

**DECISION OF THE ZONING HEARING BOARD OF
HONEY BROOK TOWNSHIP, CHESTER COUNTY PENNSYLVANIA**

ZHB 2023-5

In re: Application of the Tel Hai Retirement Community, requesting variances at the subject properties located in the A-Agricultural Zoning District off Treeline Drive, Beaver Dam Road and Park Road (Tax Parcel Numbers 22-10-10.1; 22-10-10.1B; 22-10-10.1D; and 22-10-55), Honey Brook Township, Chester County, Pennsylvania

FINDINGS OF FACT, DISCUSSION, CONCLUSIONS OF LAW AND ORDER

The Zoning Hearing Board of Honey Brook Township, Chester County, Pennsylvania (“Board”) finds as follows:

FINDINGS OF FACT

1. The properties, which are the subject of the zoning application, are located off Treeline Drive, Beaver Dam Road and Park Road (Tax Parcel Numbers 22-10-10.1; 22-10-10.1B; 22-10-10.1D; and 22-10-55), in Honey Brook Township, Chester County, Pennsylvania (collectively, the “Property”).

2. Applicant is the Tel Hai Retirement Community (“Applicant”).

3. Applicant is the legal owner of the Property.

4. The Property is located in the A-Agricultural Zoning District pursuant to the 2003/2008 Honey Brook Township (“Township”) Zoning Ordinances, as amended, (referred to as the “2003 Ordinance” and the “2008 Ordinance”) and the Honey Brook Township Zoning Map.

5. The Property, which consists of approximately 149.1 acres of contiguous parcels, 15.6 acres of building coverage, and a total of 40.5 acres of impervious coverage, is currently used as a continuing care residential retirement community (“CCRC”), and is located in the A-Agricultural Zoning District.

6. On September 10, 2008, the Township and Applicant entered into a settlement agreement (“2008 Agreement”) to resolve a zoning application filed in 2007 by Applicant before this Board (“2007 Application”) related to the CCRC at the Property.

7. At the time the 2007 Application was filed, the 2003 Ordinance was in effect, which was ultimately amended by the 2008 Ordinance.

8. Under the 2008 Agreement, the Township and Applicant agreed to implement a Master Plan (“2008 Master Plan”) to phase development of the CCRC at the Property over the course of twenty-five (25) years and also requested certain zoning relief.

9. On October 20, 2008, this Board issued a Decision and Order (“2008 ZHB Decision”) granting several variances to Applicant pursuant to the 2008 Master Plan.

10. From 2008 until present, Applicant has developed the Property as the CCRC pursuant to the 2008 Agreement, the 2008 Master Plan, and the 2008 ZHB Decision.

11. Applicant and the Township have acknowledged the need to amend the 2008 Agreement, the 2008 Master Plan, and modify the 2008 ZHB Decision in order to continue with the updated development of the Property.

12. On December 14, 2022, the Township and Applicant entered into an Amendment to the 2008 Agreement (“2022 Amendment”) which amended certain terms of the 2008 Agreement, modified the 2008 Master Plan (“2021 Master Plan”) and included the need for additional zoning relief to permit the subject changes and updates.

13. As agreed to by the Township, the 2021 Master Plan’s modifications to the 2008 ZHB Decision are vested under the 2003 Ordinance as amended.

14. Due to changing housing needs and demands, Applicant now requests zoning relief again in order to modify several of the dimensional variances granted by the 2008 ZHB Decision and to request one (1) new variance under the 2008 Ordinance.

15. On or about March 9, 2023, Applicant filed a zoning application, requesting the following variances from:

- Section 1603.J.5.c of the 2003 Ordinance (Section 27-1604.J.5.c of the 2008 Ordinance) to permit that the maximum impervious coverage of the Property be calculated on gross acreage provided that the maximum impervious coverage not exceed 35% of gross tract area or 40% of net tract area (each an increase of 5% as previously permitted under the 2008 ZHB Decision);
- Section 1603.J.5.b of the 2003 Ordinance (Section 27-1604.J.5.b of the 2008 Ordinance) to allow the maximum density of development at the Property to meet, but not exceed 4.7 dwelling units per acre, calculated based upon the gross tract area of the Property, consistent with the 2021 Master Plan (increasing from 4.3 dwelling units per acre previously permitted under the 2008 ZHB Decision); no subsequent amendment to the 2003 Ordinance, as amended, shall be applied to the Property if such application would reduce the density from 4.7 dwelling units per acre; for all purposes, including but not limited to the 2021 Master Plan development and redevelopment, each independent living unit/cottage shall equal one (1) dwelling unit and each assisted living or skilled nursing bed shall equal one half (1/2) dwelling unit as provided by Section 27-1603.J.5.b;
- Section 1603.J.5.e of the 2003 Ordinance (Section 1604.J.5.e of the 2008 Ordinance) to allow that buildings in addition to those shown on Exhibit “C” of the

2008 Agreement may be constructed provided that the new buildings as proposed on the 2021 Master Plan adhere to the applicable density limitations, the maximum building length is 365 feet, and the design includes architecturally attractive offsets;

- Section 1603.J.5.i of the 2003 Ordinance (Section 27-1604.J.5.i of the 2008 Ordinance) to allow Environmentally Sensitive Lands, as defined by Section 27-1112, to be included in the 30% calculation of minimum open space requirement within the Property without limitation on the maximum amount of Environmentally Sensitive Lands that can be counted toward the open space requirement; the open space shall be generally as shown on the 2021 Open Space Plan Sheet (See Applicant's Exhibit A-5); notwithstanding the 2021 Open Space Plan Sheet, Applicant shall be entitled to relocate open space areas for purposes of future development or redevelopment, provided that the minimum open space remains equal to or greater than the requirement.
- Section 27-1604.J.5.f.4 of the 2008 Ordinance to allow the proposed ambulance center and certain proposed cottages in the area of the existing daycare building to be within the 100-foot agricultural setback provided they are developed in conformity with the 2021 Master Plan

(collectively referred to as the "Proposed Variances"), which would modify four (4) variances granted under the 2008 ZHB Decision and request one (1) additional variance, in order to construct an ambulance center and new proposed cottages in line with the 2021 Master Plan and 2022 Amendment.

16. Public notice of the hearing of April 26, 2023 on the Proposed Variances was subsequently and timely advertised in the Daily Local News, a newspaper of general circulation

within Honey Brook Township, on April 12, 2023 and April 19, 2023; Applicant and applicable adjacent/nearby property owners were timely notified of the hearing by mail on April 15, 2023; and the Property was timely posted with notice of the hearing on April 14, 2023.

17. A hearing on this matter was held on April 26, 2023, commencing at 6:30 p.m. at the Honey Brook Township Municipal Building.

18. At the hearing, the Board entered the following exhibits:

- a. Board Exhibit No. 1 – Notice of Public Hearing
- b. Board Exhibit No. 2 – Affidavit of Publication
- c. Board Exhibit No. 3 – Affidavit of Posting at Township Building
- d. Board Exhibit No. 4 – Affidavit of Posting at Property w/ Photographs
- e. Board Exhibit No. 5 – Certification of Notice of Mailings
- f. Board Exhibit No. 6 – Zoning Application
- g. Board Exhibit No. 7 – Applicable Zoning Ordinances as amended

19. At the hearing, Applicant entered the following exhibits:

- a. Applicant Exhibit No. 1 – 2022 Amendment
- b. Applicant Exhibit No. 2 – Zoning Application
- c. Applicant Exhibit No. 3 – Resume/CV of Alex Piehl, RLA
- d. Applicant Exhibit No. 4 – 2021 Master Plan Sheet (last revised 10-20-2022)
- e. Applicant Exhibit No. 5 – 2021 Open Space Plan Sheet (last revised 10-20-2022)
- f. Applicant Exhibit No. 6 – 2021 Proposed Master Plan Rendering (dated 4-20-2023)

20. At the April 26, 2023 hearing, Applicant was ably represented by Brian Nagle, Esq.

21. At the hearing, Applicant presented testimony through David Shenk, CEO of Applicant, and Alex Piehl, RLA, an expert witness as a registered landscape architect.

22. At the hearing, the Township was ably represented by its Solicitor, Beth Kohl, Esq.; the Township did not oppose the Proposed Variances.

23. At the hearing, Anthony Minichini, President of the Tri Town Sportsmans Association, a landowner of 1274 Beaver Dam Rd, Honey Brook Township, Chester County, Pennsylvania, requested and was granted party status as a neighbor of the Property; the Association did not oppose the Proposed Variances.

24. At the hearing, Jerome J. Gerald of 2297 Horseshoe Pike, Honey Brook Township, Chester County, Pennsylvania, provided a statement.

25. At the hearing, no other individuals requested party status nor made public comments.

26. Due to changing dynamics in the market, Applicant has experienced an increase in demand for more cottages at the Property as residents prefer to begin their stay at the CCRC in cottages.

27. Applicant has calculated a need for forty-six (46) new cottages to meet demand for the CCRC at the Property, as shown on the 2021 Master Plan Sheet, See Exhibit A-4.

28. Applicant has agreed to facilitate and support the potential location of the Elverson Honey Brook Area EMS on the Property as provided for in the 2022 Amendment and in accordance with any resulting agreement entered into between the EMS and Applicant.

29. The proposed location of the Elverson Honey Brook Area EMS on the Property would provide and improve emergency services and access for the residents of the CCRC.

30. The Property's contiguous parcels' shape, characteristics, and layout are unique.

31. Applicant's proposed locations for the forty-six (46) new cottages, the Honey Brook Area EMS and other applicable zoning relief are appropriate to the Property, its neighborhood and its zoning district, would not be detrimental to the public welfare, and would help preserve the Property's northwest woodlands.

32. The requested relief is in conformity with the general purpose and intent of the Zoning Ordinance.

33. The requested relief, dimensional in nature, is a reasonable adjustment to the Zoning Ordinance.

DISCUSSION

Applicant requests the Proposed Variances to further develop the CCRC at the Property in line with current housing demands and community needs. The Board, after hearing testimony and considering all of the evidence, finds that the requested relief is appropriate to the Property, its neighborhood and its zoning district; will not be detrimental to the public welfare; is in conformity with the general purpose and intent of the applicable zoning ordinances; and is a reasonable adjustment to the applicable zoning ordinances.

CONCLUSIONS OF LAW

1. The Property is located in the A - Agricultural Zoning District.
2. Applicant is the legal owner of the Property.
3. The Zoning Hearing Board of Honey Brook Township has jurisdiction to decide this zoning application pursuant to the applicable Honey Brook Township Zoning Ordinance, as amended, and the Pennsylvania Municipalities Planning Code of 1968, P.L. 805, No. 246 as reenacted and amended, 53 Pa.C.S.A. 10901.1, *et seq.*

4. In order to be granted the requested relief, Applicant must show that the Property meets the Zoning Ordinance requirements for the requested variance.

5. Applicant put forward testimony and evidence to establish that the requested relief meets the variance requirements of the Zoning Ordinance.

6. Applicant has met its burden with respect to requested relief at the Property.

ORDER

AND NOW, the Zoning Hearing Board of Honey Brook Township, by a unanimous vote of members present at the hearing, hereby rules as follows:

Based on the findings of facts, discussion, and conclusions of law which are incorporated herein, Applicant's requests for the Proposed Variances are GRANTED subject to the following conditions:

a. The requested relief granted herein shall be consistent with all of the testimony, exhibits, and evidence presented by Applicant at the zoning hearing, including but not limited to the 2022 Amendment, referred to as Applicant's Exhibit A-1, which is incorporated herein as if fully stated;

b. Applicant shall comply with all other Township ordinances, rules, and regulations and all other federal, state and local laws and regulations, including obtaining all necessary building, stormwater, and other applicable permits;

c. Except as modified by this Decision and Order, all other relief granted and conditions imposed by this Board under the October 20, 2008 Decision and Order shall be and remain in full force and effect; and

d. In the event that there should be a discrepancy between the relief granted hereunder and the 2022 Amendment, the terms of the 2022 Amendment shall control.

Zoning Hearing Board of Honey Brook Township:

By: Jeffrey Emberger
Jeffrey Emberger

By: John Riehl
John Riehl

By: David Rodgers
David Rodgers

Date of delivery or mailing of
Written Decision to Applicant: June 9, 2023

**ANY AGGREIVED PERSON MAY APPEAL THIS DECISION TO THE COURT OF
COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA, WITHIN THIRTY (30)
DAYS FROM THE DATE OF THE ISSUANCE OF THIS WRITTEN DECISION.**