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February 23, 2022

VIA EMAIL to ghampshire@bklawva.com

Gifford R. Hampshire
Blankingship & Keith, PC
4020 University Drive, Suite 300
Fairfax, VA 22030

**RE: APPL-2021-0003
20191, 20179, and 20173 Gleedsville Road, Leesburg, VA**

Dear Mr. Hampshire,

On January 12, I wrote to you suggesting “it could be beneficial to our respective clients to better understand your clients’ specific concerns, and whether there are ways those concerns could be addressed absent going through the lengthy and expensive BZA process.” Your initial response on January 21 referenced your belief that any resolution at the BZA would be appealed to the Loudoun County Circuit Court “and probably on the Court of Appeals, at least, after that.” Notwithstanding that pessimistic perspective and the subsequent cursory dismissal of the idea of settlement in your February 8 e-mail—indicating that you have framed Newport’s attempt to provide residential mental health services as a “commercial use” and that your clients could think of no solution other than that Newport should “mov[e] to a commercially-zoned location”—I write to renew my inquiry about an alternative resolution of the above-referenced matter. Please consider this an offer of settlement and share it with your clients so they will be fully informed of Newport’s offer.

In light of the strong protections for group homes in state and federal law, the applicable facts, the carefully reasoned November 29, 2021 determination from Deputy Zoning Commissioner Michelle Lohr (the “Determination”) and Newport’s staying power, my client is confident that it will prevail in this matter and will open its group homes on Gleedsville Road. I speak more specifically about each of these below, but wanted first to set out Newport’s settlement proposal. Newport has the wherewithal to litigate this matter to Virginia’s highest courts, but would prefer to consider how its resources may be devoted to community improvement projects along Gleedsville Road (as it has done in collaboration with neighbors of its group homes on Plantation Drive in Great Falls). Further, Newport would like to explore a good neighbor agreement with its immediate neighbors. To that end, Newport has authorized me to propose a settlement agreement incorporating appropriate terms and providing up to \$50,000 for community improvements, such as fencing between Newport’s Gleedsville properties and the adjacent parcels.

I did want to lay out why Newport is confident in its legal position.

As your involvement with Newport's group home on Kurtz Road (Fairfax County) has informed you, the General Assembly—through its 1990 passage of the statute now codified at Virginia Code §15.2-2291—has established a statewide policy favoring small, licensed group homes and making them by-right uses. That law requires Loudoun County's zoning ordinance to treat such groups homes "as residential occupancy by a single family," and provides that "[n]o conditions more restrictive than those imposed on residences occupied by blood, marriage or adoption shall be imposed" on such group homes. Virginia Code § 15.2-2291(A). Accordingly, the November 29, 2021 determination from Deputy Zoning Commissioner Michelle Lohr (the "Determination") finds that the proposed group homes on Gleedsville Road are permitted as a by-right use provided they continue to meet the definition of "Family" found in Article 8 of the County's Zoning Ordinance, which includes "[a]ny group identified in Section 15.2-2291 of the Code of Virginia."

Frankly, we're at a loss to understand your allegation that Newport's group homes are a commercial use. Clearly, their purpose is to provide a residence for up to eight young adults with anxiety, depression, trauma and related mental health disabilities. And, given that § 15.2-2291(A) defines the by-right use to include "one or more resident or nonresident staff persons," you surely do not suggest that the presence of those "staff persons" renders the group homes a "commercial use."

Without evidence of any actual operations of the proposed group homes—and contrary to Newport's explicit statements and licensing limitations—you have suggested that Newport loses the benefit of the by-right provisions of § 15.2-2291 because the group home provides treatment for residents involved in the current illegal use of or addiction to controlled substances. Let me be as clear as I can possibly be: Newport is not seeking a VDBHDS license to treat such residents on Gleedsville Road, will not admit residents seeking such treatment and will remove any resident involved in the illegal use of controlled substances. If you have told your clients otherwise—or if you seek to make such allegations before the BZA based on the operations of other Newport group homes with licenses in other states that explicitly permit such treatment—that would be a misrepresentation.

As you know from Newport's briefing in the Kurtz Road litigation, the General Assembly enacted § 15.2-2291 because of the passage of the Fair Housing Act Amendments of 1988 ("FHA"), which prohibit disability discrimination in local zoning and land use matters. Loudoun County's Department of Planning and Zoning—and its Board of Zoning Appeals (in the scheduled April 28 appeal)—must comply with the FHA and § 15.2-2291 as it applies and interprets the Zoning Ordinance in reference to the Gleedsville group homes. The Kurtz Road litigation has also acquainted you with the Joint Statement on State and Local Land Use Laws and Practices and the Application of the Fair Housing Act, issued by the U.S. Department of Housing and Urban Development and the U.S. Department of Justice.¹ Among other things, the Joint Statement provides that "a local government may not block a group home ... in response to neighbors'

¹ <https://www.justice.gov/opa/file/912366/download>

stereotypical fears or prejudices about ... a particular type of disability.” Id. at 5. It also makes clear that the FHA’s protections apply to both non-profit and for-profit group homes. Id. at 7.

There are literally dozens of reported cases holding local governments liable for violation of the FHA and other federal disability rights laws in connection with their discrimination against group homes. But I want to bring to your attention to two very recent such cases in which our co-counsel (Relman Colfax PLLC) were involved. The first involved efforts by the Town of Cromwell (Connecticut) to close a group home for six men with mental health disabilities. On October 15, 2021, a federal jury awarded compensatory and punitive damages of \$5.3 million. See “Federal jury hits Cromwell with \$5 million in punitive damages for blocking operation of group home for men with mental illnesses,” in the Hartford Courant (October 16, 2021).² More recently, Relman Colfax settled a case for Newport against the Town of Fairfield (Connecticut) for delaying the opening of two group homes for nearly two years. See “Connecticut Group Homes to Open and Fairfield will Pay \$1.5 Million” (February 8, 2022).³

Given the law, the facts and the well-reasoned Determination, we anticipate there is little chance your clients will prevail—whether at the BZA, in Circuit Court or beyond. We do believe, however, that there exists an opportunity to collaborate on using resources otherwise wasted on a dispute to provide benefits to the immediate community. And, for the reasons outlined above, we’d ask that you share this settlement proposal with your clients and respond no later than March 4th so that no party (including County staff) has to expend resources unnecessarily in preparation for a BZA proceeding.

Sincerely,

Steven M. Mikulic

Steven M. Mikulic

cc: Joseph A. Procopio, Chief Executive Officer, Newport Healthcare
Keith Thompson, Chief Legal Officer, Newport Healthcare
Jameson Norton, Chief Operating Officer, Newport Healthcare
Michael Allen, Partner, Relman Colfax PLLC

² <https://www.courant.com/news/connecticut/hc-news-cromwell-gilead-group-home-5mill-20211016-20211016-ojbfaru3zfawth56ywlx2t6ii4-story.html>

³ <https://www.relmanlaw.com/news-newport-settlement>