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VALLEY TOWNSHIP

**IN RE: CONDITIONAL USE
APPLICATION OF
RESOURCES FOR HUMAN
DEVELOPMENT, INC.**

**: BEFORE THE BOARD OF SUPERVISORS
: VALLEY TOWNSHIP**

DECISION AND ORDER

Resources for Human Development, Inc. (the "Applicant") filed a conditional use application (the "Application") with the Board of Supervisors of Valley Township (the "Township") on June 6, 2023 seeking conditional use approval pursuant to Section 27-208.4A of the Valley Township Zoning Ordinance, as amended (the "Zoning Ordinance"). The Applicant seeks to renovate an existing office building for use as a short-term supportive housing facility. The office building is located on the northeast corner of West Lincoln Highway and Buckthorn Drive, having a street address of 1229 West Lincoln Highway, and being part of Tax Parcel No. 38-2-43.1 (the "Property"). The Property is located within Valley Township's Planned Development (PD) Zone as defined in the Zoning Ordinance. As represented by the Applicant during the hearings held on the Application, the Applicant is the equitable owner of the portion of the Property containing the subject office building pursuant to an agreement with Horizon Investments, LLC. and is authorized to seek conditional use approval. *See Hearing Exhibit A-4.*

The Applicant proposes to renovate the existing 18,148 square foot office building (the "Office Building") on the Property to accommodate 32 individual housing units which will provide 24/7 supportive housing to unhoused individuals and which will include

services to help such individuals find other permanent, stable housing and employment (the "Proposed Use"). During the hearings held on the Application, the Applicant referred to the Proposed Use in the Office Building as being a "Short-Term Supportive Housing Facility".

The Township conducted public hearings on July 31, 2023 and August 29, 2023, and October 4, 2023 (the "Hearings") to consider the Application. Public notice of the July 31, 2023 hearing was advertised in the *Daily Local News* on July 10, 2023 and July 17, 2023, and the hearing was continued on the record to a date certain of August 29, 2023 and then continued on the record once more to October 4, 2023. Nearby property owners also received required notice of the Hearings in accordance with Section 27-604.1A of the Zoning Ordinance. See *Hearing Exhibit B-5*.

Valley Township Board of Supervisors Chairwoman Patrice Proctor, Vice Chairwoman Kathy O'Doherty, and Members Casey Leidy, Sharon Yates, and Linda Baugher attended the Hearings and participated in deliberations. The Board of Supervisors was represented by the Conflict Counsel, Kimberly P. Venzie, Esquire from Buckley, Brion, McGuire & Morris LLP. The Applicant was represented by Debra A. Shulski, Esquire from Riley, Riper, Hollin & Colagreco.

Numerous residents attended the Hearings to voice their concerns; however, no person requested or was granted party status. Party status was explained to the attendees; however, residents did not seek party status but were given considerable time to ask questions of the Applicant's witnesses and to provide public comment. Additionally, other individuals attended to voice their support of the Application as reflected in the transcripts of the Hearings.

The testimony was recorded by Mark Hagerty, James Finlan, and Kim Kercher. The record in the Application consists of the transcript of the stenographic notes taken at the Hearings and the following documentary exhibits admitted into evidence (the "Record").

Applicant Exhibits:

- A-1 Valley Township Conditional Use Application, Narrative, and Cover Letter from Debra A. Shulski, Esquire, dated June 6, 2023.
- A-2 Valley Township Zoning Ordinance, as amended (*incorporated by reference*).
- A-3 Deed for 1229 West Lincoln Highway (UPI No. 38-2-43.1) between Reidor Corporation, as Grantor, and Horizons Investments, LLC, as Grantee, dated September 30, 2019 and recorded in the Office of the Chester County Recorder of Deeds in Deed Book 10010, Page 1968.
- A-4 Redacted Agreement of Sale between Horizons Investments, LLC, as Seller, and Resources for Human Development, Inc., as Purchaser, dated February 1, 2023.
- A-5 Chesco View Aerial Photograph.
- A-6 Photos of Existing Site Conditions.
- A-7 Site Plan prepared by Howell Engineering, dated July 20, 2023.
- A-8 Short-Term Supportive Housing Facility Brochure prepared by Resources for Human Development, Inc., consisting of one (1) sheet.
- A-9 Narrative to Describe Proposed Short-Term Supportive Housing Facility Use prepared by Riley Riper Hollin & Colagreco, July 26, 2023.
- A-10 Confirmation of water and sewer capacity from Pennsylvania American Water email, dated May 11, 2023.
- A-11 C.V. of Matthew Hammond, P.E.
- A-12 Parking Analysis and Trip Generation Comparison for 1229 West Lincoln Highway prepared by Traffic Planning and Design, Inc., dated April 20, 2023.

- A-13 Response to Pennoni Conditional Use Application Review Letter prepared by Riley Riper Hollin & Colagreco, dated July 26, 2023.
- A-14 Response to Valley Township Zoning Officer Review Letter prepared by Riley Riper Hollin & Colagreco, dated July 26, 2023.
- A-15 Preliminary/Final Subdivision Plan of Land Belonging to Lanchester Christian Schools, dated September 22, 1997 and recorded in the Office of the Chester County Recorder of Deeds in Book 14352.
- A-16 Resources for Human Development Fact Sheet.
- A-17 Chester County Point in Time Sheet dated January 2023.
- A-18 Chester County Coordinated Entry System Efficacy dated May 2023.
- A-19 Chester County Coordinated Entry System Efficacy dated September 2022.

Board of Supervisors Exhibits:

- B-1 Conditional Use Application with all attachments dated June 6, 2023.
- B-2 Letter to Debra A. Shulski from Kimberly P. Venzie dated June 29, 2023.
- B-3 Proof of Publication in the Daily Local News on July 10, 2023 & July 17, 2023.
- B-4 Certification of Posting of Property dated July 6, 2023.
- B-5 Verification of Mailing Notice dated July 10, 2023.
- B-6 Review Letter from Michael J. Ellis, P.E. dated July 7, 2023.
- B-7 Review Letter from David M. Porter, P.E., Valley Township Zoning Officer dated July 7, 2023.

During the Hearing, the Applicant presented testimony and evidence regarding the plans for the subject Property as captured in the Record. The above summary of the proceedings is also deemed to be Findings of Fact by the Board of Supervisors and those terms defined above are incorporated as defined terms throughout this Decision if not separately defined below. The Valley Township Zoning Ordinance, as amended, and Zoning Map are incorporated herein by reference.

FINDINGS OF FACT

1. Resources for Human Development, Inc. (the "Applicant" or "RHD") submitted a Conditional Use Application (the "Application"), dated June 6, 2023, for the renovation of the existing Office Building into a Short-Term Supportive Housing Facility located within the Planned Development (PD) Zoning District of Valley Township. See Hearing Exhibit A-1.

2. The existing Office Building is located on the northeast corner of West Lincoln Highway and Buckthorn Drive, having a street address of 1229 West Lincoln Highway, and being a portion of Tax Parcel No. 38-2-43.1 (the "Property"). Applicant is equitable owner of the portion of the Property containing the Office Building and has identified the Property (and its Office Building) as being suitable for redevelopment as a Short-Term Supportive Housing Facility (also referred to herein as the "Proposed Use"). See Hearing Exhibit A-1.

3. The Applicant is a human services non-profit organization that provides specialized services to its clients that focus on rehabilitation needs to permanently overcome homelessness, such as physical and behavioral healthcare support, financial literacy, employment opportunities, and education. See Hearing Exhibit A-9 & A-16; N.T. 7/31/23 pp.15-16.

4. The Chester County Department of Community Development ("DCD") has selected the Applicant to help alleviate homelessness in Chester County by opening an

adult-only, short-term supportive housing facility in Chester County. Federal funding will be used to fund this housing. See N.T. 8/29/23, pp.8-9.

5. The Applicant seeks to renovate the existing three story, 18,148 square foot Office Building on the Property to operate the 32-room Short-Term Supportive Housing Facility for single persons seeking housing support for an average length of stay of 60-90 days. See Hearing Exhibit A-1; N.T. 7/31/2023 pp. 25-27.

6. The Applicant is seeking conditional use pursuant to Section 27-208.4A of the Zoning Ordinance for the Proposed Use which provides as follows:

"4. Conditional Uses. The following principal uses and their accessory uses are permitted by conditional use, provided that a conditional use is approved by the Board of Supervisors in accordance with the procedures listed in §27-705 of this chapter, and the use complies with all supplemental development, design and use regulations in this chapter:

A. Any other use, not the same as, but which is nevertheless similar in character and impact as those Permitted Uses listed above."

7. The Applicant is seeking conditional use under the above referenced section due to their Proposed Use not being specifically listed as one of the Permitted Uses in the Planned Development Zoning District, and upon the basis that the Proposed Use may be determined to be similar in character and impact as other Permitted Uses in the PD District. See Hearing Exhibit A-1.

8. The Valley Township Zoning Officer David M. Porter, P.E. submitted a review letter to the Township dated July 7, 2023, and included the Applicant on such correspondence, in which he writes in his Zoning Analysis as follows:

"1. §27-208.4.A – As stated above "short-term supportive housing" is not listed as permitted use by right but may be considered a use "similar in

character and impact” as those Permitted Uses listed in 27-208.2. However, it is not clear from the application, how “short-term supportive housing” is similar in character and impact. The applicant needs to provide justification that this use is appropriate as a Conditional Use in the PD Zoning District.”

See Hearing Exhibit B-7.

9. The Township Engineer Michael J. Ellis, P.E., submitted a review letter to the Township dated July 7, 2023, and included the Applicant on the correspondence, in which he offers the following comments related to the Proposed Use as a conditional use:

“1. §208.4.A – The Applicant proposes the short-term supportive housing use via Conditional use as “any other use, not the same as, but similar in character and impact as those permitted uses above, provided that such use is approved as a conditional use according to the regulations contained within §27-705 of this chapter”. The Applicant should explain and justify which permitted use(s) is similar to the short-term supportive housing facility. The Applicant should also clarify if services will only be offered to the short-term residents or if any services such as meals or professional assistance will be offered at the site to non-residents.”

(#2 Omitted as not relevant to this Decision)

“3. §705.2 – The Applicant needs to demonstrate compliance with the following:

- A. That the proposed use is consistent with the purposes and intent of the Zoning Ordinance. We question if the proposed residential/housing use is consistent with the §208.1 Purpose of the PD Zone, which is to accommodate and promote mixed-use employment centers through the range of commercial services and to encourage economic activity.
- B. That the proposed use will not detract from the use and enjoyment of adjoining or nearby properties including but not limited to the Concern school.
- C. That the proposed use will not effect a change in the character of the subject property’s neighborhood. In particular, consistency with the existing character of the surrounding Round Hill townhouse community and Robinson Avenue and Oaklyn Lane single family home community should be addressed in detail.
- D. That adequate public facilities are available to serve the proposed use (e.g. schools, emergency services, sewer, water, other

utilities, vehicular access). Amongst other things, the Applicant should confirm the availability of any proposed increase in water and sewer usage from Pennsylvania American Water Company.”

See Hearing Exhibit B-6.

10. During the Hearings, Applicant’s Counsel argued that the Proposed Use is similar in character and impact as other Permitted Uses such as hotel/motels, and other service and healthcare related uses, multifamily uses, and educational uses. See N.T. 7/31/23 pp. 11-12; N.T. 10/4/2023 pp. 62-63.

11. During the Hearings, lengthy testimony was provided by Lisa Feldman, Director for the Applicant, and Owen Camuso, Regional Director for the Applicant, on behalf of the Applicant, and Dolores S. Colligan, Director of the Chester County Department of Community Development, testified on behalf of Chester County (the “County”) to provide information concerning the functionality of building and the daily proposed operations of the proposed Short-Term Supportive Housing Facility.

12. Primary access to the Short-Term Supportive Housing Facility will be from Buckthorn Drive and the Applicant intends to use the existing 48 off-street parking spaces to serve as parking for the Proposed Use. See Hearing Exhibit A-7.

13. The Applicant plans to renovate the interior of the Office Building for the Applicant’s Proposed Use and proposes no exterior site improvements with the exception of some additional landscaping. See N.T. 7/31/23, p. 13.

14. During the Hearings, the Applicant did not provide any detailed architectural or sketch plans showing the planned renovations for the interior of the Office Building. See N.T. 7/31/23 pp. 58-59.

15. The Applicant does not currently operate any facilities that are specifically like the Short-Term Supportive Housing Facility being proposed in Valley Township. See N.T. 7/31/23 p. 94.

16. The Short-Term Supportive Housing Facility will not be a licensed facility but will be subject to oversight by the Chester County Department of Community Development. See N.T. 7/31/23 p. 72.

17. During the Hearings, Matthew Hammond, P.E. from Traffic, Planning and Design presented a Parking Analysis and Trip Generation Comparison which concluded that the use of the Office Building as a Short-Term Supportive Housing Facility would reduce anticipated traffic generation as compared with a general office use. See Hearing Exhibit A-12, N.T. 8/29/23 pp. 80-81 & 94.

18. Mr. Hammond testified that the existing parking availability is compliant with the Zoning Ordinance and more than sufficient to accommodate the proposed use. See N.T. 8/29/23 pp. 79-80.

19. During the Hearings, the Applicant provided testimony that each resident will undergo a two-part screening process through the County and RHD that includes, but is not limited to, a criminal background check and screening to confirm they are over 18 prior to their admission to the facility. Additionally, no registered sex offenders will be permitted to reside at the Short-Term Supportive Housing Facility. See Hearing Exhibit A-16, N.T. 7/31/23 pp. 27 – 29.

20. To combat safety risks once candidates are approved for residency, the Applicant testified that the building will have security cameras, exterior lighting, 24/7 staff, and resident curfews. See N.T. 7/31/23 pp. 28-29 & 41.

21. The Applicant testified that no drugs or alcohol would be permitted within the facility and no resident visitors would be permitted at the facility. See Hearing Exhibit A-16; N.T. 7/31/23 pp. 26-27.

22. Testimony was provided that the residents of the Short-Term Supportive Housing Facility would likely not have vehicles and that RHD and/or the County would be providing some type of transportation to the residents when needed. See N.T. 7/31/23 pp. 28 & 39.

23. Testimony was provided that a set staffing plan has not been established and staff training will be tailored based upon the needs of the residents. See N.T. 7/31/23 pp. 39-40.

24. During the Hearings, the Applicant's witnesses were unable to provide detailed answers to specific questions posed by the Supervisors with regard to the dimensions of the residents' individual rooms, possible use and functionality of resident community rooms, description of the planned redesign of the interior of the Office Building, specific emergency plans dealing with physical and mental health issues, how to address impacts to EMS and police services, and how the Short-Term Supportive Housing Facility would specifically operate on a daily basis. See N.T. 7/31/23 pp. 34-74.

25. Testimony was provided that if the Short-Term Supportive Housing Facility was no longer needed, the federal funds could be used to turn the facility into an emergency shelter or permanent affordable housing. See N.T. 8/29/23 p.70.

26. During the Hearings, statements were given that multifamily residential development is permitted in the PD Zone; however, multifamily residential development is not permitted upon any lot that has frontage along West Lincoln Highway, which would include the subject Property. See Zoning Ordinance, Section 27-458.

DISCUSSION

The Applicant seeks conditional use approval pursuant to Section 27-208.4A of the Zoning Ordinance to renovate an existing office building for use as Short-Term Supportive Housing Facility in the Township's Planned Development Zoning District. In order to be entitled to conditional use approval under Section 27-208.4A, an applicant must demonstrate that the proposed use is similar in character and impact to the uses permitted by right in the Planned Development Zone District, and also satisfy the procedures and standards set forth in Section 27-705 of the Zoning Ordinance. Section 27-705.2A through 27-705.2G of the Zoning Ordinance sets forth the following additional criteria with which each applicant for conditional use must comply. Section 27-705.2A – G reads as follows:

- "2. General Criteria. Each applicant must demonstrate compliance with the following:
 - A. The proposed use shall be consistent with the purpose and intent of this chapter.
 - B. The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties.

- C. The proposed use will not effect a change in the character of the subject property's neighborhood.
- D. Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.).
- E. For development within the Floodplain Zone, that the application complies with those requirements listed in Chapter 8, Floodplains.
- F. The proposed use shall comply with those criteria specifically listed in Part 4 of this chapter. In addition, the proposed use must comply with all other applicable regulations of this chapter.
- G. The proposed use will not substantially impair the integrity of the Township's Comprehensive Plan.”

During the Hearings, the Applicant did not provide sufficient testimony or evidence to support a conclusion that the Applicant's Proposed Use was similar in character and impact as any of the Permitted Uses listed in Section 27-208.2. Applicant's Counsel made legal argument and summarily concluded that a Short-Term Support Housing Facility is similar in character and impact as to a hotel/motel use and also contains components similar to other permitted uses such as healthcare and educational service uses. However, there was no substantial, credible testimony or evidence provided during the Hearings that would support a legal conclusion that a Short-Term Supportive Housing Facility is similar in character and impact as to any other permitted uses in the PD Zoning District. The Short-Term Supportive Housing Facility has distinct characteristics such as, but not limited to, long-term residences, curfew for residents, additional security measures, staffing and supportive services onsite, transportation services, screening processes for residents, that are not at all similar in character and impact as to a

hotel/motel use or any other permitted uses in the PD Zoning District. The services provided by the Short-Term Supportive Housing Facility are certainly admirable and likely serve a useful purpose; however, those services and additional functions are much more comprehensive and impactful as compared to a hotel use. The two uses are distinct and the evidentiary record does not support a finding of similarity.

During the Hearings, there were no specific factual comparisons of similarities of the Proposed Use to any other Permitted Uses in the PD Zoning District. Simply stating that a use is similar is insufficient particularly when a plain read of the Zoning Ordinance also does not easily reflect any such similarities in character and impact. In fact, the multitude of differences between the Short-Term Supportive Housing Facility and the Permitted Uses in the PD Zoning District are set forth in the above Findings of Fact which detail the distinct characteristics of the Short-Term Supportive Housing Facility. No credible testimony was presented which could result in a Finding of Fact, and ultimately a conclusion of law, of similarity in character and impact. In particular, the Applicant did not provide any detailed architectural plans of what the interior renovations might entail, any specifics of staffing plans, emergency health care plans, or how the Short-Term Supportive Housing Facility would operate on a daily basis. Upon review of the Permitted Uses in the PD Zoning District and based upon the Record, the Short-Term Supportive Housing Facility does not appear to be similar in character and impact to any of the Permitted Uses in the PD Zoning District.

Although the Applicant may have stated the ability to comply with some of the criteria set forth in Section 27-705.2A – G of the Zoning Ordinance, that analysis is not necessarily relevant as the first hurdle – showing that the Proposed Use is similar in

character and impact to Permitted Uses in the PD Zoning District – has not been cleared by the Applicant. However, even if arguably that Proposed Use was somehow determined to be similar in character and impact to Permitted Uses in the PD Zoning District, the Township is not satisfied that all the criteria of Section 27-705.A-G have been met. In particular, the Township remains unconvinced that the Proposed Use would not detract from the use and enjoyment of adjoining or nearby properties, or that the Proposed Use would not effect a change in the character of the subject property's neighborhood. Furthermore, the Record does not support a finding that the Proposed Use is consistent with the purposes of the PD Zoning District – two of which are to encourage new economic activities and promote mixed-use employment centers. Although multi-family residential development is allowed, it is specially not permitted upon properties with frontage on West Lincoln Highway – which would include the subject Property. The Township did not find the testimony presented by the Applicant to be sufficient with respect to satisfying the criteria of Section 27-705 as it consisted of statements of “belief of compliance” without any factual support. The Township finds that the Applicant has not met the required burden to satisfy those criteria. However, as the Township has determined that the Proposed Use is not similar in character or impact as to Permitted Uses in the PD Zoning District, the additional Conditional Use criteria set forth in Section 27-705 need not be fully analyzed herein.

The Township finds the *Gorsline v. Board of Supervisors of Fairfield Township* case decided by the Supreme Court of Pennsylvania to provide substantial guidance on the matter at hand. 186 A.3d 375 (Pa. 2017). In the *Gorsline* case, the Pennsylvania Supreme Court determined that the evidentiary record did not support the Board's

decision that the proposed use was similar to permitted uses, and the proposed use was not, in any material respect, of the same general character as any allowed use in the subject zoning district. *Id.* at 385. In the *Gorsline* case, the Pennsylvania Supreme Court notes that the burden of proof of similarity of use is squarely on the applicant, and determined that the record did not support a finding of similarity of use. *Id.* at 398. The Pennsylvania Courts have established that whether a proposed use falls within a given category specified in a zoning ordinance is a question of law. *Id.* at 385; *Southco, Inc. v. Concord Township.*, 713 A.2d 607, 609 (Pa. 1998). The Record in the instant matter does not contain substantial evidence to render a legal conclusion that the Proposed Use is similar in character and impact as a hotel use or any other Permitted Uses in the Township's PD Zoning District. In fact, the testimony and evidence provided by the Applicant highlights the differences between the Proposed Use and the Permitted Uses in the PD Zoning District – including the extent to which the Applicant has to regulate and police its residents, long-term stays, transportation services, vetting procedures for new residents, security measures, and the extensive supportive services to the residents of the Proposed Use - and serves to magnify the drastic dissimilarities between the Proposed Use and the Permitted Uses in the PD Zoning District. The factual record does not support the legal conclusion sought by the Applicant. Although the Applicant may believe that the Proposed Use is similar in character and impact, this belief alone is insufficient to satisfy the Applicant's burden or to enable the Township to reach a legal conclusion that such use is similar in character and impact.

On a final note, the only issue presently before the Township in this matter is the granting or denial of the conditional use application and whether the Applicant has

satisfied the criteria to be granted such approval. The Applicant has not satisfied the requirements to be granted conditional use approval for the Proposed Use in the PD Zoning District. The Applicant has sought no other relief in this instant matter. Although the objective of the Applicant and the County in providing housing for the homeless is certainly a worthy goal, the Township cannot allow such Proposed Use unless the Applicant shows entitlement to such conditional use approval upon the subject Property – that burden simply has not been met by the Applicant.

CONCLUSIONS OF LAW

1. The Hearings were duly advertised, all required notices were given, and the hearings were duly convened in accordance with the MPC and the Zoning Ordinance.
2. The Board of Supervisors has exclusive jurisdiction to hear and render a decision on this Application.
3. Applicant has standing to file and prosecute this Application.
4. No neighboring parties requested party status and no such status was granted.
5. The Applicant did not demonstrate that it is entitled to conditional use approval pursuant to Section 27-208.4A of the Zoning Ordinance.
6. The Proposed Use is not a use similar in character and impact to any of the other uses permitted by right in the Planned Development Zone (PD) District.
7. The Applicant did not provide sufficient testimony or evidence to satisfy all of the criteria of Section 27-208.4A and Section 27-705.2A – G of the Township Zoning Ordinance

ORDER

AND NOW, this 21st day of November, 2023, the application of Resources for Human Development, Inc. for conditional use approval pursuant to Section 27-208.4A of the Zoning Ordinance, to renovate the existing Office Building for use as a Short-Term Supportive Housing Facility on property located at 1229 West Lincoln Highway, being part of Tax Parcel No. 38-2-43.1, is hereby **DENIED** for the reasons set forth in the decision above.

VALLEY TOWNSHIP BOARD OF SUPERVISORS



Patrice Proctor, Chairwoman



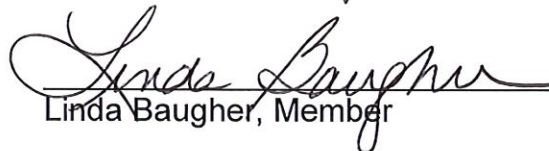
Kathy O'Doherty, Vice Chairwoman



Casey Leidy, Member



Sharon Yates, Member



Linda Baugher, Member