

**HANOVER TOWNSHIP ZONING HEARING BOARD**  
**OF NORTHAMPTON COUNTY, PENNSYLVANIA**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Petition of:	Advanced Health Care
Dated :	February 27, 2020
Property:	Lot 10, 3370 High Point Boulevard

The Hanover Township Zoning Hearing Board after conducting a hearing on Thursday, May 28 on the application of Advanced Health Care and after granting the requested lot area variance and a modification of the prior decision of the Hanover Township Zoning Hearing Board subject to the conditions as set forth herein hereby makes its findings of fact and conclusions of law in support thereof as follows:

1. The subject property is Lot 10 on the Subdivision Plan of the Lehigh Valley Corporate Center Phase II, now owned by Polaris Bio Investors, L.P.
2. Lot 10 was created as a result of the subdivision of a 70-acre parcel of land by Liberty Property Limited Partnership
3. It consists of 8.2 acres which if the further subdivision of this lot is approved would be broken into two lots, Lot 10 A consisting of 3.78 acres and Lot 10 B consisting of 4.42 acres.
4. The applicant Advanced Health Care desires to construct a Transitional Care Facility on Lot 10 A.
5. At the time of the proposed subdivision of the larger parcel of land the then owner of the property petitioned for numerous zoning variances. The Hanover Zoning Hearing Board conducted hearings on September 2 and September 23, 1999 at the conclusion of which the Zoning Hearing Board denied some of the relief requested and granted some of the relief requested by imposing certain conditions on the grant of the variances.
6. The written decision of the board was rendered on November 1, 1999. At the present hearing this decision was made a part of the record and marked exhibit A 5. The plan submitted to the Zoning Hearing Board at that time was also made a part of the record and marked exhibit T 1 at the present hearing.

7. Appearing on behalf of the applicant was attorney Nathan Fox who introduced the following exhibits:
  - A 1, Conditional Use Plan and architectural cross-section.
  - A 2, Letter to Zoning Hearing Board Solicitor dated May 7, 2020
  - A 3, Pictures of existing similar advanced healthcare facilities
  - A 4, Resume of Victor Grande, professional engineer
  - A 5, Written decision of the Zoning Hearing Board dated November 1, 1999
8. All of the exhibits of the applicant together with the plan submitted to the Zoning Hearing Board in 1999 were admitted into evidence.
9. In addition to the above exhibits the applicant previously submitted its petition dated February 27, 2020 with attachments among which included the last deed of record to the present owner of Lot 10, the authorization of James Gentile principle of Polaris Bio Investors, LP, and the agreement of sale between the applicant and Polaris.
10. Any plans submitted as part of the application are modified by the plan submitted to the Zoning Hearing Board at the time of the hearing and marked exhibit A 1
11. Testifying remotely on behalf of the applicant were Nathan Oxnam, chief operating officer of Advance Health Care, Len McCurdy development facilitator of the company, and Victor Grande, professional engineer.
12. James Gentile, the principal of the owner of Lot 10, was also remotely in attendance at the Zoom hearing.
13. The applicant's witnesses testified that the facility will not be handling full-time nursing home patients but only short-term nursing patients for rehabilitation.
14. The facility will be a one-story building with an atrium in the lobby and a raised roof in the hallways to allow natural lighting.
15. The height of the atrium areas will be 37 feet or 14 feet higher than the height restriction placed on any building on lot 10 in the 1999 decision.
16. Numerous residents of the area also participated in the zoom proceedings some of whom testified.
17. In particular Mary Jo Johnson of 1675 Stoke Park Road submitted written comments in advance of the hearing on behalf of herself, her husband, David Johnson and others. After being sworn Mrs. Johnson was asked to read her comments into the record.

18. Attorney Fox then requested his various witnesses to address the concerns and questions as expressed in her comments.
19. This testimony from the applicant's witnesses included assurances that only physical therapy and not any alcohol or drug rehabilitation would be conducted on the premises.
20. Sean and Kimberly Cunningham of 1725 Stoke Park Road also testified. They stated that their home was on the cul-de-sac on the east side of lot 10 and that they were concerned about being able to see the proposed facility because it will be located on an area of the lot with a higher elevation than other areas of lot 10.
21. The witnesses for the applicant indicated that the structure was being located at the lowest elevation of Lot 10 A (although this is not necessarily on Lot 10 as a whole). They also noted the location would be the farthest from Mrs. and Mrs. Cunningham's residence and from the residential area in general.
22. The Cunninghams also had questions concerning the lack of any berm on Lot 10 near to where their home is located and as to whether the 300-foot restriction would be applicable to a new structure on lot 10 B.
23. In that no plans have been submitted with respect to the development on lot 10 B no assurances could be given to the Cunninghams with respect to what might be the setback restriction and the effective height of the structure on this lot.
24. Robert Reilly of 1695 Stokes Park Road also testified expressing similar concerns.
25. Section 185.54 (22) of the ordinance defines a Transitional Care Facility. This section also requires that no part of the transitional care facility building shall be located closer than the 300 feet to any existing residences in an adjoining residential district and that the lot on which the facility is located must be at least six acres
26. The applicants do not dispute that they are a Transitional Care Facility as defined under the ordinance and testified that by locating the facility as far to the west as possible on the lot 10 A they are in compliance with the 300-foot requirement.
27. With respect to the 6-acre requirement they indicate that they desire to keep the facility small and that therefore the additional land would be of no use to them.
28. The relevant portion of the 1999 decision of the Hanover Township Zoning Hearing Board relating to Lot 10 granted variances permitting a buffer yard of 80 feet, allowing an undulating berm between 6 and 9 feet and reducing the plant material as follows:

Per 100 linear feet of buffer, 5 evergreens (minimum of 10 feet in height), 3 deciduous trees (minimum of 14 feet in height), 2 flowering trees (minimum of 10 feet in height) and 5 shrubs (minimum of 4 feet in height), or as approved by the Township Supervisors

29. The decision also reduced the special building set back to 80 feet and reduced the 150 feet buffer to a 75 feet buffer along the frontage of this lot on old Stoke Park Road.

30. These variances were granted subject to the following conditions:

A. The petitioner shall not construct a building on lot 10 with a height in excess of 23 feet.

B. The petitioner shall extend the proposed berm on the southside of Stoke Park Road around the corner where it will return to grade at approximately the area of the barn.

31. It is clear that all of the variances granted as to Lot 10 related to the 8.2 acres as it was then proposed for the subdivision. The question therefore now before the Board is what impact the further subdivision of Lot 10 into the two proposed lots has on the grant of the variances and the conditions as set forth as to Lot 10 in the 1999 decision and should the board modify those restrictions.

32. As to the 23-height restriction the applicant argues that section 185.22 B (1) provides for a waiver of the height requirements as to certain structures.

33. It is noted that the height restriction in the present case is not one based on the ordinance but on the decision of the board in 1999 so that it is not clear whether the ordinance provisions waiving the height requirements are applicable.

34. More importantly, it is the opinion of the board that the particular structures as proposed on the applicant's building are not clearly similar to the structures set forth in this section of the ordinance.

35. The Board is reluctant to find that anyone wishing to have a raised roof or an atrium design is automatically exempt from having to comply with the height restrictions set forth in the ordinance.

36. On the other hand, in the present case, given the purpose and design of the structure the board feels that a modification of the 23-foot height restriction placed as a condition on the prior grant of the variance will not be detrimental to the public welfare provided this modification of the prior decision is subject to the conditions as set forth hereinafter.

37. The board is concerned that the prior grant of variances in 1999 when the Lot 10 was 8.2 acres may not be appropriate on Lot 10-B. when considering the interest of the adjacent residential neighborhood Thus the board believes at the time of any proposed development of Lot 10 B the matter shall require the review and approval of the Zoning Hearing Board with regards to the variances and conditions placed in the 1999 decision as they related to Lot 10 as a whole and the possible need to modify those variances as to the berms, buffers, plantings, and set-backs based on the actual proposed development of Lot 10 B

WHEREFORE, the Hanover Township Zoning Hearing Board grants the variance from the 6-acre minimum lot requirement applicable to Transition Care Facilities and permits such use of the premises on the proposed subdivided lot of 3.78 acres. Further the Board modifies the prior decision of the Hanover Township Zoning Hearing Board with respect to Lot 10 to permit the proposed structure of the applicant to exceed the building height restriction of 23 feet and to allow the height as shown on the plans submitted to the Zoning Hearing Board, marked Exhibit A-1 at the hearing subject to the condition that this modification of the height restriction shall not apply to the balance of lot 10 and farther the set-back, berm and planting relief previously applied to Lot 10 in the prior decision shall require further review by the Zoning Hearing Board and be subject to possible modification as to any development of the 4.42 acre balance of Lot 10.

HANOVER TOWNSHIP ZONING HEARING BOARD

By: \_\_\_\_\_

Barbara L. Baldo, Esquire,  
Chairperson

Dated: 06/09/20