

**MINUTES
SPECIAL JOINT MEETING
NORTH LEBANON TOWNSHIP
BOARD OF SUPERVISORS
ZONING HEARING BOARD
August 24, 2022**

The advertised Special joint meeting of the North Lebanon Township Board of Supervisors and the Zoning Hearing Board of North Lebanon Township was held this day at 6:30 PM at the Municipal Building located at 725 Kimmerlings Road, Lebanon, PA with the following people present:

Board of Supervisors:

Ed Brensinger	Chairman
Gary Heisey	Vice-Chairman
Arden Snook, Sr.	Treasurer
Cheri Grumbine	Township Manager
Amy B. Leonard, Esq.	Henry & Beaver LLP

Zoning Hearing Board (ZHB):

Dean Cover	Chairman
John Yordy	Member
Ed Swisher	Alternate
Andrew Morrow, Esq.	Spitler, Kilgore & Enck

Landmark Builders, Inc.:

Helen Gemmill, Esq.	McNees Wallace & Nurick LLC
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The meeting was called to order by Supv. Brensinger and the pledge to the flag was made.

Supv. Brensinger turned the meeting over to Zoning Hearing Board Solicitor Morrow.

PUBLIC HEARING - Settlement Agreement with Landmark Builders, Inc.

Solicitor Morrow reviewed the two issues that Landmark had appealed.

1. The ZHB denial of the Special Exception for the increased height of the garden apartments from 35 feet to 36 feet 10-inches and the two and a half stories to three stories.
2. The ZHB denial of the Dimensional Variance to allow Landmark two access driveways onto the property to be less than 150ft from Josephine Ann Dr or driveways from neighboring properties.

After Landmark filed the appeal to the Court of Common Pleas in November of last year, Attorney Gemmill and Sol. Morrow then filed briefs. Solicitor Morrow's brief supported the ZHB denial and Attorney Gemmill's brief opposed the ZHB decision. Both Atty. Gemmill and Sol. Morrow appeared before Judge Kline in February of this year to argue their positions and answer any questions.

On April 14, 2022, Judge Kline issued an Order. Judge Kline denied the Special Exception for the increased height of the garden apartments. He ordered the case be sent back to the Zoning Hearing Board for another hearing to decide if the access driveway dimensional variance should be granted. Judge Kline stated in his decision that arguments the ZHB made regarding increased traffic concerns and that the garden apartments were not compatible with the neighborhood were not valid reasons to deny the increased height of the garden apartment buildings. These were the main reasons given in opposition to Landmark receiving the increased height of the garden apartments. Solicitor Morrow stated that these are no longer valid legal arguments based on the Court's decision and cannot be raised again. Judge Kline's decision further stated that the only possible reason that the Special Exception for the increased height of the garden apartments could be denied is if the development did not have proper ingress and egress. If the ZHB found that the development had proper ingress and egress, then the Special Exception would need to be granted, thereby awarding Landmark the increased height of the garden apartments.

The ZHB found last September that the development did not have proper ingress or egress because Landmark required a Dimensional Variance for the 150-foot access driveway requirement. The ZHB found Landmark did not prove an unnecessary hardship, and therefore the Dimensional Variance should be denied. Judge Kline stated in his Decision that Landmark met the criteria for an unnecessary hardship and could not possibly comply with the Ordinance's 150-foot requirement. Judge Kline sent the matter back to the ZHB to decide if Landmark met the other variance factors. If the ZHB found Landmark met these factors, then the ZHB was expected to approve not only the Dimensional Variance request, but also the Special Exception to allow the increased height of the Garden Apartments.

Solicitor Morrow indicated that recently he viewed in more detail the topography of the land in question it is impossible for Landmark to comply with the 150-foot access driveway requirement due to the location of existing roads and driveways along both N. 8th Avenue and Kimmerlings Road. He indicated that continuing to spend taxpayer funds to litigate an appeal that the Court made clear would result in Landmark's favor was very unlikely to result in an outcome favorable to the Zoning Hearing Board.

One member of the Township Supervisors; one member of the ZHB; Landmark's representatives; Amy Leonard, Township Solicitor; Cheri Grumbine, Township Manager; and Andrew Morrow, ZHB Solicitor met to discuss a possible resolution of this case. A tentative agreement was reached followed by Landmark drafting a written document. The reason for this special joint meeting was to allow for discussion and comment regarding the proposed Settlement Agreement and to hold a vote of the ZHB and the Board of Supervisors as to whether to approve the Settlement Agreement.

Sol. Morrow then turned the meeting over to Sol. Leonard.

Sol. Leonard explained that it is not unusual for litigation matters to be resolved out of court by agreement of the parties. However, approval of a Settlement Agreement must be done in the setting of a public meeting when some of the parties involved are local government entities.

In addition to the apartment buildings, Landmark's plan proposes five single-family residential dwellings, along N. 8th Ave. and Kimmerlings Rd. To reduce the number of driveways being added onto those roadways and to decrease the potential for conflicts with the apartment access

driveways and other existing driveways in the area, the Settlement Agreement provides that the dwelling along N. 8th Ave. will not have a driveway entering onto N. 8th Ave., and the two dwellings closest to the proposed development access driveway onto Kimmerlings Rd. will also not have driveways entering onto Kimmerlings Rd. This will reduce the number of additional accesses onto these two roads. Two of the single-family residences along Kimmerlings Rd will have driveway access onto Kimmerlings Rd, but the properties will be developed with turnarounds to facilitate forward vehicular entry onto Kimmerlings Rd to avoid any need to back out onto Kimmerlings Rd.

The Settlement Agreement also states that Landmark will conduct a traffic impact study which will specifically evaluate the number of egress lanes at each proposed access drive and whether the proposed development warrants a reduced speed limit on N. 8th Ave. and Kimmerlings Rd. The information provided by the traffic impact study will assist the Township in determining whether additional safety measures or traffic controls should be considered.

Additionally, the Settlement Agreement states that Landmark will make a monetary contribution toward traffic improvements in the Township in the amount of \$600.00 per dwelling unit, for a total of \$89,400.00. The Township will use these funds to make any traffic improvements deemed necessary. Without the Settlement Agreement, Landmark has no legal obligation to provide funding for traffic improvements.

It was pointed out that the adoption of the Settlement Agreement would not equate to a blanket approval of the proposed Landmark development. It only resolves the two zoning issues on appeal. The Settlement Agreement makes it clear that Landmark's plan will require the usual land development submittals to the Lebanon County Planning Department and the Township. The Landmark land development plan will undergo all the usual reviews by Township staff and engineering consultants and will be subject to the same approval process by the Planning Commission and Board of Supervisors as applies to all other land development projects in North Lebanon Township.

Sol. Leonard then turned the meeting back over to Supv. Brensinger and at this time the meeting was opened to the public.

The following Township residents voiced their concerns regarding the variance and special exception included in the appeal by Landmark. Questions raised pertained to plan submission process moving forward, traffic study requirement, concerns regarding the residents of the apartment unit development using the walking path (open to public) in The Crossings at Sweet Briar which they maintain, and general statements of dissatisfaction and concerns about moving forward with the 144-unit apartment development.

David Smith – Representing Briar Lake
Skip Hetrick – Resident of The Crossings at Sweet Briar
Jim Cikovic - Township Resident
Bill Smeltzer - Planning Commission member and resident
James Repetski – Resident of Briar Lake

With no further comments from the public, Supv. Brensinger then opened the meeting up to comments from the ZHB and Board of Supervisors.

At this time, the ZHB members provided their thoughts relating to the variances and special exception included in the original petition and their reasoning for their original decision. All members individually stated they were disappointed with the Judge's Order but respect his Authority on this case. They all agree that it would not be a wise decision to spend taxpayers' money to appeal the Order after reading the Judge's opinion that the ZHB was wrong to find that Landmark had not proved an unnecessary hardship and the clear indications of how Judge Kline would decide this matter if it was brought back before him.

MOTION: was made and seconded by the Zoning Hearing Board to approve the signing of the Settlement Agreement with Landmark Builders, Inc.

Roll Call Vote:

John Yordy - Yes

Ed Swisher - Yes

Dean Cover - Yes

Motion unanimously carried.

The Board of Supervisors commented as follows.

Arden Snook, Sr. – Mr. Snook stated that he and prior Supervisor Dick Miller visited apartment units constructed by Landmark in Lititz and Ephrata that are similar to the project that Landmark are proposing in North Lebanon Township. In his opinion, they were very nice-looking and upscale buildings.

Gary Heisey – Mr. Heisey asked Attorney Gemmill questions regarding Landmark's decision on the layout of this development and number of apartment units. Given the rulings that the Court had made so far, Landmark feels that they have been giving reasonable concessions already and that they do not need to decrease the number of units. The number of units that they are proposing is allowed per Ordinance. Ms. Gemmill stated that Landmark has the right build on their land in accordance with the zoning for the parcel, which is R-1 (single-family units) and R-2 (apartment development), just as the neighbor next door has the right to build a home on their property. Gary commented that he wishes Landmark would consider downsizing the project or other projects they might consider in the future.

Ed Brensinger – Mr. Brensinger stated that the Board of Supervisors and the ZHB are tasked with making tough decisions. Landmark has the same land rights as the residents do. Many homes in the township were once farm fields and are now residential developments. The Boards must make their decisions based off the Municipality's Planning Code (MPC), Township Ordinances, and the Second-Class Township Code. Supv. Brensinger stated he does not like the traffic impact that this project or other projects before or after this one will place on the Township, but everyone must deal with change.

MOTION: was made and seconded by the Board of Supervisors to approve the signing of the Settlement Agreement with Landmark Builders, Inc.

Roll Call Vote:

Ed Brensinger - Yes

Gary Heisey - Yes

Arden Snook, Sr. - Yes

Motion unanimously carried.

With no further business to discuss, meeting adjourned.

Respectfully Submitted,

Erika Sheibley
Recording Secretary