



# County of Fairfax, Virginia

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

May 15, 2019

Mr. Steve Wydler  
7009 Symphony Court  
McLean, Virginia 22101

Ms. Robyn Quattrone  
Mr. David Quattrone  
7008 Symphony Court  
McLean, Virginia 22101

RE: Use Determination Requests  
1620 Davidson Road; 1622 Davidson Road; 1624 Davidson Road  
Tax Map 30-3((1)) 30C1, 30B1, 30A1  
Meadowbrook Farm  
Zoning District: R-3

1318 Kurtz Road  
Tax Map 30-2((13)) 36  
Salona Village  
Zoning District R-2

Dear Mr. Wydler and Mr. and Ms. Quattrone:

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

**REQUEST:** Request for a determination that the four properties listed above be considered "congregate living facilities" under the Fairfax County Zoning Ordinance.

**ZONING INFORMATION AND BACKGROUND:**

Zoning: The properties located at 1620, 1622, and 1624 Davidson Road ("Davidson Properties") are zoned to the R-3 District and are part of the Meadowbrook Farm subdivision. Each parcel is developed with a single-family dwelling constructed in 2006. The lots share street access via a single pipestem driveway off Davidson Road. The property located at 1318 Kurtz Road ("Kurtz Property") is zoned to the R-2 District and is part of the Salona Village subdivision. It is developed with a single-family dwelling constructed in 2011. None of the referenced properties is subject to any proffered conditions or special exception, special permit or variance.

Relevant Zoning Ordinance definitions:

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

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

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

Site Visit: On April 24, 2019, I met Tim Davis, Vice President of Development, Newport Academy, at the Davidson Properties. There I observed the exterior layout, and I walked through the property located at 1622 Davidson Road. I observed that the single-family dwelling includes areas for sleeping: four bedrooms with two double beds in each; at least three of the bedrooms have their own bathrooms. There is a station for the staff person on duty, and upstairs there is a therapy area for counseling sessions. On the main level, there is a living area with sofas and chairs; a separate large gathering area for family visits, therapy, and other group meetings; and an office area with supplies for staff. There is also a dining room and kitchen with a commercial-grade refrigerator and freezer. The lower level holds a classroom/study area with eight workstations, a recreation area, TV room, yoga room, ping pong, and a kitchen with wet bar.

Background: Your letters state that your residences at 7008 and 7009 Symphony Court are adjacent to the Davidson Properties, which were purchased by the same entity, Monroe RE, LLC ("Monroe RE"), within the past 12 months. Also, according to your letters, Monroe RE will

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operate a group residential facility, referred to as Newport Academy, on each of the four properties, with eight clients in each dwelling.

Mr. Wydler's letter states that "Monroe is relying on Section 2-502 of Article 2 of the Fairfax County Zoning Ordinance which allows a dwelling unit to house a 'group residential facility.'" He asserts that the common ownership of the properties results in this being a single facility, as opposed to three (or four) separate facilities. He also observes that, in addition to common ownership, the Davidson Properties will "inevitably share parking, personnel, patients, materials/supplies, operations." His letter describes this as creating a "commercial compound" that is inconsistent with the residential zoning of the neighborhood.

The Quattrones' letter likewise contends that the four properties should be regarded as a Congregate Living Facility because of the temporary nature of treatment, the provision of on-site supportive services in a supervised setting, the shared resources in terms of cleaning, food, and caregivers, and the contiguity of the Davidson Properties.

Monroe RE purchased the properties located at 1624 Davidson Road and 1318 Kurtz Road on August 6, 2018. Four days later, Tim Davis, Vice President of Development, Newport Academy, sent an email to the Department of Planning and Zoning ("DPZ") stating:

My company, Newport Academy, is looking to open 2 homes, both for the same use, and was hoping to obtain a zoning letter that states that our intended use is in compliance for the below addresses [1624 Davidson Road and 1318 Kurtz Road] . . . Are there zoning density regulations on these types of uses? For example, could we purchase a neighboring house and operate both as a licensed home?

On September 4, 2018, Virginia Health Operations, LLC ("VHO") (referenced below as "Newport Academy")—the entity later identified as the applicant on the initial state license application—registered with the Virginia State Corporation Commission. On September 5, 2018, DPZ Senior staff issued a letter in response to Mr. Davis's request. The letter stated that the proposed use, as described by Mr. Davis, was deemed a group residential facility, which under Sect. 2-502 of the Zoning Ordinance may occupy a dwelling unit. The letter further stated that there is no limitation on the number of group residential facilities allowed in a certain area, but it did not directly respond to whether a neighboring house could be operated as a licensed home. Neither Mr. Davis's request nor the September 5 response included any address other than 1624 Davidson Road and 1318 Kurtz Road, properties located approximately one mile apart.

Less than two weeks later, on September 14, 2018, the Virginia Department of Behavioral Health and Developmental Services ("VDBHDS") received a single license application ("Initial Application") from VHO/Newport Academy, which identified "1624 Davidson Road and TBD" as the location of the application property (even though Monroe RE already owned the Kurtz property at the time of its Initial Application, as reflected on its Certificate of Insurance included

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in the application package). The number of beds was listed as “8+8” on the Initial Application, and the “average daily census” was listed as “11.”

From a programmatic perspective, Newport Academy’s Initial Application indicates the operation of a single program. Though it referred to more than one location (1624 Davidson Road and TBD), the Initial Application referred in the singular to “the program” and “the facility” and included only one staffing schedule and one daily schedule. The staffing schedule shows that there will be only one executive director, residential coordinator, medical director, clinical director, chef, teacher, and housekeeper, as well as only one nurse onsite at any given time. The Initial Application also identified the service type as “MH [Mental Health] Children Residential Service,” not a MH Children Group Home Residential Service. The Virginia Administrative Code requires Children’s Residential Facility applicants to identify the type of service they propose to provide. 12VAC35-46-20. The regulations define a “children’s residential facility” as, in relevant part, “a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children separated from their legal guardians and is required to be licensed or certified by the Code of Virginia.” 12VAC35-46-10. The definition does not limit the number of occupants. A “group home,” by contrast, is defined as a “children’s residential facility that is a community-based, homelike single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12.” 12VAC35-46-10. It is therefore noteworthy that Newport Academy’s Initial Application, which includes not only 1624 Davidson Road, but also a location(s) “TBD,” did not characterize its proposed service as a group home, as that would have limited its occupancy. Further, the applicant did not characterize the use as a homelike single dwelling.

In November 2018 and January 2019, Monroe purchased 1620 Davidson Road and 1622 Davidson Road, respectively. No one contacted the County on behalf of Newport Academy regarding these additional properties. Consequently, no use determination was issued concerning the use of the three Davidson Properties as a single residential facility for children.

Around the beginning of April 2019, County staff learned that a six-foot fence had been installed along the front lot lines of the Davidson Properties, as well as along the Davidson Road boundary of 1624 Davidson. The new fencing connects with existing fencing, creating the appearance of a completely enclosed facility. Around the same time, the new owner of the Davidson Properties paved the grassy area within a circular drive at 1622 Davidson Road, effectively converting the front yard into a parking lot. The new owner also expanded the paved area to the side of 1624 Davidson Road.

Jamison Monroe, CEO of Newport Academy, addressed the community at a meeting on April 24, 2019. He represented that the Davidson Properties would house up to eight adolescents in each dwelling. He added that there would be two to three staff members and an additional two to three therapists present per house during the day. He estimated there would be eight to nine cars parked per house. He also said there would be 24-hour supervision of the adolescents and alarms on each dwelling. In addition, Mr. Monroe offered to provide “a” security guard, who presumably would be responsible for all three Davidson Properties. Tim Davis, Newport

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Academy's Vice President, Development, also informed me that the Davidson Properties would share night staff.

On April 17, 2019, Newport Academy submitted a revised application to VDBHDS, which forwarded a copy to me yesterday ("Revised Application"). Newport Academy submitted the Revised Application in response to review comments from the VDBHDS Office of Licensing. VDBHDS's review comments noted that applicable regulations "prohibit a children's residential facility from operating additional facilities until substantial compliance with applicable regulations has been demonstrated." VDBHDS acknowledged its understanding that Newport Academy would be seeking a variance from this requirement to open more than one location while on a conditional license, but VDBHDS stated no decision could be made regarding such a request until the provider submits all necessary information.

Despite the Revised Application limiting Newport Academy to a single initial location at VDBHDS's direction, the application still reflects the operation of a unified program with shared staffing and resources across multiple locations. First, VDBHDS's review comments acknowledge that Newport Academy will seek a variance from the limit on one location. Second, the Revised Application identifies only one of the following positions: (1) a Clinical Director, who will manage *the* program schedule, conduct tours of the residential *properties*, and report to *the* Executive Director; (2) a Housekeeper, whose job description includes required cleaning supplies at *houses*; (3) a Medical Director, who is expected to manage a caseload of up to 32 residents; (4) a Psychiatrist, also expected to manage a caseload of 32 residents; (5) a Nurse—providing onsite nursing to adolescents in Newport Academy *facilities*—while this job description is included, Newport Academy's staff schedule does not include a single nurse, even though its application states that medications can only be dispensed by an RN or LPN; (6) a Chef de Cuisine, responsible for overseeing culinary staff, though the Revised Application does not include a chef or culinary staff on its staffing schedule; (7) a Family Therapist; and (8) a Teacher, listed on the staffing schedule but no job description was included in the Revised Application. Even though the Revised Application identifies a single initial location with up to seven clients per day by 2020, the staffing schedule includes two individual therapists with partially overlapping schedules and with a job description requiring them to carry a caseload of up to ten clients.

**DETERMINATION:** Based on the facts available and as outlined above, it is my determination, in accordance with Zoning Ordinance Sect. 18-103, that the proposed use of the three Davidson Properties as a single facility is most similar to a congregate living facility. A congregate living facility may serve more than eight mentally ill persons receiving on-site supportive services, such as special care and treatment, on a permanent or *temporary* basis, in a supervised setting with on-site counselors or other staff.

The Virginia Code states that "[z]oning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident or nonresident staff persons, as residential occupancy by a single family." Va. Code Sect. 15.2-2291; Zoning Ordinance

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Sect. 20-300 (defining “group residential facility” as a residential facility with no more than eight mentally ill persons). The statute does not require zoning ordinances to allow every *dwelling* to have eight mentally ill occupants. Instead, the plain language limits occupancy of a *residential facility*.

Here, there is a single residential facility, which is comprised of the three parcels that make up the Davidson Properties. In that regard, I base my determination on both the proposed physical layout of the Davidson Properties and on the characteristics of this use, as described in Newport Academy’s Initial and Revised Application and by Newport Academy’s officers. Either set of factors, standing alone, would be sufficient to reach this determination. Together, they are dispositive of the question.

Turning first to the physical layout of the Davidson Properties, they share a single point of access—a pipestem driveway from Davidson Road. Where the pipestem meets Davidson Road, the Davidson Properties are cordoned off with a six-foot fence. The fence serves as a physical and visual barrier between the Davidson Properties and the neighboring residences on Symphony Court. Aside from the small break where the pipestem meets Davidson Road, the 6-foot fence runs along the entire frontage of the parcels. Existing fences remain along the rear portions of the three parcels, so together with the new fence, the Davidson Properties present the appearance of a single facility. Within the fenced area, the Davidson Properties are proposed to be served by a single security guard, and numerous staff members who will travel between the three properties. Multiple parking pads have been constructed in front of the three houses to accommodate the daily flow of an estimated 24 to 27 cars each day that Mr. Monroe told the community to expect (that is, eight to nine cars per day per house, as stated at the community meeting). In fact, the first house on the pipestem—1624 Davidson Road—now has a parking pad on both sides of the house. The three dwellings on the Davidson Properties amount to a combined 22,317 square feet, including basements and garages. This is approximately the same size as some churches and private schools, which require special approval from the BZA or the Board of Supervisors when located in a residential zoning district.

Turning next to the Initial and Revised Applications, they describe the operation of a single residential program with common staffing. Mr. Davis also confirmed the sharing of staff in the site visit referenced above, and at the community meeting, Mr. Monroe only offered to provide “a” security guard for all three of the Davidson Properties. Further, the Initial Application requests approval of a “Children Residential Service,” not the homelike setting afforded by a “Children Group Home.” Due to the staffing description and expected variance request, I consider the Revised Application’s identification of only one location as a means of obtaining a license in order to fully operate the proposed facility on all three of the Davidson Properties.

Based on either the physical layout or the characteristics of the proposed facility, or in combination, the owner of Davidson Properties intends to operate a single residential facility, known as Newport Academy, with up to 24 residents, along with approximately 14 or more staff members (and likely more if Newport Academy operates from more than three locations). This facility will be frequented by at least 24 to 27 cars per day. While the clients will occupy three

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dwellings, separated by gender, the extensive staff and other services will be shared between the Davidson Properties.

The Davidson Properties will physically and functionally operate as a single facility that provides housing and general care to up to 24 clients on a temporary basis, including extensive on-site supportive services, such as special care and treatment, in a supervised setting with on-site counselors or other staff. This use is most similar to a congregate living facility, which is not permitted by right on the Davidson Properties. Rather, this use requires special exception approval by the Board of Supervisors, because it has the potential to have an undue impact on or be incompatible with neighboring uses of land. See Zoning Ordinance Sect. 9-001.

Please be advised that this determination letter does not address 1318 Kurtz Road, because that location is still under review. This week, VDBHDS notified me that Newport Academy plans to submit another revised application to open its initial location at a different address, which VDBHDS expects will be 1318 Kurtz Road. I note that even if Newport Academy changes its initial location, Monroe RE, LLC, still owns the Davidson Properties, and it has already changed the interior and exterior layouts to accommodate a children's residential facility. Further, Newport Academy has not informed me or VDBHDS that it will no longer pursue its use of the Davidson Properties or even that it will not seek a variance to open multiple locations on a conditional license.

This determination is based on the facts and information available to date. Should facts or circumstances change, this determination is subject to change.

In addition, please note that this determination is not a written order or a notice of zoning violation; however, as a courtesy, please be aware it may be subject to appeal to the Fairfax County Board of Zoning Appeals in accordance with Part 3 of Article 18 of the Zoning Ordinance.

I trust that this letter adequately responds to your request regarding the Davidson Properties. Should you have any additional questions, please feel free to contact me at 703-324-1314.

Sincerely,



Leslie B. Johnson  
Fairfax County Zoning Administrator

cc: John W. Foust, Supervisor, Dranesville District  
Mavis Stanfield, Deputy Zoning Administrator, DPZ  
Jae Benz, Director of Licensing, VDBHDS, 1220 Bank Street, Richmond, Virginia 23219  
Monroe RE, LLC, 1624 Davidson Road, McLean, Virginia 22101; 811 N. Ranch Wood Trail, Orange, CA 92869; 1318 Kurtz Road, McLean, Virginia 22101

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