a minute -- 2291 is
9 really talking about a home, a home where eight
10 individuals, either mentally ill or intellectually
11 disabled, reside for a substantial period of time
12 where they're treated like a family, and where the
13 purpose I would think is for them to be integrated
14 into the community.

15 And I think, as you mentioned, that the Fair
16 Housing, this was intended for people discriminating
17 against those individuals. And I sort of speak from
18 experience because I had an uncle who was a
19 schizophrenic and he lived in such a home for 25
20 years.

21 But there wasn't -- the purpose of that was
22 really to treat him as part of a family and to get

1 him out into the community and be able to use the
2 services without being discriminated against simply
3 because he was a schizophrenic.

4 And that seems to me to be what you're
5 arguing here, that these provisions of all these
6 therapies, yogas, activities and everything is not
7 really that intent which the General Assembly, which
8 is stated in the Virginian code, was intending.

9 Do I have that correct?

10 MR. HAMPSHIRE: Yes, sir, you do. As we
11 say in our papers, the 1997 Fairfax Circuit Court
12 case called Alternative House, which is in our
13 materials, spoke to the issue. And it did -- even
14 though it's 24 years old and it was a circuit court
15 case -- it still seems to be the only case in
16 Virginia that really speaks to the issue.

17 And it says that the 15.2-2291 was enacted
18 in response to the Fair Housing Act to prevent, as
19 you say, discrimination in housing. And in that
20 case, you had mentally ill children, children who had
21 been abused.

22 And if you've read the case, you will see a

1 footnote about all the horrible things that they had
2 gone through. They had no other home to go to
3 because their families were abusive, and they found
4 this refuge. And the intent there was that they come
5 and they have a safe place to live. And the court
6 said they have no other place to go to, and,
7 therefore, they reside there.

8 Compare that with what we have here. What
9 we have here is a young woman, not even children, but
10 young women who are coming with a specific intent
11 to be treated and with a specific intent not to come
12 home to for a particular period of time. Women who
13 have homes -- by definition they have homes. They're
14 going back to their homes.

15 Now, it is true in the case law, that
16 reside is kind of a fuzzy concept and length of time
17 is only one element. But there has to be an intent
18 to treat something as your home in the first place.

19 And when one hypothetical 18-year-old or
20 22-year-old enters through those doors, she is not
21 thinking that this is her home. She's thinking, I'm
22 going to be here for a certain period of time, which

1 happens to coincide with when the insurance runs out,
2 and then I'm going to go home, and I'm to be cured on
3 or I'm going to at least be better.

4 That's the definition as the zoning
5 administrator says, of a congregate housing facility.
6 And that's precisely why it's not allowed in the AR1
7 zone. I mean, and yet, somehow the County and
8 Newport say never mind the zoning ordinance. The
9 state code has come in and displaced all of that.

10 Well, as I said in my argument, that's a
11 pretty bold thing to say. And if you're going to say
12 that, you better come up with some evidence in the
13 language of the statute and there is none. In fact,
14 all the legislative history is, again, as you say,
15 Mr. Moffett, is to provide a place for people to live
16 in a home where they don't have another home. So I
17 hope that answers your question.

18 MR. MOFFETT: Yes, thank you.

19 CHAIRMAN CLARK: Any other questions from
20 members of the Board? Okay, I have.

21 Mr. Hampshire, excellent presentation. You
22 really helped us zero in on some issues. In fact,

1 one of my questions you anticipated in your last 30
2 seconds as you were rounding third and heading for
3 home distinguishing the Attorney General --

4 MR. HAMPSHIRE: Right.

5 CHAIRMAN CLARK: -- opinion. So I
6 appreciate that, your point being the Attorney
7 General's discussion was about profit and nonprofit
8 and noncommercial and residential so that point was
9 very well taken.

10 I want to first, go back to the question of
11 remedies of the people here tonight and whether or
12 not they have another day in court. And I'm having
13 some difficulty with that because the County's gone
14 on record that there is not another opportunity, but
15 your assertion is you believe they would take the
16 position that your clients are out of court. So I
17 want to try to particularize that question.

18 If this moves forward, it's going to be
19 because there is an application and a permanent issue
20 by the zoning department. I get your point --
21 actually, you didn't get to argue it, but you may
22 now -- that this letter includes the one we've seen

1 in every determination letter which, basically,
2 doesn't say you have the right to appeal. It just
3 advises them of what the code says, that people who
4 are aggrieved have certain rights.

5 But I believe I understand the point here
6 is that everyone would agree -- and I don't want to
7 put words in the County's mouth -- that there would
8 not be an appeal allowed of this letter after a
9 permit is issued in the future, but aggrieved
10 parties would have an appeal of the issuance of that
11 permit.

12 Do you disagree with that?

13 MR. HAMPSHIRE: I do disagree with that.

14 CHAIRMAN CLARK: Okay. Can you explain
15 that to me.

16 MR. HAMPSHIRE: If you look at the
17 determination letter -- and that's found at 815,
18 appendix 815 -- it says, This decision is final and
19 unappealable if not appealed within 30 days. Here's
20 your application packet if you don't do it.

21 If you look at the Vulcan Materials case,
22 since it was cited by the other side, and you look at

1 headnote 2 of the Vulcan Materials case, it cites a
2 line of cases there that is very well established.

3 And in a previous life, I was an assistant
4 county attorney in Prince William County, and we love
5 this line of cases because, if somebody didn't
6 appeal a zoning determination within 30 days to the
7 board of zoning appeals, they couldn't come along
8 later and attack that decision, either through a
9 collateral legal action or an administrative zoning
10 permit or to issue later; they couldn't contest that
11 zoning permit.

12 And county attorneys like I used to be are
13 very happy to say to a court they had a right to
14 exhaust their administrative remedies by appealing to
15 the board of zoning appeals, this determination which
16 is the substance of what allows the zoning permit to
17 issue. If they didn't do it, they're out of luck.

18 CHAIRMAN CLARK: Even if your office had
19 taken the opinion or the position that that was an
20 advisory, not conclusive, but an advisory opinion?

21 MR. HAMPSHIRE: Well, I take issue with
22 that characterization. It's not advisory. It's only

1 advisory in the sense that it's a zoning
2 determination. I mean, every zoning determination is
3 an advisory in some way, shape or form because the use
4 has yet to occur.

5 Zoning is only one stage. You still have
6 to get an administrative zoning permit. You have to
7 get site plan approval. You have to satisfy any
8 other number of requirements. Zoning is just
9 entitlement to do something.

10 So this determination is final vis-à-vis
11 entitlement, legal entitlement to go get that license
12 and to have that use administratively without any --
13 without the ability of anybody to attack it legally.

14 CHAIRMAN CLARK: Okay. Thank you. I think
15 I understand your point very well. The last question
16 that I have relates to the issue of whether or not
17 state laws superseding county law -- which I don't
18 think is the case -- because the County is citing a
19 specific county ordinance that includes by reference
20 the state statute 15.2-2291.

21 If you meet the state statute, you're a
22 family and that essentially kicks open the door. If

1 you accept that you're within the definition of the
2 state statute to be, and whatever entitlement you
3 would have if you meet the definition of family.

4 But that's important because, as you point
5 out, this question of the drug use, illegal drug use
6 or addiction to controlled substances I think is
7 very important. And what I'm going to ask you to
8 challenge, what I think is the plain reading of this,
9 that certain zoning ordinances must include -- and this
10 is the incorporation by reference; I'm reading 2291
11 now -- shall consider a residential facility in which
12 no more than eight individuals with mental illness,
13 intellectual disabilities reside with one or more
14 resident or nonresident staff persons as residential
15 occupancy by a single family.

16 I think the import of that is to say,
17 counties, you must heed this principle. Then there's
18 a clarifying sentence that says, For purposes of this
19 subsection, mental illness which is one of the things
20 that establishes your inclusion in the club, right,
21 and developmental disability -- another thing that
22 establishes your position in the club -- shall not

1 include current illegal use of or addiction to
2 controlled substances as defined in the other code
3 section.

4 Doesn't that simply say that you're not in
5 the club because you claim your drug use or addiction
6 is a mental illness? Isn't that different than
7 saying you may have an addiction, but you're still in
8 the club because you meet the Department of
9 Behavioral Services definition of mentally ill and
10 intellectually disabled or developmentally disabled?

11 Do you see the point that I'm focusing on
12 here, is that you're saying that it seems to say
13 that, regardless of anything else in the section, if
14 you've got an addiction or a substance abuse problem,
15 you're not in the club.

16 I think that sentence simply says your drug
17 addiction or your illegal drug use does not get you
18 in the club. But I don't see how it's a bar. Can
19 you help with that?

20 MR. HAMPSHIRE: Yes, sir, I'll try. What
21 the state code section does, again, it implements the
22 Fair Housing Act that was designed, again, to prevent

1 discrimination of housing. And so the state or the
2 Commonwealth of Virginia comes in and acts, enacts
3 this statute that is a control on local zoning. We
4 admit that it's a control on local zoning.

5 And what it says is that, if you are a
6 mentally ill person, as defined, you are entitled, if
7 there's a residential facility that is composed of
8 eight or less mentally ill persons, then you have to
9 be treated. Localities have to treat that house, that
10 residence, as a single-family residential. So, in
11 order to qualify for the protection, you have to be
12 mentally ill.

13 And what the statute goes on to say is, as
14 Mr. Moffett has pointed out, what is mental illness?
15 The General Assembly is saying one thing, that mental
16 illness is not an addiction to a controlled
17 substance. So if you've got people in a residential
18 facility that are addicts, whether or not they're
19 currently using, that facility is not entitled to be
20 treated as single-family residential.

21 CHAIRMAN CLARK: That's my point; it
22 doesn't say that. It says you can't use that as a

1 justification to claim you're mentally ill. So let's
2 have an example, and I'm not going to use his relative
3 because I don't know him and I don't want to besmirch
4 him. John Doe has paranoid schizophrenia, is on 16
5 medications that are absolutely legal to treat mental
6 illness as determined by Dr. Fauci or whoever is
7 appropriate, but at the same time is addicted to
8 Oxycontin.

9 Why is this -- why doesn't this person get
10 in the club because of his 18 medications and his
11 paranoid schizophrenia? He's just not simply getting
12 in because of his addiction to Oxycontin.

13 MR. HAMPSHIRE: Let me see if I can answer
14 it. I think the language we have to look at is the
15 very first half of the sentence. Zoning ordinances
16 for all purposes shall consider a residential
17 facility in which no more than eight people with a
18 mental illness reside as single-family residential.

19 So if you're not mentally ill or if you're
20 addicted, then localities are not required to treat
21 such a home as a single-family residential pursuant
22 to this section.

1 It relates to what kind of people are in
2 the home. Are they really disabled? Are they really
3 mentally ill? And if they're addicts, they're not
4 mentally ill under this section and entitled to the
5 protection. And, therefore, localities are not
6 required to treat that home as a single-family
7 residential.

8 CHAIRMAN CLARK: I get all of that. But
9 what if there is a clear and distinct diagnosis that
10 you have -- I guess I have to clarify that example --
11 two mental illnesses. It's possible, isn't it, one of
12 which is a direct result of your addiction, and the
13 other is mental retardation -- I'm not even sure
14 that's an appropriate phrase anymore -- but a
15 developmental delay. It has nothing to do with your
16 drugs.

17 I want to make sure I understand you're
18 saying this second sentence which says mental illness
19 shall not include the drug abuse or addiction is
20 actually a trump of the first sentence, that it could
21 have been or it could have been written regardless of
22 the previous sentence, anybody with a mental -- with a

1 drug use or an addiction does not meet the definition
2 of the first sentence and is not in the club.

3 I think that's how you are interpreting it
4 and I'm not expecting you to defend the authors of
5 the statute.

6 MR. HAMPSHIRE: Right.

7 CHAIRMAN CLARK: But you get my point here.

8 MR. HAMPSHIRE: Right.

9 CHAIRMAN CLARK: I think.

10 MR. HAMPSHIRE: I think I do.

11 CHAIRMAN CLARK: Perfect.

12 MR. HAMPSHIRE: Yes, sir.

13 CHAIRMAN CLARK: I think your reading of
14 this is too narrow -- and maybe the Department of
15 Behavioral Services has to make this determination --
16 that there has to be if drug abuse and addiction is
17 one of your reasons for claiming a mental illness,
18 you're not in the club unless you can establish a
19 totally separate mental illness, disability or
20 whatever. That's not related to the drug addiction;
21 wouldn't you agree with that?

22 MR. HAMPSHIRE: I agree that under the

1 language of the statute, and I agree that the
2 statute's not always models of clarity.

3 CHAIRMAN CLARK: That's true.

4 MR. HAMPSHIRE: But this one seems to be
5 very clear that, if you are addicted to a controlled
6 substance, localities -- and that's what's really
7 going on, people are coming there because they're
8 addicts -- then you're not entitled to be treated as
9 a residential facility as defined here.

10 But I want to hasten to add that our
11 argument does not rise or fall on that issue. Our
12 argument, as I said at the beginning, really is, does
13 the protection of 15.2-2291 extend to treatment
14 centers, commercial treatment centers, such that the
15 distinction in the Loudoun County zoning ordinance in
16 the AR1 district between residential uses and
17 congregate housing facilities doesn't apply.

18 And we say that there's nothing in this
19 statute that derogates local zoning -- derogates the
20 AR1 district to allow commercial treatment centers in
21 the AR1 district, to allow congregate housing
22 facilities that the zoning administrator herself

1 found to be not allowed in the AR1 district; there's
2 no intent to that. And, therefore, the zoning
3 administrator is plainly wrong in saying that,
4 notwithstanding the prohibition of a congregate housing
5 facility, it's allowed anyway; that's our point.

6 CHAIRMAN CLARK: Thank you for that.
7 Appreciate it very much.

8 MR. HAMPSHIRE: Thank you.

9 CHAIRMAN CLARK: I threw a lot of meat out
10 there. Anybody have a question before we go on next?
11 All right. Then that will end our appellant's
12 presentation.

13 Do we have anyone to speak on behalf of the
14 parties of interest? I think now the owners of the
15 property?

16 MR. ALLEN: Sure.

17 CHAIRMAN CLARK: Would you please state
18 your name for the record, and you'll have 15
19 minutes --

20 MR. PRECOPIO: Very good.

21 CHAIRMAN CLARK: -- to present on behalf of
22 the property owners.

1 MR. PRECOPIO: Thank you.

2 Members of the Board, let me first thank
3 you for the opportunity to speak. My name is Joe
4 Precopio and I'm the CEO for Newport Healthcare.

5 Frankly, I don't envy your job this
6 evening. I simply ask that you separate emotion from
7 the law and that you separate speculation from the
8 truth. I think individually my job here is probably
9 the easiest, and it's to talk about the need for our
10 type of services.

11 I think most people in the room, including
12 those or most vocal opponents, would agree there's a
13 need for more mental health services in Northern
14 Virginia. The question tonight before you is whether
15 or not the zoning ordinance and Virginia law deem
16 Newport's group homes in Gleedsville a by-right-use.

17 Others more versed in that topic will speak
18 to the law, and I'll turn it over to our attorney
19 shortly, but what I would like to impress upon you is
20 an understanding of the importance of upholding the
21 determination by the zoning administrator.

22 As we've seen in the past several weeks

1 from the CDC, and more recently as last Sunday from
2 the New York Times, we're in the midst of a mental
3 health crisis with our adolescents and young adults.
4 It didn't just start the last two years. It's been
5 prevalent for the last decade, and it's just been
6 exacerbated by the pandemic itself.

7 In the United States, NAMI, the National
8 Alliance of Mental Health Illness reports that one in
9 three young adults ages 18 to 25 suffer from a mental
10 health illness, and one in ten have a serious mental
11 health issue.

12 We know that mental health begins -- 50
13 percent of mental health issues begin at the age of
14 14, and 75 percent by the age of 24. Young adults 18
15 to 25 have the highest prevalence of mental illness,
16 the highest prevalence of serious mental illnesses
17 compared to all other age groups and they're the
18 lowest served. They have the lowest percentage of
19 people who actually get help, so the most acute and
20 the least served.

21 In Virginia, and in particular here in
22 Northern Virginia, it's no exception. In Virginia,

1 1.3 million Virginians have a mental health condition
2 amongst adults. That's roughly three times the size
3 of Loudoun County. 750,000 adults in Northern
4 Virginia have a mental health need, and 370,000 want
5 services, but can't find them; that's according to
6 the Community Foundation for Northern Virginia.

7 In 2019, 8 percent of the population was
8 dealing with active symptoms of anxiety and
9 depression, and now that figure is 28 percent,
10 fourfold, impacting a half a million adults here in
11 Northern Virginia. Virginia ranks 42nd among states
12 for the highest prevalence of mental health illnesses
13 and the lowest access to treatment.

14 In our business, Newport's here in
15 Virginia. When we started in 2018, we were receiving
16 about a hundred calls a year for help from families
17 in crisis. Those numbers this year will top 800.
18 Issues like anxiety and depression left unaddressed
19 manifest themselves into self-medication, self-harm,
20 major depressive disorder, suicidal ideations, and in
21 some cases, suicide itself.

22 Suicide has risen by 25 percent in

1 Virginia. Suicide is now the second leading cause of
2 death among our young people. And in 2020, 233
3 Virginians between the ages of 18 and 28 committed
4 suicide, took their own lives.

5 If you think about what we, Newport, are
6 trying to do, it's to focus on intercepting the
7 disease early in someone's life, put people, young
8 people, on a better trajectory. How are we going to
9 accomplish this.

10 We've worked in a group home setting since
11 2009. So we've been providing services similar to
12 what we're asking to provide here in this county for
13 almost 12 years, 13 years actually. We provide high
14 quality therapeutic services to individuals and their
15 families. These services take place in a home-like
16 setting, family-like environment that we are
17 proposing here on Gleedsville Road.

18 Our young adult programs work in small
19 pods. So we'll group kids in six to eight pods, and
20 we'll serve them with two therapists, an individual
21 therapist and a family therapist. And the sole
22 responsibility of those therapists will be on those

1 six to eight young adults, six to eight residents.

2 We'll use talk therapy like CBT, Cognitive
3 Behavioral Health, DBT, attachment-based family
4 therapy. We can combine that with experiential
5 services like music, art, adventure therapy. We
6 establish right at the admission process that the
7 families need to be involved. So there's a
8 high-intensity in terms of providing family services.

9 And we think the combination of those, talk
10 therapy, experiential, making sure that the families
11 are involved create great outcomes. And you'll hear
12 from some of our clients and possibly have received
13 letters from them talking about the efficacy of our
14 programs.

15 We establish our outcomes literally with
16 the use of Drexel University and we publish those
17 outcomes, and they are, frankly, really very strong.
18 And there's a reason, you know, today that there are
19 200 people waiting on a waitlist to find treatment at
20 one of our Newport facilities.

21 You're going to hear claims from our
22 opponents -- you've already heard some of them -- that we

1 seek to provide substance abuse treatment. That
2 simply isn't the truth.

3 I think, Mr. Moffett, you asked the
4 question, what literal evidence. There wasn't any
5 in the record that we've provided. But our
6 intentions are to apply to the state for a mental
7 health license. But there is a license for substance
8 abuse. We don't intend on seeking that. And we
9 screen our clients before they come into treatment.
10 We do face-to-face screenings when they enter
11 treatment. And we ensure that substance abuse is not
12 an issue for them.

13 Residents will have access only to the one
14 home that they reside within. There will be no
15 commingling of clients between houses. So each house
16 will operate independent of one another. They will
17 not be a congregate living by definition. Because we
18 carefully screen and have a hands-on approach to
19 mental health therapies, residents of our group home
20 really don't pose a significant threat to our
21 neighbors.

22 I oftentimes hear we're going to bring

1 people into the neighborhood who were not
2 appropriate. The fact is one in three, one in ten of
3 our young people have illnesses that we can serve;
4 we're living among them. They're living amongst us
5 today. People we treat are like my own children,
6 like some of your children, and likely some of your
7 neighbor's children.

8 For zoning purposes, again, there were some
9 references to for-profit versus not-for-profit. When
10 I think about family in crisis, I think they're not
11 going to care what my tax status is; they're just
12 going to want help. So I don't think it really makes
13 a difference of we're a for-profit or a
14 not-for-profit.

15 Our top at Newport is to respond to this
16 profound lack of residential treatment here in this
17 community and in the United States. So I'll turn it
18 over, unless there's questions.

19 CHAIRMAN CLARK: Let's stop the clock,
20 Stephanie.

21 MR. PRECOPIO: Sure.

22 CHAIRMAN CLARK: I think that's the

1 convenient thing to do and have questions from each
2 speaker. So we'll move on with the attorney after
3 this.

4 MR. PRECOPIO: Sure.

5 CHAIRMAN CLARK: Please ask your questions.

6 Mr. Moffett.

7 MR. MOFFETT: There isn't any question at
8 all that what Newport is providing is a valuable and
9 needed service for all of these young people; no
10 question about that. But the county has already told
11 you that that fits nicely into a congregate housing
12 facility.

13 Why are you trying to shoehorn this into
14 three single-family homes? If you do the congregate
15 housing route, you presumably will meet all those
16 requirements. The treatment will be given. It
17 clearly states that the residency, quote, can be on a
18 temporary basis. So you have all of those bases
19 covered.

20 But I have to ask you, why are you here
21 tonight trying to shoehorn this once again into three
22 single-family dwellings where, if I understand it

1 correctly, the "family" in each one of these could
2 change as often as every 30 days?

3 MR. PRECOPIO: So I'd --

4 MR. MOFFETT: So we'd have 12 families per
5 house in theory every year. So why don't you just do
6 the congregate housing route? Why are you doing
7 this?

8 MR. PRECOPIO: I would argue that we're not
9 shoehorning it in as a group home. I would say that
10 our treatment model is better served in a group home
11 setting than it is in a congregate living setting.
12 Again, we try to create a very family-like,
13 comfortable, serene environment in a single-family
14 residence. We've done that nationally now for 13
15 years, and we're doing it today here in the state of
16 Virginia.

17 MR. MOFFETT: Could you do it just as well
18 in a facility other than a single-family home?

19 MR. PRECOPIO: Yeah, I --

20 MR. MOFFETT: And provide the same standard
21 of care?

22 MR. PRECOPIO: I would agree that there is

1 an option to -- frankly, we provide campus-like
2 settings as well. And we do that in other parts of
3 the country. For our program here in the state of
4 Virginia, we've opted for the group home setting.

5 MR. MOFFETT: Well, another question is, I
6 think you said would this be young adults now?

7 MR. PRECOPIO: It is young adults, yes.

8 MR. MOFFETT: 18 to 26, if I remember
9 correctly?

10 MR. PRECOPIO: That's correct, yes.

11 MR. MOFFETT: What assurances would the
12 property owners have that each new family that comes
13 in satisfies the requirements of the statute? If
14 they're rotating in and out every 30 to 90 days, what
15 assurances does anybody have that each new group is
16 going to fit the criterion of the statute, assuming
17 that it applies to the situation?

18 MR. PRECOPIO: The assurance that I give
19 the neighbors and yourself on that is that we have a
20 very thorough screening process. We have a national
21 call center where calls come in. We have our team
22 collect information. A licensed therapist reviews

1 that information. We screen a significant number of
2 people out of services who aren't appropriate for our
3 type of setting.

4 And then when the client arrives at the
5 facility, a licensed professional and a physician are
6 validating that they're appropriate for our level of
7 care, and that they're appropriate from a
8 mental health diagnosis perspective. You had asked
9 the question, what type of assurance you have.

10 So you've got a physician saying that the
11 diagnosis of this client is major depressive
12 disorder, which is the most significant group that we
13 serve. Roughly 67 percent of the people we serve
14 have a diagnosis of major depressive disorder.

15 So you've got a physician validation for
16 it. You've got our clinical team looking at it. And
17 you have our screening process at the very front end
18 to make sure that the setting's right. Because,
19 obviously, we don't bring somebody into treatment who
20 is inappropriate and have something untoward occur.

21 MR. MOFFETT: And then all of the young
22 people coming in here have homes to return to; right?

1 MR. PRECOPIO: That's correct.

2 MR. MOFFETT: What if they want to return
3 home early; can they?

4 MR. PRECOPIO: Sure. We're a voluntary
5 program; right? So we don't have locks. We alarm
6 our windows and doors just so we can, again, keep our
7 clients and the residents safe. But it's a voluntary
8 program. They're not mandated by the state. They're
9 not typically mandated by law enforcement to be
10 there. So folks choose to come to treatment and they
11 can choose to leave treatment.

12 MR. MOFFETT: But once again, you're
13 testifying that you can't achieve pretty much the
14 same results by going the congregate housing facility
15 route which --

16 MR. PRECOPIO: I'm guessing --

17 MR. MOFFETT: -- the zoning administrator
18 has advised you that you fit perfectly. So you don't
19 want to use it; you don't want to go that route?

20 MR. PRECOPIO: In this circumstance, no. I
21 won't say in all circumstances we wouldn't choose to
22 go a different route. We choose to go the group home

1 model here in Loudoun County.

2 MR. MOFFETT: Thank you, Mr. Chairman.

3 CHAIRMAN CLARK: Mr. Walker, questions?

4 MR. WALKER: In one of your documents,
5 you had a thing about how you act as a good neighbor.
6 And I guess there was some discussion that came up
7 about other instances that happened. I guess, can you
8 elaborate on that?

9 MR. PROCOPIO: Sure. So prior to acquiring,
10 we distributed to all of the adjacent neighbors here
11 in Loudoun County our good neighbor agreement. And
12 we have those in place in other facilities around
13 Virginia.

14 And so our chief executive -- or our
15 executive director for the facility -- acts as a
16 community liaison, and any issues that come up that
17 the neighbors have concerns about, she makes herself
18 available to them to respond to those concerns.

19 We have worked in this state now since
20 2020. With some of our neighborhoods like in Great
21 Falls, we went to great lengths with the neighbors in
22 that community. We have two homes that are on the

1 same street, very similar type of situation. And we
2 worked with those neighbors to resolve matters that
3 were important to them. They initially had filed an
4 appeal, similar to the neighbors here, and they
5 withdrew it because we were able to get to common
6 ground with them.

7 We have offered that to countless neighbors,
8 and they've neglected to accept that offer to this
9 day.

10 MR. WALKER: Thank you.

11 CHAIRMAN CLARK: Mr. Sofrenko?

12 MR. SOFRENKO: I have no questions.

13 CHAIRMAN CLARK: All right.

14 I do have a question that Mr. Moffett has
15 pointed out, assurances to the neighbors about
16 standards being applied. And I heard you talk about
17 licensing briefly, but you also talked about your
18 internal procedures.

19 MR. PRECOPIO: Sure.

20 CHAIRMAN CLARK: I'd like to drill down
21 into the question of licensure with regard to that
22 assurance. Is the nature of the license issued by

1 the Department of Behavioral Health and Developmental
2 Services sort of a one-time thing for the purposes of
3 getting the zoning and after that you're free to do
4 whatever you want, or is there ongoing review where
5 there are opportunities for members of the community
6 to file complaints or raise issues with regard to the
7 Department of Behavioral Health and Developmental
8 Services that could put your licensure in question or
9 are you off the leash?

10 MR. PRECOPIO: No, it's all of the above.

11 So we will make an initial application to the
12 department. They will review our application. We
13 are already a provider within the state, so that
14 application process is familiar to them.

15 But there's a review process that occurs
16 routinely at least annually. If not, there's a
17 national -- once we were to get a home certified,
18 they'll be out in six months to make sure that we're
19 upholding the standards that we've agreed to and that
20 we're following the policies and procedures of the
21 state, and there's an annual review that occurs
22 thereafter. We're also certified by the joint

1 commission.

2 And so there are several accreditations and
3 licensing bodies that are consistently in our
4 records, reviewing our practices. The community can
5 certainly file complaints with the department or with
6 the joint commission at, you know, really any time.
7 And then it's incumbent upon the cost to respond to
8 those concerns.

9 You know, again, our avenues to Mr.
10 Walker's question would be to develop a relationship
11 with the neighbors at that first call when they had a
12 concern, would come to us.

13 CHAIRMAN CLARK: All right. To make sure I
14 heard in there, I understand your internal procedures
15 and everybody wants peace with their neighbors, and
16 sometimes that doesn't happen.

17 MR. PRECOPIO: Sure.

18 CHAIRMAN CLARK: But you're testifying that
19 there is a procedure by which ongoing -- where
20 everything goes adversely in their view, that they
21 will have a continuing opportunity to file complaints
22 and engage the state government to supervise the

1 administration of your facility on the site?

2 MR. PRECOPIO: That is correct. That is my
3 testimony.

4 CHAIRMAN CLARK: Okay. Thank you.

5 Any other questions? All right. Then we
6 would like to hear from your attorney, please.

7 MR. PRECOPIO: Sure.

8 CHAIRMAN CLARK: And, Stephanie, if you'll
9 be ready --

10 MR. ALLEN: Mr. Clark, before you start the
11 clock, one quick procedural matter?

12 CHAIRMAN CLARK: Yes, sir.

13 MR. ALLEN: We have written testimony from
14 Sylisa Lambert-Woodard who runs Pathway Homes which
15 serves Northern Virginia, including Loudoun County.
16 Her testimony came later than we expected. I have
17 written copies here. I think we've also tried to
18 submit it, you know, via the online comment piece.

19 But I understand the rules of the BZA
20 generally. I would ask would the BZA make an
21 exception here to receive this short report and CV of
22 Dr. Woodard?

1 CHAIRMAN CLARK: We have considered those
2 in the past, so I'll ask the members of the Board.

3 Is there a motion to waive the regular
4 rules and accept this or shall we stand by the
5 written rules?

6 MR. SOFRENKO: So voted.

7 CHAIRMAN CLARK: Is there a second?

8 MR. WALKER: I second.

9 CHAIRMAN CLARK: All right. Any debate
10 about this? All right. Then we'll move to a vote.

11 All those in favor of accepting this
12 additional testimony say aye.

13 Aye.

14 MR. WALKER: Aye.

15 MR. SOFRENKO: Aye.

16 CHAIRMAN CLARK: Those opposed?

17 MR. MOFFETT: Nay.

18 CHAIRMAN CLARK: So three to one. We'll
19 take it. Thank you.

20 MR. HAMPSHIRE: Mr. Chairman, may I have a
21 copy?

22 CHAIRMAN CLARK: Oh, of course.

1 MR. ALLEN: I have a copy and will pass it
2 on.

3 MR. HAMPSHIRE: Thank you.

4 CHAIRMAN CLARK: And I do -- I will ask if
5 there's any objection. I think because this wasn't
6 in the record -- it was submitted according to process
7 and Mr. Hampshire had to go first -- I think he ought
8 to be offered the opportunity at the end of your
9 presentation to have a minute to respond to anything
10 that's included in this, since it wasn't in the whole
11 of what he came tonight to be prepared on.

12 MR. ALLEN: Understood.

13 CHAIRMAN CLARK: Does anybody have any
14 objection to that?

15 A little bit of a potential rebuttal,
16 Mr. Hampshire, I'll give you that opportunity if you
17 so wish.

18 MR. HAMPSHIRE: Thank you, sir.

19 CHAIRMAN CLARK: On this issue.

20 MR. HAMPSHIRE: Limited to this letter?

21 CHAIRMAN CLARK: Yes, sir.

22 MR. HAMPSHIRE: Okay. Thank you.

1 CHAIRMAN CLARK: Okay. Thank you,
2 Counselor.

3 MR. ALLEN: Thank you, Mr. Clark and
4 members of the Board. I'm Michael Allen, partner in
5 the firm Relman Colfax based in Washington, but with
6 the national practice focused on housing
7 discrimination issues. Much of my docket is housing
8 issues for people with disabilities in various places
9 around the country.

10 I do want to say that appellants are just
11 plain wrong when in their papers they claim that
12 there's some kind of loophole here that Newport
13 Academy has exploited in order to open these homes.
14 In fact, as you've seen from the county's
15 presentation, the zoning ordinance has remained the
16 same since 1993 with respect to all of the operative
17 definitions here. And there's been 20 years of
18 consistent application of this definition of family
19 to other similar situations over the last 20 years.

20 Essentially that holding is that small
21 licensed group homes in single-family homes can be
22 located in any district where a traditional family

1 related by blood marriage or adoption is located,
2 provided that is licensed by the state.

3 Newport came forth and asked the county for
4 some information during it's due diligence period.
5 It wanted to buy three homes in a nice part of
6 Loudoun County. It wanted to ensure that, when it
7 came in to apply for a license, that its reading of
8 the zoning ordinance was correct.

9 The zoning administrator's decision did no
10 more than to say if you're eight or fewer and you're
11 licensed by the state, than our zoning code, the
12 Loudoun zoning code would permit this use. Now, the
13 BZA has to presume the correctness of the zoning
14 administrator's determination here, not only because
15 that's what the statute says, but because of the
16 consistent application over all these years.

17 The sounding ordinance does, in fact,
18 follow the requirements of state and federal law. If
19 I could ask to have the second slide put up in my
20 presentation. The Fair Housing Act in 1988 was
21 amended to include people with disabilities. And
22 Congress said in its legislative history, it is

1 precisely to prohibit the application of special
2 requirements through land-use restrictive covenants
3 and other sorts of ways that limit the ability of
4 such individuals to live in the residence of their
5 choice in the community.

6 To Mr. Moffett's point, sure there can be
7 other places where people with disabilities can live,
8 but in the same way that on the basis of race or
9 religion, we won't say can't you live in some other
10 place in the community. We need to look and see what
11 the language of this particular ordinance requires;
12 so passed in the wake of the Fair Housing Act.

13 Next slide please. The department of
14 Housing and Urban Development and the Department of
15 Justice, the two federal agencies charged with
16 interpretation and application and enforcement of the
17 law, have put out a joint statement on group homes
18 and land-use; this is from 2016.

19 But the operative piece that I want to
20 point you to here is, by definition, group homes are
21 for people who are unrelated people with disabilities,
22 and group homes, as discussed by HUD and DOJ, can be

1 opened by individuals or organizations both
2 for-profit and nonprofit, no distinction under the
3 federal law as to which they are.

4 Next slide please. The joint statement
5 also answers questions. Can a state or local
6 government enact laws that specifically limit group
7 homes for a specific -- for individuals with specific
8 types of disabilities. The answer is no. A
9 government may not limit group homes for persons with
10 mental illnesses to certain neighborhoods. And so,
11 again, the zoning ordinance is passed in the light of
12 the Fair Housing Act.

13 Next slide please. The Virginia code was
14 amended in 1990, also in light of the Fair Housing
15 Act. And, Mr. Clark, let me just say you took the
16 wind out of my sails. I think your reading of that
17 provision with respect to use or addiction of
18 controlled substances is absolutely right.

19 It does not rob, it does not carve out
20 people with mental illnesses who might also have a
21 substance abuse disorder. But notwithstanding that,
22 Newport's application and interest here, application

1 for a license, interest expressed to the county for
2 purposes of zoning, is not to serve people who have
3 substance abuse disorders or needs.

4 It's not detoxification. It's not drug
5 treatment. This is for people who have mental
6 illnesses that will be appropriate to its license,
7 anxiety, depression, trauma, eating disorders.

8 Let's go to the next slide, if we could.
9 Mr. Hampshire spoke to -- about the Board of Supervisors
10 case, also sometimes known as the Kaleidoscope case
11 from Fairfax County. And I think that that court put
12 its finger right on the button here when it said, the
13 statute is set up in a way that entrusts DMH -- now
14 called VDBHDS or we'll call it the state agency -- by
15 entrusting the state agency with the licensing
16 duties, the General Assembly can be confident that
17 consistent and reliable licenses are generated, and
18 that's because staff of that state agency oversees
19 the application process, conducts regular inspections
20 to determine if the facility meets the statutory
21 requirements.

22 Let's go to the next slide, if we could.

1 The ordinance itself is also important -- and,
2 Mr. Clark, I'll say wind out of my sails again. The
3 Board of Supervisors in 1993 looked at the state
4 statute, looked at the Fair Housing Act and
5 determined that its own ordinance at the local level
6 should have no space, no gray area, no doubt. If
7 it's covered under 2291, we cover it too. That's the
8 surest way for the county to stay in compliance with
9 the state law and with the federal law.

10 Let me just say that when a party does not
11 have a good legal argument, you'll hear a lot of
12 other kinds of arguments, property values, safety
13 quality of life allegations about drugs. I think the
14 bottom line here is I understand the concerns of
15 neighbors. Newport wants to be responsive to those
16 concerns. But the bottom line here is that it's not
17 the bogeyman that it's made out to be and that you'll
18 hear about alleged later tonight.

19 One other thing I want to say is I'm going
20 to take issue with the zoning --

21 CHAIRMAN CLARK: 30 seconds.

22 MR. ALLEN: -- with the zoning

1 administrator's determination. And that is to say
2 the ordinance itself defines a congregate housing
3 facility as something other than a single-family
4 home. By definition, these three single-family homes
5 on Gleedsville Road are not congregate housing
6 facilities.

7 This is the option that the Board of
8 Supervisors allowed. You could be in single-family
9 homes. You could be in a commercial district as a
10 commercial house, some sort of commercial facility in
11 a congregate housing facility. Newport chose the
12 former. Thank you very much.

13 CHAIRMAN CLARK: Thank you very much.

14 Happy to take any questions, and I'm sure
15 we'll have questions.

16 Any members of the Board have questions?

17 Mr. Moffett.

18 MR. MOFFETT: Yes. Let's talk about the
19 definition of family for a moment. This exception is
20 carved out for quote, "a family." And group homes
21 under 2291, we're talking about a family, a dwelling
22 single-family detached, a residential dwelling unit

1 other than a portable dwelling designed for and
2 occupied by one family; your emphasis on there.

3 And 2291(A) is all about the family. And
4 you, yourself, said the Fair Housing was devised to
5 prohibit discrimination against a family?

6 MR. ALLEN: I don't believe that was what I
7 said. I said discrimination against people with
8 disabilities.

9 MR. MOFFETT: People with disabilities.
10 But here -- and I understand that -- a single-family
11 dwelling is really intended for a family of persons
12 with disabilities.

13 And where you have a situation -- and once
14 again, I repeat what my understanding of that is.
15 Eight individuals who've been considered to meet the
16 requirements of the statute come together. Live, live
17 there -- that's their primary residence -- that they
18 lived there with the intent, as I think the counsel
19 has said, if they leave, their intent to come back,
20 and to live there and to be incorporated into the
21 community.

22 I just don't understand how a model where

1 people are in and out, possibly every 30 days, and
2 where the people are constantly shifting there, how
3 does that make that a family within the intent of
4 this? I just -- there's no intent to quote, "live
5 there" --

6 MR. ALLEN: Well --

7 MR. MOFFETT: -- anymore than there's an
8 intent to live in a hotel if you're on a 30-day TDY
9 there. So people can be in and out in two weeks.
10 They could be in and out in three days. And so
11 someone else comes in and do we have a new family? I
12 just don't --

13 MR. ALLEN: Every --

14 MR. MOFFETT: -- get it.

15 MR. ALLEN: -- every federal court to
16 consider this issue under the Fair Housing Act, has
17 indicated first of all, that there is no requirement
18 that people live there for the rest of their lives,
19 whether they live there for any fixed period of time
20 at all.

21 For the time that a person at Newport, a
22 Newport client is in residence, he or she is going to

1 be there for purposes of getting treatment. And
2 every day that person comes back, that is that
3 person's home. So the language in the Fair Housing
4 Act has been interpreted by courts to say, no question,
5 that short-term stays are covered for group homes for
6 people with disabilities.

7 In the Newport model, the emphasis is
8 not -- with all due respect to your uncle -- the
9 emphasis not to create housing for somebody for the
10 rest of their lives. And Congress didn't mean to
11 confine the Fair Housing Act protections to that.

12 Newport's approach, as Mr. Precopio told
13 you, is to get in and to provide intensive services
14 at the time of the lives when mental illnesses are
15 just manifesting. Give them and their families the
16 coping skills they need to do well back in their home
17 communities, and then to serve others who are facing
18 the very same kinds of concerns.

19 Mr. Precopio told you that the Drexel
20 University studies document the effectiveness of this
21 particular kind of approach. And the more congregate
22 approach may simply be less effective for people with

1 the intensity of anxiety, depression, trauma, and
2 eating disorders that present at Newport.

3 Finally, I would say this. The Board of
4 Supervisors made its decision for you in 1993 when it
5 defined family in the zoning ordinance as it did. It
6 could have done otherwise. Maybe subjected itself to
7 some liability for noncompliance with the state
8 statute. But it's been set in law for almost 30
9 years now. Family includes anybody defined in 2291
10 period.

11 MR. MOFFETT: Even if that family, that
12 quote "family" is in and out, constantly changing? I
13 mean, I just --

14 MR. ALLEN: So sometimes when I make
15 arguments to a judge, the judge says something to
16 this effect. That argument is for the legislature.
17 So the Congress decided that there shouldn't be
18 occupancy minimums. You wouldn't have to say you
19 have to be a certain number of days to be in there.

20 The General Assembly imposed no minimums
21 whatsoever. In fact, in 2000, SB 449 which attempted
22 to make this distinction between nonprofits and

1 for-profits also had a little flavor of that, which
2 is people are here short-term.

3 The Attorney General said, listen don't
4 mess with this. You're going to violate the Virginia
5 Fair Housing law if you change this statute. As a
6 practical matter, the state legislature has decided
7 this too.

8 And finally, the Board of Supervisors has
9 decided for the county. It could have said
10 otherwise. It could have said when we say a family,
11 it means anybody covered by 2291, we mean they have
12 to stay there for 60 days. That might be consistent
13 with state law might, it might not be. But it's not
14 what they said.

15 I think the Board's job tonight is to apply
16 the law as it's written and as it has been enforced
17 for the last 20 years and more.

18 MR. MOFFETT: Why doesn't 2291, congregate
19 housing facility, say a structure other than a
20 single-family dwelling where more than four unrelated
21 persons reside under supervision for special care,
22 treatment, training or similar purposes on a

1 temporary or a permanent basis -- if your
2 argument's correct, why doesn't
3 2291 incorporate those groups from the definition of
4 congregate housing facility?

5 MR. ALLEN: Well, because the county's
6 definition of a congregate housing facility does not
7 require state licensure. So you don't have to go to
8 the state to get the approval in order to qualify as
9 a congregate housing facility. You just need to be
10 meet local requirements.

11 I think that the Board of Supervisors did
12 the following. It said there are two ways that you
13 could be here serving people who need special care,
14 treatment, or training. That is, you could go the
15 congregate housing facility route if you want to, but
16 we also offer another lane for you.

17 If you want to be in a residential
18 neighborhood because your program works best where
19 you have a smaller number of people living together,
20 where you have more tranquility. And those of you, if
21 you're not familiar with these houses on Gleedsville
22 Road, they are on very large lots. They are

1 tranquil. There are wind chimes. There are birds
2 flying around and singing. It is -- there are ponds
3 and streams. It is a definition of tranquil.

4 I guess what I'm saying is Newport was
5 offered a choice here, and Newport opted for this
6 approach which has been successful for it in other
7 places around the country for 15 years.

8 CHAIRMAN CLARK: Mr. Sofrenko, Mr. Walker?

9 I'd like to push back on the residency.
10 I'm not sure that I buy that the state statute is
11 moot or says nothing about residential. I think it
12 uses the word twice, zoning ordinances for all
13 purposes shall consider a residential facility -- so
14 not a football stadium -- as the law.

15 As a residential occupancy -- you know, I'm
16 a lawyer as people may have picked up, but I'm an
17 elder law lawyer -- the context in which I deal with
18 that. In Medicaid, there was a famous case of a
19 fellow with a recreational vehicle who owned a home.
20 He was a pox on his children. He would drive his RV
21 from state to state and stay as long as he wished,
22 and I think it was in New York.

1 He arrived at his daughter's house in New
2 York with his RV, left it in the driveway, and chose
3 that night to have a stroke. And it was a question
4 that was litigated as to whether or not that man was
5 a resident of New York and entitled to New York
6 Medicaid services.

7 I need your help here. Can you tell me is
8 it not true that the Virginia definition of residency
9 is where you are with the indefinite intention of
10 remaining? That is to say it's different than
11 domicile which is permanent residence. But residence
12 is I'm here until I decide not to be here as a fair
13 estimate or do you think there's a different
14 definition?

15 MR. ALLEN: Well, I guess I would say the
16 following, tThat I don't believe the definition is
17 confined to indefinite intention to say. But I would
18 say that interpreting what federal courts have said
19 about the Fair Housing Act and the idea of what is a
20 dwelling unit, courts have typically said it's the
21 place where people have the present intention to stay
22 for a period of time.

1 And then as to the question of this
2 residential use, I think you make the distinction
3 appropriately. There are all sorts of uses available
4 to structures in Loudoun County and everywhere else
5 in Virginia.

6 There's no question this is a residential
7 use; right. There's no question that the Newport
8 clients who will live in these group homes on
9 Gleedsville Road will sleep there, will eat there,
10 will commune there, will do their studies there, will
11 get therapy there. All of those things are things
12 that you and I do in our residences; right.

13 They're not operating a consulting
14 business, you know, they're not operating a
15 landscaping business; they're living there. So it
16 is, in fact, a residential purpose. And I think the
17 language in 2291 focuses not on length of stay so
18 much as it does the essence of what people living
19 there are doing.

20 And if they were using it for a commercial
21 purpose inappropriately, then there ought to be a
22 sanction for that. And I would say to a question

1 that one of the board members asked earlier, there
2 are many safeguards in place for neighbors.

3 Apart from Newport's own goodwill and
4 desire to resolve problems at the lowest level of
5 conflict, the county has all sorts of authorities
6 that it could enforce, health and safety if the grass
7 gets too high, if there's too much noise, if there's
8 a fire hazard, if the building's not in good shape.

9 And the state agency can do inspections,
10 scheduled and unscheduled, surprise inspections to
11 ensure that the appropriate requirements are being
12 met. I think the appellant's papers actually
13 include -- submission to this BZA -- actually include
14 the name of the person at the state agency who takes
15 these complaints, and perhaps in evidence of
16 complaints having been filed in other instances.

17 Newport wants to work with neighbors.
18 Wants to be a part of this community. Wants to be
19 fully integrated and to work and achieve all of the
20 things that other people living in Loudoun want to
21 achieve by living here. And we would say that the
22 state, federal, and local law all permit that as a

1 right.

2 CHAIRMAN CLARK: Mr. Moffett?

3 MR. MOFFETT: Mr. Chairman, I do have
4 another question.

5 When a new class comes in -- let's just
6 call it a class here --

7 MR. ALLEN: Can I quibble with your
8 premise? When people may stay between 30 and 90 days
9 with an average around 45, which is what our papers
10 provide, but people come in at all sorts of times, so
11 there aren't classes of people.

12 MR. MOFFETT: All right.

13 MR. ALLEN: If I get my 45, 60, or 90 days
14 and I'm ready to go, I leave. Somebody comes in off
15 the waiting list. So it's a practical matter.

16 There's more continuity than the premise of your
17 question allowed.

18 MR. MOFFETT: Incorrect word. I apologize
19 for that. When a new person -- when one person goes,
20 another person comes in. Who determines whether he
21 or she fits the statutory requirement of mental
22 illness here? How is that decision made?

1 MR. ALLEN: Well, Mr. Precopio told you
2 what's done from the Newport side of things, and the
3 state agency ensures compliance with the license. If
4 any member of the community believe that a new
5 resident at Newport didn't meet the definition of,
6 presumably they could be questioned through the state
7 agency.

8 MR. MOFFETT: Well --

9 MR. ALLEN: They could be then approved --

10 MR. MOFFETT: -- how would they have any
11 idea of people coming and going? I mean --

12 MR. ALLEN: My point is, there's a license
13 that requires Newport to comply with specific
14 requirements to admit people who have the mental
15 illnesses listed in its license. At some level, I
16 suspect that what I'm going to say is that you need
17 to believe that Newport is going to comply with those
18 requirements. If it doesn't, there are sanctions for
19 noncompliance.

20 And so rather than talk about hypothetical
21 things that may happen, let me just focus on the fact
22 that there are remedies available to people who

1 believe that Newport isn't doing what it says it's
2 doing. At this point, all we have is the
3 hypothetical. Newport just wanted to know, can we buy
4 these homes and do we understand the zoning ordinance
5 correctly. That's all we have so far, no license
6 application, no zoning application.

7 Newport I think is eager to defend the
8 merits of what it's trying to do here and not get caught
9 up in the procedural case. This may or may not be
10 the time to do that because there simply isn't a
11 factual record on which to deal with allegations of
12 drug use or commercial activity.

13 And as a practical matter, we're so
14 hypothetical here. I don't understand really how any
15 group home under the appellant's view could ever
16 pass muster to be in a residential neighborhood.
17 It's not the commercial or for-profit nature of
18 Newport that makes the difference. It's going to be
19 eight people in a group home, eight people in another
20 group home. Six in the smallest of these three
21 homes, by the way -- no application filed yet -- but
22 I'll make that representation.

1 Any group of that number of people
2 for-profit, nonprofit, commercial, noncommercial
3 would likely raise the concerns, the hypothetical,
4 the speculative concerns that you've heard tonight
5 and will hear more tonight. Because, as a practical
6 matter, we're on a hypothetical record here.

7 If the Board were to hold that Newport
8 cannot be established here for some reason, it would
9 be hard to think of any group home that could be
10 established in AR1 district, notwithstanding what
11 the federal, state, and local laws say.

12 CHAIRMAN CLARK: Any other questions?

13 Okay.

14 MR. ALLEN: Thank you for your time.

15 CHAIRMAN CLARK: Thank you very much.

16 I think in fairness, since we did have the
17 admission of the statement by Dr. Lambert-Woodard, is
18 there any objection from the Board with me allowing
19 Mr. Hampshire a minute to respond if he'd like to?
20 Or maybe I should ask if you have a statement to
21 make?

22 MR. HAMPSHIRE: My understanding, Mr.

1 Chairman, is I'm limited to this document.

2 CHAIRMAN CLARK: Yes, sir.

3 MR. HAMPSHIRE: And I do have something to
4 say about it.

5 CHAIRMAN CLARK: All right.

6 Is there any objection to us allowing him
7 to speak to this document? All right.

8 Mr. Hampshire, the floor is yours.

9 MR. HAMPSHIRE: Thank you very much.

10 CHAIRMAN CLARK: Stephanie, one minute.

11 MR. HAMPSHIRE: All right. So I'm looking
12 at this document and I haven't had a chance to read
13 it thoroughly, but what it clearly talks about is the
14 need for the services. And I just want to say that
15 we do not dispute there's a need for the services.
16 We don't dispute that there is therapeutic services
17 that are intended.

18 In fact, that's really our whole point. If
19 you look at the conclusion of this document, you will
20 see in summary and so on, and in the last paragraph,
21 therapeutic value of living in a healing community,
22 community resistance, et cetera. And then it goes on

1 at the last sentence, the program will add to the
2 existing array of services and allow residents to
3 receive care close to home.

4 We are -- again, so we're not talking about a
5 home here. We are talking about services,
6 therapeutic services that are not in their home. It's
7 in a treatment center with the intent not to reside
8 there for any period of time, but to go home. When a
9 young woman walks through that door, it's her intent
10 to be treated and to return to her home, her real
11 home.

12 That's different. It doesn't matter
13 whether it's two hours, five days, three months, she
14 does not have the intent to reside in that house.
15 But I want to say that we don't have to ever get to
16 the issue of reside because it remains that this is
17 not a residential facility, regardless of how long
18 people will reside there; it simply isn't.

19 And the protection of 2291 is limited to
20 residential facilities which means that, under the
21 Loudoun County zoning ordinance, as we say in our
22 papers, is a place where people reside and do the

1 things that private homes in Loudoun County do.

2 Thank you very much. My time is up.

3 CHAIRMAN CLARK: Thank you, Counselor.

4 All right. That's the three partys'
5 presentations. I'm going to go out and say I've been
6 doing this for 15, 17 years, I can't recall a time
7 when I felt the parties so respectfully and clearly
8 were helpful to this Board about getting to the
9 gravamen of the issues and not getting off into what
10 clearly can be some emotional questions.

11 So next is our public hearing portion. I
12 do have to ask for the Board's indulgence again. I've
13 been passed a note from the secretary that one of our
14 esteemed members of the Board of Supervisors for this
15 district is present and has asked for permission to
16 cut to the front of the line in terms of speaking.
17 And our process and procedure is to let people speak
18 first come and first served.

19 There may be some other pressing county
20 business. I don't know. Is there any objection to me
21 allowing --

22 MR. MOFFETT: Can we take like a

1 five-minute break?

2 CHAIRMAN CLARK: Let's do that. Okay. I
3 tell you what, so instead of expectations with the
4 supervisor, may I have a decision as to whether
5 there's an objection as to whether or not Supervisor
6 Kershner can speak first?

7 Any objection? Okay. Unanimous there's no
8 objection. So Mr. Kershner -- I assume it's
9 Mr. Kershner, or Mrs. Kershner -- get your notes
10 together. If there's no objection, we'll take a
11 recess and reconvene at 8:10.

12 Any objection? All right. We're
13 adjourned -- or I'm sorry -- recessed.

14 (Brief recess.)

15 CHAIRMAN CLARK: Okay. I'm calling the
16 April 28t, 2022 zoning appeals meeting back in
17 session. We're at the public hearing portion for
18 today's application Appeal 2021-003.

19 And based on the unanimous consent of the
20 Board, we've allowed a representative from Supervisor
21 Kirschner's office to step to the front of the line.
22 While you're moving to the front, I'd just like to

1 make a point of clarification. I don't know if
2 there's going to be any riffing off of what's said
3 here or not, but I don't believe that the County
4 Board has taken a position on this.

5 So, Mr. Hampshire, the position of the
6 county is represented by Mr. Stultz. This is the
7 supervisor's office from whatever authority comes
8 from the district. Do you --

9 STACY CAREY: Correct.

10 CHAIRMAN CLARK: -- agree?

11 STACY CAREY: Yes, thank you.

12 CHAIRMAN CLARK: Thank you. Would you
13 please proceed. You have three minutes.

14 STACY CAREY: Thank you very much. And
15 thank you for making the clarification, Mr. Chairman.

16 So this is -- I am Stacy Carey, Chief of
17 Staff to Supervisor Caleb Kershner who represents
18 the Catoctin District which includes the area that's
19 just the subject of this application.

20 So he was trying to stay as long as he
21 could this evening because he really wanted to be
22 here to make the statements tonight. He,

1 unfortunately, had to leave, so I'm here making these
2 statements on his behalf as a supervisor of the
3 Catoctin District and in no way represents the
4 position of the Board whatsoever.

5 Our office, Supervisor Kershner, myself,
6 and our staff aide Arlee Harris has been involved in
7 this issue since December of 2021. And supervisor's
8 offices usually get involved in these kinds of
9 situations from our constituents who were elected to
10 represent. So we're usually made aware of situations
11 like this and start looking into them.

12 So consequently, we have had numerous
13 conversations with the residents, our county staff
14 gathering information, we sort of do an investigation
15 on our own if you will, to try to get a lay of the
16 land and see what the situation is and respond back
17 to residents. And lots of times, they were asked to
18 intervene from situations like this, to zoning
19 enforcement situations. And while we try to make
20 some decisions, a lot of time it's out of our
21 purview.

22 Caleb did want to come this evening to

1 offer his thoughts on the situation. And so he would
2 like to say that he shares many of the concerns with
3 the community. He also believes that the services
4 that Newport provides are needed in Loudoun County.
5 Many of the reports we're seeing recently about
6 teenage suicides and depression for whatever reason,
7 you know, pressures on our youth, COVID, are
8 desperately needed in Loudoun County.

9 The bottom line is he believes that it just
10 shouldn't be in this area. And as you --

11 CHAIRMAN CLARK: About 30 seconds.

12 STACY CAREY: Oh, 30 seconds. So as he's
13 looked at the zoning ordinance, he does believe that
14 there is confusion in the determination which has
15 been, you know, discussed by the appellant on the one
16 issue of commercial treatment used as congregate care
17 facility which really isn't permitted in the
18 agricultural role 1 one zoning district. That's all
19 been discussed and kind of flushed out.

20 And my time is up. So he would like,
21 bottom line is that he hopes that the zoning
22 determination would be reversed, and that is his

1 statement. So thank you very much for the time this
2 evening.

3 CHAIRMAN CLARK: Thank you. Thank you very
4 much. We appreciate you coming.

5 Stephanie, I've seen a couple of the
6 instructions off of my list. I just want to make
7 sure that that wasn't me striking my pen through.

8 All right. Again, in order to be
9 respectful of everybody's time, I'm going to ask that
10 we follow a little bit of procedure. It is not
11 intended to shorten anybody. Everybody gets their
12 three minutes.

13 But so that we can get through and
14 everybody has sort of a presence of mind about it,
15 and we don't spend as much time coming up and going
16 back, I'm going to call -- I've got several dozen
17 people already on the list. But we have two podiums
18 in the room.

19 So what I'm going to do is call the first
20 witness, Christine Brennan, and ask her to pick one
21 of the two podiums. And then I'm going to somebody
22 on deck, and that's Dylan Arthur.

1 So if Dylan Arthur would get his or her
2 materials together and come to the other podium.
3 Once we've had our presentation, the Board has had an
4 opportunity to ask any questions, we'll be able to
5 proceed right immediately to the next speaker where I
6 will than call the next person on deck who will kind
7 of follow up into Ms. Brennan's position.

8 Is that clear? Any questions from the
9 group about that? I appreciate your accommodation on
10 that. Thank you.

11 MR. HAMPSHIRE: Mr. Chairman, just a
12 housekeeping matter. The residents will be speaking
13 from a PowerPoint that I believe is loaded.

14 CHAIRMAN CLARK: Oh, excellent.

15 MR. HAMPSHIRE: We also have it --

16 CHAIRMAN CLARK: (Inaudible.)

17 MR. HAMPSHIRE: We also have a hard copy.
18 What we want to make sure of is that a hard copy of
19 this gets in the record. And if I can hand that to
20 the clerk, and then I have copies for the county and
21 also Newport.

22 CHAIRMAN CLARK: All right. And then

1 unless there is -- I think these are part of the oral
2 presentations -- but just to make sure we're clear on
3 the record, is there any objection to us accepting
4 this documentary representation of what's being
5 presented during the oral presentations?

6 All right. Hearing that there's no
7 objection to that, Mr. Hampshire if you can hand that
8 up, we'll make sure it's included in the record.

9 Ms. Brennan, thank you for joining us
10 tonight. You're our lead off hitter. Would you
11 please proceed, and state your name for the record
12 and give us your presentation.

13 MS. BRENNAN: Good evening, members of the
14 Board. And thank you for the opportunity to speak
15 this evening. My name is Christine Brennan. I have
16 lived at [REDACTED] Gleedsville Road with my husband,
17 Edward, a disabled Vietnam veteran, for the past 30
18 years.

19 Our home is historic (Inaudible.) where
20 during the war of 1812, the Declaration of
21 Independence and the U.S. Constitution were stored.
22 And we're about a half-mile away from the proposed

1 facility.

2 I'm here today tonight because I felt
3 compelled to speak out against Loudoun breaking their
4 own zoning rules to allow a large corporation to
5 establish a commercial treatment facility for 20
6 short-term clients of a row of three homes.

7 In Michelle Lohr's determination into
8 Newport's inquire, she stated quote, "the short
9 answer is that your proposed use is congregate
10 housing facility, a use not permitted in the AR1
11 zoning district." She repeated this decision several
12 times throughout her November 29, 2021 letter which
13 has been referenced several times this evening.

14 Their use was deemed not permissible and
15 the letter should have stopped there. We saw in the
16 Freedom Of Information Act request, that Newport's
17 CEO coached the previous owners to push for an answer
18 from Loudoun zoning that would confirm the sale. Ms.
19 Lohr responded to that pressure by telling them about
20 state code she beliefs can usurp local laws.

21 This is not only incorrect, it's also
22 egregious for our zoning department to suggest.

1 Michelle Lohr gave them the inch of sunlight they
2 were looking for. A letter from Newport cites her
3 name, her words as their sole reason for closing on
4 the homes.

5 Our state code wasn't meant to overturn
6 local ordinances, and it certainly wasn't meant to
7 give companies more rights than residents. This all
8 seems to be a financial and fear-based motivation to
9 willfully misinterpret state code by Newport and our
10 own county respectively.

11 Lastly, state code describes the purpose of
12 zoning ordinances as promoting the health, safety or
13 general welfare of the public safety from crime and
14 other dangers. Reducing or preventing congestion in
15 public streets facilitating the creation of a
16 convenient, attractive, and harmonious community with
17 adequate police and fire protection, protecting
18 against encroachment of historic areas like Rokeby
19 and undue density and to preserve agricultural lands.

20 How about we do what zoning is intended to
21 do and not what companies want. We are confident
22 that you will wade through what Newport and Loudoun

1 zoning wish the state code said, and see what it does
2 and what it does not and find in our favor. Thank
3 you thank.

4 CHAIRMAN CLARK: Thank you, Ms. Brennan.

5 Next up is going to be Dylan Arthur on the
6 podium to my left. If we could have Aaron Kozikowski
7 come to the podium on the right and get ready in the
8 Price is Right.

9 Mr. Arthur, your three minutes.

10 DYLAN ARTHUR: My name is Dylan Arthur and
11 our family lives on [REDACTED] Court about a mile walk
12 from Newport's property. As a 100 percent
13 permanently disabled U.S. Marine veteran with
14 service-connected injuries and a retired federal law
15 enforcement officer, I am highly concerned that
16 Newport is trying to manipulate the language of the
17 state code and its intentions.

18 State code 15.2-2291 does not communicate
19 intention to give people with disabilities superior
20 rights to those provided in a single family. The
21 intention was to protect those with disabilities by
22 allowing them to be treated the same as families in a

1 single dwelling unit. People with disabilities
2 should not be given lesser rights or any rights more
3 restrictive than that of a single-family home.

4 By giving Newport superior rights to allow
5 them to operate a congregate facility, a congregate
6 housing facility as defined by Zoning Administrator
7 Michelle Lohr in an AR1 where traditional families
8 cannot, you are doing a disservice to those who
9 benefit from living in a true group home.

10 Group homes are places where people go to
11 live, to reside often for years and live there
12 together in a community setting. Short-term 35 to
13 40-day treatment is not the focus here; the focus is
14 residency. Per Newport's own mission, they are not a
15 group home. They're a treatment facility offering
16 paying clients services, therapy, and treatment for
17 an average of a 45-day stay.

18 Clients don't come here because they have
19 nowhere else to live. They leave their residences
20 and visit this facility and receive 30 to 45 days of
21 treatment with an intent to return home when the
22 insurance coverage for said treatment ends.

1 Loudoun County cited a Fairfax case from
2 1997 regarding quote, "children who had no other home
3 to go to." That is not this situation. These are
4 adults, clients leaving their residences for
5 short-term treatment at a congregate commercial
6 facility.

7 By allowing Newport to have superior rights
8 over single family homes to operate while on a by
9 right status, would undoubtedly damage the character
10 of this residential neighborhood and set a precedent
11 for all of Loudoun County.

12 If a commercial treatment facility for 24
13 adults is considered a by right in an AR1 district,
14 then why can't traditional family homes related by
15 blood, marriage or adoption do the same thing that
16 Newport proposes to do. Why can't we gut the inside
17 of our homes and convert them into commercial
18 treatment centers.

19 Virginia code 15.2-2291 does not supersede
20 local zoning codes by giving congregate housing
21 facilities the superior right to engage in commercial
22 activities in an AR1 zone. This is a fallacy I hope

1 you see through tonight.

2 As a new father with a baby on the way and
3 a disabled veteran who has served my country
4 honorably, I ask that you please uphold the state
5 code the way it's written, not the way Newport wants
6 it to be. And as a former federal police officer
7 concerned for the safety, security of my family and
8 my community, given Newport's track record with
9 emergency calls to its facilities, I ask why doesn't
10 this concern you. Thank you.

11 CHAIRMAN CLARK: Thank you, Mr. Arthur.
12 Please don't step away.

13 Are there any questions from board members
14 of Mr. Arthur? All right.

15 Thank you for your service, sir. I
16 appreciate your report.

17 I believe I've made a full faux pas when
18 Ms. Brennan finished. I didn't ask the board if
19 there were any questions of her, and hopefully, she
20 hasn't left the room if you do. But I think we can
21 cure that and call her back up if anybody has any
22 questions.

1 Were there any questions for Ms. Brennan?
2 I didn't mean to steamroll you. Thank you very much.

3 All right. Next is going to be
4 Mr. Kozikowski. Cheryl Wright is going to be next on
5 the podium on the left. Thank you very much.

6 Mr. Kozikowski.

7 My name is Aaron Kozikowski, and I am a
8 former Loudoun County Sheriff's Officer Deputy and I
9 live on Delta Diamond Lane.

10 As I'm sure you've heard or will hear, it's
11 likely Newport will have former clients praise their
12 treatments tonight. We're happy for them, but those
13 reviews will mean as much to us as the scathing ones
14 we've read online. It's great that people get what
15 they need from treatment, but that's not what our
16 zoning objection is about, and Newport knows that.

17 If a company was trying to put a drive-thru
18 in a neighborhood, would you base your zoning
19 decision on whether the food was good, would you base
20 it on how many satisfied customers they presented to
21 you? No, it's solely about whether their use is
22 permitted within the AR1 zone, and we know it's not.

1 Newport is backed by billions of private
2 equity that shouldn't allow them to bully their way
3 into claiming by right status and marking anyone who
4 questions it as discriminatory and somehow against
5 Fair Housing laws. You and I both know that Fair
6 Housing laws in the Americans with Disabilities Act
7 were never intended to protect commercial treatment
8 centers guising themselves as group homes.

9 The most important thing to know is that
10 this decision will set a precedent across the county.
11 Unlike other states, we don't have regulations for
12 distances between group home operations. Instead, we
13 have congregate regulations that are supposed to keep
14 unified commercial endeavors from abusing residential
15 zones.

16 That means if Loudoun allows a work around
17 for congregate operations to buy up rows and clusters
18 of homes under the misguided assumption that we have
19 no local zoning rights, the flood gates will open for
20 companies to repurpose residential homes as
21 commercial treatment facilities.

22 As you read in the licensing director's

1 letter to neighbors, VDBHDS holds no authority or
2 control over local zoning. The decision to allow
3 Newport to usurp local zoning rests solely with you
4 tonight. It is not with the state code and it is not
5 with the VDBHDS.

6 Lastly, why is this for-profit company
7 testing another Virginia county on whether they will
8 enforce their congregate housing facility rules. Why
9 didn't this billion-dollar rehab company simply
10 pursue one of the many beautiful Loudoun commercial
11 properties available. Why not choose a location that
12 can accommodate the dozens of staff, vendors,
13 deliveries, visitors, and large-scale trash removal.

14 We fear the answer to my previous
15 questions, as well as the lack of concern for the
16 inappropriate nature of the location, comes down to a
17 simple desire to for money. At over \$2,000 a day per
18 client, they have around 17 million dollar reasons
19 per year to fight for a Gleedsville campus. Thank
20 you.

21 CHAIRMAN CLARK: Thank you, Mr. Kozikowski.
22 And thank you for your service to the county.

1 Any questions from the Board for Mr.

2 Kozikowski? All right.

3 Thank you very much.

4 I'd like to invite Lynn Wright to come to
5 the podium on my right. You will be called next
6 after Cheryl Wright.

7 Your podium, ma'am.

8 CHERYL WRIGHT. Good evening, Board. My
9 name is Cheryl Wright and I live at ██████████ Gleedsville
10 Road, Leesburg, Virginia. Our property butts up to
11 this proposed commercial treatment facility. In
12 fact, this same property at one time belonged to my
13 husband's great-great-grandfather. We have lived
14 here for 30 plus years and we've seen a lot of
15 changes, but I never thought we would witness
16 anything as egregious as this.

17 Newport Academy has purchased three homes
18 to operate an adult commercial treatment facility
19 after unsuccessfully trying the exact same thing in
20 Fairfax County. Fairfax zoning determined that
21 Newport's treatment locations, three residential
22 adjacent homes located on Davidson Road, was indeed

1 congregate, a commercial endeavor not permitted in a
2 residential zone.

3 Loudoun zoning has determined Newport's
4 proposed use to be congregate as well, and unlike
5 Fairfax, this type of use is not even allowed with a
6 special exception permit. So why are we here?
7 Loudoun zoning has stated that Newport could operate
8 these commercial treatment centers if they are
9 licensed by the state.

10 As our attorney has argued, Virginia code
11 15.2-2291 does not supersede local zoning to allow
12 commercial treatment uses in residential zones. The
13 zoning administrator herself has also found
14 congregate housing facilities to not be allowed in
15 residential zones.

16 Further, Newport will admit residents that
17 are addicted to controlled substances even if they
18 are not actively using at the time of admission.
19 However, Virginia code 2291 prohibits the admission
20 of such persons with a co-occurring disorder, for
21 example, substance abuse.

22 Virginia code 2291 states that, to be a

1 group home, you must reside there. And reside means
2 intending to stay in circumstances where there is no
3 other home. Newport patients are not coming with the
4 intent of residing, but rather treated for finite
5 periods of time with the intent to return to their
6 homes. In Newport's own words, they are staying an
7 average of 45 days.

8 They are not receiving mail at these homes.
9 They are not updating their driver's licenses. They
10 are not updating their voting registrations. No
11 staff will reside there either. They simply return
12 to their own homes after their shift ends. So again,
13 no one can define themselves as a resident of these
14 homes.

15 These are not separate group homes.
16 Newport's own leadership clearly stated that, the
17 homes will share resources like a chef and food
18 service. Do you think that the amenities at this
19 location like the pond, the pool, the tennis court
20 will be shared?

21 Residents living amongst Newport's other
22 homes submitted several examples of how Newport is

1 not known to operate its facilities independently.
2 Why would they? It makes business sense to unify
3 operations, and make no mistake this is a business
4 and a lucrative one, an investment for a very large
5 corporation.

6 My family advocates for mental health
7 treatment. We've helped loved ones that seek care.
8 No facility we've ever attended or selected was
9 operated out of or located amongst neighborhood homes
10 and for good reason. Our support for quality care is
11 exactly why we object to this commercial congregate
12 campus for 24 adults in a residential zone. Thank
13 you.

14 CHAIRMAN CLARK: Thank you very much.

15 Any questions for Ms. Wright from this
16 Board?

17 Appreciate it.

18 If Eddie Palmer will come to the podium on
19 my left. And now, Lynne Wright.

20 LYNNE WRIGHT: Could I please request that
21 slide 70 be put up.

22 CHAIRMAN CLARK: Is that the correct slide?

1 LYNNE WRIGHT: Um-hum.

2 CHAIRMAN CLARK: Thank you. Please
3 proceed.

4 LYNNE WRIGHT. Hello again. Since 2019, my
5 family has been proud to know the use of four acres
6 of our land closest to the property that Newport
7 Academy purchased to a local nonprofit organization
8 called A Farm Less Ordinary, or AFLO.

9 As you hopefully read in the reading
10 materials, AFLO is a thriving program that
11 successfully employs and trains people with
12 significant developmental and/or intellectual
13 disabilities. But AFLO does more than that.

14 It provides growers with a purpose, a
15 welcoming community, and a safe and stable
16 environment in which to socialize, thrive, and learn
17 as they earn a reliable income and gain a sense of
18 pride and independence. It is important to know that
19 AFLO's growers on fields on our land is the largest
20 of only two locations they have, and is an essential
21 element to the program's overall success.

22 Consequently, our concerns were first and

1 foremost for that. The intellectually and
2 developmentally disabled are an extremely vulnerable
3 population that is often overlooked and victimized.
4 Visitors and volunteers are not allowed on the
5 property without having completed a full criminal
6 background check; that's how important their well
7 being and safety is. The reason our property has
8 been in that ideal location and enabled the program
9 to flourish is because it offers a consistently and
10 reliably safe, peaceful setting.

11 If Newport is permitted to operate a
12 commercial treatment center next door, we have no
13 doubt that the currently stable environment in which
14 the growers and the program have thrived, will be
15 compromised. This is an impact different from the
16 public at large.

17 As you will here from others tonight,
18 frequent first responder calls and public
19 disturbances are status quo in many areas where
20 Newport operates. If the 24-adult facility for
21 clients with emotional and behavioral issues becomes
22 operational, it may be too much disruption, risk, and

1 liability for AFLO to remain on our land.

2 Unlike private equity-backed Newport, AFLO
3 has no other options for financial leeway to locate
4 elsewhere due to the extremely needy requirements of
5 their program. Per Newport's own recorded
6 statements, they do not perform criminal background
7 checks or do drug tests on incoming patients.

8 The special nature of AFLO and the
9 employees, it helps mean that the impacts of the
10 commercial treatment focused use next door are
11 particularized, i.e.: not shared by the public at
12 large.

13 Please read the state code with unbiased
14 eyes. Help us maintain Loudoun's zoning rights
15 against congregate facilities in residential zones.

16 Thank you.

17 CHAIRMAN CLARK: Thank you, Ms. Wright.

18 Any questions for Ms. Wright from the
19 Board?

20 All right. Thank you.

21 Next, I would like to ask Craig Palmer to
22 come to the podium to my right, you'll be next.

1 And now, we'll turn to Addie Palmer.

2 ADDIE PALMER: Thank you. Could I please
3 see slides 4 and 5 and 6 please.

4 My name is Addie Palmer. I live at [REDACTED]
5 [REDACTED] My house is 213 feet from
6 Newport's property line. After my husband retired
7 from the military in 2014, we built our dream home
8 next to our son, daughter-in-law, and their two young
9 daughters. Since our first granddaughter was born in
10 2018, we have lived every grandparent's dream, being
11 next door to watch our grandbabies grow up. We had
12 every intention to live the rest of our lives here.

13 We never imagined a billion-dollar backed
14 company would attempt a corporate takeover of our
15 neighborhood to operate a commercial treatment
16 facility out of residential homes. Newport has tried
17 to attack our standing by telling you we are 2.8
18 driving miles away from their property.

19 This is not true. Our home is backed up to
20 their property and is connected by a walking bridge.
21 We use this walking bridge between our homes so that
22 our kids and grandkids could pass between the yards,

1 taking turns in each other's playground. There's no
2 fencing, there's no barriers, there's nothing to stop
3 anyone from running over into our yard.

4 However, if a commercial treatment center
5 with an average of a 194 to 288 different adults
6 cycling in and out every year is allowed to operate,
7 then we'll have to figure out a way to secure our
8 property and the bridge will be no more.

9 We have heard from neighbors at several
10 other Newport facilities about the noise and
11 disturbance that they're exposed to as you've read in
12 your briefing packets. It's not uncommon for Newport
13 clients who are seen -- who are seeking care to be
14 seen lying in neighborhood streets, yelling making
15 disrespectful and inappropriate comments, and
16 trespassing through yards.

17 Because of the amount of sirens and
18 disturbance in one small California neighborhood,
19 many families with children said they no longer take
20 them for walks or let them play in their own yards.
21 Again, we are adjacent neighbors and we'll be
22 experiencing an impact differently from the public at

1 large.

2 My husband is a hundred percent disabled
3 from his service in the military. He defended and
4 protected our country for 25 years. I believe it is
5 fair to say that we deserve to maintain our quality
6 of life in our retirement years just as much as
7 Newport patients deserve access to privacy and
8 quality healthcare to help them recover.

9 We are not against recovery. We are
10 against a company targeting a residential location
11 that isn't zoned for that use as the zoning
12 administrator herself said. Thank you.

13 CHAIRMAN CLARK: Thank you, Ms. Palmer.

14 Any questions for Ms. Palmer?

15 MR. MOFFETT: I do have a question. Are
16 you really a grandmother?

17 ADDIE PALMER: I am. I've very proud.

18 MR. MOFFETT: Wow. Unbelievable. Okay.

19 Thank you.

20 CHAIRMAN CLARK: All right. Next, I'd like
21 to invite Sarah Hoffman to the podium to my left.

22 You'll be next after we hear from Craig Palmer to my

1 right.

2 CRAIG PALMER: My name is Craig Palmer, and
3 I live on [REDACTED] which is adjacent to the
4 property as you saw. If he can pull slide 6 for me
5 too please.

6 My home is 213 feet from the proposed
7 facility, not only is this a commercial facility for
8 24 short-term adult clients congregate and not
9 permitted in a residential zone, it is also a wholly
10 inappropriate setting for the following reasons.

11 Number one, I am a hundred percent
12 permanently disabled veteran who now, makes a living
13 as a weapon's specialist and trainer. I teach people
14 how to safely handle and shoot firearms large and
15 small. I do often travel to train high-profile
16 clients. When I am home, I use my personal shooting
17 range to remain proficient. Unlike having advanced
18 knowledge of when the AFLO growers are on-site who
19 work nearby for a few hours a day a few days a week,
20 the paying clients that Newport wants to locate here
21 would visit for 30 to 45 days, and would absolutely
22 be exposed to the full scope of activity in an AR1

1 zone.

2 My family reached out to Newport's COO
3 about shooting in an AR1 zone, and we were told
4 that's fine. I built my home because in an AR1 zone,
5 where I have the freedom and safety to have my own
6 range and I'm not alone. In our neighborhood, you
7 often hear shotguns, handguns, and other weapons
8 firing from all around as many people hunt game and
9 target practice.

10 Number two, the 50 acres next to our home
11 that runs along the back of the proposed facility
12 where my lot ends, is the future site of a brewery
13 and tasting room. Unlike commercial treatment
14 facilities, that's a permitted use in our zone.

15 Number three, the impact to a great local
16 nonprofit, AFLO, that you already heard about.
17 Number four, this endeavor has been a farce since the
18 beginning. Their previous owners tried to conceal
19 the reality of the location. We had no idea who the
20 potential buyers were. We made our concerns known as
21 soon as we found out from a letter in a mailbox.

22 In my opinion, if Newport was truly

1 dedicated to treating those with anxiety, PTSD,
2 depression, and other mental and behavioral
3 conditions that require a higher level of care, they
4 would not pursue a campus in an AR1 zone where
5 congregate facilities are permitted for good reason.

6 Sadly, I've had many friends who have
7 needed mental health support and short-term
8 treatment. No one I have ever known has attended a
9 facility within a neighborhood, as that is a
10 distraction and would be too inappropriate a setting
11 to even fathom.

12 In the history of bad ideas, opening a
13 facility for 24 adults paying to receive treatment
14 for anxiety, PTSD, depression, and more right next to
15 an active range, a brewery tasting room on a blind
16 curve next to a nonprofit program and across the
17 street from a hemp farm is up there with some of the
18 worst.

19 It was deemed a congregate. It's a
20 commercial facility. It's an incompatible use with
21 residential homes. The location is dangerous and
22 negligent, period. As I conducted 13 combat

1 deployments and a disabled veteran, why do you give
2 Newport a superior right over your disabled
3 constituents.

4 And I ask you to ask them how many of their
5 employees live next to their facilities? Thank you.

6 CHAIRMAN CLARK: Thank you.

7 Any --

8 And thank you for your service, Mr. Palmer,
9 appreciate it.

10 Any questions? Mr. Moffett? No? I saw
11 the nod of your head.

12 MR. MOFFETT: No, I was just thanking him
13 for everything you've done for our country.

14 CRAIG PALMER: Thank you, sir.

15 CHAIRMAN CLARK: All right. Hilary
16 Kozikowski will be called next to the podium to my
17 right. Right now, we have Sarah Hoffman.

18 SARAH HOFFMAN: Hi. May I have slide 3
19 please.

20 My name is Sarah Hoffman. My family and I
21 have lived at [REDACTED] for the past 13
22 years. Our home is [REDACTED], 500 feet away

1 from the proposed campus where we view the ten-acre
2 lot and the house closest to the road.

3 As the four of you consider the narrative
4 that Newport's legal team has woven and that zoning
5 has doubled down on, alongside the information
6 residents have shared with you tonight, please
7 remember the following key areas: standing.

8 Appellants were accused of not having
9 standing and were challenged with the burden to prove
10 it. They did that. You have and will hear from over
11 a dozen adjacent and nearby residents who've outlined
12 the impact of their lives due to the proximity, home
13 devaluation, and more elements that confirm standing
14 as a reality and not as speculation. The most

15 immediate impact being to AFLO during the height of
16 their growing season and despite the lack of
17 employment opportunities for those with developmental
18 disabilities.

19 2291 is for residential, not commercial
20 facilities. As much as a well compensated legal team
21 would like our state code to include commercial
22 congregate facilities and by right status, it does

1 not. The code is intended to give equal and not
2 superior status for residential facilities.

3 State code 2291 was created for Virginia
4 residents. The word resident is written seven times
5 in that code. Nonresident is only mentioned once to
6 describe a caretaker. Nonresident clients are
7 mentioned zero times. Congregate and separate group
8 homes are mutually exclusive.

9 May I have slight 10 please.

10 You can't be both. Any suggestion that
11 they could rebrand a state by right use and get
12 around local zoning, undermines the purpose of
13 zoning. This isn't like a game where you can apply a
14 cheat code to get the answer you want. This is real
15 life, and this will directly affect all of us and set
16 a precedent for every single neighborhood across this
17 county.

18 And let's not forget that no one from
19 zoning did a site visit to see that the homes are a
20 unified property. They already share structural
21 features. And we know that Newport shares resources
22 across other supposedly separate group homes via

1 examples you have been sent by others residents in
2 other states and in Virginia.

3 Substance abuse. They do not mean to deny
4 one's thorough description, but is careful to omit
5 substance abuse. They want us to believe that no
6 adult client will have an addiction to any substance.
7 And further, they want us to believe that no client
8 will arrive with a substance on them, but both are
9 impossible to guarantee as their own stats show.

10 Words can be deceiving, but actions provide
11 sound assessment. Please refer to the examples that
12 we presented that expel any speculation. For a
13 company, this is a business, but for residents, it's
14 whether our kids will grow up with the sounds of
15 sirens as we try to explain public disturbances and
16 lose the sense of ease we have watching them play in
17 our yards.

18 Slide 9 please.

19 Today is my husband's birthday, and
20 tomorrow I'm taking my mother who moved here for a
21 peaceful life to get her second round of chemo. This
22 is not how we should have to spend our time. The

1 idyllic setting that Newport wants to use as their
2 latest backdrop was created by my neighborhood; it
3 exists because of them.

4 Please don't let a company usurp local
5 zoning laws and ruin it for financial gain. Lynne's
6 wind chimes and all, those sounds really carry
7 because the property slope down and they're in a bit
8 of a holler, if you know what a holler is. Even
9 500 feet away in my property, I can always tell who
10 was winning when they were playing games in their
11 yard; it's a bit of a cacophony.

12 CHAIRMAN CLARK: Time is up.

13 SARAH HOFFMAN: They erred. The letter was
14 only given to one residence, the Kozikowskis. It was
15 not given to all adjacent residents.

16 CHAIRMAN CLARK: Thank you, Ms. Hoffman.

17 Any questions for Ms. Hoffman?

18 Appreciate your time.

19 Ms. Kozikowski. Coming up next will be
20 Louis Bergeron on my left.

21 Your podium.

22 HILARY KOZIKOWSKI: My name is Hilary

1 Kozikowski and my back yard abuts to Newport's
2 backyard. Despite the fancy footwork Newport's legal
3 team has done to mislead you into believing that I'm
4 2.8 miles away from the property, Newport's property
5 line and walking bridge that connects us is 173 feet
6 from our playground, where my 1 and 3-year-old girls
7 play in our backyard.

8 Slide 4 and 5 please.

9 The reason we are here today is because
10 Newport put a letter in my mailbox introducing
11 themselves as our new neighbors and telling us that
12 on November 29th, Michelle Lohr issued a
13 determination, not advice, that quote, "our proposed
14 use of the homes is a permitted use in this zoning
15 district."

16 Slide 18 please.

17 Newport's proposed use of the three homes
18 can only be described as a congregate housing
19 facility and nothing else. Newport would like you to
20 agree to mislabel them as group homes in order to
21 operate by right status because that is what Michelle
22 Lohr suggested they could do.

1 The flaw of her determination letter is
2 that she can't determine that they are a congregate
3 housing facility in the first paragraph, and then go
4 on to say that they may be able to define themselves
5 as a group home. The two are mutually exclusive.

6 You cannot be both a congregate housing facility and
7 a group home at the same time.

8 She also erred in never coming to do a site
9 visit before issuing the determination to see the
10 true scope of the congregate compound. Years ago, my
11 husband and I rented two of the homes that Newport
12 now owns. All three homes were owned by the same
13 family. They functioned like a compound.

14 As you have seen in our submission, they
15 have one single gated entry for all three homes. The
16 three homes are structurally connected by one shared
17 driveway. There is one parking area, one golf course
18 that spans the entirety of the three homes, one large
19 pool, one tennis court area, and one fence that
20 partially encloses the compound.

21 In their filing against this appeal,
22 Newport's attorney stated quote, "clients will reside

1 in the existing single-family homes as residences in
2 the same fashion as their prior occupants." The
3 three-home property was built to be and has been used
4 as a unified enclosed family compound for the last
5 decade and a half. I know because I lived there.

6 It is very similar to the description of
7 the three-home Davidson Road property that Newport
8 purchased in Fairfax County in 2019, which Fairfax
9 Zoning Administrator, Leslie Johnson, determined to
10 be a congregate living facility. We ask that Loudoun
11 County follows Fairfax's precedence and upholds the
12 congregate housing determination. Thank you.

13 CHAIRMAN CLARK: Thank you, Ms. Kozikowski.

14 Any questions for Ms. Kozikowski?

15 I appreciate it.

16 Next, coming up to the right will be Tommy
17 Walker to my right, and now, we should have Louis
18 Bergeron.

19 LOUIS BERGERON: Louis.

20 CHAIRMAN CLARK: Louis.

21 LOUIS BERGERON: Yes, sir.

22 CHAIRMAN CLARK: Louis. All right. I'm

1 sorry.

2 LOUIS BERGERON: Hi. Thank you so much,
3 and I appreciate your time tonight. My name is Louis
4 Bergeron. I'm a retired Navy officer, and I'm
5 actually a hemp farmer too, so that's me. I'm living
6 on [REDACTED] from the proposed
7 commercial facility.

8 To everyone here, I ask why did you choose
9 your own home? Why'd you choose your home? Why'd
10 you choose your neighborhood? Think back to that
11 decision process, the careful deliberation that went
12 in it, the anguish probably of making that big
13 decision.

14 For my family, and from the neighbors
15 you've heard from tonight, we chose our forever home
16 location on [REDACTED] 12 years ago because of
17 the agricultural use offered by that AR1 zone,
18 families, livestock, hunting, firing ranges which we
19 can hear clearly from our property, and even
20 breweries are welcome in AR1, but not congregate
21 housing facilities.

22 They are not even listed in the AR1 revised

1 1993 zoning ordinance. There are plenty of other
2 places in the zoning ordinance where they are listed
3 as special exceptions, but just not in AR1.

4 Even when the military deployed me
5 overseas, I felt my family was safe because we
6 believed in the county and we believed in our
7 neighbors. However, when we learned that Loudoun
8 plans to allow this three-home 24-adult congregated
9 housing facility to operate on a family compound in
10 our AR1 neighborhood, we are shaken to our core and
11 we've questioned our choices to put down roots in
12 Loudoun County.

13 If this congregate use is allowed as three
14 separate family homes, it could change the very
15 fabric of not just ours, but potentially, every
16 residential neighborhood in Loudoun County, including
17 HOAs. State code of the Fair Housing Act allows
18 equal access to housing, not superior access to
19 housing that disregards the carefully planned and
20 nondiscriminatory local ordinance zoning ordinances
21 like those found in AR1.

22 Tonight the residents have made several

1 points, including standing. One, standing. Adjacent
2 families have standing and would suffer
3 particularized harm. Two, congregate housing.
4 Newport's proposed use was deemed congregate by
5 Loudoun County, period.

6 Three, not separate group homes. Loudoun
7 has suggested to Newport that they categorize
8 themselves as three separate family dwellings not
9 sharing resources. This is not feasible due to the
10 nature of the family compound that Newport purchased
11 and because of Newport's intentions to share services
12 across three homes. Therefore, it is congregate and
13 not allowed.

14 Four, no guarantee on controlled
15 substances. Five, proper zoning for mental health.
16 We all support safe, effective mental health
17 treatment in properly zoned areas. It's just an AR1
18 zone is an inappropriate area for a commercial
19 treatment facility .

20 Six, precedent. As you just heard, Fairfax
21 County enforced their local zoning ordinances when
22 Newport attempted to operate a 24-client facility in

1 three adjacent homes in McLean. We trust that the
2 Loudoun BZA will follow the precedent set by Fairfax
3 County and overturn Loudoun's incorrect zoning
4 determination. Thank you so much for your time.

5 CHAIRMAN CLARK: Thank you.

6 Any questions for Mr. Bergeron?

7 MR. MOFFETT: Yes. Very articulate. Thank
8 you for your service in the greatest of militaries.

9 LOUIS BERGERON: Thank you, sir.

10 CHAIRMAN CLARK: Thank you for your
11 service.

12 Was Tommy Walker in the room?

13 JANE WALKER: He's not here. He's absent
14 tonight.

15 CHAIRMAN CLARK: Okay, thank you.

16 How about Jane Walker?

17 JANE WALKER: That's me.

18 CHAIRMAN CLARK: Great. You're up.

19 And then on deck is Audrey Hunter.

20 So, Ms. Walker, if you'll come up to the
21 podium on my right.

22 And, Ms. Hunter, if you'll come up to the

1 podium on my left, you'll be next.

2 Thank you, your floor.

3 JANE WALKER: Okay. Thank you. My name is
4 Jane Walker. And I want to thank you guys for making
5 it possible so that we could be here at the hearing
6 for you guys, and thank you for listening to us as
7 well.

8 We have the property at [REDACTED]
9 [REDACTED] and the property at [REDACTED] which is right
10 next door to it, on [REDACTED]. These
11 properties are very close to the Palmer's and
12 Kozikowskis, and they were right next to the
13 property -- we're within a fourth-mile radius of that
14 property as well.

15 We oppose the proposed corporation because,
16 as many people have said, this is a rural area. We
17 have a farm. We've had it for like, I guess 12
18 years. And we have livestock on the property. We
19 have electrical fencing. We have a pond.

20 And all of those things are things that
21 fortunately, we really haven't had to a lot of no
22 trespassing signs or anything because most people

1 have stayed out, but we want to keep it that way.

2 We would be devastated if something
3 happened on our property that was a tragedy for
4 anyone else or for us, for the safety of us, for our
5 ability for us. And also just to change the setting,
6 the setting of what we all have and we all like,
7 right. We just love our community.

8 We chose this area as everybody else has
9 said because it's rural. It wasn't really bothering
10 anybody, and because of the previous zoning that we
11 had, the A1, we thought and expected and relied upon
12 the idea that this was a good investment. And that
13 if we can't count on that zoning, if it changes for
14 other people's purposes, why is it even a zoning. So
15 that was our thought process.

16 And I want to say that I'm totally, totally
17 very, very pro-mental health; I really am. I know
18 what you're doing as far as treating people, treating
19 patients is correct to treat them. And I myself am a
20 clinical counselor. I got my graduate degree at
21 Johns Hopkins University.

22 But, you know, I made the decision not to

1 do a private practice in my home because I don't want
2 my home to be a counseling center. I don't want it
3 to be that. I want to have that where a counseling
4 center belongs, and I ask that of you. You know,
5 just please, I don't think any of you would want your
6 home to be a counseling center.

7 There are many good things that come out of
8 that, but also, there are many unexpected twists and
9 turns that can come out of that as well. And nobody
10 knows that more than somebody who's been in the
11 business a long time.

12 CHAIRMAN CLARK: Your time is up.

13 JANE WALKER: Okay. Can I just say one
14 more thing? My husband would have liked to have been
15 here tonight. He did have -- he has worked on this
16 form so much. And he is undergoing chemotherapy, and
17 so he really wanted to speak as well, but was unable
18 to be here.

19 CHAIRMAN CLARK: Well, we're sorry to hear
20 that.

21 JANE WALKER: Thank you.

22 CHAIRMAN CLARK: Our best wishes to him.

1 JANE WALKER: Thank you.

2 CHAIRMAN CLARK: Any questions for Ms.
3 Walker? None, okay.

4 Thank you very much.

5 Next up is Audrey Hunter, and on deck is
6 Scott Boddie at the podium to my right.

7 Thank you.

8 AUDREY HUNTER: Hello. My name is Audrey
9 Hunter. I am a Newport Academy program graduate.
10 And as a Newport Academy graduate, I completely
11 support the zoning for Newport housing in Loudoun
12 County.

13 Loudoun County would benefit from having a
14 Newport Academy house because there's no program of
15 the quality of Newport in this area. Newport Academy
16 really, really impacted me. Without attending, I
17 would not be where I am today in my mental health
18 journey.

19 I now have a more positive outlook on life
20 and myself. I made great strides in processing years
21 of trauma in just over a month, and I'm continuing to
22 do so. Even though only I attended, my family

1 benefited too. I worked with my family and family
2 therapy at Newport. We worked through so much in the
3 40 days I attended.

4 Mental health is not simple, and I thought
5 I would never be able to get better and work through
6 my issues. Newport Academy proved me wrong. Newport
7 did not just help me through what was going on in the
8 moment, but also what had happened in the past.

9 I was going through impacts of trauma,
10 depression, anxiety, and PTSD. They helped me
11 through so much while giving me quality living
12 spaces, great activities, and helping me be the best
13 I possibly could while working extremely hard on
14 myself.

15 Please approve this zoning variance for
16 Newport Academy in Loudoun County so people like me
17 do not suffer in silence. Thank you.

18 CHAIRMAN CLARK: Any questions for
19 Ms. Hunter?

20 Thank you for your time.

21 On deck next will be Susan Rau to the
22 podium to my right.

1 And, Mr. Boddie?

2 SCOTT BODDIE: It's Boddie, thank you.

3 CHAIRMAN CLARK: I had it right the first
4 time, sorry.

5 SCOTT BODDIE: Yeah, you did.

6 My name is Scott Boddie. I'm a Loudoun
7 County resident, and my company, Pattern for
8 Building, operates in the Dulles South District. I'm
9 a project planner, building designer, project
10 manager. I've represented homebuilder's interests
11 and as well as an advocate for landowners to Fairfax,
12 Arlington, and Loudoun County BZAs trying to find
13 feasibility and mutual combinations in the zoning
14 ordinance.

15 That is not why I'm here tonight. Tonight
16 is personal. I don't need to recount what has
17 already been said about the horrific facts that have
18 put Loudoun County at the top of a very nasty list of
19 national teen suicide. The mental healthcare system
20 was already overwhelmed and under water before the
21 pandemic began.

22 We heard Mr. Precopio's numbers about

1 what's happened in the last two years, and if you
2 talk with the principals and counselors in LCPS,
3 they're terrified. There is a wave coming.

4 When we talk about residents, the damage to
5 residents, our kids are residents. My child is a
6 resident. One of your children, one of your
7 grandchildren is going to need services like this.

8 What is an appropriate location for safe
9 mental healthcare, a hospital? Anyone who's been to
10 the psych ward of any hospital, knows that's the last
11 place they should be. The appropriate thing a
12 hospital does is stop them from doing the worst that
13 week. And if somebody doesn't pick it up after that,
14 they see them come right back, over and over.

15 My child was hospitalized five times. The
16 last time, we had nowhere to go. Fairfax Hospital
17 would not discharge because there was no home. My
18 home my child could not come to. It was not an
19 appropriate home. Newport offered that home for
20 three and a half months.

21 At this point, my child who had been
22 accepted into the four-year engineering program at

1 the Academies of Loudoun, had to leave that program
2 because of the mental health crisis that they were
3 undergoing.

4 I'm glad to say they're back in the academy
5 starting next year, and instead, in a nursing program
6 because the time at Newport convinced them that they
7 wanted to pursue mental healthcare and become a
8 mental health technician. And hopefully, they want
9 to have their home in Connecticut so they can go back
10 and help others at Newport like they were helped.

11 I could go on for an hour about how this
12 company does what they do the way they do it because
13 it works. Institutions don't work. Psych wards
14 don't work. Fairfax hospital is the only one we've
15 got because Loudoun and Fair Oaks doesn't have
16 anything anymore.

17 There are nowhere for our kids to call
18 home. Your home is not going to be it forever. I'm
19 grateful that my son can live in a home and be alive
20 and has a future because there was almost no home
21 anywhere.

22 CHAIRMAN CLARK: Time is up. Thank you.

1 Don't leave.

2 Any questions for Mr. Boddie? No, okay.

3 Thank you, Mr. Boddie, appreciate it.

4 Coming up next to the podium on the right
5 will be Greg Masucci. I hope I didn't slaughter that
6 too bad. And, Susan Rau, you are next.

7 SUSAN RAU: Hello. My name is Susan Rau,
8 and I live on [REDACTED], about a third of a
9 mile from Newport's property.

10 I am in strong opposition to a company
11 claiming by-right status to circumvent local zoning
12 laws that operate a congregate commercial facility
13 out of a row of three residential homes. I am also
14 in disbelief that Loudoun County has chosen to
15 support the addition of a commercial treatment
16 facility in a residential zone after Deputy Zoning
17 Administrator Michelle Lohr on November 29th,
18 determined it congregate and not permitted. We are
19 simply asking that our zoning laws be enforced.

20 Despite the strict 30-day window to appeal,
21 the county did nothing to make citizens aware of this
22 issue. If Newport hadn't announced the purchase of

1 the homes, we would have known only after the fact
2 that it was too late to object. The small window for
3 anyone to appeal was only communicated to Newport.
4 How does that make any sense?

5 In their filing for tonight, Loudoun zoning
6 said that the neighborhood has no grounds to appeal
7 the determination, and that there's nothing to appeal
8 since Ms. Lohr's letter was merely advice. Yet, her
9 letter itself states, please be advised that any
10 person aggrieved or any office, department or agency
11 of Loudoun County affected by an order, requirement,
12 decision or determination made by an administrative
13 officer may appeal said decision within 30 days.
14 This decision is final and unappealable if not
15 appealed within 30 days.

16 Nowhere is it described as advice.
17 Instead, the words determination and decision are
18 used. If we appeal it, as is our right, regardless
19 of how zoning perceives it, the determination
20 detailed a way for Newport to operate despite their
21 use not being permitted, and Newport publicly cited
22 Ms. Lohr's words as a green light to purchase the

1 three homes.

2 Newport's letter handed to select neighbors
3 stated Michelle Lohr issued a zoning determination
4 that our proposed use is permitted use in this zoning
5 district. That is not what she said. What she said
6 was, the short answer to your inquiry is that your
7 proposal use is congregate housing facility, a use
8 not permitted in an AR1 zoning district.

9 A congregate facility is not permitted in
10 the AR1 zoning district, so much so that it's not
11 even possible with a special permit. To force it is
12 a disservice to Newport's clients and to Loudoun
13 County's residents.

14 Newport is backed by billions with a B in
15 private equity funds. They have the means to do the
16 right thing and operate in a commercial zoned area of
17 Loudoun. When Newport tried this in McLean, Fairfax
18 zoning wasn't confused about a congregate operation
19 not being a federally protected endeavor.

20 Please help us clarify this to our own
21 county. Thank you.

22 CHAIRMAN CLARK: Thank you. Perfect

1 timing.

2 Any questions for Ms. Rau?

3 Thank you for your time.

4 Next up I would like to call Wendy Antal to
5 the podium to my right. You will be up after
6 Mr. Masucci.

7 GREG MASUCCI: Yes, sir.

8 Good evening. Thank you for the
9 opportunity to speak. My name is Greg Masucci, and
10 I'm a Loudoun County resident, and also a cofounder
11 of a Farm Less Ordinary, which you've heard a few
12 things about this evening.

13 The farm actually operates on the parcels
14 surrounded by the parcels that were purchased. And
15 we provide employment and job training skills to
16 people with pretty profound disabilities. This is
17 going to directly affect us in many ways, and so I
18 wanted to come here to speak about that, rather than
19 just my Loudoun residency, and also I wanted to speak
20 as a parent of a severely autistic child.

21 I have a stake in this because I'm
22 concerned about the precedent, not only the

1 precedent, but also because our largest growing field
2 is about 150 feet from the nearest home, and even
3 closer to the ten acres they purchased.

4 For us, nothing is more important than the
5 safety and well-being of our growers. Their parents
6 entrust us to care for them while they're at AFLO and
7 we take that very seriously. In fact, virtually
8 everyone who steps foot on the grounds, including our
9 employees, our visitors, and even our volunteers,
10 must complete a full criminal background check.

11 However, we'll have no such assurances
12 about our perspective new neighbors. Sadly, many
13 living near current Newport facilities submit letters
14 describing numerous public disturbances, the runaway
15 of constant sirens.

16 Here, in my business, all it takes is one
17 incident, one person looking to make a scene, to seek
18 help in a manic state or to create irreparable harm
19 to one of my employees who could severate over things
20 in a way that, you know, you couldn't imagine.

21 To me this is a gross zoning misuse at
22 best, and it's a real danger at worst. There are

1 people who have tried to paint this as a NIMBY issue

2 "not in my backyard. But the Wrights actually
3 approached me and gave me the opportunity to operate
4 on their land because it's farming by right.

5 And we're providing jobs, job training as I
6 mentioned. And the problem is if they open, you
7 know, we may have no choice but to shut down due to
8 parental concerns, liability, and insurance concerns.

9 I mean, would it be okay with you if your
10 disabled child being 150 feet away from a treatment
11 campus housing 24 short-term adults clients seeking
12 treatment for unknown medical -- excuse me -- unknown
13 mental and behavioral issues. Not many parents would
14 allow that. With our growing fields so close, it
15 puts us in real jeopardy.

16 To me, it's a sad state -- it's a sad
17 reality that simply reinforces why commercial
18 treatment campuses are not zoned to operate in
19 neighborhoods. Calling a commercial campus a group
20 facility does not make it a group home.

21 I know because my wife and I have been
22 looking to start a group home in the future for

1 people like our son, Max, who is profoundly autistic
2 because we believe it should be at multiple agency
3 oversights. The law is intended to help people like
4 our son establish themselves in the community on a
5 permanent basis and not have people revolve in and
6 out every six weeks. There simply is no community in
7 that.

8 My son would want to be surrounded by a
9 community that he can feel and be a part of. And I
10 feel like this type of facility, big corporate money
11 is going to just destroy and poison the well for
12 people like myself who want to start a group home for
13 my son who requires a permanent home.

14 My wife and I will die one day. And I'm
15 going to have a real tough time finding a group home
16 for my son because everybody will circle the wagons
17 because they're afraid they're going to have
18 something like this on their doorstep.

19 And I thank you for your time.

20 CHAIRMAN CLARK: Hold on.

21 Any questions for Mr. Masucci?

22 Okay. Thank you, Mr. Masucci, appreciate

1 it very much.

2 Next up will be Debbie deLadurantaye.

3 Anybody volunteer to --

4 FEMALE: DeLadurantaye. I don't see her
5 here.

6 CHAIRMAN CLARK: Oh, thank you for that.

7 FEMALE: Sure.

8 CHAIRMAN CLARK: All right. Then I'll pass
9 on to the next name, Jacqueline McCarty Arthur, if
10 you'll come forward to the podium on the right.

11 And so we'll take Wendy Antal.

12 WENDY ANTAL: Antal.

13 CHAIRMAN CLARK: Antal, thank you.

14 WENDY ANTAL: Gentlemen of the Board and
15 Community Members, good evening. My name is Wendy
16 Antal. I grew up in Fairfax County back in its
17 heyday in Reston Town Center and many adventures --
18 I've had many adventures here in Loudoun County
19 dating as far back as 1988, back when Tysons was the
20 size of Fair Oaks Mall.

21 And being back here, I'm reminded how much
22 this place has grown. I'm here to speak to you all

1 about the impact that Newport Academy has had and
2 still has on our lives. There is understandable and
3 valid opposition against adding a new site here in
4 the county. But I hope that our story will persuade
5 you and see this as an opportunity and an asset to
6 the community, rather than a potential threat.

7 We brought our youngest daughter, Moira,
8 who had just turned 17 to Newport's residential
9 facility in Fairfax November 6, 2020. I say this
10 date with distinction because that was the exact date
11 one year prior that she had her left leg amputated, a
12 sacrifice she made by choice to improve her quality
13 of life.

14 You see, in her short life, Moira has had a
15 total of 21 surgeries and thousands of hours of
16 therapy to treat a physical condition she was born
17 with. As a result, she suffers with PTSD, anxiety,
18 and depression on top of her chronic pain.

19 My husband and I took her to weekly
20 counseling and involved her in peer support groups,
21 and yet, it never seemed to be enough. It was like
22 more damage control than it was an overhaul. And

1 after years of trying to stay afloat, Moira spoke up
2 and said she needed help.

3 Enter Newport. Newport was the one that
4 checked all of the boxes. We wanted her in a
5 home-like setting. Check. Not institutional. We
6 wanted her to continue her schoolwork. Check. We
7 wanted her to acquire skills to manage her mental
8 health. Check. We wanted her at a facility that
9 included family therapy and education. Check.

10 As you can see, I have high standards. The
11 fact that there was a place that provided all of that
12 was a Godsend. My husband worked with Fairfax County
13 Police Department, and he has never had any, any
14 problem with that facility on Kurtz Road, the Kurtz
15 facility, none whatsoever. And as a mama bear
16 knowing that it was just a short drive away and my
17 husband could go there at the drop of a hat, was a
18 great piece of mind.

19 Moira stayed at Newport for 82 days, and it
20 saved our life and change ours. The staff worked
21 hard to create a treatment plan that carried over and
22 tremendously improved her well-being.

1 Ladies and Gentlemen, I understand that
2 there are concerns and reservations you have about
3 the treatment center being placed in your backyard,
4 asking yourself what will this cost me. Will taxes
5 go up. Will property values go down. Will we be
6 safe. Will things get disturbed. Will I be woken up
7 at 2:30 a.m. by some kid running around down the
8 street throwing a bunch of burnt toast at my house.

9 Honestly, I don't know. None of us do.
10 But I'd like to ask you guys this. Could one of
11 these teens grow up to be a doctor that treats your
12 grandchild for cancer, a police officer that helps
13 you at a traffic accident, a county board member, or
14 like my daughter studies one day to be the kind of
15 therapist who was there for her when she was
16 suffering.

17 CHAIRMAN CLARK: Times up.

18 WENDY ANTAL: Thank you.

19 CHAIRMAN CLARK: Any questions? All right.

20 Thank you very much.

21 The only person I say at this time that I
22 pronounced it before, Tolliver, Melissa Tolliver or

1 Taliaferro.

2 MELISSA TALIAFERRO: Taliaferro.

3 CHAIRMAN CLARK: I got that right?

4 MELISSA TALIAFERRO: You got it right.

5 CHAIRMAN CLARK: Great. Thank you.

6 So up next is Jacqueline McCarty Arthur.

7 JACQUELINE MCCARTY ARTHUR: Could I get

8 slide number 21 please.

9 Hi. My name is Jacqueline McCarty Arthur.

10 I live on [REDACTED], about a mile from the

11 proposed facility.

12 As you've heard tonight, Loudoun County
13 zoning determined Newport's use as congregate and not
14 allowed, then suggested they could be separate group
15 homes. If Newport's use was not allowed, why would
16 he county then give them the option to rephrase what
17 the call themselves. Newport's own website calls
18 these facilities rehab centers and campuses.

19 Additionally, substance abuse treatment is
20 not permitted in AR1 districts. Newport not only
21 treats substance abuse and lists it on every web page
22 describing their services. They even provided an

1 illustration to explain the combination of a
2 secondary diagnosis for substance abuse.

3 As described in their own records,
4 20 percent of their patients have a secondary
5 diagnosis of substance abuse, while six percent have
6 a primary diagnosis. State code 2291 makes a caveat
7 for its coveted by-right status very clear. "Mental
8 illness and developmental disability shall not
9 include current illegal use or addiction to a
10 controlled substance."

11 The question is also whether any of these
12 possible 190 to 258 different clients that the
13 facility would treat in a given year are considered
14 addicted. The Southern Management case state that a
15 person who has not been using for some time, is still
16 considered an addict.

17 In other words, I could be addicted to an
18 illicit drug yesterday or two weeks ago, and show up
19 for treatment at Newport's facility tomorrow. I
20 would still be considered addicted even if I'm not
21 currently using.

22 Slide 22 please.

1 Newport would argue that they would only
2 treat adults with eating disorders, anxiety or PTSD
3 at this location. But as you can see in slide 22,
4 they recently advertised a job opening in Leesburg
5 for someone with experience with substance abuse.

6 Newport also stated they provide regular
7 drug tests for their client. And as their record
8 shows, they have an expulsion rate of three percent
9 for anyone discovered to be using a substance while
10 under Newport's care, which begs the question why are
11 you testing and expelling if there's no substance
12 abuse allowed in Newport's facilities.

13 As an expectant mother, I have grave
14 concerns about Newport moving into my neighborhood.
15 We chose to move here -- my husband has PTSD from the
16 military -- we moved to Loudoun County specifically
17 because of the serene nature that it provides. I'm
18 very concerned about this, and I implore you to
19 uphold the congregate housing determination. Thank
20 you.

21 CHAIRMAN CLARK: Thank you.

22 Any questions? All right.

1 Next, I'd like to invite up Larry Thomas to
2 the podium to my right. Is Mr. Thomas here? Great.
3 all right.

4 So Ms. Taliaferro, you're next.

5 MELISSA TALIAFERRO: Thank you. My husband
6 and I, along with our five children ages 11 to 18,
7 live just off of Kingsmill Road on Gape Road, which
8 is about seven-tenths of a mile south of these homes
9 on Gleedsville. We have been residents of the area
10 for ten years.

11 We have been deeply impacted by mental
12 illness. We have two children who have received
13 treatment. Fortunately, they've not needed to
14 receive residential treatment, but that has been
15 something that we've been forced to consider and
16 evaluate as a possible care option. And I am
17 strongly in favor of Newport Academy's intended use
18 of these homes.

19 Mr. Chairman, I promise you that this is
20 not a club that anybody wants to be a part of. Some
21 of those definitions are a little tough to hear.
22 People seeking residential treatment are not feeling

1 loved.

2 Nobody wants to be in a situation where
3 they have to consider residential treatment for their
4 loved one. Nobody wants to go through the daunting
5 task of evaluating all the pros and cons of the
6 various treatment options. Certainly, nobody wants
7 to be in a situation where they have to place their
8 loved one very far away from their family.

9 I think that anybody who's in this
10 situation would want to be able to participate in
11 that treatment. They would want to be able to ut
12 eyes on their loved one. They would want to be able
13 to ensure that their loved one was safe.

14 And so the idea unfortunately that parents
15 are faced with, their family members are faced with
16 is placing them out of the community, out of the
17 state, out of the region. That's a very real concern
18 for families that are in this situation.

19 I have a lot of personal passion on this
20 topic. I'm hoping not to react to some of things
21 that I'm hearing negatively tonight. These are
22 actual real, live suffering people that already live

1 in our community. They already live in our
2 community.

3 I have a large group network of other
4 mothers who are constantly strategizing together to
5 try to solve these problems for our children so that
6 we're not faced with residential treatment. We talk
7 about therapists. We talk about psychiatrists. We
8 talk about medications. We talk about school
9 avoidance. We talk about adverse effects.

10 That's what I spent a lot of my time doing,
11 in addition to parenting five children, two of them
12 are mentally ill and working full-time as a
13 management technology consultant is a heavy load and
14 a heavy burden.

15 It's unfair to assume and to paint these
16 individuals with a broad brush to imply that they
17 were going to be running around the community. That
18 they're going to be rolling in the streets. That
19 they're going to be dangerous to others, is
20 categorically unfair. That may happen, but that may
21 also happen if these individuals are living in our
22 community without any care.

1 It is more likely to happen if they are
2 living without care, and it is more likely they are
3 more likely to be a harm to themselves than to
4 others. And I think you've heard that, some
5 discussion today about suicide reality.

6 So when I got the letter, I jumped on and I
7 wanted to see what I could learn. But, you know, we
8 had a seventh grade boy in our community at the end
9 of February that took his own life. And I want to
10 make sure that we give young women the access to care
11 so that this doesn't continue to be a headline and a
12 story that we're hearing in our community.

13 CHAIRMAN CLARK: Your time is up.

14 MELISSA TALIAFERRO: Thank you.

15 CHAIRMAN CLARK: Any questions?

16 Ms. Taliaferro, thank you for your time.

17 Appreciate it.

18 MELISSA TALIAFERRO: Yep.

19 CHAIRMAN CLARK: Next up will be Lori

20 Fairfield the podium to my left.

21 Mr. Thomas, your floor.

22 LARRY THOMAS: Thank you.

1 My name is Larry Thomas, and I live at
2 [REDACTED] I'm a hundred feet away and
3 directly next door to Newport's property.

4 As a real estate broker, I'm concerned
5 about the depreciation of the property values. We
6 submitted research showing a devaluation of
7 approximately 12 percent of properties closest to
8 Newport's location on Kurtz Road in McLean from 2018
9 when they bought the home, to the end of 2021.

10 Over the same period, the rest of the homes
11 built in the neighborhood experienced approximately a
12 22 percent increase in home values. And McLean
13 overall, saw a 21 percent increase in home values.

14 So in a housing market where the rest of the
15 neighborhood and the rest of McLean saw a significant
16 increase in values, those closest to Newport saw a
17 decline in homes adjacent and nearby. There, a
18 proposed three-home campus would no doubt experience
19 a similar decrease in property values. And this is a
20 harm that will not be experienced by the public at
21 large.

22 Loudoun County is similarly defending their

1 right of this commercial treatment facility to
2 operate in contradiction to prohibitions in the AR1
3 zone. And they are questioning whether I, as an
4 adjacent neighbor a hundred feet away, have standing
5 on this issue. It's pretty incredible.

6 If Loudoun County sets this precedent,
7 Newport and other companies with the same business
8 models have a green light to buy clusters of
9 residential homes and use them as commercial
10 treatment facilities.

11 In Orange Acres, California, Newport just
12 purchased their 12th home in the same small town.
13 That's not speculation, it's real life. And
14 residents that the home prices have been negatively
15 affected there as well.

16 Not only will this commercial campus alter
17 the character of our neighborhoods eroding the
18 character of the AR1 district, it will set a
19 precedent threatening the same for other AR1 zones,
20 such as Beacon Hill, Sandstone, Big Woods,
21 Longmeadows, Kings Crossing, Saddlebrooks. There are
22 AR1 clusters of homes all around Loudoun County.

1 I also have individual concerns about
2 disturbances generated by a 24-client compound with a
3 10 to 15-person staff per home, an average of 70
4 people, clients, therapists, counselors, yoga
5 instructors, maintenance staff going in and out of a
6 commercial treatment facility a hundred feet away
7 from me, I probably won't get to hear the wind chimes
8 on my own deck.

9 If they succeed in allowing a commercial
10 congregate facility by-right use, there would be no
11 restrictions, no permits, nothing to abide by, and
12 it'll be the first of many commercial campuses amidst
13 family homes in Loudoun. Fair Housing laws and
14 Americans With Disabilities Act were never intended
15 to allow commercial treatment facilities deemed
16 congregate to operate where they shouldn't. Thank
17 you.

18 CHAIRMAN CLARK: Thank you, Mr. Thomas.

19 Any questions for Mr. Thomas? Okay.

20 Thank you very much.

21 Next at the podium to my right will be Alex
22 Stein, and we'll turn now to Lori Fairfield.

1 LORI FAIRFIELD: Great. Thank you. I
2 probably should have written my notes down.
3 Hopefully, I won't ramble for you.

4 I am a Loudoun County resident. I'm a
5 mother of teenagers, two 16-year-olds.
6 Unfortunately, in my family, we struggle with mental
7 illness. I am part of a very unfortunate club that I
8 do not want membership in.

9 My daughter has been hospitalized five
10 times over the last year. Has participated probably
11 in every type of mental health treatment that you can
12 imagine. The only thing that helped, and when things
13 started to turn around, was when she spent a
14 significant amount of time at Newport at one of the
15 residential homes in Great Falls.

16 And they are residential homes. I'm lucky
17 enough to live in Ashburn. Many of the residents
18 there live far away. Their parents can't visit. I
19 was lucky enough to be able to deliver Amazon
20 packages, to deliver prescriptions, to pick her up --
21 she was there twice -- to pick her up and -- I'm
22 sorry, not to pick her up -- to drop her off for

1 treatment the first time, pick her up, drop her off
2 again, be inside the home. The clients lived there.

3 And the reason that Newport was so
4 beneficial is because there is a dedicated therapist.
5 There is a dedicated family therapist. I've heard a
6 lot of people mention it's not the right place for
7 treatment. I have friends who've gone for treatment
8 and home is not the right place for some people.

9 It's the only thing that works.
10 Fortunately, it seems like she's turned things
11 around. She's in recovery. She's on the right
12 medication thank goodness. We never would have
13 discovered this in a hospital.

14 That parent who said a hospital's purpose
15 is to stop them from doing the very worst, absolutely
16 right. A program that lasts for four weeks
17 afterwards, PHP had no impact, right. We just went
18 back to the same negative behavior. All they do is
19 prescribe medication. And I'm not anti-therapist.
20 I'm not anti-PHP. They prescribe medication and then
21 they release a child and you're on your own.

22 I, the other day, called the therapist to

1 try to make appointments. Do you know what the wait
2 time is in Loudoun County for a one-hour therapist
3 appointment? 60 days. 60 days. Do you know how
4 quickly prescriptions run out? 30.

5 Our children need help. Any treatment
6 option that we can add to Loudoun County, any bed,
7 any option is going to be a benefit to the community
8 at large.

9 CHAIRMAN CLARK: Your time's up.

10 Any questions for Ms. Fairfield?

11 Thank you very much.

12 LORI FAIRFIELD: Thank you.

13 CHAIRMAN CLARK: Appreciate it.

14 Next up to the podium on my left would be
15 Dr. Lambert-Woodard, is she here? I know we had the
16 written materials. All right. Then I'm going to
17 call Maria Zimmitti to the podium on the left.

18 Well, we're losing Alex Stein. Do we not
19 have Alex Stein? All right. I'm gong to call the
20 next name, Maria Zimmitti, the next name, Anthony
21 Virgilio.

22 Sir, would you come up and take the podium

1 to my right.

2 And next up would be Caroline Schiralli on
3 the left. Is she here? Good. Thank you.

4 TONY VIRGILIO: Can I have everyone else's
5 time too? I'll be here a while. My name is Tony
6 Virgilio. I'm a resident that lives in the area, and
7 I have three quick things that I'd like to convey to
8 you and then a comment for the group here.

9 First, is that I knew the previous owners
10 of the property. They tried for several years to
11 sell the property. It was unsellable. They could
12 not sell it. One of the reasons for that was when
13 you reviewed the other property and you went to the
14 open house, and you talked to the real estate agents,
15 it was actually developed and operated as a family
16 compound.

17 They had residents there. They had
18 grandparents. They had in-laws. They had mother and
19 father. They had children there. And the facility
20 was developed with a nine-hole golf course that spans
21 all three properties, a swimming pool complex that's
22 amazing that served all three of the homes.

1 The septic system for one house was on the
2 property for another house. The well for one was on
3 these properties, and a third single driveway. There
4 was no way that this place could actually be
5 separated up and called three separate residences
6 because they didn't use it as three separate
7 residences. They used it as a family compound and
8 that's what it is. So the idea of that this is going
9 to be a residence and not be a compound -- not being
10 a congregate facility is crazy; it just doesn't work
11 that way.

12 Second, is that, you know, I heard this
13 from residents. And you don't call people residents
14 when they're kidnapped or forcibly committed to a
15 facility and required to stay there or they're
16 drugged and given mood-changing narcotic drugs in
17 order to be able to keep them under control and to
18 keep them there, or you go through the process of
19 finding out that they escaped and they've run away.

20 I wouldn't call that residents. In fact,
21 if you did that to your kids or I did it to my kids,
22 we'd call it parental abuse and then we'd be in jail.

1 But that sort of what goes on at these facilities.
2 It's not somebody that says hey I'm going to go in
3 there and I'm going to be in there and have a nice
4 time. And oh, by the way, I was ordered to the
5 facility and I'm going to stay there. That's not
6 what happens. So let's get this off the table and
7 say that these are residents that don't want to be
8 there.

9 The third thing, it's a quick Google search
10 to find out the criminal activity that's associated
11 with the facilities, both by the staff as well as by
12 the residents, if you want to call them residents.
13 And it's not small, it's very large. Do a quick
14 Google search, you'll find not hundreds, but
15 thousands of examples where people actually committed
16 crimes at the facilities, to the residents, to the
17 staff.

18 There was one recently in Stafford County.
19 One of the caretakers there got six felony charges
20 placed against him. Last, before I run out of time,
21 is that we empathize with the parents that are here
22 today that have children that are affected by mental

1 illness and have to have services and support. We
2 have all had either relatives, family members,
3 distant friends who have had mental illness problems
4 and suffered it.

5 But if Newport is so damn interested in
6 taking care of these people and providing for them,
7 then why are they housing them in a multi-million
8 dollar complex that is basically million-dollar
9 homes, instead of developing a congregate facility
10 that can house not just 20 people, but a hundred
11 people and take care of them and provide for them.

12 If they're concerned about the people, if
13 they're concerned about the citizens, if they're
14 concerned about these individuals, then they should
15 take care of them, instead of just talking about
16 using this facility for that purpose. Thank you.

17 CHAIRMAN CLARK: Thank you, sir.

18 Any questions for Mr. Virgilio?

19 Thank you for your time.

20 Caroline Schiralli?

21 CAROLINE SCHIRALLI: Hi. My name is

22 Caroline Schiralli. I live at [REDACTED]

1 in Leesburg. I was asked to read this letter on
2 behalf of Melena Doco, a neighbor of Newport's
3 location on Kurtz Road in McLean, as she couldn't be
4 here this evening.

5 I live three doors down from a Newport
6 facility in Salona Village in Fairfax, at 1324 Kurtz
7 Road. I have a master's degree in Urban Planning and
8 I'm a member of the American Institute of Certified
9 Planners.

10 I was asked by a neighbor of the proposed
11 facility in Loudoun County to share what I shared
12 with the Board of Zoning appeals in Fairfax County.

13 I believe Newport is misusing state code and local
14 zoning laws to claim that they're medical facility is
15 a group home.

16 By most people's definitions, someone who
17 is temporarily staying at a place for 45 to 90 days
18 is not a resident. These adults have a home to go
19 back to when they are done with treatment. No one is
20 living at the facility at 1318 Kurtz Road and not in
21 the ones in Loudoun.

22 I also want to speak to you about my

1 experience at a single-person business that operates
2 out of my home. I am under significant restrictions
3 with operating my business that Newport Academy does
4 not need to comply with because they claim to be a
5 by-right group home.

6 I understand and know the conditions are
7 more restrictive than those imposed on residents as
8 occupied by persons related by blood, marriage or
9 adoption may be imposed on such a facility is the
10 rule. But I am not clear why the business they are
11 running out of the home should not be subject to the
12 same laws I am.

13 We can't impose more restrictions on group
14 homes, but we're allowed to impose less restrictions
15 than we are on homeowners. In Fairfax, I am allowed
16 to have one employee at my house from 8 a.m. to
17 5 p.m. They will have at least eight employees on
18 staff at any one time. I am allowed to have one
19 commercial vehicle on the site, and they have stated
20 they will have eight to nine cars per each house.

21 This has proven to be true as they are
22 currently operating a facility and the driveway is

1 always full of cars. They even have a shuttle for
2 their employees to the homes. I am not allowed to
3 have customers or clients. They have eight clients
4 per home.

5 They are clearly operating a business
6 significantly larger than mine without any oversight
7 at all. In closing, none of us is opposed to the
8 treatment that Newport offers. This is not about
9 that. This is about operating a multi-million dollar
10 business within a residential neighborhood and trying
11 to define it as a protected group home.

12 The point is not what it is, but where it
13 is. This type of facility does not belong in the
14 middle of a residential neighborhood with no
15 oversight. It is not a group home. Perhaps it's
16 time to get a new definition within our zoning
17 ordinance before Fairfax County and Loudoun County
18 are both overrun by medical treatment facilities
19 masquerading as group homes. Thank you.

20 CHAIRMAN CLARK: Thank you.

21 Any questions for Ms. Schiralli? All
22 right.

1 Thank you very much. Well, that takes us
2 to the list of preregistered speakers. I'm going to
3 declare a recess until 9:36. That's five minutes so
4 the board members and the speakers can take a
5 bathroom break.

6 We have a number of people who have
7 registered to speak as of the beginning of this
8 meeting. So we do have more business and then a
9 debate on the issues. So stay tuned. 9:36 we'll be
10 back. Recess.

11 (Brief recess.)

12 CHAIRMAN CLARK: We're back in session.
13 Could I please have it quiet and everyone's attention
14 please. Please take your seats. All right.

15 There are five new speakers who've signed
16 up since the beginning of the meeting. We will take
17 those speakers if there are no slips of paper turned
18 in to the clerk.

19 At that point, it's going to be my
20 intention to close the public hearing, according to
21 the law and according to our procedures, at which
22 point, we'll proceed to a debate and a decision

1 amongst the board members.

2 So if you would like to speak, please make
3 your way to the front of the room and get a piece of
4 paper from the clerk to give us information about
5 your name, address, and so on; okay?

6 So we'll continue with the process that we
7 were using earlier. I'm going to ask Abigail Abraham
8 to come to the speaker -- to the podium on my right,
9 and Aparna Madireddi come to the podium on my left
10 and you'll be ready to become the second speaker in
11 this portion.

12 And, Ms. Abraham, you may start when you're
13 comfortable.

14 ABIGAIL ABRAHAM: Thank you. My name's
15 Abigail Abraham. I live 0.4 miles away from the
16 proposed facility. I graduated in 1992 from law
17 school and clerked for the U.S. Court of Appeals on
18 the Sixth Circuit, and then started a practice, but
19 in a different area of the law.

20 So I've been interested -- I've been very
21 interested in listening to the legal arguments and
22 because I'm going to end up switching out some of

1 what I was planning to say, this may end up being
2 more disjointed than I would have hoped.

3 So, Mr. Moffett to Mr. Precopio, you said
4 that you could do congregate, and I think that the
5 responsive part was, we prefer to do group homes or
6 we prefer to do group situations. And there have
7 been a number of people who have said how valuable
8 the group situation is.

9 That may be. But knowing that, addresses
10 why it needs to be in an AR1. Why it can't be in
11 another zone. Now, since zoning is not my thing, so
12 I don't know what all the other zoning options are,
13 but there clearly are other options and you can do
14 group settings, even if they're not congregate
15 settings -- and I believe that this is congregate in
16 any event -- but you could do the same kind of
17 treatment plan in another area. And nobody is
18 objecting or suggesting that there is not a need for
19 this sort of service in Loudoun County.

20 Your question, Mr. Clark, was does mental
21 illness in 15.2-2291 trump in terms of you were
22 talking about two different issues. I think the

1 answer is yes. And that's because it says, mental
2 illness shall not include current illegal use, et
3 cetera, et cetera.

4 So it's suggesting that for some reason,
5 that class of people needs to be excluded from that
6 kind of setting, and therefore, there is something
7 about that treatment process that is a problem. So I
8 don't think that if you have a dual diagnosis, I
9 think that's still a problem. I don't think that if
10 you have the two diagnosis, that the schizophrenia,
11 for example, trumps. I think that the dangerousness
12 or the problematic aspect of it is the other thing
13 that trumps.

14 It's strange credulity to suggest that a
15 lack of standing of homeowners whose property values
16 or quality of life would be affected by inappropriate
17 decisions to allow congregate living in a residential
18 neighborhood deem any homeowner at risk in the areas
19 at risk for this determination because it's going to
20 affect their property values if those homes go in, in
21 other areas.

22 I think also such a facility has

1 demonstrably impacted the ease of sale and property
2 values in the nearby area. This is worse than a
3 Fifth Amendment taking. The government is imposing a
4 property value loss on the surrounding area, while
5 simultaneously conferring a benefit which mirrors
6 only to one private property and in this instance, it
7 is Newport.

8 While I was trying to crystallize what to
9 say tonight, I was thinking that (Unintelligible.)
10 has an unwarranted bad rap. The whole point of
11 zoning is to codify a (Unintelligible.) because it
12 tells you what the permitted uses are and what the
13 non-permitted uses are. I chose to move to an area
14 that has (Unintelligible.) at dawn. I did not choose
15 to move to an area that has congregate housing and
16 has this sort of treatment.

17 It is a question zoning specifically tells
18 you that a steel plant, for example, cannot be in an
19 AR1. That's the point of zoning. Thank you .

20 CHAIRMAN CLARK: Thank you very much.

21 Any questions for Ms. Abraham before she
22 scoots too far away from the podium? All right.

1 Thank you.

2 And next to the podium to my right will be
3 Stephen Druhot. Are you still here.

4 STEPHEN DRUHOT: Yes, I am.

5 CHAIRMAN CLARK: Okay, excellent. Thank
6 you very much. Please come up to the front.

7 And so right now, it's Aparna Madireddi.

8 APARNA MADIREDDI: Good evening. My name
9 is Aparna Madireddi. I'm a resident at the Rokeby
10 Farm. Before I relocated from California to Virginia
11 last year, I served as a board member for a number of
12 years for a very well known nonprofit in the Bay area
13 in California.

14 It's called Discovery Counseling Center.
15 It provides mental health services to students and
16 families. And I was an integral part of that
17 organization, helped them with fundraising efforts,
18 with marketing so we could serve more families and
19 more students.

20 And in 2018, I helped them open a satellite
21 office in the city that I lived in because the need
22 was so immense in that community. It was not in a

1 residential area and it was very successful once it
2 opened in that city. Another organization, a
3 nonprofit that I was a part of in California was
4 called Being Well CA. And this organization is
5 dedicated towards improving student mental health for
6 the entire California.

7 And when they launched their DMV license
8 plate initiative, which was to highlight the mental
9 health challenges that students and their families
10 face, I was one of the very first few people who
11 purchased their license plate, even though I knew it
12 was pointless for me because I was going to relocate
13 to Virginia.

14 So my support, my commitment to mental
15 health causes has been ongoing for a number of years.
16 I understand what this illness looks like. I
17 understand what a good location for a treatment
18 facility looks like. And what Newport has chosen
19 this time is a lousy one.

20 Zoning ordinances are in place to protect
21 public safety health and well-being. They are in
22 place to protect a community's character, not to

1 disrupt it. Newport Academy wants to address mental
2 health issues. Yet, it is causing so much mental
3 anguish to residents at this time because of their
4 choice of location.

5 So I'd encourage Newport Academy to not
6 focus on short-term profit making goals, but rather
7 look at the bigger picture, the bigger vision which
8 is ultimately to help the children and their
9 families. Thank you so much.

10 CHAIRMAN CLARK: Thank you for your time.

11 Any questions for the speaker?

12 Thank you very much.

13 Next up to my podium on the left, we're
14 going to invite George Johnson and Mr. Druhot, you
15 have the podium.

16 STEPHEN DRUHOT: Thank you.

17 Good evening. My name is Stephen Druhot.
18 I'm sorry that we're having this hearing that is
19 vital to our community. I moved here with my family,
20 wife about 50 years ago. At that time, we bought
21 some acreage south of Leesburg in what's now -- at
22 the time, was Route 650, unpaved. Still unpaved.

1 Later, renamed Gleedsville Road.

2 It's a beautiful two-lane, but it hasn't
3 been modified. It's been reconstructed a little,
4 it's been repaired a little, but it hasn't basically
5 been changed in half a century.

6 When I come out of my driveway, I turn left
7 and immediately go by a blinking severe curve, and
8 that's where the proposed houses are for the Academy.
9 It's not an ideal situation.

10 When we moved to Leesburg, we knew it was
11 going to grow and why wouldn't it grow. It's a
12 beautiful place and a lot of people want to bring
13 their homes there. I remember when they started the
14 first subdivision just right south of Route 15, and
15 that was the first. And then there was the next one,
16 the next one, and the next one.

17 The good news about this is that these were
18 families that were moving in. There weren't 7-11s.
19 There weren't hard fast foods, so it was a community
20 that was going to be family-oriented. And at that
21 time, the zoning ordinance was protected; it was
22 honored.

1 Like so many people before, we're not
2 opposed to growth in Loudoun County. We're not
3 opposed to a facility that helps young adults and
4 adolescents, I guess that's the other group that's
5 going to be involved.

6 What we are opposed to is the Newport
7 facility location for profit and commercial facility.
8 It's not right for our area. There are other
9 locations that could be considered, maybe even near a
10 more commercial area or maybe even near a hospital.

11 We do not need more traffic in Gleedsville,
12 as a two-lane road will hardly be able to support
13 what's going on now, the possibility for added
14 infrastructure and the possibility of criminality.
15 Once you open this up, it's a little like the camel
16 in the tent. Once they get their head in it, it
17 doesn't normally change. And what's going to happen
18 is there's going to be more and more exceptions that
19 will be asked.

20 I think that in essence, the county has
21 broken their --

22 CHAIRMAN CLARK: Your time is up.

1 STEPHEN DRUHOT -- promise to us. The
2 county promised us that we WOULD be living in an
3 agricultural area. They promised us that we would
4 have a good quality of life, and this is very much in
5 jeopardy. It's wrong to change. We live off the
6 Gleedsville --

7 CHAIRMAN CLARK: Mr. Druhot, I need to as
8 you to wrap up. You're past your time.

9 STEPHEN DRUHOT: Okay.

10 CHAIRMAN CLARK: Oh, okay. You can finish
11 the sentence.

12 STEPHEN DRUHOT: All right. I'd just say
13 that I'm here to pledge that all of my efforts and
14 manners will be used to support that the change is
15 not instituted. Thank you.

16 CHAIRMAN CLARK: Okay.

17 Any questions for Mr. Druhot? All right.

18 Thank you very much.

19 Next, I'd like to call up on deck Michael
20 Wright.

21 And our next speaker is George Johnson.

22 GEORGE JOHNSON: Good evening, and thank

1 you. My name is George Johnson, and I'm here on
2 behalf of my wife, Leah, who is the founder of Little
3 Tree Hugger Preschool. We're an environmental
4 educational initiative operating through a minor
5 special exception as a family day home less than a
6 mile south of the property in question on Gleedsville
7 Road.

8 Our business which is most easily described
9 as a farm school, operates 11 and a half months out
10 of the year with children spending time outdoors and
11 in contact with nature 75 percent of the time rain or
12 shine.

13 Our property has been designated a wildlife
14 sanctuary by the Loudoun Nature Conservancy and the
15 Audubon Society. We've won numerous awards from the
16 Loudoun County Chamber of Commerce as well as the
17 Virginia Green Initiative ever since 2016 for our
18 commitment to sustainability through, among other
19 things, a 48-panel solar array generating
20 16,000-kilowatt hours of energy a year. We have
21 geothermal and we have numerous other sustainability
22 programs in place.

1 As a result of these programs, we have a
2 wait list sometimes 30 children deep. And as a
3 result, we founded Little Tree Huggers Earth Center,
4 a 501(c)(3) nonprofit in 2020 to manage this
5 expansion. To say we embrace being part of Loudoun
6 County's rural policy area and are committed to
7 supporting the maintenance of Loudoun's enduring
8 rural landscape is an understatement.

9 And what brings us here today is a deep
10 concern for what appears to be a trend for corporate
11 misuse of residential areas. Just within the past
12 year, two properties adjacent to ours were purchased
13 by different business owners.

14 One attempted to turn their three-acre
15 parcel of land into a slaughterhouse and commercial
16 vehicle storage facility, at one time having more
17 than six or seven dump trucks parked in direct line
18 of sight from our home and preschool.

19 The other party tried to turn a pristine
20 32-acre parcel of land between our property and
21 Oatlands plantation into a junkyard. Now, thankfully
22 the zoning department acted on those illegal uses and

1 they were able to remediate.

2 But Newport Academy's proposed congregate
3 living and treatment facility campus, in addition to
4 being another example of this type of misuse, has
5 appalled us even further.

6 Our institution has sought a special
7 exception zoning request since 2020 to expand from a
8 family day home which has 12 students to a 20-student
9 facility, not a huge jump. And despite the fact that
10 we've gotten lots of support by the planning officers
11 assigned to us, two years have elapsed and we don't
12 even get phone calls anymore. So we're trying to do
13 the right thing, and because we're essentially a
14 mom-and-pop operation on a shoestring budget, we're
15 getting no traction.

16 But fast forward to Newport Academy's
17 application, and they seem to be fast-tracked. It
18 doesn't seem consistent to us. We're trying to
19 maintain the rural character of the community, and
20 this endeavor is certainly going to bring a lot more
21 traffic than what we've discussed tonight. Thank
22 you.

1 CHAIRMAN CLARK: Thank you.

2 Any questions for the speaker?

3 Thank you very much.

4 Next speaker is Michael Wright.

5 MICHAEL WRIGHT: My name is Michael Wright.

6 My family and I reside at [REDACTED]
7 which we acquired 24 years ago and which abuts the
8 northern property line of the real estate bought by
9 Newport Healthcare.

10 We found out about this by receiving a
11 photocopied piece of paper stuffed in an unframed
12 envelope delivered in the dark of night in our
13 mailbox after Thanksgiving of last year. That's the
14 only interaction I've had with my new neighbor.

15 In researching Newport at other locations,
16 it appears that what started off as an innocuous
17 small holding, has morphed into a larger premise.

18 What's to stop the expansion beyond the homes on
19 these parcels at the moment. They're sitting on a
20 valuable ten-acre undeveloped lot right on our
21 border. We've already heard my wife has explained to
22 you that we can hear everything.

1 We've already heard the work that has been
2 undertaken in these houses as they're busy
3 renovating, even though as we've heard tonight, they
4 don't have a license yet. I won't go into the virtues
5 of AFLO. You've heard enough of that tonight. But I
6 can assure you despite the fact that it's been
7 asserted by Newport that there won't be an issue,
8 there's no such thing as a hundred percent guarantee
9 in life. And my wife and I have discussed this, and
10 if this goes through, I don't think we can accept the
11 risk of potential liability with AFLO around.

12 Another point is the fact that of
13 community. Community is just not stroking a check to
14 organizations in the sake of good corporate
15 relations. Community is the myriad of volunteers who
16 invest their time in improving the community as a
17 whole through participation, supportive, and
18 volunteering. Given the express purpose of this
19 facility, we cannot expect Newport or their clients
20 to have a vested interest towards the well-being and
21 growth of our community.

22 Loudoun County has clear rules against

1 treating substance abuse in residential zones.
2 Despite all of the guarantees that have been asserted
3 tonight, I don't see how that can happen. And I'd
4 like to see the zoning laws upheld. Thank you.

5 CHAIRMAN CLARK: Thank you, sir. Mr.
6 Kershner has apparently returned to the room. I
7 don't feel that I can recognize him as a matter of
8 right because we already put him on the list and
9 recognized his chief of staff to speak on his regard
10 on his behalf. However, if the Board wishes to
11 indulge one to essentially speak a second time, I'll
12 be happy to indulge.

13 Are you all okay with that?

14 MR. WALKER: Sure.

15 CHAIRMAN CLARK: Any objection? All right.
16 Let's note that we are making an exception to our
17 rule of one speaker. And I'm going to ask Supervisor
18 Kershner to address us.

19 Sir, you've got three minutes. Thank you.

20 SUPERVISOR KERSHNER: Thank you. I'll try
21 not to use all three. I had a number of meetings
22 tonight. I'm sorry I wasn't able to be here earlier

1 and just say a couple of things. And I'm not going
2 to beat a dead horse with a stick because I think
3 most of you probably have heard most everything
4 multiple times tonight and a lot of the concerns of
5 the citizens.

6 I will tell you thank you for listening to
7 all of this. Thank you for that, and thank you for
8 those who have put before this. I know this is kind
9 of a big deal. And I've been, and my staff have been
10 working regularly with the constituents and a number
11 of the folks that live in this area specifically near
12 the Newport property that's been put before you in
13 terms of a zoning appeal.

14 As I mentioned before, as you mentioned, my
15 Chief of Staff did read a lot of my specific
16 comments. But I will just tell you that just kind of
17 from a general overview, we obviously have the
18 ongoing concerns of what the AR really is and whether
19 this is an appropriate use, commercial use within the
20 AR. I know you heard a little bit tonight about the
21 use of firearms and what that means in the AR, and
22 whether this would be appropriate use and could stand

1 there.

2 I'd also point out to you is this really
3 the right place for something like this. And I
4 understand that there's a mixture of state law here
5 as far as the Dhillon Rule and whatnot, but is this
6 really truly the right place for this. And I'm not
7 necessarily taking one or not position, but I know
8 that you have a difficult choice given what's been
9 put forward whether or not to make a very specific
10 legal decision here.

11 And I would note that also, this was an
12 advisory opinion by the County Attorney, by the
13 County Attorney's Office and it was not specific. So
14 I would urge you to really look, parse through
15 everything that has been said tonight. And I do
16 believe that you will make the right decision.

17 But at the end of the day, the question
18 then arises is this really what the AR1 area
19 specifically meant and what this statute specifically
20 allows. Thank you for allowing me to state a few
21 words. Again, I didn't reiterate if I already said
22 it, I just wanted to encompass some of my final

1 thoughts. Thank you very much.

2 CHAIRMAN CLARK: Thank you, Supervisor. I
3 would just like to repeat what I said before, that we
4 appreciate your participation. I do want to remind
5 the group lest we convey the false impression, that
6 the supervisor is speaking for himself at this
7 hearing.

8 The county's position is being represented
9 by the county and the zoning administrator. Not to
10 denigrate or diminish anything he had to say. He's
11 coming here as a citizen essentially.

12 Okay. I have no further speakers. Speak
13 now or forever hold your peace. All right. I'm
14 declaring the public hearing now closed. The Board
15 will now proceed to deliberate.

16 As we discussed at the beginning of the
17 evening, I believe it would be helpful to the parties
18 if we handled this in a very specific manner. I
19 identify potential three issues that can be handled.

20 The first and the narrowest I believe a
21 legal only question of standing vis-à-vis the issue
22 of the advisory opinion. If it's the opinion of the

1 Board that this is not an advisory opinion, and that
2 there is standing by virtue of that, I believe that
3 with that would then take us to the question of
4 whether or not there is standing vis-à-vis the issue
5 of the particular harm question which may be impacted
6 and the judgment of the Board members apply the facts
7 adduced in the case which could divert us from a --
8 and if that were defeated, then we would proceed to a
9 question on the merits of whether or not the zoning
10 administrator was correct or if the deputy was
11 correct in her decision.

12 So I foreshadowed that beforehand. Does
13 the Board have any objection to us handling it in
14 that order; first taking on the question -- I'm
15 trying to put myself in for the court -- let's
16 address the issue of standing vis-à-vis the advisory
17 opinion because that would be the narrowest ruling.
18 If we get beyond that, let's take them in increasing
19 order of complexity.

20 Is there any objection to that?

21 MR. MOFFETT: Mr. Chairman, how would you
22 like to do that? I'm happy to offer a motion on each

1 one of those if that would be out of --

2 CHAIRMAN CLARK: I think that's what we
3 would do. That if there's no disagreement about
4 that, what I'll then say is that we are now going to
5 entertain motions with regard to standing vis-à-vis
6 the advisory opinion issue.

7 We'll debate it, take a vote, and then see
8 whether there's a question coming forward. All
9 right.

10 MR. MOFFETT: Mr. Chairman, I'm happen to
11 make a motion. But for me, I think I'd like to make
12 a motion with respect to the advisory opinion and the
13 standing issue because I think --

14 CHAIRMAN CLARK: Oh, I think the --

15 MR. MOFFETT: -- standing is kind of --

16 CHAIRMAN CLARK: I think the advisory issue
17 informs standing. If we -- as I understand it, if we
18 believe it is -- if we find the case law compelling.
19 There is an argument that if it's an advisory opinion
20 and you find the case law persuasive, there is a lack
21 of standing. So I think they are the same question.

22 I'm asking for a motion with regard to

1 whether or not there is standing specifically to the
2 question of the advisory -- potential advisory --
3 nature of the opinion.

4 MR. MOFFETT: Well, Mr. Chairman, I move
5 that this not be considered an advisory opinion for
6 the reason that parties have relied on it in a number
7 of different ways, and have committed resources with
8 respect to it, and that it has not been treated as an
9 advisory opinion certainly by the property owners
10 here.

11 And I clearly think that the appellants
12 here have standing with respect to challenging this
13 issue since it has a direct impact on them. Once
14 again, I really that goes to the second standing
15 which I'll be happy to address.

16 But my motion is that we treat this as a
17 determination because that's what it says it is.
18 That's what people have relied on to expect it, and
19 that the chances of an argument being that the appeal
20 time has gone and that they have not exhausted their
21 administrative remedies is a real possible argument,
22 should we treat this as simply an advisory opinion.

1 And I clearly think that they have standing. So that
2 would be my motion.

3 CHAIRMAN CLARK: All right. We'll debate
4 that in just a second.

5 Does anyone wish to second that motion?
6 All right I see no second. So that motion fails for
7 want of a second.

8 Is there another motion?

9 MR. WALKER: I'd like to make a motion.

10 CHAIRMAN CLARK: Mr. Walker?

11 MR. WALKER: I move that the Board of
12 Zoning Appeals dismiss APPL2021-0003 based on the
13 following finding. A, there is no pending
14 application nor a permit issued to the subject
15 properties.

16 B, the appellant's lack standing as they
17 are not aggrieved persons under the Virginia code
18 15.2-2311 as the zoning determination did not grant
19 or deny appellants real or personal property right,
20 nor was there an applicant under review.

21 And C, ZCO-04-2021-0233 was an advisory
22 opinion.

1 CHAIRMAN CLARK: All right.

2 Is there a second to that?

3 MR. SOFRENKO: Second.

4 CHAIRMAN CLARK: All right. Then we'll
5 proceed to debate.

6 Would you like to speak your motion?

7 MR. WALKER: Yes, sir.

8 So I think that the real point here is that
9 there wasn't an applicant. There wasn't an
10 application submitted yet. And I think that's really
11 the key, is that we would have a debate. We would
12 have something to actually talk about, and I think
13 that it was an opinion given under multiple
14 situations.

15 And so I think that there needs to be an
16 actual application submitted. And I think that that
17 application is going to have a pretty high bar that
18 it's going to have to achieve to meet the standards
19 of that. So I think we need to see the detail of
20 that application. We need to understand better how
21 it's going to meet that standard, and how it's going
22 to dispel the congregate facility. And so I think

1 that's what I'm looking for is that I would look to
2 see the actual applicant.

3 CHAIRMAN CLARK: Other speakers?

4 MR. SOFRENKO: My only other concern would
5 be that they have some remedy available to them at a
6 future date. I don't want this to be the end all be
7 all. And so if I need to add on to the motion, but
8 that 30-day window I don't want to see it come and go
9 for them. And so that there be some assurance, if
10 possible that, there is still remedies once the
11 application is -- and permit is applied for.

12 CHAIRMAN CLARK: I don't know that that
13 requires a motion. But I believe the County's gone
14 on record today that it's their position that once a
15 permit -- if an application comes in and a permit is
16 issued, that it will be an appealable decision.

17 And I can tell you if I'm up here when that
18 comes up, I will not take at all very well any
19 position from the County a position inconsistent with
20 that is at all moral or appropriate under the law.

21 Mr. Moffett, would you like to address the
22 motion?

1 MR. MOFFETT: Well, I completely disagree.
2 I cannot disagree more. I mean, we've been here now
3 for four hours taking evidence setting for a complete
4 record, a verbatim record of all of the arguments.

5 And now, we're just going to pull that out
6 on the basis of it's an advisory opinion. I find
7 that incredible. And I find it absolutely incredible
8 that there's an argument that they're not an
9 aggrieved party. I think that's plainly wrong on any
10 standard. To say that they're not aggrieved after
11 we've had four hours of testimony of everything is --
12 it's absurd.

13 I too would have preferred that we had this
14 in the context of a zoning permit, but we don't. We
15 don't, and Newport has proceeded ahead in reliance on
16 this. They sold the houses. We have correspondence
17 saying please tell us so we can sell our houses.
18 They sold their houses in reliance on it.

19 And these folks here get notice in the
20 middle of the night as we've had testify. And all of
21 a sudden, they have to make a decision whether to
22 appeal or not and risk. And so they go out and they

1 hire counsel, and they put together the facts.

2 So now, to sit here and to say that we've
3 compiled this record, and that we've listened to all
4 of these arguments, and that we're not prepared to
5 make a ruling on the merits of this one way or the
6 other because this is an advisory decision is absurd.

7 And it's more absurd quite frankly, to say
8 that these people don't have standing. What does it
9 take to get standing? They've testified to the
10 possible loss of market value. They testified to the
11 noise. They've testified to the number of cars, to
12 the fact that there might be ten staff members for
13 each resident.

14 That's not good enough, that that's a harm
15 they're going to suffer? I mean, clearly, that's a
16 harm that they're going to suffer, and not something
17 I'm going to suffer living 12 miles away or wherever
18 I am.

19 So to say that they're not aggrieved is
20 just astonishing. And I just -- I don't even know
21 what to say. I really don't know what to say.

22 Because the standing issue here, if they don't have

1 standing here, then no one has standing.

2 And to call this now at this late hour an
3 advisory opinion where it was characterized as a
4 determination. Everybody thought it was a
5 determination. And they thought we better appeal and
6 the appeal was accepted.

7 If it had been an advisory decision, the
8 staff should have said by the way there's no need for
9 an appeal because it's an advisory decision. They
10 accepted the appeal and here we are. And now, to go
11 back and say we're just kidding, I mean, I don't get
12 it.

13 And once again, I just have to repeat for
14 the record how we could possibly contemplate a lack
15 of standing under the facts of this case when we've
16 heard Mr. Thomas and others testify consistently to
17 the possible harms, all of which by the way, would be
18 dealt with in a concrete fashion if they had just
19 gone the congregate housing route.

20 No, they couldn't go the congregate housing
21 route. They had to go this route right here which is
22 problematic to say the very least. And now, now to

1 contend that, this is an advisory opinion that
2 everybody's relied on, when everybody's relied on it,
3 when it wasn't called, when the appeal was accepted,
4 when the appeal was noticed, when they spent I'm sure
5 thousands of dollars in reliance on them.

6 And now, to call it --

7 FEMALE: (Inaudible.)

8 MR. MOFFETT: -- I can't recognize you.
9 This is a -- this is a public hearing. I'm just
10 emoting now. And once again, I just will not be a
11 part of any decision that states that these folks
12 don't have standing. That to me is just a blatant --
13 no -- a total misinterpretation of the law of
14 standing in agreement.

15 So I will not support this motion at all,
16 and I'm just shocked that we're at this point right
17 now.

18 CHAIRMAN CLARK: All right. I'm going to
19 speak for a while in support of the motion. I

20 believe, Mr. Moffett, that Newport here may be at

21 risk for having purchased the property without a --

22 and then would take the position that there isn't an

1 appeal from this question because it's advisory.

2 That opens the door that when there is an
3 application, we could review and we could say no and
4 they're now stuck with a 3 million-dollar pieces of
5 property they're not going to be able to use for a
6 group home.

7 It think it's important for us to
8 understand that this question is a narrow one that
9 does not deprive anybody in this room of a grievance
10 or the right of being aggrieved. But my point is
11 it's not our job to decide what it an aggrieved party
12 is.

13 It's our job -- we don't make the law --
14 our job is to interpret the law and enforce the law.
15 There are two Supreme Court cases and one local
16 circuit court case that makes it very clear that you
17 can call the word blue -- the word is aggrieved. I
18 understand your emotional point that people here have
19 grievances. I get that. They absolutely do.

20 But an aggrieved party is a specific thing
21 under the law --

22 MR. MOFFETT: In proximity --

1 CHAIRMAN CLARK: Please, I'm speaking.
2 That has to do with standing under another issue.
3 The question here is the motion is there's no
4 standing because this is an advisory opinion, and
5 it's not right.

6 We may be back here again in a month or two
7 or three to hear 40 people debate again, but this is
8 the nature of local government. You have a right to
9 be heard, but it needs to be at the right time on the
10 right question.

11 The Supreme Court's guidance, I think this
12 is exactly why, because what's opened is -- and,
13 Mr. Moffett, you said you're emoting -- if we allow
14 people to have meetings that last four hours and have
15 debates over decisions that begin with the word if,
16 that's a very bad way to make public policy.

17 We should ask people to put applications
18 together and specifics and attach plots and give
19 copies and send notices out to everybody, make the
20 county review them in depth, and then bring a
21 specific issue to us. Don't bring us fears and
22 worries and concerns and maybes about near me's

1 because we all get that issue. But our job is not to
2 rule in a popular way about near me's.

3 Our role is to interpret the law, enforce
4 the law as it is handed down to us. The Supreme
5 Court, the General Assembly, and the Board of
6 Supervisors have tied our hands in my opinion. We
7 have no choice, but to view this as an advisory
8 opinion. Because of that, that means legally, I do
9 not believe these appellants have standing on this
10 question of an appeal of this letter.

11 But I do not take a position as to whether
12 or not they have a right to appeal or when on a
13 question about the merits, of whether or not an
14 actual approval of an actual permit actually filed
15 when it comes back before us, is a completely new
16 question to which I will have a completely open
17 forum.

18 MR. MOFFETT: Mr. Chairman, how would you
19 define the issue of standing on the advisory opinion?
20 How is that different than the question of standing
21 in general?

22 CHAIRMAN CLARK: All right. I don't need

1 to answer that because the motion is because this was
2 an advisory opinion, legally there is no aggrieved
3 party. And I don't think it's appropriate for me to
4 render an opinion about anything beyond the scope of
5 the motion because that may become a motion at a
6 board meeting or a Board of Zoning meeting in two
7 months.

8 You're presuming I'm going to vote against
9 the appellants on every one of the three issues, and
10 that's totally inappropriate. I'm using my lawyer
11 mind to analyze these issues which were exceedingly
12 well laid out by the parties.

13 I am just persuaded that this is an
14 advisory opinion, and that they are not therefore,
15 appealable. And the way the lawyers get to that
16 decision is by saying you're not an aggrieved party.
17 That's how I interpret the guidance of the Supreme
18 Court.

19 Now, when we come back, we get to talk
20 beyond is there another standing question or is the
21 ruling on its merit right, wrong or indifferent, we
22 address those questions at the right time.

1 Any other debate?

2 MR. WALKER: I think there's a lot more
3 information --

4 CHAIRMAN CLARK: Would you turn on your
5 mike.

6 MR. WALKER: I'm sorry. I think there's a
7 lot more information when we see the actual
8 application and can understand that. I think that's
9 going to help to back up a lot of the discussion that
10 we saw or heard with actual having to address how we
11 were going to meet those standards.

12 MR. HAMPSHIRE: Mr. Chairman, may I be
13 recognized just -- and I know that I am out of order,
14 but I just need -- there's a factual misunderstanding
15 in this discussion. There will be no further
16 application. The whole point is that this is a use
17 by right. You won't see this again. This is a use
18 by right under this determination.

19 So if you're making a motion based on the
20 idea that this going to be another application in
21 front of you with maps and plats, that's not going to
22 happen. That's all I want to say.

1 CHAIRMAN CLARK: I don't -- thank you very
2 much. I don't agree. I believe there's going to
3 have to be a permit issued that's based on this
4 interpretation.

5 All right.

6 MR. MOFFETT: Mr. Chairman, can we get a
7 clarification?

8 CHAIRMAN CLARK: The public hearing is
9 closed and we're into debate. I shouldn't even have
10 allowed the attorney to speak at that point.

11 So everyone has spoken. I think all of our
12 positions are clear. So let's proceed to a vote.

13 All those in favor of the motion, please
14 say aye.

15 MR. SOFRENKO: Aye.

16 CHAIRMAN CLARK: Aye.

17 MR. WALKER: Aye.

18 CHAIRMAN CLARK: Opposed.

19 MR. MOFFETT: Nay.

20 CHAIRMAN CLARK: An emphatic nay from
21 Mr. Moffett.

22 So the motion passes three to one. Thank

1 you very much. Please I repeat to the members of the
2 public. We were working in an orderly capacity
3 today. We appreciate your participation in the
4 community. I expect we'll see you again. Thank you.

5 (Whereupon the meeting concluded at
6 approximately 10:19 o'clock p.m.)

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1 CERTIFICATE OF REPORTER
2 I, CHRISTINE S. VICARI, a verbatim court
3 reporter, do hereby certify that I took the
4 stenographic notes of the foregoing proceedings by
5 voice writing which I thereafter reduced to written
6 format; that the foregoing is a true record of said
7 proceedings to the best of my knowledge and ability;
8 that I am neither counsel for, related to, nor
9 employed by any of the parties to the action in which
10 these proceedings were held; and further, that I am
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