

Date of Hearing: April 28, 2022

**BOARD OF ZONING APPEALS  
PUBLIC HEARING  
STAFF REPORT**

**SUBJECT:** APPL-2021-0003  
Group Homes in AR-1 (Gleedsville Road)

**ELECTION DISTRICT:** Catoctin District

**CRITICAL ACTION DATE:** April 28, 2022

**STAFF CONTACTS:** Michelle Lohr, Deputy Zoning Administrator, Planning & Zoning  
Mark Stultz, Zoning Administrator, Planning & Zoning  
Hugh J. Green, Senior Assistant County Attorney

**APPELLANTS:** Aaron Kozikowski, Hilary Kozikowski, Lawrence Thomas,  
Mary Catherine Thomas, Thomas Wright, Cheryl Wright,  
Michael Wright, William Feitshan, Beverly Feitshan, Craig  
Palmer, and Addie Palmer

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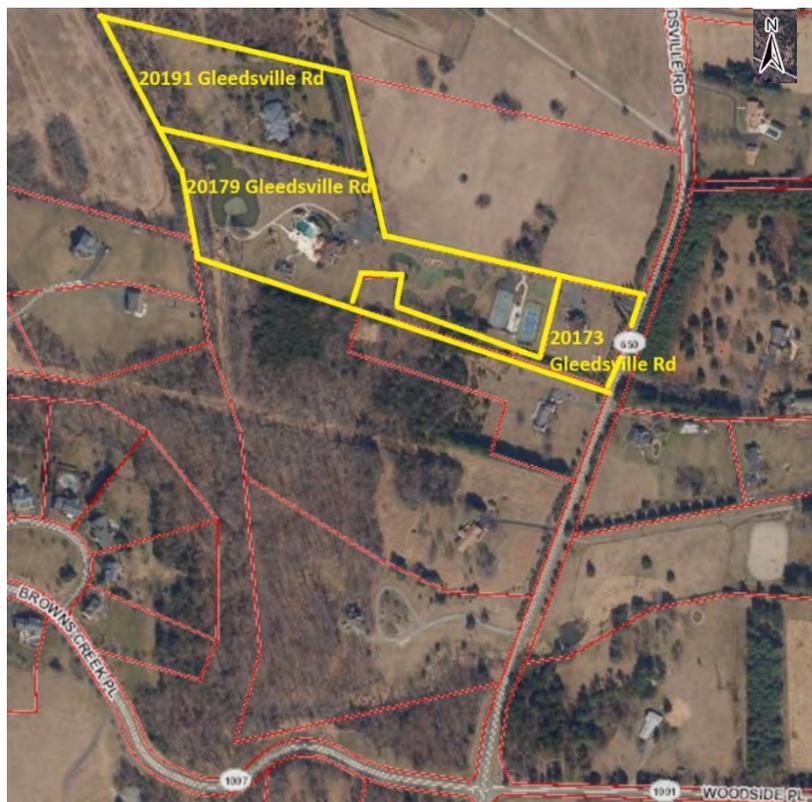
**COUNSEL FOR NEWPORT HEALTHCARE:** Virginia Health Operations, LLC and  
Monroe RE LLC (collectively “Newport Healthcare”)  
Sean F. Murphy, Esq.  
Steven M. Mikulic, Esq.  
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**SUMMARY OF APPEAL:** The Appellants are appealing the November 29, 2021, Zoning Administrator determination, ZCOR-2021-0233, which found that the proposed use of the subject properties is permitted in an AR-1 zoning district as a Dwelling, Single-Family Detached, and meets the definition of “Family” as defined in Article 8 of the Revised 1993 Loudoun County Zoning Ordinance and if it satisfies the criteria of Section 15.2-2291(A) of the *Code of Virginia*. [ATTACHMENTS 1 and 2]

**LOCATION:** The subject properties are located on the west side of Gleedsville Road (Route 650), north of Woodside Place (Route 1001) and Browns Creek Place at 20191, 20179, 20173 Gleedsville Road, Leesburg, Virginia (collectively “subject properties”) in the Catoctin Election District. [ATTACHMENT 3]

**PARCEL INFORMATION:**

PIN/ADDRESS	ZONING	ACREAGE
315-39-2788 20191 Gleedsville Rd	AR-1 (Agricultural Rural-1); FOD (Floodplain Overlay District)(minor floodplain)	4.9
315-39-4049 20179 Gleedsville Rd	AR-1; FOD (minor floodplain)	8.01
315-30-2419 20173 Gleedsville Rd	AR-1	2.26



**SURROUNDING  
ZONING/USES:**

NORTH: AR-1 (Residential and Agriculture)  
AR-1 (Vacant)  
SOUTH: AR-1 (Residential)  
EAST: AR-1 (Residential)  
WEST: AR-1 (Residential and Agriculture)

**I. CHRONOLOGICAL HISTORY**

- September 22, 2021: Sean F. Murphy and Steven M. Mikulic of McGuire Woods LLP, on behalf of Virginia Health Operations, LLC and Monroe LE, LLC d/b/a Newport Healthcare (collectively, “Newport Academy”), sent a request seeking a zoning determination that the proposed use of each property would be considered “occupancy of a ‘Dwelling, single family detached’ as defined in Article 8 of the Revised 1993 Loudoun County Zoning Ordinance (the “Zoning Ordinance”), and therefore permitted, as “a matter of right” as a “residential facility” under Section 15.2-2291(A) upon appropriate licensure from the Virginia Department of Behavioral Health and Developmental Services. [ATTACHMENT 4]
- November 29, 2021: Zoning Administrator issued zoning correspondence (ZCOR)-2021-0233. [ATTACHMENT 5]
- December 27, 2021: Appeal (APPL)-2021-0003 application received in the Loudoun County Department of Planning and Zoning appealing ZCOR-2021-0233. [ATTACHMENT 1]
- February 4, 2022: APPL-2021-0003 officially accepted. [ATTACHMENT 6]
- March 31, 2022: Appellants sent supplementary supportive material. [ATTACHMENT 2]
- March 31, 2022: Newport Academy sent a *Memorandum in Support of the Zoning Administrator’s November 29, 2021 Use Determination Regarding 20191, 20179, and 20173 Gleedsville Road*. [ATTACHMENT 7]

**II. RELEVANT PROVISIONS OF THE REVISED 1993 LOUDOUN COUNTY ZONING ORDINANCE**

- A. **Table 2-102 of Section 2-102, AR-1 Zoning District Use Table.** A Dwelling, single-family, detached, including manufactured housing is a Permitted Use type in the AR-1 Zoning District under the Use Classification “Residential Uses”, and Use Category “Household Living”.

TABLE 2-102: AR-1 AGRICULTURAL RURAL-1 DISTRICT USE TABLE P = PERMITTED S = SPECIAL EXCEPTION M=MINOR SPECIAL EXCEPTION			
USE CATEGORY	USE TYPE	AR-1 DISTRICT	ADDITIONAL REGULATIONS FOR SPECIFIC USES
<b>RESIDENTIAL USES</b>			
<b>Household Living</b>	Accessory dwelling (accessory to single family detached dwelling)	P	Section 5-613
	Dwelling, single-family detached, including manufactured housing	P	May divide property in accordance with Section 2-103 Development Options.
	Portable Dwelling/Trailer Construction	P	

**B. ARTICLE 8 - DEFINITIONS**

*Words and terms set forth below shall have the meanings ascribed to them. Any word, term, or phrase used in this Ordinance not defined below shall have the meaning ascribed to such word, term or phrase in the most recent edition of Webster's Unabridged Dictionary, unless in the opinion of the Zoning Administrator, established customs or practices in Loudoun County, Virginia justify a different or additional meaning. For the purpose of this Ordinance, certain words and terms are herein defined as follows:*

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

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

**Family:** *A group of people living together consisting of:*

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

**III. RELEVANT CODE OF VIRGINIA CITATIONS**

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

*A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident or nonresident staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and*

*developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in §54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, “residential facility” means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to this Code. [ATTACHMENT 8]*

**B. Section 15.2-2309. Powers and duties of boards of zoning appeals.**

Boards of zoning appeals shall have the following powers and duties

1. *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 of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board’s judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or specific.*

**C. Section 15.2-2311. Appeals to board (in part).**

- A. *An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286. . .*

**IV. APPELLANTS’ POSITION**

The complete basis for appeal is attached, beginning on page A1. [ATTACHMENTS 1 and 2] The following is a summary of the Appellants’ basis for appeal:

- A. The proposed use of the property, as an alleged “commercial treatment-focused use” is not allowed in a single-family home within the AR-1 “Residential Use.”
- B. Virginia Code § 15.2-2291 does not allow commercial treatment centers in residential zones.
- C. The proposed use is not entitled to protection under § 15.2-2291 because it proposed occupation by persons addicted to a controlled substance.

## V. ZONING ADMINISTRATOR'S POSITION

### A. The Appellants Lack Standing as "Aggrieved" Persons because the Zoning Administrator's Letter did not Grant or Deny a Personal or Property Right and the Letter Constitutes an Advisory Opinion.

The Zoning Administrator questions whether the Appellants are "aggrieved persons" under Virginia Code § 15.2-2311(A). An official determination made in the administration or enforcement of the zoning enabling statutes or the zoning ordinance may be appealed to the Board of Zoning Appeals ("BZA"):

. . . **by any person aggrieved** or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article. . .

§ 15.2-2311(A) (emphasis added).

The meaning of "aggrieved" is settled under Virginia case law:

[I]n order for a petitioner to be "aggrieved," it must affirmatively appear that such person had some direct interest in the subject matter of the proceeding that he seeks to attack. The petitioner "**must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest**" . . . The word "aggrieved" in a statute contemplates a **substantial grievance and means a denial of some personal or property right**, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.

*Virginia Beach Beautification Commission v. Board of Zoning Appeals of the City of Virginia Beach*, 231 Va. 415, 419-420, 344 S.E.2d 899, 902-903 (1986); *see also, Vulcan Materials Co. v. Board of Supervisors of Chesterfield County*, 248 Va. 18, 445 S.E.2d 97 (1994) (emphasis added).

Furthermore, interpretations issued by the zoning administrator are merely advisory, and not appealable, if they do not actually grant or deny a right. If there is no pending application, a decision by the zoning administrator constitutes an advisory opinion that does not trigger the right to appeal under § 15.2-2311. *Vulcan Materials*, 248 Va. at 24.

In *Vulcan Materials*, the property owner inquired of the county's planning department as to the procedure to re-open a quarry. After deliberations between the county planning director and the county attorney, the owner was told that the staff had "determined" the procedures required to re-open. *Id.* at 20. The property owner proceeded forward with an application to re-open the quarry and to obtain a conditional use permit. *Id.* at 21. However, the county planning commission rejected the proposed plan and voted to recommend that the Board of Supervisors deny the application. The landowner filed a complaint in circuit court seeking, *inter alia*, an injunction to compel the County to approve the proposed plan. *Id.* at 22. The trial court ruled in favor of the County. On appeal, the Supreme Court held that the "determination" by the county staff was merely advisory because it was not in response to any pending application. *Id.* at 24 ("until an

application was pending asking for specific relief, there could be no denial of any personal or property right resulting from any administrative decision or determination”). Thus, the property owner was not “aggrieved” within the meaning of § 15.2-2311. *See also Board of Supervisors of Stafford County v. Crucible*, 278 Va. 152, 160-61, 677 S.E.2d 283, 287-88 (2009) (§ 15.2-2311 did not apply to a zoning verification letter because the letter did not affirmatively approve the project at issue and establish a vested right, but merely interpreted the definition of “school” under the then-current zoning laws).

Turning to this matter, *Vulcan Materials* is applicable. ZCOR-2021-0233, the Zoning Administrator’s letter, did not grant or deny any personal or property right to the Appellants, nor was there a pending application. Newport Academy’s September 22, 2021 letter indicated it anticipated purchasing the properties, and sought a determination with its proposed use of the properties. Newport Academy proposed to provide treatment to up to 8 “adolescents between the ages 12 and 17” experiencing mental health issues. Newport Academy sought to use the properties as a “residential facility” pursuant to § 15.2291(A), and that each property would be licensed by Virginia Department of Behavioral Health and Developmental Services (“VDBHDS”).

In response, ZCOR-2021-0233 simply stated the Zoning Administrator’s opinion as to the proposed use, based on the information provided by Newport Academy. The Zoning Administrator reviewed the facts presented and confirmed how the Zoning Ordinance would be applied if an application was presented, consistent with the proposed set of facts. As in *Vulcan Materials*, ZCOR-2021-0233 did not grant or deny a personal or property right of the Appellants, nor was there a pending application. Under the clear holding of *Vulcan Materials*, the Appellants are not “aggrieved” under § 15.2-2311 and ZCOR-2021-0233 was merely an advisory opinion. Therefore, the BZA must deny the appeal.

### **B. Appellants Lack Standing as “Aggrieved Persons” as They Fail To Satisfy the Virginia Supreme Court’s Test for Challenging a Land Use Decision.**

A party challenging a land use decision who claims no ownership interest in the subject property can be aggrieved, only if it can satisfy a two-step test. First, the complainant must own or occupy real property in “close proximity” to the property that is the subject of the land use decision. Second, the complainant must allege facts demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally. *Friends of the Rappahannock v. Caroline Cty. Bd. of Supervisors*, 286 Va. 38, 743 S.E.2d 132 (2013).

In *Friends of the Rappahannock*, the property owner obtained a permit to operate a sand and gravel mining operation on a tract of land bordering the Rappahannock River. *Id.* at 42. Although the property was zoned industrial, extraction of natural materials required a special use permit. The appellants challenged the Board of Supervisors’ decision to issue the permit. The appellants were neighboring landowners who were concerned that the permitted use would: “end the scenic beauty of the river area. . .increase noise, dust, traffic from barges and commercial boats in a manner that would alter their quiet enjoyment of the area. . . [and] harm their recreational use of the river.” *Id.* at 43.

The Supreme Court in *Friends of the Rappahannock* found that the neighboring landowners' alleged harms were not supported by the facts, were conclusory, and did not show a loss of some personal or property right different from that suffered by the public generally. The Court stated:

Although the individual complainants presented conclusory allegations as to possible harms, the general objections pled by the individual complainants present no factual background upon which an inference can be drawn that Black Marsh's [the owner] particular use of the property would produce such harms and thus impact the complainants. *Id.* at 49. (emphasis in the original).

Turning to this matter, the Appellants have failed to show that the Zoning Administrator's determination caused the loss of some personal or property right belonging to each individual Appellant, different from the public in general. Here, the Appellants allege that the particularized harms include: "reduction of property values and risks to safety and property because of commercial traffic and crime." However, the Appellants fail to provide any substantive evidence that support that any of these alleged harms will be caused offsite by Newport Academy's use of the properties. The Appellants' conclusory allegations of possible future harms are similar to the harms alleged by the neighboring landowners in *Friends of the Rappahannock*. Moreover, Newport Academy proposes to maintain the properties as single family residences, which is far less activity than the sand and gravel mining operation in *Friends of Rappahannock*. Furthermore, there are other homes within the area of the subject properties, thus it is unclear how the Appellants' alleged harms are different from those suffered by the general public. In this case, the Appellants lack standing as they are not "aggrieved" persons as they fail to demonstrate a loss of some personal or property right different from that of the general public as required under *Friends of the Rappahannock*. Accordingly, as the Appellants lack standing as "aggrieved" persons, the BZA must dismiss this appeal.

If, however, the BZA determines the Appellants are "aggrieved persons" and, therefore, have standing to maintain this appeal, the Zoning Administrator offers the following response to the Appellants' appeal.

**C. The BZA Must Uphold the Zoning Administrator's Determination As the Proposed Use Is Considered a "Family" in a Single Family Dwelling under the Zoning Ordinance and If it Meets the Criteria Under § 15.2-2291(A) of the Virginia Code.**

Newport Academy requested a zoning determination confirming that the proposed use of the properties is considered occupancy of a "Dwelling, single family" and permitted by-right under the Zoning Ordinance. The proposed use of each property was described as a single-sex, group residential facility for no more than eight adolescents, with one or more nonresident staff persons. Each of the properties would be licensed by the VDBHDS. Residents would participate in individual therapy, group therapy, academic study, and a variety of other activities, including music therapy, life skills, counseling, yoga, mediation, and other fitness activities. The residents of each facility would not have

access to the other two properties. The length of stay would be typically between 30 and 90 days. Newport Academy stated it would not operate drug rehabilitation facilities or provide substance abuse treatment at the properties. Further, any resident who is determined to be using alcohol or other drugs will be subject to immediate discharge.

In ZCOR-2021-0233, the Zoning Administrator indicated that a Congregate Housing Facility, is a use not permitted in the AR-1 zoning district. Nevertheless, the Zoning Administrator determined the proposed use would be permitted as a “Dwelling, Single-Family Detached” on each of the subject properties if the use meets the definition of “Family” under the Revised 1993 Loudoun County Zoning Ordinance and the criteria set forth in § 15.2-2291(A).

Each of the subject properties is zoned AR-1 (Agricultural Rural-1). Under the Zoning Ordinance, Table 2-102 of Section 2-102, it lists the uses permitted on properties in the AR-1 zoning district. “Dwelling, single-family detached, including manufactured housing” is listed as a permitted Use Type, within the Residential Use Classification, in the Household Living Use Category.

“Dwelling, Single Family Detached” is defined as:

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

Therefore, a single-family detached dwelling is a permitted use in the AR-1 zoning district.

Furthermore, “Family” is defined in Article 8 of the Zoning Ordinance as:

*A group of people living together consisting of:*

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

Turning to § 15.2291 it states, in relevant part:

- A. ***Assisted living facilities and group homes of eight or fewer; single-family residence.*** *Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident or nonresident staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in §54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, “residential*

*facility” means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to this Code. For purposes of this subsection, “residential facility” means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to this Code.*

Thus, a residential facility meeting the criteria of § 15.2291(A) is considered as “residential occupancy by a single family” for zoning purposes. Moreover, no conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. Therefore, if no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside at each of the subject properties and each of the residential facilities are licensed by the VDBHDS, the subject properties are single-family residential dwellings and are permitted uses in the AR-1 zoning district within the Use Type “Dwelling, single-family detached, including manufactured housing.” Thus, the Zoning Administrator’s determination in ZCOR-2021-0233 is correct and the Board must uphold the determination.

**D. The BZA Must Uphold the Zoning Administrator’s Determination in ZCOR-2021-0233 as Consistent with Prior Administrative Practice.**

The Zoning Administrator has previously opined that uses that meet the Zoning Ordinance definition of “Family,” including groups identified in § 15.2-2291, are Single-Family Dwellings, and are permitted in zoning districts where such use is allowed. Examples of previous determinations include: ZCOR-2009-0246 (dated December 16, 2009); ZCOR-2003-0111 (dated April 29, 2003; and DET2000.103, dated April 10, 2000) demonstrate this consistent administrative practice. [ATTACHMENT 9]

Further examples of this consistent administrative practice are evidenced by approved zoning permits for “Group Homes.” Attached for reference are zoning permits that were issued for five Group Homes, each of which reference Section 15.2-2291 include: Z30231430101 (issued March 12, 2003); Z001939801 (issued January 3, 2011); Z60382230101 (issued September 9, 2016); Z10277460001 (issued February 12, 2021); and Z20483990001 (issued March 9, 2022). [ATTACHMENT 10].

**VI. ZONING ADMINISTRATOR’S RESPONSE TO APPELLANTS’ ARGUMENTS**

**A. The proposed use of the property, as an alleged “commercial treatment-focused use” is not allowed in a single family home within the AR-1 Zone.**

The Appellants argue that “commercial, treatment-focused” use is not allowed in a single-family home within the AR-1 “Residential Uses” use category. This is not an accurate statement. As discussed above, “Dwelling, Single-Family Detached,” is a permitted use in the AR-1 zoning district. “Family” is defined in Article 8 of the Zoning Ordinance as “A group of people living together consisting of ...any group identified in § 15.2-2291 of the Code of Virginia.” Therefore, a Dwelling, Single-Family Detached use includes any group identified in § 15.2-2291. Pursuant to § 15.2-2291 a residential facility that meet the applicable statutory criteria shall be considered

“residential occupancy by a single family.” § 15.2-2291(A) further states that a residential facility means any group home or other residential facility for which the VDBHDS is the licensing authority. Thus, if the proposed use has no more than eight individuals in residence within one of the groups identified in § 15.2-2291 and is licensed by VDBHDS, it is considered residential occupancy by a single family. Such use is identified in the AR-1 zoning district as a Dwelling, Single-Family Detached permitted use.

**B. Virginia Code § 15.2-2291 Does not Mandate Commercial Uses in Residential Zones.**

The Appellants wrongly claim that, because the use is “commercial, treatment-focused use,” it is precluded from the AR-1 “Residential Uses” category. The Zoning Administrator disagrees with that assertion. § 15.2-2291 does not distinguish between “commercial” and “non-commercial” residential facilities. In fact, in 2000, a proposed Virginia General Assembly bill (SB449) sought to amend § 15.2-2291 to distinguish between “for-profit” and “non-profit” residential facilities, however that amendment did not pass. With respect to the proposed amendment, the Attorney General opined:

Regarding Senate Bill 449 and its proposed amendment to § 15.2-2291 to change the current definition of a “residential facility” from any group home or residential facility in which aged, infirm or disabled persons reside” to ‘any *nonprofit* group home or other *nonprofit* residential facility,’ it is **my opinion that such an amendment violates the Virginia Fair Housing Law**. Clearly, it is the policy of the Commonwealth, as expressed in the Virginia Fair Housing Law, ‘to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of ... handicap, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons.’  
Dec. 8, 2000. Op. Va. Att’y Gen. 2000 Va. AG LEXIS 80, \*5-8 (emphasis added).

In this case, the Appellants’ arguments regarding the purported commercial (“for profit”) business model of Newport Academy is irrelevant to any issue before this Board. In fact, such an attempt is a violation of the Virginia Fair Housing law as opined by the Attorney General. Furthermore, § 15.2-2291 does not distinguish between “commercial” and “non-commercial” residential facilities. Thus, the Appellants’ arguments are meritless and the BZA must uphold the Zoning Administrator’s determination.

**C. The Proposed use is Not Entitled to Protection Under Virginia Code § 15.2-2291 Because it Proposed Occupation by Persons Addicted to a Controlled Substance.**

Newport Academy stated in its request that it does not seek to operate a drug rehabilitation facility or provide detoxification services or other substance abuse treatment. Further, Newport Academy will not admit a resident who is currently using illicit substances. Further, any resident who is determined to be using alcohol or other drugs will be subject to immediate administrative discharge. Therefore, if a residential facility serves such individuals, it would not be in compliance

with § 15.2-2291 or the Zoning Ordinance. Moreover, the Zoning Administrator has the authority to enforce the zoning regulations in the event of a violation of the use.

**D. The Residents Receiving Mental Health Treatment at the Properties will be there for a limited time.**

The Appellants suggest that because the residents receiving mental health treatment at Newport Academy will reside there for a “limited-time,” this is somehow a violation. However, the Appellants fail to cite to any Virginia Code provision or Zoning Ordinance requirement which supports that position. On the contrary, the Zoning Ordinance does not impose such conditions. Moreover, § 15.2-2291, expressly states that: “No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility.” Therefore, the suggestion by the Appellants that the residents’ duration of stay for treatment at Newport Academy is not relevant to any issue before this Board.

## **VII. PROPERTY OWNER POSITION**

Counsel for Virginia Health Operations, LLC and Monroe RE, LLC referred to collectively and doing business as Newport Healthcare, the owner of the subject properties, submitted a *Memorandum in Support of the Zoning Administrator’s November 29, 2021, Use Determination Regarding 20191, 20179, 20173 Gleedsville Road*. This document is included as **ATTACHMENT 7**.

## **VIII. PUBLIC COMMENTS**

Public comments to the Board of Zoning Appeals regarding APPL-2021-0003, received to date, are included as **ATTACHMENT 11**.

## **IX. CONCLUSION**

The Zoning Administrator respectfully requests that the BZA determine that the Appellants lack standing as they are not “aggrieved” persons under Virginia Code § 15.2-2311 and dismiss the appeal.

If, however, the BZA determines that the Appellants have standing, the Zoning Administrator respectfully requests that the BZA deny the appeal. The Appellants’ arguments are all based upon erroneous and misleading interpretations of the Zoning Ordinance and *Code of Virginia* § 15.2-2291(A). The Zoning Administrator maintains:

1. The use would be permitted as a Dwelling, Single-Family Detached on each of the subject properties, as the proposed use meets the definition of “Family” under the Revised 1993 Loudoun County Zoning Ordinance and the criteria of § 15.2-2291(A) of the *Code of Virginia*.

2. If the proposed use has no more than eight individuals in residence, within one of the groups identified in § 15.2-2291, and meets the criteria of § 15.2-2291(A), it is considered residential occupancy by a single family.
3. Such use is identified in the AR-1 zoning district as a Dwelling, Single-Family Detached, a permitted use pursuant to Table 2-102 of Section 2-102 of the Zoning Ordinance.
4. Whether the residential facility is operated by a commercial/for-profit or noncommercial/non-profit entity is not relevant to the ability to locate a residential facility on each of the subject properties.
5. Licensure by the Department of Behavioral Health and Developmental Service is required to meet § 15.2-2291(A).

The Zoning Administrator requests that the BZA uphold the November 29, 2021, Zoning Determination, and deny the appeal.

## **X. SUGGESTED MOTIONS**

1. I move that the Board of Zoning Appeals dismiss APPL-2021-0003 based upon the following finding:
  - (A) There is no pending application nor permit issued to the subject properties.
  - (B) The Appellants lack standing as they are not “aggrieved” persons under Virginia Code § 15.2-2311 as the zoning determination did not grant or deny Appellants a real or personal property right, nor was there an application under review.
  - (C) ZCOR-2021-0233 was an advisory opinion.

### **AND/ OR**

2. I move that the Board of Zoning Appeals dismiss APPL-2021-0003 based upon the following findings:
  - (A) There is no pending application nor permit issued to the subject properties.
  - (B) The Appellants lack standing as they are not “aggrieved” persons under Virginia Code § 15.2-2311 as ZCOR-2021-0233 did not grant or deny Appellants a real or personal property right, nor did the Appellants each demonstrate that the proposed use of the properties, will cause a particularized harm to some personal or property right different from the public in general.

### **OR**

3. I move that the Board of Zoning Appeals uphold the November 29, 2021, zoning determination and deny APPL-2021-0003 based upon the following findings:
- (A) The subject properties identified as: 20191 Gleedsville Rd (PIN 315-39-2788), 20179 Gleedsville Rd (PIN 315-39-4049); 20173 Gleedsville Rd (PIN 315-30-2419) (collectively the “subject properties).
  - (B) Monroe Real Estate LLC is the owner of the subject properties.
  - (C) On or about September 22, 2021 Sean F. Murphy and Steven M. Mikulic of McGuire Woods LLP, on behalf of Virginia Health Operations, LLC and Monroe LE, LLC d/b/a Newport Healthcare (collectively, “Newport Academy”), sent a request seeking a zoning determination that the proposed use of each property would be considered “occupancy of a ‘Dwelling, single family detached’ as defined in Article 8 of the Revised 1993 Loudoun County Zoning Ordinance (the “Zoning Ordinance”), and therefore permitted, as “a matter of right” as a “residential facility” under Section 15.2-2291(A) upon appropriate licensure from the Virginia Department of Behavioral Health and Developmental Services.
  - (D) On November 29, 2021, the Zoning Administrator issued ZCOR-2021-0233.
  - (E) Section 15.2-2309 of the *Code of Virginia* states “the determination of the administrative officer shall be presumed to be correct.”
  - (F) The subject properties are zoned AR-1 (Agricultural Rural-1) under the Revised 1993 Loudoun County Zoning Ordinance (“Zoning Ordinance”).
  - (G) “Dwelling, single-family detached, including manufactured housing” is a permitted use within the AR-1 zoning district in accordance with Table 2-102 of Section 2-102 of the Zoning Ordinance.
  - (H) The definition of “Family” within Article 8 of the Zoning Ordinance, includes any group identified in § 15.2-2291(A) of the *Code of Virginia*.
  - (I) Section 15.2-2291(A) of the *Code of Virginia* states: “Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident or nonresident staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in §54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, “residential facility” means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services (“VDBHDS”) is the licensing authority pursuant to this Code.”
  - (J) Section 15.2-2291(A) does not distinguish between “commercial” and “noncommercial” uses.
  - (K) The proposed use of each property was described as a single-sex, group residential facility for no more than eight individuals, suffering from mental issues with one or more nonresident staff persons.
  - (L) The proposed use of each property was to treat individuals experiencing depression, anxiety, trauma and other mental health issues.
  - (M) Newport Academy would obtain an appropriate license for each of the properties from

the VDBHDS.

- (N) Newport Academy would not admit a resident who is currently using illicit substances, or needs treatment for same.
- (O) Any resident who is determined to be using alcohol or other drugs will be subject to immediate administrative discharge.
- (P) ZCOR-2021-0233 stated that the proposed use on each of the subject properties can be permitted on each of the subject properties under § 15.2-2291(A) if such use is issued a license by the Virginia Department of Behavioral Health and Developmental Services and meets all other statutory criteria.
- (Q) The consistent administrative practice of the Zoning Administrator when interpreting and administering the language of the definition of “Family” in Article 8 of the Revised 1993 Loudoun County Zoning Ordinance is to permit uses meeting the criteria of § 15.2-2291 as a single-family dwelling where permitted.

**OR**

- 4. I move an alternate motion.

## **XI. ATTACHMENTS**

<b>Number</b>	<b>Description</b>	<b>Page</b>
1.	APPL-2021-0003 Application	A1 - A54
2.	Supplemental Supportive Information from Appellant, dated March 31, 2022	A55 - A222
3.	Vicinity Map	A223
4.	ZCOR-2021-0233 request for determination (Sean Murphy and Steven Mikulic of McGuire Woods, LLC), September 22, 2021	A224 - A230
5.	ZCOR-2021-0233, dated November 29, 2021	A231 - A233
6.	APPL-2021-0003 Acceptance Letter, dated February 4, 2022	A234 - A235
7.	Newport Healthcare’s Memorandum in Support of Zoning Administrator’s November 29, 2021, Use Determination Regarding 20191, 20179, 20173 Gleedsville Road	A236 - A320
8.	Code of Virginia Section 15.2-2291	A321
9.	Sample Zoning Determinations regarding Group Homes	A322 - A333
10.	Sample Zoning Permits issues for Group Homes	A334 - A341
11.	Information submitted from the public	A342 - A482
12.	Rules of Statutory Construction	A483