In the Matter of:

Hilary Kozikowski, et al
v.
Monroe RE, LLC, et al

Hearing Transcript

December 12, 2022

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VIRGINIA

IN THE CIRCUIT COURT FOR LOUDOUN COUNTY

HILARY KOZIKOWSKI, et al,)
Plaintiff,)
) Case No.
) CL2200002838
v.)
)
MONROE NEWPORT, RE, LLC, et al)
Defendant.)
)

Leesburg, Virginia
Monday, December 12, 2022

A hearing in the above-styled matter before the Honorable Paul F. Sheridan, Judge, for the Circuit Court of Loudoun County, at the Loudoun County Courthouse, Courtroom 2F, 18 Market Street, Leesburg, Virginia 20176, on the 16th day of December, 2022, set for 10:00 a.m., when there were present on behalf of the respective parties:

A-P-P-E-A-R-A-N-C-E-S

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THE DEPUTY: All rise. The Circuit Court of Loudoun County is now in session, the Honorable Paul F. Sheridan presiding. Please be seated and come to order.

THE COURT: Good morning. Sorry to keep you waiting. Do we have everyone we need to proceed?

MR. WILBURN: Yes, Your Honor.

THE COURT: I understand the zoning permit was published November 16 or so.

MR. WILBURN: That's correct. November 16 it was issued.

THE COURT: Can you show me what the written document was?

MR. HAMPSHIRE Yes, sir. I have –- I'm sorry I’ve marked this. This is my copy. I didn't bring another copy. I thought this was already sent --

MR. WILBURN: I have a copy of just the permit.

MR. HAMPSHIRE: Thank you.

THE COURT: Let me read it a second. I read down to C and I see there is a specific reference to Code of Virginia 15.2-2291, some of that content seems to be written above, but specifically I want to be sure the statute wasn't cited and whatever.

You can take this back. Thank you. Counsel, you may proceed.

MR. HAMPSHIRE Gifford Hampshire for the petitioners. We are here today, as you just noted, Your Honor, that the zoning permit has been issued since the last time we spoke. I'd just like to point out a couple things about it.

And, number one, say that we have appealed this permit pursuant to a pleading that I believe Mr. Lawrence submitted in a way of a supplement to the record.

THE COURT: When did you file that?

MR. HAMPSHIRE We filed that on November 22nd.

THE COURT: In this court or the

appellate court?

MR. HAMPSHIRE No, with the Loudoun County Board of Zoning Appeals.

THE COURT: Within the zoning system. Okay.

MR. HAMPSHIRE And I need to explain that a little bit. We are forced to appeal that because it's unclear, if Your Honor looks at this permit, what exactly it says.

Our position is, and always has been, that the previous zoning determination on the one that we appealed and which is now subject to this proceeding in circuit court, is the substantive zoning decision at issue both in that appeal and also the one that that has just been filed.

When you look at this permit, it really does not have a anything by the zoning administrator in the way of any kind of rationale other than the signature of the zoning administrator on the last page. So it's unclear to us, frankly, if this permit reflects a new

and different determination, or whether the old determination is embedded in it.

We think because - precisely because it really doesn't say anything other than the permit is issued.

THE COURT: I've got to confess I only read down to 2291, which is one of the keys, starting with the declaration doctrine, backed the battle between local zoning and the court of Virginia state-wide.

MR. HAMPSHIRE That is the statute we have discussed at great detail in this proceeding. And the contention of the county is that it controls over the local zoning definitions and the local zoning ordinances, and we take the opposite position that it does not, from our point of view.

But you will not see any kind of a rationale of a decision in this document other than the only difference I would submit to you is that the permit says in the very first paragraph, this zoning permit is approved with

the condition that the use maintain licensure by the Virginia Department of Behavioral Health and Developmental Services. Whereas the decision -- the determination that has been appealed and before the Court here says that the actual use was conditioned upon securing that ferment. So, that's the only difference that I see in between the two things. I think substantively, the determination is the same. The substantive zoning determination is the same.

And I need to harken back to the arguments that I made before, and that is -- and the Court has these code sections. But when you look at the zoning ordinance code section at 6-401 subsection ©), that is the provision that I argued before that allows zoning administrators to make discretionary determinations, discretionary determinations about what uses are allowed or aren't allowed in the zoning ordinances and whether a given use meets a definition of the zoning ordinance.

We submit that that discretionary

determination was made a year ago, more than a year ago, in November, and that it's the very same determination that has been reflected in this zoning permit. And that's precisely why we say –

THE COURT: You believe that the present writing is a rejection of the governing factors in 522291?

MR. HAMPSHIRE Are you talking about the zoning permit?

THE COURT: Yes.

MR. HAMPSHIRE: No. I think all I can say is that the zoning permit appears to cite that code section.

THE COURT: Well, if the statute governs, discretion is not allowed to vary from the state statute.

Is there any language that suggests that is what’s being said?

MR. HAMPSHIRE No, sir. I think it's hard to know what's being said here. It says simply that the zoning permit is approved with

the condition that user maintain licensure by the state agency. And then there's a citation to the definition of family in the zoning ordinances. And then there's also a cut and paste, if you will, of 15.2-2291. It seems to imply - it's hard to know what it says, but it seems to imply that that is the code section that the zoning permit is relying upon for the issuance of the zoning permit.

Of course, we have argued that at great length, saying that code section does not supersede local zoning and does not contradict the zoning ordinance prohibition on congregate living facilities, and that it is merely licensure by the state agency.

It does not trump the zoning ordinances prohibition on those congregate living facilities, zoning being a separate determination under a separate regulatory structure than the Virginia State Department of Behavioral Health state licensure issue.

THE COURT: But the declaration page

itself said that local zoning would prohibit what they want to build and operate, right?

MR. HAMPSHIRE Which declaration page, Your Honor, are you referring to?

THE COURT: The document that starts this in the zoning office. The declaration page, which you're more familiar with the pages here, it starts with the local zoning, but then moves to the Virginia code.

MR. HAMPSHIRE You're talking about the determination itself?

THE COURT: It says we don't issue this. We issue it under the state code, which it should.

MR. HAMPSHIRE Okay.

THE COURT: Am I being too sloppy with my language here?

MR. HAMPSHIRE No, sir. I think you're referring to the zoning determination itself –- what was appealed. The first part of it says –

THE COURT: It's the first document I remember reading several times to make sure I

understood it.

MR. HAMPSHIRE Right. That's the determination issue. That's the one that we appealed to the BZA. The BZA didn't make a decision on our appeal, said we didn't have the right to appeal it, we didn't have standing, and then we ended up here.

But determination said on the one hand, that the use is not allowed because it's a congregate living facility. But in the next paragraph, or two, it went on to say that it was allowed because of 15.2-2291. I think that's what you're referring to.

THE COURT: It seems to me the very language used within the zoning authorities here is saying, under local zoning, we can't do it, but under the code, we can do it.

MR. HAMPSHIRE Well, it doesn't say that in this permit. I don't see that in here. I don't see much of anything in this permit from a zoning determination point of view. Yet we are forced to appeal it because we're not

exactly sure what it says, and in our –- or we'll be stuck with it in 30 days if we don't appeal it.

THE COURT: What do you think it should say?

MR. HAMPSHIRE Well, I think it should say, at the minimum, there should be an explicit reference back to the determination that was issued a year ago and say, for the reasons set forth in that opinion, we find under subsection ©), six – excuse me, under section 6-1002, we found a year ago that this use is allowed under the zoning ordinance. It should have some kind of explicit reference to that. I think it may be implied here.

If you look at the last page, Your Honor, you will see a reference to two things under related applications. You will see related applications NBR (phonetic) number one, and there's a reference to the, I believe that's the zoning determination, and then there's a related applications NBR number two, which

appeals, which references the appeal to the Board of Zoning Appeals. So it sort of implied that this is a continuation of those two things but it doesn't quite say that.

So we're a little bit frankly confused on what this permit does say in terms of a decision. It appears to imply that the old determination is imbedded within it, which has been our position all along. That the old determination was appealable because it was the substantive discretionary zoning determination that said it may be allowed if you do two things, you get the zoning permit, and you get licensure from the state, and that is a permit.

But for that opinion, our position would be under the zoning ordinance, that wouldn't be allowed at all, you wouldn’t even have the opportunity to appeal to apply for those things.

So that's that's our position. We have appealed it. We believe and I believe Mr. Wilburn joins me in this, and he can speak for

himself in a minute here, of course, but we think the Court has jurisdiction, notwithstanding the appeal of the zoning permit that has just been made, to render a substantive decision on the legal issue that we have briefed, precisely because we think that zoning determination is imbedded in this most recent permit, at least implicitly.

And the Court's ruling would be instructive, to say the least, to the Board of Zoning Appeals on the appeal of any new permit. If the Court were to rule one way or the other, I would think that the BZA would have to follow that substantive ruling to the extent the determination is the same.

THE COURT: That would address the concept of how much intervention is allowable by Judge in matters done by zoning authorities. Sometimes we don't have the power to say anything or rule, sometimes we do. And what you described to me is something that I started today with. I wanted to see the words permit.

And frankly, I'm telling you right now, I'm sorry I took so little time reading it because it is vitally important as to whether they are applying the county zoning or they're applying the state code.

MR. HAMPSHIRE Yes, sir. The Court has jurisdiction certainly to address the substantive legal before it. And that substantive legal issue is the November 2021 determination, or I guess it was September 2021 determination - I may be wrong on those dates. November 2021, that is the substantive decision that is before the Court. Assuming the Court finds that the November zone determination was appealable.

You have two issues before you, was that appealable, you have already resolved the standing issue. Was that determination appealable, and the second issue, if you should find it is, and we think you should, was the zoning determination correct in its rational.

And we have briefed that back and

forth, both sides. That determination can be can be made. That legal determination by this Court can be made regardless of what's going on for the board of zoning appeals.

To the extent the county takes the position that that new determination is a different determination then the Court's ruling would be less persuasive I suppose to the BZA. I don't see how they're going to say that, because it seems to me it's exactly the same determination that's imbedded in this new permit, the only difference being maintain licensure instead of secure licensure. So that's where we are on this.

THE COURT: Thank you.

MR. HAMPSHIRE: Thank you, Sir.

MR. WILBURN: May it please the Court. Your Honor, my name is John Wilburn, I'm with McGuire Woods. I agree. I think counsel has correctly represented our collected view that Your Honor has the jurisdiction and authority to decide the legal question before you.

We think you can get there a couple of ways. You might agree with the petitioners that the zoning administrator's determination was, in fact, appealable, and these questions are now before you or even failing that, the statute allows Your Honor two things in particular. One is, it allows you to reverse, modify, or affirm the decision, so you can take the issue up. But perhaps most importantly, the statute gives the Court the authority de novo on legal questions, which we all agree we're here on a legal question. So we think what should be done, what we hope the Court will do is issue a decision. We obviously disagree on the outcome, but we think that would be appropriate.

THE COURT: A decision of what kind?

MR. WILBURN: A decision whether –- that the fundamental decision is, is my client's facility able to operate? Is it consistent with the law to operate in this R-1 district? That's the fundamental question. And the answer is, we think, yes, there's no disagreement between the

zoning ordinance –

THE COURT: What do you believe your facility is legally required to do, which –- either state code, local ordinance, or some - something in between, and the decision we're discussing here today?

MR. WILBURN: Both the state code and the zoning ordinance expressly allow it. There's no distance between the two. Just very briefly. 15.2-2291 requires four things be present for our facility to operate in the residential district. And remember, this code section was specifically drafted to allow this use because the public need to address these mental health issues. There's four things. The statute has to –- we have to meet.

One, is we have to have no more than eight individuals at the location, and we'll have six under the license, so that's satisfied. Two, they have to be treated for a mental health issue. That's satisfied. Because the license is specific for mental health treatment. The

Court has seen that, there's no appeal of that license. Three, there has to be one or more non resident staff people at the facility, so that's satisfied too, it's in the license. Petitioners don't challenge that aspect. And the only other requirement is that we, in fact, get a license, which we did get a license. And so those four elements are easily satisfied. And I don't believe the petitioners challenge those.

And when we look at the zoning ordinance, and by the way, the statute has primacy. If the Court were to find there's a distinction between the two, article one, and -- I forget the code section, but article one of the Virginia code makes it very clear that if there's a disagreement between state law and local law, state law controls, the code controls over any inconsistent zoning ordinance.

So when the petitioners say there's an inconsistency, if that were true, it doesn't matter, this code section would control, but it's not accurate. The Loudoun County zoning

ordinance was modified in response to the statute, and they specifically built into their zoning ordinance this 15.2-2291. It's not -- there's no inconsistency. This is article eight of the zoning ordinance, which defines as a family, a group of -- there's different definitions –- but the last definition says as follows, any group identified in section 15.2-2291 of the Virginia code.

THE COURT: Does that mean it's one group of family? Does that mean the single group of family?

MR. WILBURN: Well, what it says is that if you have a license, if you are a group identified under 15.2-2291, and that would be -- that's satisfied by the license, then you are deemed a family and can operate in a residential district. It's perfectly clear.

The petitioners are asking you to adopt a totally different definition. They want you to find that this is not a residential facility licensed under the statute, which it

is, and instead say it's a congregate facility. That definition doesn't apply for a couple of reasons.

One, the definition starts with a structure other than a single family dwelling. If Your Honor recalls from the photographs and from the record, this is a single family dwelling. It also includes people that are not treated as a family. These are, by statute, we're treated as a family. So, Your Honor, we suggest to Your Honor it's perfectly clear the statute has four elements, each of which are met. The statute says we are deemed a residential treatment facility. We meet the definition if we get a license. And we did get a license, they had an opportunity to appeal that under the administrative processes act to challenge that, and they did not do that. So the license is final. Each of those four elements are present, and there's no distance between the zoning ordinance and the code. The county can probably speak to that.

THE COURT: Help me understand. You're way ahead of me in the exact wording of things. Does the prohibition against the use of illegal drugs appear in the county zoning information?

MR. WILBURN: I don't believe it does. I don't believe it does.

THE COURT: How then can it say it relies on 2291?

MR. WILBURN: Well, it relies on 2291 – The drug treatment issue is tied to the staff –- to the to the license. And so when my client applies for a license, they have two paths they can go with, and they're mutually exclusive. One path is for medical treatment and path two is for drug treatment. And they are mutually exclusive.

We applied for and obtained a license solely for mental health treatment. We don't have the right and we didn't apply for the right, nor do we have the right to treat as a detox center. And there's no evidence that that's what this would be. If there were, we'd

be in violation of the license. But there's simply no evidence of that.

THE COURT: Why wouldn’t the prohibition against current drug use apply to the mental health side. Why would it only apply to those being cured for drug dependency? The language in it, as it comes down in the code?

MR. WILBURN: The prohibition in the statute. It's really an exception rather then a prohibition –- what it says in the statute is for the purpose of determining whether a resident is mentally ill, there are a lot of different things that people can be diagnosed with that would be mental, including drug abuse. For that purpose the only reason can't be current drug use. Current drug use. So what we can't do as part of our –- when we pick the eight residents to come in and treat them, the diagnosis –

THE COURT: I thought you said six.

MR. WILBURN: Well, under the statute -- correct, here we’re limited to six, correct.

When we identify the six people that come in for treatment, they may have a variety of diagnosis, it may be anorexia, it could be a variety of different things, but we can't take somebody in when their diagnosis is they are currently a drug addict, you can't take them in. So they wouldn't meet the requirements.

But there's no evidence, Your Honor, that we've done that, and we haven't because we haven’t opened. We are not licensed to do that, so we can't do it. And if, in fact, we did do that in violation of the license and the statute, then there would be an action that could be taken by the state or perhaps maybe the zoning administrator, but that's all speculative.

The the question is, if we're licensed, and we are, the statute is dispositive on that point. It says if you're licensed, you are a residential treatment facility under the statute. We've obtained the license. We will operate within the parameters of the license,

which we'll have more than one or more non resident treatment people there, we'll have less than eight, we'll have six residents there being treated for mental illness. And so we meet each of the requirements of the statute, and that is built into the zoning ordinance.

So the zoning administrator got this correct at the very beginning. The document Your Honor referred to and read, the zoning administrator looked at these identical issues, and she got it correct, or he, I apologize, got it correct when they said we would meet the requirements of the statute and the zoning ordinance, if we obtained a license and permit, both of which we've now done.

And so that's the issue. There's two issues. One is procedural, and counsel and I are in agreement on it, that Your Honor can and should decide this question. And the other substantive, which is having obtained a license and operating within the parameters of the license may we operate in a residential

district, and the statute says we can, and the zoning ordinance says we can.

Just by way of a reminder on defenses, the petitioners only asserted two defenses to this, none of which deal with, for example, well, the two defenses were one, you can't have a commercial function. And as I pointed out previously, there's not a case or statute or ordinance that says that. In fact, the attorney general filed an amicus brief and pointed out the legislative history makes it very clear that while that was considered, it was unanimously rejected, so that doesn't apply.

And the other argument they made is that we wouldn’t be residents within the meaning of the statute. The Court, I think in commentary, said you thought they would be, and that would be correct, consistent with all the case law we cited, and the decision by Judge Bach.

But at the risk of repetition, Your Honor, there's no daylight between the statute

and the ordinance as it applies to us. We had to obtain license, we did. The licensing body said we can operate with six people at this specific location to treat for mental health, consistent with the statute. And the zoning ordinance allows that as well.

So the zoning administrator got it correct. Your Honor, we don't think it's a complex, or an overly complex issue, once you obtain the license. And so we would like, I think both parties would like Your Honor to tackle the legal question. We think the answer is essentially the zoning administrator got it correct, the licensing body got it correct, and that we can operate at this particular location.

THE COURT: Take me back again to what you were telling me about my question about within the the Virginia code where it says a person can’t be there with current drug usage, right? You know what I'm saying?

MR. WILBURN: I do, Your Honor. The statute requires that these individuals be

treated for mental health.

THE COURT: I'm unclear whether the patient is mental health or a drug user. And you can tell me it's only mental health. I'm going down farther in the code section and looking at no patient can be a current drug user.

MR. WILBURN: It says for purposes of determining mental health, the patient may not be, their current drug use may not be the basis for the diagnosis. And we don't disagree that -- I mean, we agree that's the language in the statute, but that has no factual bearing on what we're doing here.

There's no evidence or would there be, that we intended to take people in who are current drug users. What the record was at the BZA, and this is before the Court, and we submitted a declaration from our CEO, among other things, is we screen, so any patient who wants to to enter our program, they're screened for drug use. And if somebody is a current drug

user, they're not allowed in the program, among other things, to ensure that somebody doesn't try and cheat our policies or procedures, they're drug tested periodically.

Anybody who is found to be using a drug is removed immediately from the program. So –- and that's in the record, that's before the Court.

THE COURT: Are those written rules or just understandings?

MR. WILBURN: I believe there are written policies and procedures there, and this is attested to by our CEO and material that was submitted to the BZA. So our own policies don't allow us to treat for this. We screen for it both, you know, in the way you normally would with questionnaires and conversations, but also with drug testing. So there is no evidence or even an indication that we would circumvent or violate that provision, that exception in the statute.

These six individuals will have a

mental health diagnosis, that will be treated, that it will not be current drug use. They will not be allowed in if they're current drugs users. They're tested for that.

And, by the way, we're supervised by the Department of Behavioral Health and Developmental Services. So our license is year to year. And as part of the renewal process and throughout were subject to inspection and oversight, including on the issue that we're talking about here. So there's simply. in my opinion, there's no basis to find that we would violate that exception in the statute.

We haven't opened yet. We don't –- we're not licensed to have anybody in there who has a current drug use problem. And to ensure that we don't, we screen them and we test them, and were supervised by the Commonwealth on this point.

THE COURT: So what are you asking me to rule?

MR. WILBURN: I'm asking Your Honor to

rule that that we meet the requirements of 15.2-2291 now that we've obtained our license and can operate in the residential district. And that's exactly what the statute says.

The statute says that if you obtain a license, then you are deemed residential use. The statute itself is titled residential use. And so the very purpose of the statute, I know people don't want this in their neighborhood, sort of a classic NIMBY situation, but the purpose of the statute was recognizing that when you have adolescents, young people, who have mental health issues, they perform better when they're put into a nice home in a small group and they're treated in that setting rather than if we warehouse them in a group of hundreds in Richmond or Norfolk.

And so the General Assembly decided to enact this statute, the localities modify their zoning ordinance specifically because this treatment is necessary and it's best in this environment.

If you take the petitioners' position, you would just gut the statute. They want it somewhere else. We would have to be in Richmond or someplace else.

So the elements are met, the last element we met was the licensing. And Your Honor properly continued the case until we obtained the license. But we have obtained that license, and it's dispositive of these issues, and no appeal was taken from that -- the issuance of the license.

And so we are we are in agreement with the petitioners that Your Honor can and should decide this. We are at odds on this fundamental question, having met the requirements of 15.2-2291 and the zoning ordinance, can we operate in the residential district as the statute says we can. The zoning administrator correctly got this right. The permit recognizes the statute and we think that that's the correct outcome from this case.

THE COURT: Help me roughly trace

somewhat old issues, what I call the declaration, which was one of the original documents I studied along with everything else.

One, the local zoning didn't allow it and two, the code did. We could talk about that all day long. You're telling me that the local zoning has now conformed?

MR. WILBURN: No, Your Honor. What that original opinion that you're referring to actually said, and it's page one rolling over to -- I'm sorry, page two, rolling over to page three. What the zoning administrator originally said was in the absence of the statute, this would not meet the definition of a single family use. It might be a congregate facility, which is not allowed in the R-1 district in the absence of the statute.

She went on to write, however, there is the statute and the zoning ordinance recognizes the statute. And because of the presence of the statute and the definition of single family, which Loudoun County built into their ordinance,

they said any group identified in section 15.2-2291 of the code of Virginia. So the zoning administrator did not say one thing and then later change her mind. In the very opinion, in the very next sentence, she points out, even though it doesn't look like single family housing, it looks like congregate, it's not because the General Assembly enacted this statute which requires we treat them like a single family and a residential and our ordinance, in fact, does that.

So I think it's inaccurate to say that the zoning administrator found that that we weren't lawful under the ordinance, but we were under the statute. What she did say was ordinarily you wouldn't be a single family in residential, but there's a statute that says you are. And our ordinance, because of that statute, defines you as one.

So there's no inconsistency. That was 15.2-2291, was incorporated into the local ordinance specifically as single family. No

inconsistency. She said ordinarily it would be this, but because of the statute, it's not, it's treated as single family in R-1. And she was a 100% correct in that decision. Okay.

And, Your Honor, the General Assembly said, if you get a license, you're single family residential, which we did. And the whole point of this would be -- the whole point of the statute was to allow these uses in a residential neighborhood because of their enhanced benefits -- pardon me –- benefits to the treatment of doing it would be completely gutted if it was interpreted contrary to that.

So we think there's no inconsistency between the ordinance and the statute. The statute controls if there is, but there is no inconsistency. The zoning ordinance incorporates into its definition that very statute.

And, again, simply as the zoning administrators said, ordinarily, this wouldn't qualify in R-1 because you're not a single

family, you're unrelated people. But, however, 15.2-2291 does exist, and we've incorporated that into our zoning ordinance, and as a result, you may lawfully operate in that in that zone.

So that was the original decision. And it was correct then, it remains correct. Okay. And it's, I think enhanced by the fact that we got a license to do exactly that at this location in a residential district for six people for mental health treatment. And that's, you know, that's what the record is.

THE COURT: What do you say to any argument that the permit itself has a long list of things within it, some of which are inconsistent with each other?

MR. WILBURN: I think I agree with petitioners' counsel that the permit doesn't address any of this. I mean, the permit was -- in prior arguments petitioners made this point to the Court, and I think correctly, that that's an administrative function. So there are things that they look at. You know, do we have enough

– are we going to have a right number of people. They have to check and see whether we got a septic approval from the commonwealth, which we did. But I don't think there's anything in the permit that is inconsistent with the rights under the statute, with the zoning ordinance.

And I think the petitioners would agree with that. Their view of this is the permit just does the same thing that the zoning administrator did years ago, a continuation of the same thing. I think that they believe that bolsters their argument that it was an appealable decision. But there's nothing in the permit that would prevent us from operating. For example, the permit allows us to operate, and it sites 15.2-2291 in the body of the of the permit.

THE COURT: Thank you.

MR. HAMPSHIRE: Your Honor, I know the County may want to go ahead.

THE COURT: I think a third participant just stood up.

MR. HAMPSHIRE Yes, sir. I'll sit down.

THE COURT: Did you have something you wanted to address, Mr. Hampshire?

MR. HAMPSHIRE I just want to make a point. I've not addressed the substantive issue that Mr. Wilburn just addressed. I was focused on the procedural one, but I'd like to do that at the appropriate time.

MR. LAWRENCE: Good morning, Your Honor. Nicholas Lawrence, Board of Supervisors. I agree that there are two issues. I agree the first issue is the procedural issue of whether the November 29, 2021 letter Your Honor has been referring to it as the declaration, they refer to it as a determination, and in are view that's an advisory opinion.

The procedural question is whether that was properly appealed to the BZA and whether the BZA’s ruling, that it should not, should be affirmed by the Court. So that's the procedural question.

And then there's the substantive question Mr. Wilburn has gotten into, which is whether that advisory opinion is substantively correct. And so our view I'm going to focus on the on the procedural issue.

Our view is that the zoning administrator has authority to issue advisory opinions. If somebody wants to come to him and ask him, can I do this, he's allowed to answer that question, and he's allowed to give them an advisory opinion on how the ordinance would be applied. And that's what that November 29, 2021 letter does. It tells them this is what you know, you have to have the license, you have to apply for and obtain the zoning permit, and, you know, if you meet those requirements, then you would be allowed to do it. But it's advisory because that letter in and of itself doesn't actually allow them to do anything. It's not a decision that says, Mr. Wilburn, your client may begin operations. It's merely advisory. It’s simply to inform the citizen as to the

requirements they have to meet.

So certainly, the zoning administrator is authorized to do that. Our assessment of the statutory authority of the BZA is that they don't have the authority to issue advisory opinions. They are a subordinate tribunal under the supervision of this Court, and so they're bound to review essentially decisions not advice.

And so that's why we took the position in the BZA that the matter was not right, that there was no basis for them to issue a ruling on the substance of the question, because what had been provided to Mr. Wilburn's client at that point was merely advisory. We took the position there, and we've taken the position in each of the hearings Your Honor has heard here, that as much as everybody might like to rush forward, they need to wait for the permit. And so Your Honor continued it to allow them to finish the process to obtain a state license, which was a prerequisite to them applying for the permit.

You then continued it, and the permit has been processed. It's been granted. The administrator has now made a decision, however, that decision has to be appealed to the BZA, that's how the statutory scheme works.

We left here last time and we went out and I suggested to counsel that we look for a way to simply streamline the process. And I asked them both to consider, is there a way that we can come to a set of stipulations whereby we bring the permit, you know, in front of Your Honor, and now we've got the permit and we can set this up so that we're all satisfied that you can properly rule on it and reach that question.

And after making that proposal, everybody thought that that was worthy of at least thinking about, I went back to my office and sitting down with the statute trying to draft a set of stipulations that would fit that requirement, I found myself unable to do so. And the reason is because the BZA –

THE COURT: Thank you.

MR. LAWRENCE: The BZA has to have a public hearing. You will see here in 15.2-2312, the board shall fix a reasonable time for the hearing of the application, and then it's required to give public notice, as well as notice to the parties of interest, and it has to make its decision within 90 days of the filing the application.

And so as I sat at my desk trying to draw up the stipulations that these parties could agree to that would allow us to bypass the BZA and bring that permit directly before you for consideration, I couldn't do that because the public has a right to notice, and the public has a right to come before the BZA and express their position. That's a statutory right. And I just don't see any way to get around that.

So what I've suggested to the parties, they're obviously not delighted with my suggestion, or they wouldn't be taking the position that they're taking today, but what I suggested to them and what I would advise the

Court is that we should continue to hold this matter in abeyance. Because the BZA will hold its public hearing and the BZA will make its ruling on the permit. It has to do that within 90 days.

And the county staff tells me it will almost certainly be taken up in the second half of January at the next - at the next meeting that the BZA expects to hold. And so in January, after the proper public notice and advertisement and all that, the BZA will hold the public hearing. Whoever, you know, nonparty members of the public who wish to be heard on this will come forward and they will, you know, provide their testimony, or their view to the board, and then the BZA will will make its ruling.

And, you know, the one thing I'm morally certain of in all this is that one of these parties is going to be disappointed by the BZA'S decision, because they're either going to affirm the administrator's decision to grant the

permit or they're going to conclude that he erred and reverse him.

But either way, whichever one of these parties is disappointed, will have the right to appeal to this Court. And along about the first week of February, we could simply consolidate the two matters. We could consolidate the appeal that, in our view, has come up properly on the permit, and is properly before the Court. We can consolidate it with this matter, which in our view, is not properly here because it's merely advisory. We believe the BZA was correct, that it was merely an advisory opinion. The BZA would have erred if it were to give a substantive ruling on an advisory opinion. And this Court respectfully, Your Honor, we believe, would also err if it were to give an advisory ruling on an advisory ruling.

But if you allow this to continue into February and allow the two appeals to be consolidated then the argument I've been making at each one of these hearings will be satisfied,

Your Honor can address the substance and we can all go down to Richmond.

THE COURT: What substance is left for the Court to decide?

MR. LAWRENCE: Well, if they're both consolidated and you'll have the permit in front of you and you'll be in a position to make a ruling.

THE COURT: After the BZA rules?

MR. LAWRENCE: Correct. You'll be in a position to make a ruling as to whether that permit was properly granted. And again, it's our view that that's what's properly appealable because it's the permit that tells Mr. Wilburn’s client they can commence operations. The November 29, 2021 letter from Michelle Rohr (phonetic) is merely advisory, it merely told them what they would have to do in order to commence operations.

And so that's our position is that, you know, what I'm trying to avoid, Judge, is getting down to Richmond and having the court of

appeals tell us that you should not have ruled on the substance at this point because what had come before you was merely an advisory, non appealable decision.

THE COURT: I'm half smiling because I've relied upon the assistance of counsel throughout this case. And all of you have been educational. You've been really productive as to how to let these parties have closure to this debate whether for good or for bad, whether they like it or not, and yet not do things to trigger a trip from this Court to the appellate court and back again.

MR. LAWRENCE: The only thing that would be worse, for either party, is getting a decision from the court of appeals they don't like would be getting an opinion that says, you know, go back down and try again and spend twice, spend your money twice to brief two different cases, two different issues, and with all of the attendant delay and waste of time.

So that's our position. If Your Honor

would like to hear from me on the substance, I'm happy to address that.

THE COURT: I want to hear any opposition to what you just proposed.

MR. HAMPSHIRE: Your Honor, Gifford Hampshire for the Petitioners. We do oppose that on a number of grounds. Keep in mind, well, first of all, that this zoning permit that was issued relates to only one of the three properties, if you look at that, not for all three.

THE COURT: Say it again.

MR. HAMPSHIRE The zoning permit that has just been issued relates to only one of the three properties, namely 20173 Gleedsville Road. So it's a false argument to say that allowing the BZA to rule on this takes care of all three properties. But on the other hand, the zoning determination does relate to all three properties. And is the same substantive decision that appears to be imbedded in the zoning permit.

Again, if you look at that permit, you will not see really a discussion or rationale of any sort other than a implicit reference to the earlier determination of November of 2021. So the substantive decision is ripe before Your Honor, and it's either going to be the County is either going to take the position that the that the substantive decision is embedded in the zoning permit or it's a different determination.

And frankly, it doesn't matter with respect to the Court's jurisdiction today because the Court has the substantive decision before it that it has. It’s either the same or different from what the BZA will rule.

To the extent that it's the same, and we think it is. We think what's substantive going to be before the BZA is exactly the same issue substantively, the zoning determination decided then this Court's legal determination would be highly persuasive towards the BZA and maybe dispositive.

The other thing to keep in mind, as Mr.

Wilburn said, is that on appeal as a matter of judicial economy, the appeal, that is a petition to cert. from the BZA to this Court. This Court decides questions of law de novo anyway. And so the BZA, this Court's determination on de novo questions would simply be a waste of judicial resources to have it go down to the BZA on the very same substantive legal issue. I want to get to that in a minute.

And to only for it to come back up for the Court to hear it de novo, anyway, and only with respect to one of the three properties. When the Court currently has all three properties before it on the subject of legal issue. So we think, on the contrary, it would be a waste of judicial resources for the Court to hold off to allow this process to go before the BZA on only one of the properties at issue.

I'd like to get to the substantive issue because I didn't really get a chance to talk about that.

A lot of times these cases –

THE COURT: Just a second.

MR. LAWRENCE: I don't know if we wanted to get into that or whether you wanted to hear from Mr. Wilburn on the procedural issue. I'd like to be heard on the substantiative issue as well. So I just wanted to make sure.

THE COURT: You've got the podium in front of you. You want to stay there or yield?

MR. HAMPSHIRE: I'll yield to my friend for a few minutes on the substantive issue, and then I'll come back. If that's all right.

THE COURT: That's courteous. Thank you.

MR. WILBURN: Thank you. I'll just talk about the procedural issue. I agree with Mr. Hampshire, the right thing, the legally correct thing is for the Court to decide the legal question. There are a couple of reasons why. One of which Mr. Hampshire already expressed is that there are three properties that are at issue in this zoning administrative determination. There's only one that would be

at issue before the BZA. And so the county is incorrect to suggest that delaying this action pending the BZA hearing would add value, would resolve it.

The other point, perhaps most importantly is the legal question. We are here only on a legal question, a pure legal question if we meet those four requirements of 15.2-2291, which we do, can we operate in an R-1 zoning district or not? It's a pure question of law. On that issue the BZA has no primacy. The Court decides those questions de novo. And so, if anybody would benefit –

THE COURT: So the Court -- you've seen me in this case defer ruling because I'm trying to avoid everybody doubling back on the cost expense. Worrisome of parts of litigation. You want closure and I'm trying to deliver closure, and I have reasons that I haven't. And one of the factors here is you're telling me that you want me to rule, not yield to a hearing of the BZA.

MR. WILBURN: Yes, Your Honor. There are a couple reasons. One, on the cost issue, I think it's incorrect when the county says there's a cost savings by doing this. In fairness to the Petitioners, many of them are here today. They hired Mr. Hampshire and my client hired us, and they litigated, they raised these issues at the BZA.

So they were briefed and they were argued and that money was spent by these people in the courtroom today to try and get to a determination and the county didn't do it. We're now here in this action. And those petitioners and my client have spent an awful lot of money trying to get resolution on this legal question too. The county suggests it's just easier to send it back to the BZA. But that requires, I suspect, these people to pay Mr. Hampshire and my client to pay me to make all of the same legal arguments that we've made over these multiple hearings. We'll go back. We'll brief them. We'll show up at the hearing.

Mr. Hampshire is a wonderful advocate for his clients and I will argue all of these same legal points. The BZA will make a decision which has no precedential value.

THE COURT: You're asking to be to rule today?

MR. WILBURN: Well, it may not be today. What I'm resisting - what I disagree with is referring to the BZA. I've suggested one solution, or one option might be, we submit proposed findings of fact and conclusions of law to the Court. You could look at the authorities and decide among these options, Mr. Hampshire's view, or mine on the merits, or the county on the procedure.

But I do want to push back a little bit on the County's suggestion that these petitioners or my client save money by starting over with the BZA. That's absolutely not the case.

There's a Virginia Supreme Court case I just looked at last night. I apologize. I

don't have it, but I'll cite it, because it deals with this issue, I wasn't sure whether this would come up.

It's West v. Mills 238 Va. 162, 1989 decision. I can submit this to the Court and to Counsel. But there, like here, there was a developer who had three development plans and they submitted them to the town, the planning commission of the town to review, and they rejected the -- the town rejected one of the plans. And it was it was appealed up. It was appealed to the circuit court and then also on an administrative appeal at the town level. And the court deferred, said, I'm going to wait pending the administrative appeal. And the Supreme Court reversed and remanded with instructions and said it was already pending in the circuit court. The parties had already addressed this issue in the circuit court. And in light of that, you should not defer to an administrative agency.

And specifically, again, I apologize, I

don't have it, but I'll give it to Counsel. It says the Supreme Court held it would be improper for simultaneous consideration of issues relating to the same property by an administrative body and a court.

This would inevitably lead to a judicial and administrative conflict and confusion. And they directed the court to decide the question. And I think that statutorily you have the authority to do it because it's a question of law, courts valid has jurisdiction. The petitioners are, I believe, urging the court to decide it because they believe it's the most cost effective way to a resolution, whether you decide their way or the other way, they don't have to go back down to the county.

THE COURT: If I rule today, somebody's going to appeal. If I rule today and somebody's appealing and BZA has got a hearing scheduled, would my ruling really save the parties money?

MR. WILBURN: That's a good question.

I haven’t considered that. We're not likely -- assuming the Court rules today and there is an appeal, we're not going to get to resolution of the appeal before a hearing on the on the BZA matter.

THE COURT: I'm thinking of the billable hours these parties would be paying lawyers, and that always –- economics of the law issues are sometimes important.

MR. WILBURN: It is. And we're –-I think -- I know, Mr. Hampshire and I are mindful of that in the sense that we thought, we believe that a decision by the Court is the most economical and efficient resolution, but you're now posing a good question about whether you then have an appeal to the court of appeals and an appeal to the BZA that would be simultaneous and that might be the case.

So I think, Your Honor, I guess, in fairness to the Court, I think you have the discretion to do what the County suggests. I think you probably do, but we think that the

resolution of the legal question eventually will come before Your Honor and you won't be bound you won't even get deferenced.

THE COURT: –- travel along the legal road, but I do worry that the case continuances are not good in a lot of ways.

MR. WILBURN: Correct. And the legal question -- if this were a factual issue, if there were a factual issue at play I could understand waiting for the BZA, because on factual questions they decide Your Honor would have to give deference to that. But we're not here on any factual question. It's a pure legal question. And on that one, the BZA's decision, whatever it may be, whenever it occurs, is not entitled to any deference.

Your Honor would, in the first instance, have to decide this without any deference to the BZA. But I also understand the point Your Honor makes about an appeal of this case to the court of appeals and expenses associated with that.

THE COURT: People will be paying for two efforts by counsel.

MR. WILBURN: And that may be what happens either way. I think what Mr. Hampshire and I were concerned about is it won't have any precedential value when it comes back.

THE COURT: The only cost effective factor I've had is that you folks have been absolutely fully prepared. And every time I've seen you, you know every dotted I and crossed T, and know everything involved, and therefore the amount of gaining the knowledge to properly appear at the BZA and all that stuff.

Every lawyer here impressed me with their total knowledge of everything involved, and therefore the kind of research and usual trial preparation has already been done.

MR. WILBURN: Well, it's been a pleasure to work with my colleagues in the bar. Both of my colleagues have done a great job for their clients. We all want to get to closure on this. I understand the county's view. The one

thing I'd say about that, I think the county's arguing something that is hyper-technical, and they have reasons that they want to protect the zoning administrator. But the zoning administrator issued a decision, and in it, the zoning administrator said it was appealable.

These petitioners spent money to appeal it and are here and it is probably a difficult pill for them to swallow for the county to now say you've gotta start over.

My client, you know, is mindful of the economics too. It is clear in our papers that not only are they paying us to litigate these issues, but for each day they don't open, I don't recall the exact number, but there's an affidavit of substantial thousands of dollars in revenue that they miss. So these delays do have an economic impact.

But I understand Your Honor’s question. It was a good question. I hadn't considered you could have an appeal to the court of appeals, and you could have one to the BZA.

THE COURT: You know, before I had this job, I was a lawyer for 20 years billing people as a lawyer, I know that it hurts them.

MR. WILBURN: Understand.

THE COURT: Just a second. I'm asking petitioners' counsel who out of courtesy wants to go next?

MR. LAWRENCE: I assume, Mr. Hampshire wants to close, which is his right. I had some points I wanted to make about the procedural issue, but if Your Honor recalls I mentioned I would like to be heard on the substance and you indicated that you wanted to hear a response to the procedural question. So I wasn't --

THE COURT: Counsel decide who goes next.

MR. HAMPSHIRE: Well, I believe I was in in the middle of mine, and we were talking about the procedural issue, and specifically the judicial economy issue that was just discussed.

THE COURT: I brought you over last time, you sit down, you let him go?

MR. LAWRENCE: Yes, Sir.

MR. HAMPSHIRE: I do appreciate the Court's question, Mr. Wilburn, and that is a valid point, that the Court makes that there could be, most likely would be an appeal to the Court of Appeals, which –

THE COURT: I'm confident that this is worthy of an appeal, yes, sir. No matter what the ruling is.

MR. HAMPSHIRE: Yes, sir. It's certainly a very interesting legal issue. And that brings me to the substance of it. Because it is appealable –- well, as the Court knows, we have an appeal by right to the court of appeals, but it would certainly be interesting to The Supreme Court of Virginia, too, if it got to that point, because I think there's no issue but that the issue in this case is a very kind of clean one and a very interesting one, and that is in sum does Virginia code section 15.2-2291 supersede and trump local zoning and the power of local zoning to decide zoning issues.

Specifically, does Virginia code 15.2-2291 supersede the prohibition in the Loudoun County zoning ordinance of a congregate living facility in this AR-1 zone? And that question is illustrated in the zoning determination.

And for that substantive issue I will argue, as I've argued before, and it's also in the briefs, that 2291 does no such thing. There is no indication in subsection A of 15.2-2291 that the General Assembly intended to supersede local zoning.

Mr. Wilburn’s argument is essentially that if you have –- the General Assembly intended in 15.2-2291, that if you have a state license, you are ipso facto allowed in the zone, even it's otherwise prohibit by the zoning ordinance.

But I ask the Court to look at a couple of things, and I've mentioned these before, and they're also in the briefs. The operative -- number one, 15.2-2291 is part of the enabling statutes that give localities the right to have

zoning ordinances. So it's not some sort of competing regulatory scheme from elsewhere in the code. It’s actually part of the enabling local zoning ordinance.

And it was enacted, as we've said in our briefs, in response to the federal amendments to the fair housing act of 1988, and what was going on - and all this is in the briefs – is Congress reacted to discrimination by global zoning authorities by imposing unfair requirements or different requirements on disabled people, mentally ill people, requiring special permits for people to go into group homes that were not required for single family homes occupied by traditional families. That was the whole genesis of this code section.

THE COURT: Which code section?

MR. HAMPSHIRE The Virginia general assembly –- Virginia code section 15.2-2291, the genesis was a federal fair housing act in 1988, that prohibited that kind of unfairness. And so when you look specifically at the operative

language in this code section, you have the following sentence, no conditions more restrictive than those imposed on residents occupied by persons related by blood, marriage or adoption shall be imposed on a residential facility.

So it's a fairness thing. And Loudoun County has complied with this provision by saying in its zoning ordinance that it doesn't matter what kind of family you are, whether you're a traditional family or a group home family with mental illness or whatnot, you may occupy a single family home and we're not imposing special requirements on group home families that we’re not applying to traditional families.

So that's the sum total of the limitation on local zoning power. Don't discriminate in so many words. And Loudoun County is not discriminating because it applies the congregate housing living facility prohibition across the board no matter what kind

of family you are. That’s our position.

What Mr. Wilburn would like to argue and does argue and what Newport would like the Court to rule, is that 15.2-2291 actually gives a superior right to group home families to occupy commercial uses in a residential zone to traditional families. And that's not -- that's also not apparent here in the code section. And we see that in the last sentence of the code. It says for the purpose of this subsection, residential facility means any group home or other residential facility for which the Department of Behavioral Health and Development Services is the licensed authority. I go back to this language, which means any group home, or disjunctive, other residential facility.

So The General Assembly has left it up to the localities to determine in the first instance, what is a residential facility and what isn't a residential facility. But if you are a residential facility, then you have to -- the local government has to treat all

residential facilities alike, both those that have been licensed by the state, and those that are occupied by traditional families.

And we have evidence in the record of this in the letter from Jay Benz (phonetic) of the Department of Health and Development Services who notes that the Virginia Department of Behavioral Health and Developmental Services has absolutely nothing to do with zoning.

THE COURT: Let me interrupt you for a second.

MR. HAMPSHIRE: Yes, sir.

THE COURT: 15.2-2291 has a definition of residential occupancy or reside. The General Assembly is saying something about the key words. Who’s a resident, who resides?

MR. HAMPSHIRE: That's is another issue. Yes. Sir. We briefed that. And our position is that while there's a split of authority as to what reside means, that the rule in Virginia, as illustrated by Judge Bach’s decision from 1997, and the Woods v. Foster

decision that he cites, is that reside requires a situation where one has no other home, one has no other home to go to. You may recall the facts of Judge Bach's decision, in the footnote, where these children were abused and had no other place to go –

THE COURT: That's a bit involved here. Are they really residents for the purpose of all these legal definitions.

MR. HAMPSHIRE: Right. You heard my colleague Mr. Bartolomucci argue that as well that we don't believe that they reside on top of all the other difficulties, the fact that local zoning is not trumped by 15.2-2291, and the whole drug issue we've discussed a little bit, is also a problem because they don't reside on the property. Because the record is clear that these young women are coming to be treated and then they're going back home and that Newport has located this facility where it's located precisely because these people, these young women have homes nearby. They're going back to

their home at the end of their treatment period.

But we think our primary argument is that this is a commercial facility in a residential zone and one that does not meet the definition of a residential facility, as the zoning administrator himself has already determined, and it just does not follow that The General Assembly has said even that it has to be allowed anyway under 15.2-2291, because localities in the first instance have to decide if under their broad zoning authority what is and what isn't a residential facility.

And in this case, as the zoning administrator has determined, it is not a residential facility. And 15.2-2291 just doesn't change that. So in response to Mr. Wilburn’s argument, this is not an issue of supremacy between state and local law. The state law is perfectly consistent with local law in providing a small –- excuse me –- a single limitation, if you will, on the power of local zoning officials not to discriminate, don't

treat traditional homes differently than you treat group homes.

With respect to the drug issue that we've discussed, there's also language in this statute that speaks to that. And it says that -- and it says, for the purpose of this subsection, mental illness and developmental disability shall not include current illegal use of, or addiction to a controlled substance. So it's a false argument to say that because Newport may not be treating people for drug addiction, or they may not be currently using, that it's not in violation of the statute. Because it's enough for people to be addicted to a controlled substance for that facility not to --

THE COURT: The Legislature is aimed at users of drugs as a negative factor in a treatment facility.

MR. HAMPSHIRE: Right. I think what The General Assembly has said is that mental illness is one thing, but addiction to a

controlled substance is another. And we've –- briefed –- we're not going to say that that is a disability that requires housing in a group home.

Here, the record is clear that while there may not be actual treatment of a drug addiction, drug use, there is certainly the case that these young women are addicted to these controlled substances in the sense that as has been defined by the federal courts, mainly the Southern Management Corporation decision, which has been cited, which requires a period of abstinence and past treatment in order to qualify for protected status.

Here there is no record that Newport is going to screen the residents to require that they have had a period of abstinence or have been through a treatment program before being admitted. What they're basically going to do is admit the residents -- admit the young women and then deal with the problem later. And that's exactly what The General Assembly does not want.

But we will submit to the Court that the drug argument and reside argument is not our primary argument. Our primary argument is that The General Assembly never intended to supersede local zoning and to say that local zoning officials determination about what is and what is not residential is somehow superseded by 15.2-2291. The General Assembly knows how to say that. Okay. And they simply haven't said that in this case.

With respect to the advisory opinion. I just need to take the opportunity to repeat, and we've said this over and over again, but I just need to repeat it here. That is that the case law and the enabling statutes simply do not support the county's argument on this. If you look at 15.2-2309, which is entitled Powers and Duties of Board of Zoning Appeals, subsection one states –

THE COURT: Just a second. This is a room I'm not familiar with. I don't know where the books are.

MR. HAMPSHIRE: Yes, sir.

THE COURT: All right. Go ahead.

MR. HAMPSHIRE: So 15.2-2309, which is entitled Powers and Duties of Boards of Zoning Appeals, and as the title implies these are the powers of Boards of Zoning Appeals to hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article, or anyone that is adopted thereto, this article being a zoning enabling authority, is a local zoning ordinance essentially.

So Loudoun County, as I said last time, does not get to say, in light of this clear power, that the Board of Zoning Appeals has to hear an appeal for any determination. That only certain determinations are appealable, especially when its local ordinance in the form of 6.401, speaks to the right of somebody to ask for a determination, which is exactly what Newport did and to issue it and also to set

forth appeal deadlines in it.

And Loudoun County doesn't get to say we didn't really mean it. It's only an advisory decision. So the statutory authority doesn't support that position, the case law also doesn't support that position. And the County has cited the decisions of Vulcan and Lilly, and those are in our briefs.

Vulcan involved, not a written determination, but an oral determination. And Lilly also involved an oral determination. But the reason that there was some certainty about it was because there was also a permit. But here we don't have an oral decision. There's no issue. It's a written determination. You can call it an interpretation, you can call it a determination, you can call it anything, but it falls within a decision determination made by an administrative officer about what is allowed in a zoning ordinance.

As we've argued before, zoning determinations, by their nature, do not

authorize necessarily the use to begin. Zoning determinations are always conditional on other things happening, such as building permits, occupancy permits, maybe permits from the division of motor vehicles, permits from the board of architectural review for the use to actually commence.

So there's a distinction between zoning determination, which article decisions and a determination by a permit that allows the use to commence. The General Assembly did not intend to exclude entitlement decisions from those that are appealable to the Boards of Zoning Appeals. On the contrary, as set forth in this language, it is to hear any decision, requirement, or determination made by an administrative officer about the zoning ordinance.

And those determinations only go as far as they go. They say what they say. The fact that they may be conditional on other things happening, doesn't make them any less a zoning determination, because they talk about what is -

- what you can possibly do on your property. They're never a permitting decision, or not a permitting decision in and of themselves.

Those are the points I wanted to make. I've made them before. They're also in the briefs. Thank you.

THE COURT: Thank you.

MR. LAWRENCE: Thank you, Your Honor. I'm going through my notes of the various comments that Counsel made here.

The reason all three properties are not before you in the permit case is because they've only filed one permit application. They didn't file applications for the other two. And that's why that's in that posture.

The argument they seem to be making is that, you know, you'll have multiple hearings or multiple actions. And I think that that's certainly possible unless there's binding authority from the Court of Appeals or the Supreme Court of Virginia at some point, that everybody agrees that it's binding and not

distinguishable.

But that's why there's only one permit case going to the BZA for the one property is because they've only ever applied for one permit.

The argument that both counsel made regarding the statutory standard of review for questions of law, they point out correctly that the standard for questions of law in this court is de novo, that you're not bound by the Board of Zoning Appeals findings on a question of law. I agree with that, but then they take it a little bit further, and they both suggested in substance, we're here now.

I think Mr. Wilburn used the term technicality or hyper technicality. You know, why does this matter, we're here, let's just decide it. He cited you the West case, which I had not previously seen, but I looked it up while he was speaking. I had certainly not had time to fully review it or digest it, but I would caution the Court, that's a planning

commission case. That's not a Board of Zoning Appeals case. I can see that much from just briefly skimming it.

There is an entirely different statutory scheme for appeals for planning commission decisions. It's not at all like what we have in an BZA appeal, so I'm not sure that authority is what I would rely on as it relates to a BZA appeal.

I would point the Court to an analogous authority that came to mind as they were speaking. That's the case of Parrish v. Fannie Mae. It’s at 292 Va. 44, 2016. And I remember this from from my prior practice. Your Honor, I was a was a partner in a law firm in Fairfax. I did a lot of defense work, some of it in general district court, some in circuit court. And, you know, I had this case come up a number of times in the context of –- cases, and it just came to mind as they were discussing this point.

Parrish against Fannie Mae is an unlawful detainer action filed in general

district court. And the general district court erred because it essentially tried title to the property that was at issue. The pleadings raised the issue of title, as Your Honor probably knows, general district courts have no authority to try title, it is not within their limit of jurisdiction.

The decision was appealed to the circuit court. And that point was made to the circuit court. And the argument was made, well, maybe the general district court didn't have jurisdiction to try title, but the circuit court does. And that's where we are now. So the circuit court should just decide the issue, and on appeal to the Supreme Court, the court said, no, that's not how this works. When you're sitting in an appellate capacity in the circuit court, even though your own juris –- your original jurisdiction might allow you to do things, when you're sitting in an appellate capacity, you're constrained by the jurisdiction of the body that sent the case to you. They

refer to it as derivative jurisdiction.

So the Parrish case is not a BZA case, but I think it is instructive that it may be a technicality, but it's one that the Supreme Court seems to think is important, whether the body that is sending you the case has the authority to do what they're asking you to do.

THE COURT: Are you saying that I lack jurisdiction?

MR. LAWRENCE: I'm saying that if my argument is correct, that the November 29, 2021 letter is an advisory opinion and is not a biding determination, as Mr. Hampshire refers to it, then you would not have any jurisdiction or authority to reach the substantive question that they want you to reach.

You would, of course, have jurisdiction to review the decision of the BZA, but recall that their decision was this is advisory and we don't think we have statutory authority to review it. The BZA felt it had to wait for the permit.

And so while I respect these gentlemen and their arguments, it is my position, Your Honor, that this is a significant issue. I wouldn't be bringing this up hearing after hearing much to the displeasure of both of my friends if I thought it could just be waived away as a technicality.

THE COURT: Let me re-ask a question. You're saying that I do not have jurisdiction to determine the legal correction of definitions?

MR. LAWRENCE: Your Honor, I think you have jurisdiction to review the BZA's decision. And the BZA's decision was that it does not have statutory authority to review an advisory opinion. If you think that's correct, then that's where this case ends, affirming the BZA and waiting for the permit appeal to make its way –

THE COURT: Why wouldn't there be a lack of jurisdiction if I agree with the BZA.

THE LAWRENCE: Well, you've always got jurisdiction to review your own jurisdiction,

and that includes reviewing the jurisdiction of the supporting tribunal. So you wouldn't be acting unlawfully.

And certainly Your Honor may disagree with me. You may not think that's an advisory opinion. I don't think that's the best reading of the precedent. But if Your Honor thinks that that's a binding determination that was properly appealable, then you would in effect be finding that the BZA erred.

THE COURT: Actually I thought that the opinion –- you made me say it correctly. That document we're talking about actually showed thoughtfulness, research. and good intelligence, saying this part of local zoning and this part of code we gotta reconcile together, very thoughtful. Whether it was an adjudication or not, I never thought about it. I just thought about it as an advisory thing internal to the BZA process not affecting the jurisdiction of this Court on these present issues.

MR. LAWRENCE: Well, when we get to

this Court, when we move out of the decision by the administrative officer into the BZA and then into this Court, we, of course, start to encounter limitations on this Court's power. I mean Your Honor knows there really is no circumstance under the Virginia constitution where the Court can give an advisory opinion.

I mean we run into that all the time in declaratory judgments, where just because parties disagree over what the law means and they file a declaratory judgment, that doesn't mean necessarily that the court has authority to resolve that for them.

The court often has to tell them there's no actual case or controversy, and you have to wait for those circumstances to arise before that law can be tested. And so that's one of the things that as I looked at this, it gives me significant pause.

Mr. Hampshire mentioned some of the cases that we cited. He did not mention all of them. The Vulcan Materials case was decided a

year or two after the county enacted its ordinance. You may recall I suggested at a prior hearing that some of the language in our ordinance, I think, has to be limited in light of the Vulcan case because the Supreme Court decided that after our ordinance was enacted and the board of supervisors didn't have the benefit of that decision and the cases that followed at the time it enacted the ordinance.

And so what Vulcan dealt with, Mr. Hampshire is correct, it was an oral opinion, but it was a carefully considered oral opinion. It was an oral opinion by the administrator, the zoning administrator after consultation with the county attorney and other staff. So it was oral, but it was not, you know, it was not off the cuff. It was a considerable opinion.

And the issue in that case was whether that was binding, because there the party had not appealed it and the county was taking the position that that landowner was bound by the oral determination that have been given by

county staff because they had not appealed it to the BZA and because the time to do so had run.

And so on appeal, the Supreme Court said, no, it didn't matter that it was oral. What mattered was that they were asking for advice, and as I recall the facts of the case, they had in mine that that they had been operating for a number of decades, and then they had closed it down, you know, for economic or other reasons, and they went back to the county and they said, we'd like to reopen that mine. We'd like to restart the operations. What do we have to do? And the county staff went away, they consulted, they came back, and they said, this is what you have to do.

And so what the Supreme Court said was that they hadn't actually applied for anything. They hadn't actually asked for permission to begin the use. They had just asked what is the process. And so because it didn't actually address a request to begin operations or some other substantive right, the court found that it

wasn't appealable. It couldn't have been appealed to the BZA and therefore it couldn't be binding.

In the Lilly against Caroline County case that I think Mr. Hampshire mentioned is another oral opinion, but what makes it different, what makes the outcome different from the Vulcan Materials case is that it was an oral opinion stated by the zoning administrator in the course of a land use application.

So the landowner came in to Caroline County. They said, we want to build a radio tower and we want to build broadcasting facilities. And they went in front of the planning commission and the planning commission had a hearing, and they went in front of the board of supervisors for final approval because the board of supervisors had to grant a special exception in order to allow that to be built where they wanted to build it.

And so during the course of the board of supervisors hearing, the zoning administrator

was asked what the zoning permit, or what the existing zoning ordinance would allow. And there was a distinction between the tower and, you know, some of the other facilities that the landowner wanted to build together with the tower.

And the zoning administrator, you know, researched it and told the board, you know, it's my determination that they're allowed to build a tower there, but they can't build some of these other facilities that they want to build with the tower unless you approve a special exception.

And the plaintiff was there, one of the neighbors. They heard the determination. They were heard too, you know, to comment on the application and oppose it, and then they didn’t appeal. They didn't appeal that determination. And so the Supreme Court said that was different than the Vulcan case because the land owner had an application pending. They had applied to the board of supervisors asking for the special

exception, and this oral determination was binding and appealable because it was given in connection with that.

So they're asking for permission to do something. And that's the context in which the opinion is given. That's what makes it binding and appealable, as opposed to merely advisory like in the Vulcan case.

And then the third case that we cite that I don't know if Mr. Hampshire touched on, is the Crucible case. This is out of Stafford County. It's 278 Va. 152. And when I was looking at my brief this morning, I believe it's in there.

But this is a case where the landowner, again came into the county. They operate an anti terrorism training school facility down in a Stafford County, and they wanted to expand it. And so they were looking at a large piece of property that would allow them to do the types of training that they wanted to do, but it was in a different zoning district.

And so they went to the zoning administrator and did a presentation. They sat down with them. They explain, this is what we're going to do. You know, there'll be firearms training, there'll be, you know, anti-terrorist training, avoid the terrorist driving courses. There'll be, you know, all these sorts of things, and the gist of their presentation is, as we read your ordinance, that's a school and, you know, we just want to make sure you think this is a school because schools are allowed in this district.

And the zoning administrator comes back, unlike the Vulcan case, and unlike the Lilly case, he gives them a written letter, a written opinion where he says, yes, I think this would be a school, and schools are permitted in that district.

And then, of course, the board of supervisors immediately changed the ordinance because they didn't want an anti-terrorism training facility in the residential district

that company had identified. And so on appeal, the Supreme Court said, you know, it highlights I think the point that I've been trying to make over the last several hearings which is, that was advisory, even though there was a formal presentation to the zoning administrator, even though he gave them a detailed, thoughtful, written letter, it was still advisory because they weren't asking a question about the process. They weren't actually applying to do anything. They weren't actually requesting permission to begin the use. They were simply asking him for his opinion about how the ordinance would be applied.

And so in that case, the Supreme Court said that was advisory. It was not binding. It's a vested rights analysis, which falls under a different section of Virginia code, section 15.2-2311. But the language that the court's construing in that vested rights analysis is the same as under 2311(a), which is what gives the BZA its authority either to hear or not hear the

appeal that's at issue in this case.

So, you know, I appreciate everybody wanting to get to the finish line and wanting to get a decision. But I do think it is an important technicality whether the BZA had authority. And, again, my counsel to the Court would be to allow the permit to make its way to the BZA next month, have the hearing, get the decision, that can be appealed and the appeals can be consolidated. Certainly, I would not object to that.

And that would avoid the situation that the parties in the Parrish against Fannie Mae case found themselves in, where they devoted, who knows how many years, trying the case in general district court, trying the case in circuit court, going down to Richmond, briefing the thing, waiting for a hearing, only to find out that there was no authority for the court to act.

THE COURT: Are you telling me that you believe that any decision I make on this is

premature?

MR. LAWRENCE: I'm telling you that I think the correct decision for this Court, based on my analysis of the statutory authority and very importantly the case law that applies it, is that the BZA was correct, that they lacked authority to review that letter, the November 29 2021 letter, because it was merely advisory.

So I think that's the correct result is to affirm that ruling by the BZA, but recognizing, you know, the capable and an experienced counsel who both probably disagree with me, I think the safer thing to do is to consolidate the two because they’re both coming to this court. And that's another thing their argument doesn't address.

THE COURT: Why would it matter if I rule on the legal correctness of what happened on November 21 versus I make a finding as to today? Aren’t the events that followed making that not what I'm really deciding? I'm deciding whether the more current events are legally

correct or justiciable.

MR. LAWRENCE: Well, and they're not here yet. That permit is not here yet. You've been notified of it, but it's not here yet. It's not part off the record that's before you from the BZA. It's not something that the BZA has ruled on. And I went back to my office Judge, and I tried to think of a way to avoid that, but that's the statute that I handed up the first time I was at the podium, 15.2-2312 where we see there's a requirement for public notice and public haring. And so I don't see a way for these parties, with or without my consent, to stipulate our way around the BZA being able to review the issuance of that zoning permit.

Now, there are other land use decisions. I think some of the stuff that goes to the planning commission is an example where you can bypass the planning commission and you can go straight to circuit court. But this issuance of a zoning permit, I can find no

authority that we could bypass the BZA. That had not happened. That permit application had not even been filed at the time the BZA held its hearing. It hadn't been filed at the time the appeal to this Court was filed. It's not referenced in any of the pleadings. It didn't happen until last month after this Court already held at least two hearings. And so I just don't see any way to bypass that. As much as everybody would like to.

THE COURT: So you're saying the Court should wait until the BZA hearing and decision?

MR. LAWRENCE: Well, I think you should affirm the BZA. That's what I think is the substantively correct decision. But I think from an economical point of view, it makes sense to consolidate them and the Court can issue two opinions. It can do whatever it thinks is right with my argument in this case regarding the November 29, 2021 letter, and it can do –

THE COURT: But that was not a decision. That's an opinion.

MR. LAWRENCE: I agree. And hopefully you agree with me if you --

THE COURT: I think the later acts are available to the Court jurisdiction wise.

MR. LAWRENCE: That's the point Mr. Hampshire was making last time. You may recall that he expressed a concern that the county was going to aggravate and reprobate, and we were going to take one position here and a different position in front of the BZA. And you'll recall I put on the record that that's not what we're doing. We agree the permit is appealable. We believe that's the only thing that's properly appealable.

THE COURT: It's interesting as I listened and can go with you on the different breakdowns of how we intellectually look at all this. At no time have I thought I was ruling on the correctness of the November 21 letter. It's just a factor in the decision makers labor.

MR. LAWRENCE: Well, I think –- I do think it might be helpful if I make this point,

Judge. I do think the question before you is was the BZA correct in its ruling that the BZA decided that was not appealable. But I do think we have to we have to look at what the BZA is being asked to do when we when we get into these questions.

So if the permit case comes back before you, the question technically before you is, is whatever the BZA does next month, correct. But the BZA is in turn being asked whether the administrator's decision was correct. So it's like one of those, you know, Russian nesting dolls where, you know, the question in front of you includes the question and that includes the question that was below that subordinate tribunal. So it does to some extent run together.

I would like to make briefly a couple of points in the event that you disagree with everything I've just said and you want to reach the substance today.

As to the merits of the argument that's

been presented under 15.2-2291. I think the last sentence of subsection (a) is very important, and it reads, for purposes of this subsection, quote, “residential facility” close quote, “means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority.”

And so the argument that Mr. Hampshire makes is that is that that doesn't apply to commercial facilities. And I think Mr. Wilburn’s position is, if I understand his clients position correctly, they concede that they're commercial in nature. They're not nonprofit or, you know, a government agency.

And so Mr. Hampshire’s argument is, you know, that that definition doesn't apply to commercial facilities.

And so certainly, we're going to, we being the Board of Supervisors and the County, we're going to apply this to however the Court instructs us that it's correctly applied. But

in the absence of Virginia authority directly on point, we would submit that the most natural reading of that statutory provision is the one set out by the deputy zoning administrator in her November 2021 letter because it doesn't say any nonprofit group home. It doesn't say any governmental group home. It says any group home.

And so our view on that is that if the General Assembly had intended to draw a distinction between government operated or nonprofit operated or for profit commercial operations, it wouldn't say any group home. It would say any not for profit group home. It would say any 501c3 group home. It would say any non commercial group home, but it wouldn't say any group home. That's very, very broad language.

And if that's not enough to let us understand what was intended, the General Assembly goes on to say, or other residential facility. So it's not just any group home.

It's any group home or other residential facility. And so it does not appear to us that Mr. Hampshire's argument regarding commercial versus non commercial is the most logical or plain language reading of that provision.

And to the extent the Court decides it's going to reach the merits today, we believe that the opinions expressed are substantively correct. Thank you.

THE COURT: Thank you. Any other arguments?

MR. HAMPSHIRE: Your Honor, I would be repeating myself, but I would just like to take the opportunity to point out that it says other group home or other residential facility. Our argument is that that means it has to be residential as determined by the local government.

THE COURT: What about his idea that I don't have any jurisdiction or I don't have any power to rule?

MR. LAWRENCE: Well, we briefed this

many times, Your Honor. I need to say that I heard the Court say that the Court viewed that determination as advisory, or something to that effect.

But again, I need to go back to the whole nature of zoning determinations, and I need to go back to 15.2-2309 that I mentioned earlier. And that the power of the Board of Zoning Appeals, appeals from any determination. A zoning determination does not allow the use to commence necessarily. The Board of Zoning Appeals hears cases all the time, BZAs across this Commonwealth hear cases all the time about whether zoning administrators are correct. That is a matter of entitlement of legal rights that use could perhaps be established, but they by definition do not necessarily establish the use and allow it to commence, for that you need permits.

Zoning permits perhaps, building permits, board of architectural review permits, motor vehicle department permits. That's what

allows use to commence. So it's a false argument to say that a zoning determination is not a determination under 15.2-2309 because it doesn't necessarily allow the use to commence. That's just a false argument.

And it would basically, I would submit, would put Board of Zoning Appeals out of business. We wouldn't need the Board of Zoning Appeals because everything would relate to the ministerial permits where there is no discretion involved.

Zoning administrators make tough calls, they make judgment calls about what things could be allowed under the zoning ordinance. That is different from permitting decisions. So this decision very much falls immediately within 15.2-2309, and is the kind of a determination that should be –-that can be appealed.

The argument that somehow the Loudoun County Board of Supervisors didn't have the benefit of Vulcan, Vulcan was decided in 1994. I mean, that's a long time ago. So I don't

understand that argument.

But I need to repeat that Vulcan and Lilly were oral determinations and that they were problematic precisely because they were oral determinations. Here we have a written determination. Granted, it doesn't allow the use to commence, but it says that it could commence if certain things happened, and that's a significant determination.

Remember, Newport asked for this determination, and the record shows that Newport was very happy with the determination. They trumpeted the determination to the neighbors, that’s why we knew about to appeal. But it was prudent of Newport to do that because, as I argued before, Newport did not want to be in the position of paying over $3,000,000 for these homes and then get down the road to a permitting decision only to find out that the zoning administrator felt that as a matter of legal entitlement, they could never be used under any circumstances for what they wanted to use it

for. They secured the zoning determination, which was a significant determination, even though it didn't necessarily allow the use to commence up front.

And so, again, that was a substantive determination, and the Loudoun County zoning ordinance falls neatly within it and I cited that section before, 6-401, which contains the exact procedure that Newport followed and contains at the end of it the 30 day appeal period. So that was a significant determination and falls neatly within 2309. And it's in the nature of a zoning determination that does not necessarily allow the use to commence, but it says that could be allowed.

Lilly and the Crucible case, I just need to mention that Crucible, as Mr. Lawrence said, dealt not with not with whether a decision was appealed to the board of zoning appeals, but whether it was vested under a completely different statute. Under 15.2-2311, subsection ©), which says that if a zoning administrator

makes a determination about something that would not be otherwise be allowed by the zoning ordinance, in other words, the zoning administrator is wrong, but yet the landowner relies upon that in good faith. And 60 days goes by, the zoning administrator can't change his or her mind. That is a different subsection. It's a different set of circumstances, or it's a different regulatory scheme than 15.2-2309, two different statutes.

So we very much believe that this the zoning determination from November of 2021 was a zoning determination. Everybody treated it like a zoning determination, and it fell neatly within 15.2-2309 and the case law. Thank you.

THE COURT: Thank you.

MR. WILBURN:: I'll be brief, Your Honor. I'll be brief on the issue that the County raised.

If the Court concludes that the zoning administrator's determination or decision was advisory only, then the board of zoning appeals

would be correct that it was advisory and not subject to appeal, and the Court could affirm that. But you also have the authority under the statute to modify. I just want to highlight that. All the parties talked about this in a prior hearing.

So you could agree with Mr. Hampshire that it's an appealable decision and that we're here on the merits, projecting the County's position was advisory, or you could accept the County's position advisory and still under the statute, you have the authority to modify it. And I'd submit, and I think Mr. Hampshire would as well, because it's a pure legal question that the Court could rule on this issue.

But I think that if we're breaking it down the decision tree the first decision, I would submit, is whether the zoning administrator's decision was advisory or not. If it was, then the BZA was correct in finding that it was not appealable, and the Court can affirm that. And that ends this case, or the

Court could exercise its authority under the statute to modify it and take up the legal question. So, I mean, I think we all agree that's the decision tree the Court has to navigate through. We just disagree, I think, between the County and Mr. Hampshire's clients on whether that was an appealable decision.

Briefly as to the permit. The County emphasizes that the permit is not before the Court. There's no permit record before the Court. It's not in the pleadings. And all of that is true. But it's true because the Petitioners here have a right to appeal or to bring this action before the Court and to frame it and to frame the issues that they so choose.

If the Court believes it has jurisdiction to decide those, then it's not for the County to say it would be more efficient to simply wait and decide some other case at some other time. I understand we've already talked about the economics of either going, or staying this or not, so I'm not going to repeat that,

but I do want to give some weight to the petitioner's right to file their complaint when they did, or their appeal when they did, to frame the issues as they choose. And they weren't obligated, I think, to litigate this, you know, this permit that wasn't yet issued or even the permits that we haven't applied for, yet. But unless Your Honor has any other questions, that's the only additional comments I wanted to make.

THE COURT: The concept of resolution decision ending at this level, setting up what undoubtedly will be an appeal by whatever party, whoever loses, wasn’t my goal here today. I was going to listen to you and let you educate me further and make a call, sort of an ending that is going to be a 50% upset of one side, 50% sense of victory for the other.

But the concept, whether I totally agree with it or not, raised by your teammate over there, that this could be theoretically lacking in jurisdiction, which would be a waste

of time. The mere fact that that's possible, I'm not sure I agree with it, but I am sure I am not that firm in my position, I could disregard what was said on it, but that would put you in months and months down the road.

Secondarily a dialogue I had with you about the cost if you end up at BZA. Today is another persuasive performance by counsel that you know everything in this case. You're telling me everything possible in it. There would be minimal research or minimal billing to the citizens that have an interest in the outcome, and therefore, I am not going to rule.

I came in here Friday and reread this whole case. So I warmed up for where you would take me, because you were very, very exhaustive of every possible way of looking at each subject. And I told myself over the weekend I kind of owe everybody a verdict. I'm not going to do it. It could double the aggravation, delay, all the rest of the trouble. If there's a concept in any way related to the idea that

it's not just issuable at the moment and may be never. What's your best guess when BZA will have their hearing?

MR. HAMPSHIRE: Your Honor, I asked the staff and they gave me a date over the phone. I gave it to Mr. Hampshire, right? It's the last, I think it's the 3rd week of January.

THE COURT: Do they issue an opinion promptly or do they take it under advisement or what happens there?

MR. LAWRENCE: Your Honor, our experience is consistent with the case that is before you, which is they’re going to give a decision there at the hearing. They’ll have a public hearing where the parties can address it. Any other interested member of the public can address it.

THE COURT: Public hearing being January 26.

MR. LAWRENCE: I can't remember what the date is, but it's usually the third Thursday, and then they close the public hearing and they

go into essentially a public deliberation format where the members of the BZA sort of discuss the merits and then they give a ruling right there.

I don't know that they're legal bound to do that. January 19 is what Mr. Hampshire is pointing out to me. There is a statutory requirement that they render a decision within 90 days.

THE COURT: I'm sorry to hear that. I'm bothered enough that I'm not closing it for the people today, for good or for bad.

MR. HAMPSHIRE It's 90 days from the filing date. So it's 90 days from whatever day they filed it. I've talked to the staff, and I can tell the Court that I will push every button at my disposal to make sure that it's early January.

We're certainly not trying to delay this for the sake of delay, and so that's what we can do. We can put it on for January. There was a hearing, I think it's scheduled for December 15, but with the timing of when they

filed their appeal, the public advertisements and notices that have to be done, staff told me it was just impossible to get it on for the December 15 date.

THE COURT: I may start further research on whether this is or is not within my power. If it's going to take a substantial period of time after January.

MR. LAWRENCE: My expectation, Your Honor, is that they will have a decision in January. I'm being candid with you, I don't know that there's a statute that requires them to decide that night, but that's our experience with this particular BZA.

THE COURT: All right. Sorry, you don't have closure today, but you've heard what I've said. Thank you.

MR. LAWRENCE: Yes, sir. Thank you.

(Whereupon, the hearing concluded at approximately 12:02 p.m.)

CERTIFICATE

I, Claudette M. Gaujot-Turner, Certified Court Reporter and Notary Public in and for the State of Virginia, do hereby certify that I reported by electronic means the proceedings styled on the title sheet hereof, taken at the time and place shown, and that the foregoing pages constitute a true and accurate transcript of said proceedings, to the best of my ability.

I further certify that I am not related to any of the parties, nor am I employed by or related to any of the attorneys representing the parties, and I have no interest in the outcome of this matter.

GIVEN under my hand this 6th day of January, 2022.

Notary Public

My Commission Expires:
November 21, 2026
Notary Registration No. 280813