

Dear Neighbor,

Thank you for contacting me regarding your concerns about the establishment of drug and rehabilitation centers at 1620, 1622 and 1624 Davidson Road and 1318 Kurtz Road.

As you may be aware, there are numerous group homes in residential neighborhoods across the county. Because of concerns raised when these types of facilities were opened in other residential neighborhoods in McLean, I have previously worked with the County Attorney to research the issue of whether and, if so, to what extent the county can regulate these types of group residential facilities. As discussed below, based on requirements established in state law, these uses are typically deemed “by right” (meaning they require no public notice by the operator and no zoning approvals from the county). We are developing the relevant facts related to this current proposed use by Monroe Operations and I have asked the County Attorney to update any legal research as may be appropriate. While these efforts are on-going, I wanted to get back to you with the information I have at this time. The discussion below is based on the research that was previously conducted.

The federal Fair Housing Act, 42 U.S.C. Section 3604(f), makes it unlawful to discriminate against or otherwise not make housing available to individuals because of handicap or disability. Federal courts have held that this statute generally protects group homes from local regulation.

The Code of Virginia, at Section 15.2-2291, subsection (A), states that local zoning ordinances “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 a residential occupancy by a single family.” Under Subsection A, “residential facility” is defined as “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.”

Similarly, Subsection B states that local zoning ordinances “shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family.” Under Subsection B, “residential facility” is defined as “any assisted living facility or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.”

Both subsections (A) and (B) of Code Section 15.2-2291 state that local zoning ordinances may not impose conditions on a group home that are “more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption.”

Consistent with the state law, the county’s Zoning Ordinance defines a “Group Residential Facility” as a group home or residential facility, with one or more resident or non-resident staff persons, in which no more than 8 persons reside who are mentally ill, intellectually disabled, developmentally disabled, aged, infirm, or handicapped as defined in the Fair Housing

Amendments Act of 1988. The Fourth Circuit Court of Appeals has explicitly held that former substance abusers, among others, qualify as having a handicap. It should be noted that under both federal law and the county's Zoning Ordinance, the term "handicapped" does not include the current illegal use of or addiction to a controlled substance. While residing in a Group Residential Facility, residents may not be using or addicted to a controlled substance.

It is our understanding that Monroe Operations has license application pending before the Virginia Department of Behavioral Health and Developmental Services for the three homes on Davidson Road. The VDBHDS only regulates these facilities in terms of the qualifications and quality of care, not local land use issues.

Like any other property, a group home must abide by all County regulations relating to such things as zoning, building construction, noise, and property maintenance requirements. The County could intervene if it were determined that the group home was violating these County laws. However, if a residential home can be built by right in a neighborhood under the county's zoning ordinance, then operation of a group home, with no more than eight residents plus one or more resident or non-resident staff, is also by right.

We are continuing to work with the County Attorney and County Zoning Administrator. We will continue to investigate whether, based on the specific facts of Monroe's intended operation, there are any unique grounds for county involvement and regulation. If we develop more information, we will provide it to the community.

In the interim, please reach out to Jane Edmondson (Jane.Edmondson@fairfaxcounty.gov) in my office if you have any questions, comments or suggestions.

John

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