

DATE OF DECISION: APRIL 15, 2021

DATE OF MAILING: APRIL 16, 2021

**BEFORE THE NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD**

**RE: APPLICATION OF FOXLANE HOMES AT HIGHPOINT, LLC,
FOR THE PROPERTIES LOCATED ALONG THE EAST SIDE
OF HIGHPOINT DRIVE NEAR ITS INTERSECTION WITH
SCHOOLHOUSE ROAD; AND BETWEEN HORIZON DRIVE
AND HIGHPOINT DRIVE; WITH A STREET ADDRESS OF
ONE HIGHPOINT DRIVE, NEW BRITAIN TOWNSHIP, BUCKS
COUNTY, PENNSYLVANIA, FURTHER IDENTIFIED AS TAX MAP
PARCEL NOS. 26-5-47-5, 26-5-56, 26-5-56-1, 26-5-56-9 AND 26-5-26-11**

FINDINGS OF FACT

1. On Thursday, March 18, 2021,¹ at 7:00 p.m. at the New Britain Township Building, 207 Park Avenue, Chalfont, New Britain Township, the New Britain Township Zoning Hearing Board (“Board”) held a duly noticed hearing on the application of Foxlane Homes at Highpoint, LLC (the “Applicant”).

2. The properties that are the subject of this application are located along the east side of Highpoint Drive near its intersection with Schoolhouse Road; and between Horizon Drive and Highpoint Drive, New Britain Township, also known as Bucks County Tax Map Parcel Nos. 26-4-47-5, 26-5-56, 26-5-56-1, 26-5-56-9, and 26-5-56-11 (collective the “Property”). The Property has a street address of One Highpoint Drive.

3. Notice of the March 18, 2021, hearing was published in advance of the hearing in the Thursday, March 4, 2021, and Thursday, March 11, 2021, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the March 18, 2021, hearing was sent by first class mail on March 4, 2021, by Kelsey Harris (“Harris”), the New Britain Township Zoning Officer, to (a) all record owners of properties within New Britain Township within 500 feet of the Property; and (b) to the adjoining municipality for any surrounding properties that are located in that municipality. *See* Exhibit B-8.

5. Harris posted notice of the March 18, 2021, hearing on the Property on March 9, 2021. *See* Exhibit B-9.

6. Club Investors Group, Ltd, LP (“CIG”) is the legal and record owner of all of the lots that comprise the Property. The Property is subject to a valid Agreement of Sale dated

¹ The hearing was originally scheduled for Thursday, February 18, 2021. This hearing was postponed due to inclement weather. The Board provide new public notice for the March 18, 2021, hearing date. The Applicant’s attorney granted the Board an extension of time in writing to hold the hearing on or before March 18, 2021. *See* Exhibit B-10.

September 2, 2020, (the “Agreement”) between CIG and the Applicant. *See* Exhibit B-1, Agreement.

7. As the equitable owner of the Property pursuant to the Agreement, with authorization from CIG, the Applicant has the requisite standing to prosecute this zoning hearing board application.

8. The Property is in the C-3, Commercial, zoning district under the current New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

9. The Property is primarily improved with a large non-residential building containing a private recreational facility use (use E2), locally known as the Philadelphia Sports Club. *See* Exhibits A-1, Aerials; A-2, Photos; and A-4, Survey.

10. The Property is also improved with indoor and outdoor swimming pools, an accessory pool house and other buildings, outdoor tennis courts, outdoor basketball courts, drive aisles, parking areas and other improvements related to the private recreational facility use. *See* Exhibits A-1, Aerials; A-2, Photos; and A-4, Survey.

11. Tax Map Parcel No. 26-5-56-1 (the “Water Tank Lot”) is subject to a permanent easement with the North Wales Water Authority (the “Authority”). A large water storage tank owned by the Authority is on the Water Tank Lot. *See* Exhibits B-1, Agreement of Sale; A-1, Aerials; and A-2, Photos.

12. The Applicant proposes to demolish all the existing buildings and structures (other than the water storage tank on the Water Tank Lot and its related improvements) and remove all the private recreational facility use improvements from the Property. *See* Exhibit B-2(A), Sketch Plan.

13. Following removal of the private recreational facility use improvements, the Applicant proposes to develop a Twins and Towns Mixed Community use (use B3/B5) with at least 101 dwelling units, together with related improvements (the “Project”) on the Property.

14. A Twins and Towns Mixed Community use is an “integrated development of B3 and B5 uses.” It is permitted on the Property upon conditional use approval in the C-3 zoning district. *See* Zoning Ordinance §27-1401.c and §27-1403.c.

15. To permit the Project, the Applicant seeks variances from and/or interpretations of the following sections of the Zoning Ordinance:

- a. From §27-1403.c.1 to permit a special building setback of 50 feet from Highpoint Drive; from the southeastern lot line between Horizon Drive and Highpoint Drive; and from the Property’s southwestern corner lot line, where the required minimum special setback is 100 feet;
- b. From §27-1403.c.5 to allow 2 dwelling unit classes (housing types) in the Project, where the required minimum number of dwelling unit classes for a Twins and Towns Mixed Community use containing 101 or more dwelling units is 3; and

- c. From §27-1403.c.5 to allow the number of dwelling units in the respective housing style classes in the Project to comprise alternative percentages of the overall total dwelling unit mix.

16. Introduced as exhibits at the zoning hearing are the documents identified on Schedule A attached to this decision. Schedule A is incorporated by reference as though fully set forth herein at length.

17. The following individuals testified on behalf of the Applicant in support of the application at the hearing:

- a. Joseph Morrissey (“Morrissey”), officer and representative of the Applicant.
- b. Scott Mill, R.L.A. (“Mill”), registered landscape architect. The Board received Mill as an expert in civil site design and landscape architecture.

18. The following individuals requested and were granted party status to the application:

- a. Gregory T. Hood (“Hood”), 109 Country View Lane, Chalfont, PA.
- b. Carol Garretson (“Garretson”), 204 Prince William Way, Chalfont, PA.

19. The Property’s gross site area is 33.14 acres. Excluding the areas within the ultimate right-of-way of abutting and intersecting streets, and the utility easement on the Water Tank Lot, the Property’s base site lot area is 29.1 acres. *See Exhibit B-2(A), Sketch Plan.*

20. The Property is generally shaped like a rectangle, with a protruding area at the southwest corner. The Property has frontage along two (2) public streets: Horizon Drive and Highpoint Drive. *See Exhibit B-2(A), Sketch Plan.*

21. Mill stated, and the Board finds, that Horizon Drive and Highpoint Drive are each classified as “minor collector” streets. These are considered “other streets” in a Twins and Towns Mixed Community use. *See Exhibit B-2(A), Sketch Plan; see also Zoning Ordinance §27-1403.c.1.*

22. Horizon Drive runs along the Property’s southwestern lot line. The Property has curvilinear frontage along Horizon Drive where that road turns west and abuts the Property’s bulging lot corner. *See Exhibit B-2(A), Sketch Plan.*

23. Highpoint Drive diagonally bisects the Property, creating 2 distinct sections. It intersects the center of the southeastern lot line and travels to the northern most corner, where it exits the Property to eventually intersect with Schoolhouse Road. *See Exhibit B-2(A), Sketch Plan.*

24. The larger area is 22.55 acres. It is to the west of Highpoint Drive. The majority of the private recreational facility use improvements, as well as the Water Tank Lot, are located in this bigger section. *See Exhibits B-2(A), Sketch Plan; and A-4, Survey.*

25. The smaller section is 6.55 acres. It is to the east of Highpoint Drive. It contains a small pool, parking area, play courts, and a pavilion. *See* Exhibits B-2(A), Sketch Plan; and A-4, Survey.

26. The lots to the southwest and southeast of the Property are in the C-3 zoning district. These lots are improved with non-residential buildings and uses. *See* Exhibits B-2(A), Sketch Plan; and A-6, Comparison Plan.

27. The 2 lots abutting the Property's southeastern lot line between Horizon Drive and Highpoint Drive are owned by Grace Community Church of Buxmont ("GCC") (TMP No. 26-5-56-5) and BOA Holdings, LLC ("BOA") (TMP No. 26-5-56-3). *See* Exhibit A-4, Survey.

28. The GCC parcel is improved with a place of worship use. The BOA tract consists of a multi-user professional office building. *See* Exhibits A-4, Survey; and A-6, Comparison Plan.

29. The tract abutting the Property's protruding southwest corner is Tax Map Parcel No. 26-5-47-4. It is improved with a non-residential building occupied by LaPetite Academy day care center. *See* Exhibits A-4, Survey; and A-6, Comparison Plan.

30. The large parcel directly northwest of the Property is in the MHP, Mobile (Manufactured) Home Park, zoning district. It is improved with Little Farm Estates, an age-restricted residential community. Hood and his family are the record owners and operators of Little Farm Estates. *See* Exhibits B-2(A), Sketch Plan.

31. To the east of the Property's 6.55 acre portion is the Glennbrook townhouse residential subdivision ("Glennbrook"). It is located in the RR, Residential, zoning district. Glennbrook is part of the Highlands planned residential development (PRD). *See* Exhibit B-2(A), Sketch Plan.

32. The Water Tank Lot fronts on to Horizon Drive. Mill stated, and the Board finds, that a driveway on to Horizon Drive provides direct access to the large water tank. *See* Exhibits A-2, Photos; and A-4, Survey.

33. Morrissey stated, and the Board finds, that he has been involved with residential real estate projects for over 20 years. Fox Lane Homes has built many residential developments containing townhomes and twin dwellings, some of which are in Bucks County.

34. Morrissey and Mill stated, and the Board finds, that Property's existing road patterns and the presence of the Water Tank Lot present unique challenges to the Applicant's efforts to redevelop the Property and design the Project.

35. Morrissey and Mill stated, and the Board finds, that the Project has undergone at least 9 revisions to promote a dwelling unit mix and layout that complements the surrounding land uses, provides surplus open space and recreational amenities, and minimizes the variance relief needed.

36. Morrissey stated, and the Board finds, that the Project proposes 137 dwelling units.² All of the dwelling units are in the Property's larger section between Highpoint Drive and Horizon Drive. *See* Exhibit B-2(A), Sketch Plan.

37. Morrissey and Mill stated, and the Board finds, that no dwelling units will be in the Property's 6.55 acre section between Highpoint Drive and Glenbrook. This area will be reserved for active open space, recreational facilities, and a water feature. *See* Exhibit B-2(A), Sketch Plan.

38. At its current size, the Project is required to provide all 3 classes of the enumerated housing types. These housing types are twin home, patio/atrium house, and townhouse. *See* Exhibit B-2(A), Sketch Plan; *see also* Zoning Ordinance §27-1403.c.5.

39. Morrissey stated, and the Board finds, that the Project provides only 2 of these housing types. Twenty-eight (28) residences, or 20% of the Project's dwelling unit mix, are single-family semidetached dwellings (i.e., twin homes). *See* Exhibit B-2(A), Sketch Plan.

40. Morrissey stated, and the Board finds, that all the twin units will all be 24 feet wide and 50 feet deep. Each twin residence will have a 1 car garage. *See* Exhibit A-3, Rendering.

41. Morrissey stated, and the Board finds, that the remaining 109 units (or 80%), are single-family attached dwellings (i.e., townhouses). The Project contains no patio/atrium houses. *See* Exhibit B-2(A), Sketch Plan.

42. Morrissey and Mill stated, and the Board finds, that 61 townhouse units will be 22 feet wide. The remaining 48 townhouse residences will be 24 feet wide. All will be 50 feet deep and have a 1 car garage. *See* Exhibits B-2(A), Sketch Plan; and A-3, Rendering.

43. Morrissey and Mill stated, and the Board finds, that the Applicant made numerous design attempts to include the patio/atrium house in the Project. Morrissey stated that for reasons both market and Zoning Ordinance-based, these efforts proved unavailing.

44. The Zoning Ordinance defines a "patio/atrium house" to be an attached unit, fully enclosed (other than the front yard) by a wall 4 to 6 feet high, with all living spaces opening on to an outdoor area or private indoor atrium. *See* Zoning Ordinance §27-1403.c.2(b).

45. Also, the Zoning Ordinance prohibits access to a patio/atrium house from the front street. Vehicles must enter patio/atrium house's garage by means of a rear alley. *See* Zoning Ordinance §27-1403.c.2(b).

46. Morrissey stated, and the Board finds, that he has never built a patio/atrium house in or around Bucks County. Such homes are simply not in demand in New Britain Township. This housing type is more apt for warmer climates, such as Florida or Arizona.

47. Morrissey and Mill stated, and the Board finds, that the three-quarter 6 feet high perimeter wall, the rear alley and garage access, and the dimensional criteria for a patio/atrium house produce a dwelling type that contrasts with the allowable twin and townhome dwellings.

² The Board recognizes that the Project's final dwelling unit total is a matter reserved to the conditional use proceeding, which is within the exclusive jurisdiction of the New Britain Township Board of Supervisors.

48. Moreover, Morrissey and Mill stated, and the Board finds, that including patio/atrium houses in the Project's dwelling mix unnecessarily increases the housing density, results in more impervious surfaces on the Property, and provides less open and rear yard space.

49. Morrissey stated, and the Board finds, that these by-products are incompatible with the Project's intent, which is to offer dwelling types that are harmonious with the surrounding residential neighborhoods, keep the density below the maximum permitted, reduce impervious surfaces, and add extra open space.

50. Morrissey and Mill stated, and the Board finds, that at 137 units, the Project's density is 4.7 dwelling units per acre. The Zoning Ordinance limits the density of a B3/B5 use to 5 dwelling units per acre. *See Exhibit B-2(A), Sketch Plan; see also Zoning Ordinance §27-1403.c.6.*

51. Morrissey and Mill stated, and the Board finds, that the Project provides 6 distinct open spaces areas totaling 16.29 acres. This exceeds the required minimum of 13.1 acres of open space. *See Exhibit B-2(A), Sketch Plan; see also Zoning Ordinance §27-1403.c.7.*

52. Morrissey and Mill stated, and the Board finds that the Property presently contains 11.9 acres of impervious surfaces, producing a ratio of 48.1%. The Project reduces the actual impervious surfaces to 8.29 acres, resulting in a 34% ratio. *See Exhibit B-2(A), Sketch Plan.*

53. Upon questioning from the Board, Morrissey stated that the Applicant did not include a different alternative housing type, such as a single-family detached dwelling, as a substitute for a patio/atrium house in the Project.

54. Morrissey stated, and the Board finds, that the Zoning Ordinance does not authorize any other housing types in the B3/B5 use, nor any other residential use in the C-3 zoning district. *See Exhibit B-2(A), Sketch Plan; see also Zoning Ordinance §27-1401 and §27-1403.c.*

55. Morrissey and Mill stated, and the Board finds, that the Project's 80% townhouse and 20% twin dwelling mix exceeds the corresponding 75% maximum and 25% minimum ratios for a B3/B5 use with only 2 housing classes. *See Exhibit B-2(A), Sketch Plan; see also Zoning Ordinance §27-1403.c.5.*

56. Morrissey and Mill stated, and the Board finds, that adjusting the housing style percentages outside the prescribed range allows the Project to maintain its reasonable density, while reducing impervious surfaces and providing excess open and recreational spaces. *See Exhibit B-2(A), Sketch Plan.*

57. Regarding location of the units, Morrissey stated, and the Board finds, that 22 of the twin units will be in 7 buildings along the new internal Road "C" in the Property's southeast portion. The rears of 14 of these units will face the BOA and GCC tracts, and Highpoint Drive. The rear walls of other 8 units will face the Water Tank Lot. *See Exhibit B-2(A), Sketch Plan.*

58. The remaining 6 twin units will be in 3 buildings in the protruding southwest corner of the Property along the bend in Horizon Drive. The rear walls of these 6 units will look toward the LaPetite Academy lot. *See Exhibit B-2(A), Sketch Plan.*

59. Morrissey and Mill stated, and the Board finds, that the 109 townhouse residences will be in 20 buildings. These units will front on new internal Roads “A,” “B” and “C.” The rear or side wall of 19 of the townhouse units will face Highpoint Drive. *See* Exhibit B-2(A), Sketch Plan.

60. Morrissey and Mill stated, and the Board finds, that the Project provides the required minimum special 100 foot setback from all lot lines and the minor collector roads in all areas except (a) the 14 twin units adjacent to the BOA and GCC lots; (b) the 6 twin dwellings abutting LaPetite Academy; and (c) the 19 townhouse residences next to Highpoint Drive. *See* Exhibit B-2(A), Sketch Plan; *see also* Zoning Ordinance §27-1403.c.1.

61. Morrissey and Mill stated, and the Board finds, that in these 3 areas, the Project provides a 50 feet special setback. *See* Exhibit B-2(A), Sketch Plan.

62. Morrissey and Mill stated, and the Board finds, that these areas with the reduced setback abut either the open space that is on the opposite side of Highpoint Drive or other non-residential uses in the C-3 zoning districts. The residences in Little Farm Estates will be buffered by the required 100 feet setback. *See* Exhibit B-2(A), Sketch Plan.

63. Morrissey and Mill stated, and the Board finds, that providing the 100 feet special setback in these affected areas is not possible. Mill stated that every such design permutation of the Project is impractical due to the presence of the Water Tower Lot and the bisecting angle of Highpoint Drive. *See* Exhibit B-2(A), Sketch Plan.

64. Morrissey and Mill stated, and the Board finds, that to offset the reduced special setback, supplemental buffering and landscaping will be added along the Property’s entire perimeter, as well as along Highpoint Drive behind the townhouses. *See* Exhibit B-2(A), Sketch Plan.

65. Morrissey and Mill stated, and the Board finds, that the Sketch Plan (Exhibit B-2(A)) presently does not show the proposed buffer plantings behind the 6 twin dwelling units that are next to LaPetite Academy. These plantings will be added to the design.

66. Morrissey and Mill stated, and the Board finds, that the plantings along the Property’s common lot line with Little Farm Estates will essentially be “doubled.” These new plantings will expand upon the existing trees and fill in the open areas. *See* Exhibit B-2(A), Sketch Plan.

67. Morrissey and Mill stated, and the Board finds, that the Property presently lacks any meaningful stormwater management facilities. Hood and Garretson stated, and the Board finds, that water runoff travels from the large building toward Little Farm Estates. *See* Exhibit B-2(A), Sketch Plan.

68. Upon questioning from the Board, Hood and Garretson, Morrissey and Mill confirmed that the Project will introduce modern runoff controls to address the Property’s drainage issues, including those that presently impact Little Farm Estates. *See* Exhibit B-2(A), Sketch Plan.

69. Morrissey and Mill stated, and the Board finds, that due to the Property’s existing physical features and characteristics, no location exists on the Property to locate the various twin

and townhouse dwellings in full compliance with the Zoning Ordinance’s special required minimum setback criteria.

70. Morrissey and Mill stated, and the Board finds, that to construct a reasonably sized Twin and Towns Mixed Community use with useable open areas for recreation facilities, along with the necessary drainage facilities, only 2 prescribed dwelling types can be provided. *See* Zoning Ordinance §27-1403.c.

71. The Property contains unique physical characteristics that support relief for the variances requested by the Applicant to permit the construction of the Project on the Property with dwelling unit mix and special setbacks proposed on the definitive Sketch Plan. *See* Exhibit B-2(A), Sketch Plan.

72. The Zoning Ordinance’s limitations impose a hardship on the Property and the Applicant in that these provisions prevent the installation of a reasonably-sized Twins and Towns Mixed Community use and the required related improvements.

73. Subject to the conditions imposed herein, the proposed Twins and Towns Mixed Community use and related improvements, the Project, and its overall layout as shown on the definitive Sketch Plan, are harmonious with the Property’s size and consistent with uses of other properties in the surrounding neighborhood.

CONCLUSIONS OF LAW

1. Required public notice of the March 18, 2021, hearing was made by sufficient publication, posting and mailing to affected property owners.

2. In order to show entitlement to a variance, use or dimensional, an applicant must demonstrate all the following elements, where relevant:

- a. an unnecessary hardship stemming from unique physical characteristics or conditions will result if the variance is denied;
- b. because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property;
- c. the hardship has not been created by the applicant;
- d. granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and
- e. the variance sought is the minimum that will afford relief.

3. The Board finds that conducting the Twins and Towns Mixed Community use with only 2 housing types and with dwelling mix percentages outside the prescribed range are requests for a use variance.

4. Under Pennsylvania law, a use variance arises in situations where the proposal is to use the property in a manner that is wholly outside a zoning ordinance regulation. *See Hertzberg v. Zoning Board of Adjustment of Pittsburgh*, 721 A.2d 43 (Pa. 1998).

5. The Board finds that the property line and minor collector street building setback variance is a request for a dimensional variance.

6. A dimensional variance involves a request to adjust or vary a zoning ordinance provision by degree to be able to otherwise use a property consistent with the regulations. *See Dunn v. Middletown Township Zoning Hearing Board*, 143 A.3d 494 (Pa Commw. 2015); *see also Constantino v. ZHB of Forest Hills Borough*, 636 A.2d 1266 (Pa. Commw. 1994).

7. The reasons for granting any variance must be substantial, serious and compelling. The party seeking the variance bears the burden of proving that (a) unnecessary hardship will result if the variance is denied; and (b) the proposed use will not be contrary to the public interest. *See Wilson v. Plumstead Township Zoning Hearing Board*, 936 A.2d 1061 (Pa. 2007).

8. An applicant can demonstrate “unnecessary hardship” for a use or dimensional variance by showing that: (a) a property’s physical characteristics are such that the property cannot be used for any permitted use or purpose; (b) the property can only conform to a permitted use or purpose at prohibitive expense; or (c) that the property has either no value or only distress value for any permitted purpose. *See Nowicki v. Zoning Hearing Board of Monaca Borough*, 91 A.3d 287 (Pa. 2014).

9. Although mere economic hardship alone will not justify the grant of a use variance, an applicant need not demonstrate that the property is rendered completely valueless without the variance or as zoned in order to show that a use variance is needed to make reasonable use of the property. *See Marshall v. City of Philadelphia*, 97 A.3d 323 (Pa. 2014).

10. When evaluating an unnecessary hardship in a use variance case, use of adjacent and surrounding land is relevant. *See Valley View Civic Association v. Zoning Hearing Board of Adjustment*, 462 A.2d 637 (Pa. 1983).

11. A dimensional variance is subject to a lesser standard of proof to establish unnecessary hardship than a use variance. *See Hertzberg v. Zoning Board of Adjustment of City of Pittsburgh*, 721 A.2d 43 (Pa. 1998) (when seeking a dimensional variance within a permitted use, the owner is asking only for a *reasonable adjustment* of the zoning regulations. The grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation).

12. When deciding whether a hardship has been established in dimensional variance cases, the *Hertzberg* rationale authorizes the Board to consider multiple factors, including the characteristics of the surrounding neighborhood. *See Hertzberg, supra*, at 47.

13. The Board concludes that the Applicant has established, by substantial and credible evidence, that an unnecessary hardship will result if the use and dimensional variances are refused due to these unique physical circumstances and conditions of the Property.

14. The Board concludes that the Property’s odd shape, the bisecting minor collector road, and the presence of the Water Tank Lot and the related easement, establish a hardship under the *Hertzberg* standards sufficient to justify the use and dimensional variances requested.

15. The Board concludes that a use variance is justified from Zoning Ordinance §27-1403.c.5 to permit the Project to offer only 2 housing types while providing more than 101 dwelling units on the Property.

16. The use variances sought by the Applicant are atypical of a commonly requested use variance. A Twins and Towns Mixed Community use with 2 authorized housing types is a *permitted* use. It would ordinarily limit the Project to less than 101 dwelling units.

17. However, to force the Applicant to reduce the number of dwelling units below 101 to exclude a remote housing type, when the Project at its present density is already below the intensity threshold, is counterintuitive.

18. The Board concludes that the Zoning Ordinance effectively offers only 2 viable housing types to include in the use. The Board credits Morrissey’s and Mill’s opinion that the patio/atrium house, while theoretically a valid housing style, is not found in New Britain Township or in its vicinity.

19. Moreover, the Board concludes that incorporating the patio/atrium house in *any* size Twins and Towns Mixed Community use creates perverse incentives. Excluding this housing type allows the Project to provide extra open and recreational space, and reduces the amount of impervious surfaces. *See* Exhibit B-2(A), Sketch Plan.

20. Critical to the Board’s conclusion is that redesigning the Project to include the patio/atrium house runs counter to the purpose of the Twins and Towns Mixed Community use composition, which is to “promote flexibility...and to encourage innovation.” *See* Zoning Ordinance §27-1403.5.c.

21. Regarding the dwelling unit class percentages, the Board recognizes that the Zoning Ordinance expressly permits the Project’s percentages to be modified by the Board of Supervisors during the conditional use application. *See* Zoning Ordinance §27-1403.c.5.

22. The Board concludes that eliminating the patio/atrium house style necessarily impacts the maximum and minimum dwelling type percentages. To the extent necessary, the Board concludes that a variance is warranted from the maximum and minimum dwelling type percentages for the same reasons articulated for the housing type use variance.

23. Lastly, the Board concludes that requiring to Project to provide the 100 feet special building setback along Highpoint Drive, and along the BOA, GCC and LaPetite Academy lots would essentially render the Property worthless and unusable.

24. The Board credits Morrissey’s and Mill’s testimony that relocating the affected dwellings to accommodate the 100 feet setback is impractical due to the Water Tank Lot and the angle of Highpoint Drive.

25. The Board notes that the 50 feet setback is along areas that either abut open space or non-residential uses. By supplementing the landscaping in these areas, as well as along the common lot line abutting Little Farm Estates, the Project reduces the visibility or neighborhood incompatibility risks that are inherently associated with an adaptive reuse development.

26. Provided the Applicant complies with the reasonable conditions attached to the relief granted herein, the Applicant has met the Zoning Ordinance and Pennsylvania law requirements for the variances, including hardship, to construct the Project on the Property.

27. The approved variances will not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of adjacent properties.

28. The approved variances will not be detrimental to the public welfare.

29. The conditions and circumstances imposing a hardship upon the Property for the approved variances are not of the Applicant's own doing.

30. The approved variances represent the minimum variances that will afford relief and represent the least modification of the zoning regulations under the circumstances.

DECISION

AND NOW, this 15th day of APRIL, 2021, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicant's request for variances from Zoning as follows:

a. A variance is granted from §27-1403.c.1 to permit a special building setback of 50 feet from Highpoint Drive; from the southeastern lot line between Horizon Drive and Highpoint Drive; and from the Property's southwestern corner lot line, in the areas shown on the definitive Sketch Plan (Exhibit B-2(A));

b. A variance is granted from §27-1403.c.5 to allow 2 dwelling unit classes (housing types) in the Twins and Towns Mixed Community use, specifically single-family semidetached dwelling (twin) and single-family attached (townhouse) in the Project; and

c. A variance is granted from §27-1403.c.5 to allow the number of dwelling units in the respective housing style classes to comprise alternative percentages of the overall total dwelling unit mix.

The relief granted above is subject to the following conditions:

1. The proposed Twins and Towns Mixed Community use and related improvements for the Property shall be in accordance with the definitive plans, and the other relevant evidence, exhibits, representations and credible testimony made at the hearing.

2. The additional buffer plantings, as approved by New Britain Township, as shown on the definitive Sketch Plan (Exhibit B-2(A)) shall be installed and planted. Buffer plantings shall also be added to the definitive plan behind the 6 twin units that face the LaPetite Academy

lot. These plantings shall be maintained and replaced as needed should any plantings die, become diseased or damaged, or are removed.

3. The decision does not waive any requirements of any other applicable New Britain Township Ordinance(s). The proposed improvement(s) and/or use(s) must meet all other applicable federal, state, county, and New Britain Township regulations and codes.

The signatures of the New Britain Township Zoning Hearing Board members that appear on the following page attached hereto and incorporated herein, confirms the Board's decision and order.

By: Kelsey Harris
Kelsey Harris
New Britain Township Zoning Officer

Date: 4/15/2021

Thomas J. Walsh III, Esquire
Solicitor, New Britain Township Zoning Hearing Board
3655 Route 202, Suite 105
Doylestown, PA 18902

Note to Applicant: This Decision is NOT an authorization to build. Zoning and building permits must be obtained from New Britain Township prior to the commencement of any construction.

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SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application dated 1/29/21 Included with the Application: <ul style="list-style-type: none">• Addendum to Application outlining relief requested• List of property owners with 500 feet• First page and signature page of Agreement of Sale dated 9/2/2020
B-2(A)	Sketch Plan for High Point Racquet Club, 1 sheet, prepared by Van Cleef Engineering, dated 9/9/20, last revised 1/28/21
B-2(B)	Site Rendering for High Point Racquet Club, 1 sheet, prepared by Van Cleef Engineering, dated 1/22/21, last revised 1/28/21
B-2(C)	Sketch Plan with Net Open Space for High Point Racquet Club, 1 sheet, prepared by Van Cleef Engineering, dated 1/22/21, last revised 1/28/21
B-3	Letter to The Intelligencer dated 2/26/21 forwarding public notice of hearing for publication
B-4	Public Notice of the hearing on 3/18/21
B-5	Proof of publication of public notice in 3/4/21 and 3/11/21 editions of The Intelligencer
B-6	Letter to Applicant and Attorney dated 2/26/21 providing notice of the 3/18/21 hearing
B-7	List of the record owners of all properties within 500 feet of the Property
B-8	Affidavit of mailing to property owners – notice mailed on 3/4/19 by Kelsey Harris, Zoning Officer
B-9	Affidavit of posting of public notice at property – notice posted on 3/9/21 by Kelsey Harris, Zoning Officer, together with 3 photographs
B-10	Email from Attorney for Applicant dated 2/17/21 authorizing continuance of 2/18/21 hearing and extension of time to hold hearing until 3/18/21
B-11	Email dated 2/26/21 from Marsha Drenth, resident of New Britain Walk
B-12	Bucks County Viewer Map and Aerial
A-1	Aerial photographs (9) of the Property's existing conditions

Exhibit	Description
A-2	Ground level photographs (10) of Property's existing conditions
A-3	Renderings and elevation of proposed residential dwellings
A-4	Boundary and Topographic Survey plan for Metropolitan Group, 1 sheet, prepared by Van Cleef Engineering, dated 3/11/21
A-5	Sketch Plan for High Point Racquet Club, 1 sheet, prepared by Van Cleef Engineering, dated 9/9/20, last revised 1/28/21(same as <i>Exhibit B-2(A)</i>).
A-6	Proposed Improvements Comparison to Existing Features Plan for High Point Racquet Club, 1 sheet, prepared by Van Cleef Engineering, dated 3/15/21

New Britain Township
Zoning Hearing Board

Signature Page

Re: Foxlane Homes at Highpoint, LLC

Date: 4/15/2021

Chuck Coxhead, Chair

N/A / ABSENT

Cathy Basilio, Vice Chair

Cathy Basilio

Jim Scanzillo, Member

/s/ Jim Scanzillo

Scott Fischer, Alternate Member

Scott W. Fischer