# Brunswick Hills Township
# Board of Zoning Appeals Special Hearing Meeting Minutes
# November 2, 2026

## Call Meeting to Order

Mr. Schigel called the Brunswick Hills Township Board of Zoning Appeals Special Meeting on Monday, November 2, 2026 to order. Mr. Schigel noted that the board has a full quorum present. He stated that the meeting has been properly advertised and is being taped for record. He further noted that a simple majority vote is required and is considered in favor of the applicant, and that the Board of Zoning Appeals operates within the regulation of Section 519 of the Ohio Revised Code. Mr. Schigel stated that tonight's meeting agenda is to discuss two variances for Fox Village LLC / Caves at Bluebell Parcel No. 001-02D-27-035: 1) a reduction of setback, and 2) an increase of fence height.

## Roll Call

A roll call of the board was executed.

- **Board Members in Attendance:** Mr. Schigel, Ms. Barron, Mr. Timura, Mr. Krall, Mr. Radesic
- **Board Members Absent:** None
- **Others in Attendance:** Mr. DeCastra, Trustee; Mr. Humphrey, Assistant Zoning Inspector, Ms. Beck, Secretary

## PLEDGE OF ALLEGIENCE

Mr. Schigel asked all present to rise for the Pledge of Allegiance.

## APPROVAL OF MINUTES

Mr. Schigel confirmed there was no new minutes to approve from the last meeting.

## CONFLICT OF INTEREST/RECUSAL

Mr. Schigel asked whether any members of the board needed to be recused due to any affiliation with the case. No recusals were declared.

## NEW BUSINESS

### Variance Application — Fox Village LLC / Caves at Bluebell

### 4310 Blue Bell Parkway, Brunswick Hills Township | Parcel No. 001-02D-27-035

Variance requests submitted by Fox Village LLC, relating to the commercial development at 4310 Blue Bell Parkway (also known as the Caves at Bluebell). The two variance requests are: 1) a reduction of side yard setback adjacent to residential district from the required 50 feet to a minimum of 33 feet to 34.5 feet and 2) an increase of maximum fence height from 6 feet to 8 feet.

## Swearing In of Applicant & Applicant Representative

Mr. Schigel asked the applicant's representative to come forward and swore him in.

Dennis Nevar, Attorney, representing Fox Village LLC, 50 Public Square, Suite 3301, Cleveland, Ohio 44113, was sworn in and stated his name and address for the record. Roger Nair, 5535 Winter Brook Dr, Valley City, Ohio 44280, was subsequently sworn in and stated his name and address for the record.

## Applicant Presentation

### Background and Procedural History (Dennis Nevar, Attorney for Fox Village LLC)

Mr. Nevar provided background on the project and its procedural history. The subject parcel at 4310 Blue Bell Parkway is a commercial parcel that resulted from a civil settlement agreement executed over 20 years ago between Brunswick Hills Township and the property owner, Mr. Yomtovian. The settlement authorized commercial use (C1). The property owner has been attempting to market the property for commercial development for over 20 years, and this project, consisting of two commercial contractor suite style buildings represents the first project with meaningful traction.

Mr. Nevar provided the procedural history of the project as follows. In mid 2025, applications for zoning certificates were submitted to the Township. In July 2025, the Zoning Commission approved the zoning certificate applications, subject to approval of two area variances by the BZA. In August, 2025, the BZA approved two area variances: 1) a reduction in front setback from Pearl Road and Bluebell Parkway from 70 feet to 50 feet, and 2) a reduction in required parking spaces from 90 to 45. These variances were not appealed. Zoning certificates were subsequently issued certifying the proposed use as conforming to all applicable provisions of the Township Zoning Resolution.

Following issuance of zoning certificates, the applicant proceeded with preparation and finalization of all required plans, including Ohio EPA, ODOT, Medina County Engineer, Sanitary Engineer, Planning Department, and Building Department approvals. Upon completion of those approvals, the Medina County Building Department issued building permits, and the applicant commenced site preparation, including excavation, infill, grading, boundary fencing, silt fencing, and material compaction. Mr. Nevar noted that photographs in the board's packet demonstrate significant grade changes on the property, approximately 14 feet of elevation difference from Pearl Road moving east toward Bluebell Parkway. A stop work order was issued by the Township in mid August 2026.

Mr. Nevar stated that while the applicant is not waiving any available legal rights, the client agreed to appear before this board to seek approval of the two additional area variances now at issue, to work cooperatively with the Township and neighboring property owners.

### Current Variance Requests

Mr. Nevar described the two variance requests. The first is a reduction in the side yard setback adjacent to the neighboring residential property (one residential property affected) from the required 50 feet to approximately 33/34.50 feet, depending on the orientation of Building Two relative to the property line. This request arises from the C1 Local Commercial District requirements. The second is an increase in maximum fence height from the permitted 6 feet to 8 feet, as part of a proposed privacy solution for the adjacent homeowner.

Mr. Nevar noted that the developer is proposing to install white pine trees along the entire eastern border of the property, and additionally an 8 foot privacy fence. He stated he had discussions with neighboring homeowner's counsel, on the day of the meeting regarding the fence proposal. Mr. Nevar stated the applicant is willing to negotiate the fence's location, materials, and length, and that the fence would be installed at the applicant's expense. Mr. Nevar referenced an orange highlighted area on the landscaping plan included in the board's packet showing the proposed location of the fence, and noted the fence could extend as far north as the public right of way on Butterfly Circle.

### Duncan Factor Summary (Mr. Nevar)

Mr. Nevar addressed the Duncan factors at a high level. Regarding reasonable return and beneficial use, he stated that based on the topography, site preparation costs already incurred, and contractual obligations entered into in reliance on the validity of issued permits and zoning certificates, the project would not be economically viable if required to relocate buildings or reduce their size. On the character of the neighborhood, he noted that the residential properties in Fox Village were developed approximately 2010,

years after the 2005 settlement agreement authorizing commercial use and that all purchasers had access to the public record indicating commercial development was contemplated on the front lot. He stated governmental services would not be adversely affected, and that the property owner was a party to the underlying litigation that authorized commercial use. Mr. Nevar stated that the variances, combined with the proposed landscaping and fence, satisfy the spirit and intent of the Zoning Resolution, and that exceptional circumstances exist due to the topography of the site, the history of the settlement agreement, and the extensive approval process already completed.

**Board Questions — Applicant Representatives**

**Questions from Mr. Timura:**

Mr. Timura asked whether the proposed pine trees, as shown on the landscape plan with orange highlighting, would be located on the outside of the building but inside the fence. Mr. Nevar confirmed that was the approximate illustration, but stated the configuration is workable and the fence could be moved further west with the pines on the other side, if preferred. Mr. Timura asked about the grade differential, referencing the approximately 14-foot difference mentioned, and questioned what the purpose of an 8 foot privacy fence would be if the building already sits lower than the adjoining residential property due to the grade. Mr. Nevar directed the board to photographs towards the back of the packet showing the neighboring property. He suggested that an 8 foot fence on the lower portion of the site would have less visual impact than one placed on the elevated berm area.

Mr. Timura asked whether the fence's purpose was primarily for the benefit of the homeowner. Mr. Nevar confirmed that the fence was being proposed for the homeowner's privacy and that there is no benefit to the developer from the fence. Mr. Timura noted that the grade elevation of the site means the building would be partially below the neighboring residential property's grade and questioned the combined benefit of both the fence and the pine trees.

Mr. Timura also asked about the fence's approximate length. Mr. Nevar stated (after being sworn in) that the proposed fence would run from approximately the front building line of the neighboring residence to approximately five feet beyond the rear building line of Building Two. Mr. Timura asked whether the fence could extend further, such as to the edge of Butterfly Circle, and Mr. Nevar confirmed the fence could extend to where the public right of way and the eastern property line of the subject property intersect at the curb, but could not extend into the public right of way. Mr. Timura asked about the type of fence material. Mr. Nevar stated the applicant is open to negotiating material, Mr. Schigel noting that zoning restrictions prohibit chain link, so vinyl or two sided wood would be appropriate. Mr. Timura also asked how the project reached its current state, noting that the board had approved variances approximately a year prior and questioning why the project was now back before the board with further issues. Mr. Nevar responded that the applicant followed all proper procedures and went through extensive review processes, and that the 33 foot setback dimension was shown on the March 2025 site plans and was part of the application and review process and it was not concealed. He attributed the issue to a misinterpretation of the zoning code regarding whether this property line constituted a side yard (requiring a 50-foot setback) or a rear yard (for which there may be no C1 setback requirement).

**Questions from Mr. Schigel:**

Mr. Schigel asked about the pine trees and confirmed they would run along the entire eastern border toward Bluebell Parkway per the landscaping plan. Mr. Schigel asked, referencing photographs of Building Two, whether the building could be moved forward (westward toward Pearl Road) to eliminate the need for the variance. Mr. Nevar responded that moving the building 15 to 17 feet to the west would likely require additional setback variances from Pearl Road and would increase costs to a non-viable level given the current state of site preparation and existing engineering plans. Mr. Schigel asked about the amount of grading completed. Mr. Nair estimated at least a 10 foot cut at the deepest end, near the neighboring house, and Mr. Nevar noted that photographs in the packet show the significant grade

comparison. Mr. Schigel asked whether there had been any erosion control challenges on the site. Mr. Nair responded that there had been none, fencing was placed and the contractor for the excavation work installed it properly. He indicated that work proceeded in accordance with all approvals but then became contentious when contractors were stopped on site, police were called multiple times, and the EPA was brought in following complaints. He noted the project has been delayed approximately a year and a half as a result.

**Questions from Ms. Barron:**

Ms. Barron asked about the square footage of the variance, noting that the application shows both 33 feet and 34.5 feet. Mr. Nevar explained, with reference to the sheet in the packet, that Building Two is slightly angled relative to the property line, it is not perfectly parallel which is why there are two different measurements, one at each end of the building. Ms. Barron asked where the proposed fence would be in relation to the neighboring residential house. Mr. Nevar stated that the fence would be on the applicant's property. Mr. Humphrey (after being sworn in) clarified that the fence would be 6 inches from the property line, the closest allowed under the zoning code. Ms. Barron asked whether anyone had communicated with the adjacent homeowner directly. Mr. Nevar confirmed he had spoken with the homeowner's counsel.

Ms. Barron later asked Mr. Nair whether the developer had communicated with the homeowners association. Mr. Nair confirmed that the developer had never communicated directly with any of the homeowners and that contact with the Township had been through Trustee DeCastra. Ms. Barron asked about measures to mitigate dust. Mr. Nair stated there was a tree removal contractor on site (Sam's the Man) and an excavation contractor. He confirmed that after a complaint was raised to him by Trustee DeCastra, he went out to the property and installed an orange fence. He stated two separate EPA contacts occurred but no citations were issued, and that the excavation contractor was instructed to wet down areas before working to mitigate dust and that fire hoses were added to the contractor's trucks. Ms. Barron confirmed with Mr. Nair that the project is currently in the site work stage only and no buildings have been started.

Ms. Barron asked Mr. Nair, in his role as the property owner/developer, whether he was aware of zoning restrictions at the time of development. Mr. Nair responded that he met with Assistant Zoning Inspector Wes Humphrey and former Zoning Inspector Daryl Lucian, and had a preliminary meeting with the Township trustees. He stated that Daryl Lucian instructed his team that the recommended path was to seek the setback variance from Pearl Road and the parking variance, and that those two were the variances needed to make the project work.

**Questions Regarding Stop Work Order (Mr. Schigel to Mr. Humphrey, Assistant Zoning Inspector):**

Mr. Schigel asked Mr. Humphrey (who had been sworn in) about the process for issuing a stop work order and how it was communicated. Mr. Humphrey stated he was instructed to write a letter for the stop work order. He had the letter reviewed before sending it. He took the address from the application and mailed the letter to that address.

**Background on Stop Work Order (Mr. DeCastra, Trustee):**

Trustee DeCastra explained that under the Township's process, trustees take recommendations from the Zoning Commission on site plan approval. He stated that in 2025, the site plan had not been formally approved by the trustees. In reviewing that process, he identified that the setback from the adjacent residential property was not in compliance with the zoning resolution. The issue centered on whether this was a rear lot line or a side lot line, given that the property is a corner lot. He explained that the Township's zoning resolution states that for a corner lot, the shorter side is considered the front, making this a side yard with a 50-foot setback requirement. Upon reaching this conclusion, and in consultation with the prosecutor's office, the decision was made to issue a stop work order.

## PUBLIC COMMENT

Mr. Schigel opened the floor for public comment, noting that the board reserves the right to limit the length of individual comments if duplicative testimony is presented.

All individuals who provided public comment were sworn in prior to their public comments.

Anthony Esposito, 4239 Butterfly Circle

Mr. Esposito stated that he has a background of 15 years in construction, both residential and commercial, and is also a licensed real estate agent in Northeast Ohio. He stated he is present to respectfully request that the board deny the proposed side yard setback variance.

Mr. Esposito identified himself as the individual who first identified the setback discrepancy. After reviewing the approved construction plans with his background and experience, he determined that building two was shown approximately 33 feet from the property line, not in compliance with the 50 foot side yard setback required by the Township's zoning resolution. He brought this to the attention of the Township publicly at a trustee hearing attended by Trustees Thomas and Ryan, and subsequently in writing to all three trustees. He acknowledged that dust issues existed on the site, stating that the EPA was contacted because of dust (not wildfire smoke as said by the applicant & attorney), and noted that tree removal contractors generated airborne dust that prevented his children from playing outside. Mr. Esposito stated that the zoning requirement calls for a 50 foot setback between the commercial building and the adjacent residential property, and that the approved construction plans show Building Two approximately 33 feet from that property line, approximately 17 feet closer than required. He expressed concern about the process, stating that a discrepancy of this magnitude, a commercial building 34 percent closer to a residential property than the zoning requires should have been identified and resolved during the review and approval process, not by a resident after construction began. He argued that granting the variance primarily because construction has already progressed sets a problematic precedent, stating: "If the board grants this variance primarily because construction has already progressed, what message does that send to the rest of our township that a developer can proceed without obtaining every necessary approval, invest enough money into construction, and then use those expenses as justification for an exception afterwards?"

Mr. Esposito further noted that the adjacent homeowner, Ms. Hunter, did not design the project, did not determine building placement, and should not bear the burden of the developer's oversight. He stated the proposed variance represents a 34 percent reduction in the required 50 foot setback, and that the building is 27 feet tall noting that even accounting for the approximately 14 foot grade difference, an 8 foot fence does not eliminate visibility of the building. He raised a concern as a real estate agent that the proximity of a commercial building would affect neighboring property values and potentially serve as comparable sales impacting the entire Fox Village development. He also noted that despite the settlement agreement authorizing commercial use being over 20 years old and the residential development having been in place for approximately 16 years, the parcel's tax record still shows residential acreage rather than C1 commercial classification.

Mr. Esposito formally requested the board stand behind the Township's established residential setback requirements and deny the requested variance.

Kris Kormos, 4215 Butterfly Circle

Mr. Kormos identified himself as a homeowner and the president of the Fox Village Homeowners Association. He distributed supporting documents to the board for the record and raised the following concerns.

On the question of setback from Butterfly Circle's right of way, Mr. Kormos stated his belief that the 50 foot setback requirement, which applies to street frontages, should also apply from the right of way of

Butterfly Circle, a private street, and that the setback should extend the entire width of the property rather than curving along the street and then back to the residential property line. He also noted that the driveway along Building Two should be 24 feet wide per the zoning resolution. He raised a unit size discrepancy, observing that the units are advertised publicly at 1,600 square feet each, but the applicant's representative stated 1,200 square feet per unit at the hearing.

Mr. Kormos described parking conflicts, stating that the 45 parking spaces already approved by variance will be located directly in front of the commercial overhead garage doors, making it unclear how vehicles could both park and use those doors simultaneously. He also identified plan inconsistencies among various pages of the submitted plans, including some pages referencing "proposed signage" and others referencing "existing signage," no lighting plan, and the access drive width listed as 22 feet on one page and 24 feet on another (the required width being 24 feet). Regarding homeowners association communication, Mr. Kormos noted that the landscape plan states "the property owner and contractor shall coordinate landscaping and fence modifications and/or removals with the homeowners association and township," and that no such coordination occurred — he was not contacted as HOA president, and that existing landscaping and a fence at the entrance to the Fox Village development were removed without coordination. On erosion control, he stated that silt and sediment controls were not in place on the site as of September 3, 2026, and were only installed after Mr. Kormos contacted Medina County to report the violation.

Mr. Kormos challenged the applicant's claim of economic unfeasibility, noting that 15 units are listed for sale at $204,900 each, for a total of approximately $3 million in potential revenue. He stated that even accounting for a $1 million construction cost and reducing the project to 10 units, the developer would still profit approximately $2 million given that the property is already owned. He also argued that the property owner created the lot in its current configuration and that any resulting constraints constitute a self imposed hardship.

Kristen Hunter, 4293 Butterfly Circle

Ms. Hunter identified herself as the adjoining residential property owner most directly affected by the proposed development. She opposed both variances and presented comments tied to the Duncan factors.

Regarding Factor A (Reasonable Return), Ms. Hunter questioned the applicant's unsupported claim of economic unfeasibility, noting no dollar estimates, budget, or financial analysis was provided showing the project cannot proceed without the variances. She also noted that the approximately 14 foot grade shown on the site is visible on the applicant's own site conditions drawing, which was prepared before work began, and stated that a difficult site does not entitle the developer to impose its consequences on the neighbor. On Factor B (Substantiality), she noted that the side yard setback reduction is from 50 feet to 33 feet, a 34% reduction. She cited Ohio court decisions treating deviations of 25% or more as substantial, and noted that these would be the third and fourth substantial variances requested for this project, following prior variances including a 50% parking reduction and a 28.6% front setback reduction.

On Factor C (Character of Neighborhood), Ms. Hunter stated she did not purchase her home anticipating an adjacent commercial building and that the property was not marketed as being next to commercial development. She argued that under Section 407-1, the 50 foot side yard and 25 foot landscape strip are what make the zoning compatible with surrounding residential uses, and that the requested variance removes a third of that buffer on the only side touching a residential home. She also referenced the zoning inspector's letter flagging safety and erosion concerns. Regarding Factor D (Governmental Services), she noted there is no written confirmation from the fire department or other agencies that services would not be adversely affected, and expressed concern that a parking lot screened from the road by a building may attract loitering and increase demand for police services.

On Factor E (Knowledge of Restrictions), Ms. Hunter argued the property owner knew of the restrictions because he owned the property and configured the lots in their current form. On Factor F (Other Methods), she argued the applicant has not demonstrated that other methods are unavailable, suggesting

that reducing building two by one unit could allow compliance with the 50 foot setback. Regarding Factor G (Spirit and Intent), Ms. Hunter stated the applicant relies on the 2006 settlement agreement, which is currently before the Medina County Court of Common Pleas in Case No. 05 CIV 488, and requested the board not act ahead of the court ruling. On Factor H (Exceptional Circumstances), she argued none of the applicant's claimed circumstances constitute conditions of the land itself, noting that the slope was visible on the applicant's own pre work site conditions drawings, and that no building has yet been constructed and no footer inspection has occurred, meaning the project remains in early stages despite the site preparation work.

Ms. Hunter stated five reasons why the applicant's reliance claims are not supported by the record. First, the 50 foot side yard requirement is printed in Section 407-4B of the Zoning Resolution, and on February 11, 2025, former Zoning Inspector Daryl Lucian emailed the C1 pages to Roger Nair, Ben Weinerman, Stephen Walker, and Brian Klein, stating in that email that if an error was made by a previous zoning inspector, the Township is not obligated to proceed on that error. Second, in August 2025, the applicant's own director of development wrote that the property is not adequately sized to accommodate the zoning use and satisfy all setback and parking requirements, a self created hardship. Third, the 33 foot setback dimension from building two appears on the applicant's March 30, 2025 site layout, but when the applicant appeared before this board in October 2025, their counsel represented that the project was not encroaching into residential property, while the current application now seeks approval for that exact encroachment. Fourth, the applicant came before this board in October 2025 for front setback and parking relief and knew how to apply for area variances, yet the side yard setback variance was not included at that time. Fifth, no figures were provided for costs incurred, and work performed after the August 18, 2026 stop work order cannot constitute reasonable reliance.

Ms. Hunter also raised personal impacts. She has lived in her home for 16 years and chose the neighborhood for its quiet, residential character, and has been raising two children there, including one who enjoyed the wooded area that has now been cleared. She stated workers have been operating within 50 feet of her property during site preparation, close enough to make direct eye contact through her screen door, preventing her family from enjoying their front or backyard. Dust from construction activities coated her house, patio, driveway, and vehicles, in some cases preventing her from driving without first hosing down her car, and she stated she has video evidence. She noted the slope adjacent to her property has been eroding with each rainfall, creating concern for her home's foundation and utilities buried within 10 feet of the slope. The proposed fence does not extend to her front yard or to the tree line in her backyard and would only partially screen her property. She stated she does not want white pine trees planted adjacent to her property due to their shallow roots, susceptibility to wind damage, and potential impact on soil conditions at the site.

Ms. Hunter concluded that she respectfully requested that the board deny both variances.

Board question from Ms. Barron: Ms. Barron asked Ms. Hunter to clarify whether the fence would physically encroach on her property. Ms. Hunter clarified that the fence would be on the applicant's property, not hers, but that the proximity of the building itself is concerning. Board question from Mr. Timura: Mr. Timura asked Ms. Hunter, playing devil's advocate, whether she recognized that if the variance were not granted and no fence were required, she would still see the building from her property and would not receive any proposed screening. Ms. Hunter responded that she would rather have the required distance between herself and the building, noting that distance is something she can never recover.

Daniel Benjamin Woods, 2660 Hollyhock Lane

Mr. Woods stated that he moved to his home in August of the prior year and that his rear property is approximately 160 feet from the site. He presented visual materials to the board and stated he opposes both variances. He described the visual impact from his two bedroom windows, which will both face either Building One or Building Two, with garage doors and parking lots visible from his home. He stated

that prior to the clearing, the view was mature trees that he and his wife enjoyed for a few months before they were removed. He described the character of the Butterfly Circle neighborhood, children riding scooters, parents walking with strollers, couples walking dogs and stated the neighborhood enjoyment has been significantly diminished.

Mr. Woods then presented technical and legal concerns to the board. He cited specific clauses of the settlement agreement, including Section 3, Paragraph 3 requiring commercial development to comply with the Brunswick Hills Zoning Resolution; Section 3, Paragraph 4 permitting development per C1 zoning; and Section 4, Paragraph B, which forecloses on later discovered facts as a way to avoid enforcement. He stated that the applicant's inability to develop the property in a way that meets their profit goals constitutes a later discovered fact that does not entitle relief under the settlement agreement.

Mr. Woods raised several prior misrepresentations. At the October 8, 2025 BZA hearing, Mr. Nevar estimated the landscape screen would be approximately 20 feet, while Zoning Commission Chair DeCastra noted the requirement is actually 25 feet. Also at the October 8, 2025 BZA meeting, Mr. Nevar testified under oath that the buildings would be 18 feet tall; however, elevation drawings dated January 2025, months before that testimony show the building height as 26 feet 7 inches, nearly 50 percent taller. Mr. Woods noted that elevation drawings were not included in the board's packet at the October 2025 meeting. He also identified a building orientation discrepancy: the 2025 application stated that building rears would face the neighborhood, acting as a buffer, while the current site plan shows the opposite, building rears face Pearl Road and a cornfield, while the overhead garage doors and parking face the residential homes.

Mr. Woods raised use classification concerns, noting that while the applicant's counsel described the project in October 2025 as "geared toward trades, a place to park a truck and store materials," Mr. Nevar's brokerage now markets each unit with a 14 foot overhead door and heated warehouse/shop space, and social media pitches the units for "work storage" or as the "ultimate man cave." He argued the board should understand what uses are being proposed and whether those uses are permitted in C1 zoning. He also presented evidence that the County Engineer's stormwater permit (issued June 5, 2026) was conditioned on a stormwater pollution prevention plan including silt fencing, yet silt fencing did not exist until after September 3, 2026 and only after a complaint to the county. Mr. Woods presented a still image from a video showing dust generated by site activity (not smoke from Canadian wildfires) and Ohio EPA email correspondence between Trustee DeCastra and an EPA representative indicating no known measures to mitigate dust were in place. He further presented evidence that while counsel referenced fencing being installed on July 27, 2026, only plastic snow fencing was installed on July 30, and as of the day before the hearing, that fencing does not extend the entire length of the lot and stops short of Ms. Hunter's property.

Jennifer Baker, 4300 Butterfly Circle

Ms. Baker stated she is directly across the street from the site and one of three homes directly facing the development. She shared that her husband was also in attendance. She is present to request the board deny both variances. Ms. Baker and her husband purchased their home approximately three years ago, viewing it as a place to raise their family away from a busy road. She described the significant impact already experienced: removal of trees and loss of privacy, dust, construction vehicles, additional traffic, and noise.

Ms. Baker raised specific concerns about the proposed variances. Regarding the proposed landscaping, she stated that the screening proposed by the applicant is not a concession, it is already required under Section 407-4D, which mandates a 25 foot strip landscaped and planted for screening purposes. She further stated that white pines planted in tight rows lose lower branches over time, creating gaps at eye level, and also have concerns regarding compacted or disturbed soil, ice damage, and disease susceptibility. On the proposed fence, she stated it covers only part of one backyard, will require ongoing maintenance, and the variance being requested is permanent. She stated there should be a mechanism to

ensure any required screening or fencing is maintained indefinitely. She noted that the zoning inspector raised unresolved safety and erosion concerns in the area near the property line that require substantive engineering solutions, not a fence.

Ms. Baker presented alternatives and additional arguments. She stated Building Two could be shortened by approximately 17 feet, representing only a 5.6 percent reduction to the site plan to bring the building into compliance without requiring the variance. She asked the board to evaluate each variance independently and determine whether the applicant has established the need for each one. She also argued that given the orientation of garage doors and proximity of the parking lot to the eastern property line, a continuous property fence in addition to, not instead of, required landscaping is appropriate, and that the required buffer should apply along the entire side of the property adjoining the residential district, not just at one homeowner's backyard.

Ms. Baker cited Section 1005-3 and argued the applicant has not carried its burden, noting that the 33 foot setback dimension appeared on the applicant's plans since early 2025 and the design has not materially changed, and that the applicant's own director of development stated the lot is not adequately sized, a self created hardship. Ms. Baker formally requested the board deny both variances. Alternatively, she requested the application be tabled pending resolution of Court of Common Pleas Case No. 05 CIB 048.

If the board nevertheless grants relief, Ms. Baker requested the following conditions at minimum: 1) relief limited specifically to the footprint of Building Two as shown on Sheet C.04; 2) preservation and installation of the full 25-foot landscape screening strip along the entire eastern property line, from the north property line to Blue Bell Parkway; and 3) a continuous privacy fence along the same property line in addition to required landscaping, particularly given that garage doors and parking areas are approximately 40 feet from the property line.

Ms. Baker asked that her statement and exhibits be made part of the official record.

Kris Kormos, 4215 Butterfly Circle- Supplemental Comments

Mr. Kormos provided supplemental comments to clarify points made in his initial remarks. He directed the board's attention to the second page of his handout, which shows existing landscaping and a fence that was in place at the entrance to the Fox Village development prior to the start of site work, and reiterated that the applicant's landscaping plan requires coordination with the homeowner's association and township coordination that did not occur. He also pointed out that the 45 parking spaces (already reduced from 90 spaces by variance) will be arrayed in front of commercial overhead garage doors, making it functionally impossible to park and use those doors simultaneously, and questioned how these can be counted as compliant off street parking spaces.

On the setback from the Butterfly Circle right of way, Mr. Kormos argued that this private street creates a street frontage and that the 50-foot setback requirement should run the entire width of the property from that right of way. He also discussed unit sizes, noting that if each unit is 1,600 square feet as marketed, Building Two with seven units would be 11,200 square feet and Building One with eight units would be 12,800 square feet — both exceeding the 5,000 square foot threshold that requires off-street loading zones per the zoning resolution.

Follow up questions from Board:

Mr. Schigel invited Mr. Nevar to return to the podium for follow up questions from the board.

Erosion Control:

Mr. Timura asked about the applicant's specific plans to address the erosion issue raised by Ms. Hunter. Mr. Nevar deferred to Mr. Nair, who stated the following: On the incline where the most significant cut occurred, the applicant plans to install riprap and crown vetch. Mr. Nair further stated that silt fencing was installed along the front of the site on March 29, 2026, and that all work on the property ceased following the stop work order, approximately one to one and a half months prior to the hearing.

Good Faith Outreach to Homeowners Association:

Ms. Barron asked whether the developer had communicated with the homeowners association, noting that Mr. Kormos had stated they had not. Mr. Nair confirmed that the developer had never spoken directly with any homeowners. He stated that after meeting with Trustee DeCastra, he indicated his intent was to update the landscape plan once site work was complete and buildings were up, at which point he would work with homeowners. He stated he is willing to meet with the homeowners and remains open to accommodating their concerns regarding landscaping and fencing.

Clarification on Misrepresentation:

Mr. Nevar offered a clarification on the allegation that the 33 foot setback was concealed. He stated the 33 foot setback dimension was visible on the March 2025 plans and was part of the application and review process, it was not hidden. He attributed the oversight to the ambiguity over whether the property line constituted a side yard or a rear yard in the context of a C1 corner lot and suggested the prior zoning inspector's interpretation that no setback variance was needed explains how the project proceeded through the approval process.

Additional Public Comment — Anthony Esposito (Brief Supplemental)

Mr. Esposito briefly returned to the podium to add that the confusion argument regarding the 33 foot setback. If that it was a matter of interpretation rather than concealment does not explain why it was not escalated to the trustees or any other reviewing authority when the question first arose.

**Deliberation**

At approximately 8:43 PM, Mr. Schigel invited the board to step out for deliberation. The applicant's representatives, Zoning Inspector, Secretary, and Trustee DeCastra along with the public remained in the hearing room.

The board deliberated in the Townhall's office from approximately 8:43 PM to 9:00 PM (approximately17 minutes).

Return from Deliberation / Post-Deliberation Questions

Mr. Schigel called the meeting back to order at 9:00 PM. Mr. Schigel stated the board had an additional question for the applicant before proceeding to the Duncan factors.

Additional Question from Ms. Barron Regarding Economic Feasibility:

Ms. Barron directed her question to Mr. Nevar and Mr. Nair regarding the applicant's claim of economic unfeasibility in the variance application. Specifically, the application states: "In the event the setback variance is not granted, the significant additional costs associated with an adjustment to the footprint of Building Two, including without limitation engineering and construction costs, would render the project economically unfeasible."

Ms. Barron asked how the project would be economically unfeasible to alter at this point, for example, by reducing the number of units. Mr. Nevar responded that the process of redesigning the site, obtaining site plan re approval, and going through county and township review again would be extremely time consuming and expensive given that the project has been in process for 18 months. He stated he was not an engineer or architect and deferred to Mr. Nair on specifics. Ms. Barron asked further, asking what dollar amount or threshold renders redesign unfeasible. Mr. Nevar stated that a complete redesign of the project would "likely kill it." Ms. Barron noted that from a logical standpoint, reducing the number of units would not require a complete redesign. Mr. Nair responded that while the building design itself may be relatively straightforward, the process of going back through permitting and approvals is what constitutes the major burden. He stated the process has taken 18 months, he does not have the desire to repeat it, and that the delay has already caused the loss of two contracts and uncertainty regarding

potential contract liability with buyers who signed purchase agreements. Ms. Barron thanked the applicant. Other board members confirmed the additional information was helpful.

**VARIANCE 1: Side Yard Setback Reduction**

**Reduction in Side Yard Setback Adjacent to Residential District from 50 Feet to a Minimum of 33 Feet (to 34.5 Feet) Parcel No. 001-02D-27-035**

Before proceeding to the Duncan factors, Mr. Schigel notified the public: "Any person adversely affected by a decision of the Board of Zoning Appeals may appeal to the Court of Common Pleas of Medina County."

Mr. Schigel stated the board would address the two variances separately, beginning with the side yard setback.

Ms. Beck, Secretary, read each Duncan factor for the record. The board voted on each factor individually in randomized roll call order.

**Duncan Factor Analysis — Variance 1 (Side Yard Setback)**

A. Whether the property in question will yield a reasonable return, and whether there can be any beneficial use of the property without the variance.

Roll Call: Mr. Radesic — Yes; Mr. Schigel — Yes; Mr. Timura — Yes; Mr. Krall — Yes; Ms. Barron — Yes

B. Whether the variance is substantial.

Roll Call: Mr. Schigel — Yes; Ms. Barron — Yes; Mr. Radesic — Yes; Mr. Krall — Yes; Mr. Timura — No

C. Whether the essential character of the neighborhood will be substantially altered, and whether adjoining properties will suffer interference with their proper future development and rights as a result of the variance.

Roll Call: Mr. Timura — Yes; Mr. Radesic — Yes; Mr. Krall — Yes; Ms. Barron — Yes; Mr. Schigel — Yes

D. Whether the variance will adversely affect the delivery of governmental services.

Roll Call: Ms. Barron — No; Mr. Schigel — No; Mr. Radesic — No; Mr. Krall — No; Mr. Timura — No

E. Whether the property owner purchased the property with knowledge of the zoning restriction.

Roll Call: Ms. Barron — Yes; Mr. Radesic — Yes; Mr. Krall — Yes; Mr. Schigel — Yes; Mr. Timura — Yes

F. Whether the property owner's predicament can be obviated through some method other than the variance.

Roll Call: Mr. Radesic — Yes; Ms. Barron — Yes; Mr. Krall — Yes; Mr. Schigel — Yes; Mr. Timura — Yes

G. Whether the spirit and intent of the zoning resolution will be observed and substantial justice done by granting the variance.

Roll Call: Mr. Timura — Yes; Mr. Schigel — Yes; Mr. Krall — Yes; Mr. Radesic — Yes; Ms. Barron — No

H. Whether the property in question has unique or exceptional circumstances or conditions that do not generally apply to other properties in the vicinity and within the same district.

Roll Call: Mr. Timura — Yes; Mr. Schigel — Yes; Ms. Barron — No; Mr. Radesic — Yes; Mr. Krall — Yes

**Formal Vote — Variance 1 (Side Yard Setback)**

**Motion:** Mr. Schigel made a motion to approve PP# 001-02D-27-035 for reduction in side yard setback adjacent to residential district from 50 feet to a minimum as 33 feet to 34 and a half feet. Mr. Radesic seconded the motion.

**Roll Call:** Mr. Timura — Yes; Ms. Barron — No; Mr. Radesic — No; Mr. Krall — No; Mr. Schigel — No

Result: Motion failed. Variance is not granted. Vote: 1 Yes, 4 No.

Mr. Schigel stated the finding for the vote of No: The board found that the variance was substantial, specifically noting the 34% reduction in the required setback.

**VARIANCE 2: Fence Height Increase**

**Request for Increase in Maximum Fence Height from 6 Feet to 8 Feet — Parcel No. 001-02D-27-035**

Mr. Schigel stated the board was unable to make an informed decision on the fence variance because insufficient information had been provided regarding the fence length, exact location, and specifications. He proposed extending a 90 day continuance to allow the applicant to provide the exact specifications of the proposed fence, including where and how the fence would be installed. Mr. Nevar, on behalf of the applicant, withdrew the fence variance request. Ms. Beck confirmed with the board that because the variance was withdrawn, no Duncan factor analysis or vote was required. The board agreed.

**ADDITIONAL BUSINESS/ ANNOUNCEMENT OF NEXT MEETING:**

Ms. Beck confirmed there was no additional business. Mr. Schigel announced the board's next regularly scheduled meeting: Wednesday, November 4, 2026 at 7:00 PM.

**MOTION TO ADJOURN**

Mr. Schigel asked for a motion to adjourn. Mr. Timura motioned to adjourn the meeting. Mr. Krall seconded.

**Roll Call:** Mr. Radesic — Yes; Ms. Barron — Yes; Mr. Timura — Yes; Mr. Krall — Yes; Mr. Schigel — Yes

Adjourned at 9:13 PM.

Respectfully Submitted,
Dalith Beck, Secretary

Chris Schigel 11/04/26

Chris Schigel, Chair — Date