



# COMMONWEALTH of VIRGINIA

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October 11, 2013

James E. Barnett, Esquire  
County Attorney, York County  
Office of the County Attorney  
Post Office Box 532  
Yorktown, Virginia 23690-0532

Dear Mr. Barnett:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You inquire whether a facility as defined in § 15.2-2291 of the *Code of Virginia* shall be deemed to constitute a single family residence for zoning purposes only if all counselors and other staff persons who provide services to the residents are “resident,” i.e., live at the facility. In other words, you ask whether § 15.2-2291 imposes a requirement that all counselors and other staff persons who might provide services to the residents reside at the facility in order for it to qualify as a residential occupancy by a single family for zoning purposes.

## Response

It is my opinion that § 15.2-2291 does not require all counselors and other staff persons to reside at a facility for individuals with mental illness, intellectual disability, or developmental disabilities to qualify as a residential occupancy by a single family for zoning purposes.

## Background

You indicate that York County has adopted a zoning code definition of “family” that incorporates the provisions of § 15.2-2291.<sup>1</sup> You further state that the York County Zoning Administrator has interpreted the relevant Code provisions “such that a facility which employs nonresident staff persons is not a single family dwelling for zoning purposes, and as such may be subject to a special use requirement.” You indicate that, based on this interpretation, York County requires special use permits

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<sup>1</sup> See COUNTY OF YORK, VA., § 24.1-104, available at <http://www.yorkcounty.gov/Default.aspx?tabid=5951>. I note, however, that this local definition of “family” differs to some extent from the wording of § 15.2-2291(A). Nevertheless, because the terms of § 15.2-2291(A) are mandatory as to localities, these linguistic differences are inapposite to the herein stated legal analysis and conclusions. See VA. CODE ANN. § 1-248 (2011); and see *Sinclair v. New Cingular Wireless PCS, LLC*, 283 Va. 567, 576, 727 S.E.2d 40, 46 (2012).

for facilities that intend to use non-resident staff. You relate that applicants for these permits have questioned the Zoning Administrator's opinion, prompting you to request that this Office opine on this matter.

### Applicable Law and Discussion

Section 15.2-2291(A) provides, in relevant part, that:

Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, intellectual disability, or development disabilities reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. . . . No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility.

"The primary objective in statutory construction is to ascertain and give effect to legislative intent,"<sup>2</sup> and "[i]n construing statutes, courts should give the fullest possible effect to the legislative intent embodied in the entire statutory enactment."<sup>3</sup> A court "must determine . . . legislative intent by what the statute says and not by what [the court] think[s] it should have said."<sup>4</sup> Finally, "[w]hen the language of a statute is unambiguous, we are bound by the plain meaning of that language."<sup>5</sup>

Virginia's zoning enabling legislation recognizes that localities may define what constitutes a single family residence.<sup>6</sup> Section 15.2-2291(A) categorizes facilities meeting the criteria of the Code section as a single family residence for zoning purposes regardless of how a locality may otherwise define such a residence. When enacting § 15.2-2291, the plain language used indicates that the General Assembly intended to ensure that a locality's definition of a family would not preclude the subject facilities in single family residential zoning districts, so long as at least one counselor or other staff person likewise resides at the facility.<sup>7</sup> Thus, by definition, and by plain construction of the statute, up to eight individuals with listed disabilities and any resident counselors or staff constitute a family for zoning purposes.

The statute also clearly states that "[n]o conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such

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<sup>2</sup> *Conger v. Barrett*, 280 Va. 627, 630, 702 S.E.2d 117 (2010) (quoting *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983)).

<sup>3</sup> *Va. Real Estate Bd. v. Clay*, 9 Va. App. 152, 157, 384 S.E.2d 622, 625 (1989).

<sup>4</sup> *Commonwealth v. Amerson*, 281 Va. 414, 421, 706 S.E.2d 879, 884 (2011) (quoting *Virginian-Pilot Media Cos. v. Dow Jones & Co.*, 280 Va. 464, 469, 698 S.E.2d 900, 902 (2010)).

<sup>5</sup> *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425, 722 S.E.2d 626, 629 (2012) (quoting *Kozmina v. Commonwealth*, 281 Va. 347, 349, 706 S.E.2d 860, 862 (2011)).

<sup>6</sup> *See* VA. CODE ANN. § 15.2-2286(A)(5) and (14) (2012).

<sup>7</sup> I construe the phrase "with one or more resident counselors or other staff persons" as modifying both the term "counselors" and the term "staff persons" with the word "resident." "Generally, phrases separated by a comma and the disjunctive 'or' are independent." *Lampkins v. Commonwealth*, 44 Va. App. 709, 717, 607 S.E.2d 722, 726 (2005) (citing *Smoot v. Commonwealth*, 37 Va. App. 495, 501, 559 S.E.2d 409, 412 (2002)). Nevertheless, in the quoted phrase no comma separates the terms "counselors" and "staff persons," so they may be construed together for matters of interpretation and the application of modifiers. *See, e.g., Washington-Virginia Ry. Co. v. Fisher*, 121 Va. 229, 234-35, 92 S.E. 809, 811 (1917) (holding that the word "county" within the phrase "every county road or highway" modifies both the terms "road" and "highway").

facility.”<sup>8</sup> Although it could have done so, the General Assembly did not require that anyone who was to provide any form of services at the facility must also reside at the facility. Instead, the statute clearly and unambiguously requires that single family residences as defined by the statute be treated the same as all other single family residences. This mirrors the requirement of general zoning law that “zoning regulations shall be uniform for each class or kind of buildings and uses throughout each district.”<sup>9</sup> Requirements not imposed on traditional single family residences cannot be imposed on those facilities included within the scope of § 15.2-2291(A).

### Conclusion

Accordingly, it is my opinion that § 15.2-2291 of the *Code of Virginia* does not require all counselors and other staff persons to reside at a facility for individuals with mental illness, intellectual disability, or development disabilities in order for the facility to qualify as a residential occupancy by a single family for zoning purposes.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Ken C II". The signature is written in a cursive style with a horizontal line under the "C" and the Roman numeral "II" to the right.

Kenneth T. Cuccinelli, II  
Attorney General

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<sup>8</sup> Section 15.2-2291 (2012).

<sup>9</sup> Section 15.2-2282 (2012).