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**WRITTEN DECISION**

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**EXHIBITS**

- B-1      Application for variance of Reedlee Leasing, Inc. dated June 6, 2024
- B-2      Certificate of Service of Public Notice and Written Notice
- B-3      Site plan
- A-1      Google maps

**FINDINGS OF FACT**

1.      Applicant, Reedlee Leasing, Inc. (hereinafter “Applicant”), is the owner of the property located at 702 Nailor Drive, Lower Allen Township, Cumberland County, Pennsylvania (hereinafter the “Property”).
2.      The property is located in the (R-3) multi-family residential zoning district of Lower Allen Township, Cumberland County.
3.      Public Notice of the hearing in this matter was published in the Patriot News, a newspaper of general circulation in Lower Allen Township on July 2, 2024 and July 9, 2024.
4.      The Written Notice of the hearing was forwarded to the following individuals and entities on July 5, 2024: Applicant and adjoining property owners.
5.      The property in question was posted on July 2, 2024, the municipal building was posted on July 11, 2024 and Township’s website was posted on July 11, 2024.
6.      No objections as to the method and timing of notice and advertising were raised.
7.      No objections as to any of the Board’s exhibits were raised.
8.      Testimony at the hearing on behalf of Applicant was taken from Justin Kuhn, P.E.; James Crum of James Crum Architects; and Jestin Kaercher, an owner of Applicant. Applicant was represented by David Getz, Esquire. Theresa Jones, a nearby resident testified on her behalf.

9. On July 18, 2024 at approximately 7:00 p.m., a public hearing was conducted on the matter.

### **CONCLUSIONS OF LAW**

1. The Lower Allen Township Zoning Hearing Board has jurisdiction to hear the above-captioned appeal and application pursuant to 53 P.S. Section 10909.1(a)(5). (The Municipalities Planning Code).
2. Proper notice of the hearing was given to the public and to all interested parties.
3. Exhibits B-1 through B-3 and A-1 were properly admitted into evidence.
4. Applicant met its burden in establishing a dimensional variance relative to Sections 220-46A and 220-202A1 of the Lower Allen Township Zoning Code (hereinafter "Code").

### **DISCUSSION**

Reedlee Leasing, Inc. (hereinafter "Applicant") is the owner of the property located at 702 Nailor Drive, Lower Allen Township, PA (hereinafter "Property"). Applicant is proposing a two (2)-story 10 unit apartment building located in the (R-3) Zoning district of Lower Allen Township.

Applicant is seeking two (2) dimensional variances from the Code to include:

1. A variance from Section 220-46A site design standards to allow parking in the front yard.
2. A variance from Section 220-202A1 to reduce the buffer yard from the 25 feet required to 15 feet along the northwestern side of the property as set forth in Exhibit B-3.

The property is just less than three-quarters of an acre and is triangular in shape. A storm and sewer easement traverses the property from an east to west direction. Due to these constraints, the only placement of the building could be along the back property line.

As a result of being a corner lot, the property has two (2) front yards. As such, a significant portion of the property is within the two (2) front yard setbacks.

The orientation of the building per Exhibit 3 allows for the least modification possible. It is important that the front of the building face the street for visibility of the entrances. Additionally, the Board believes that it would be impractical for the parking to be located in the rear of the building.

Mr. Crum testified that designing the building to be three (3) stories rather than two (2) would not be practical considering the proposed small size of the building and challenges with compliance with building code requirements.

North of the property is an apartment complex. East of the property is 2116 Cedar Run which is an apartment complex. Directly across the street from the property is 2121 Cedar Run which is comprised of two (2) apartment buildings. Many of the surrounding buildings in the area have parking located in the front yard.

In reviewing the variance request in the above application, the Zoning Hearing Board must take into account the criteria as set forth in Section 10910.2 of the Municipalities Planning Code (53 P.S. § 10910.2).

In order to prove a variance, the applicant must show the following:

1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of this Ordinance in the neighborhood or zone in which the property is located;
2. That because of such physical circumstances or conditions, there is not the possibility that the property can be developed in strict conformity with the provisions of this Ordinance and that the authorization of a variance is therefore necessary to enable reasonable use of the property;
3. That such unnecessary hardship has not been created by the appellant;
4. That the variance, if authorized, will not alter the essential character of the zone or neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue.

Applicant submitted a request for a dimensional variance relative to allow parking in the front yard and to reduce buffer from the 25 feet required to 15 feet along the northwestern side of the property. Common law distinguishes between a dimensional variance and a use variance. A use variance applicant requests to use the property in a manner prohibited by the zoning regulation. *Hertzberg v. Zoning Bd. of Adjustment*, 721 A.2d 43, 47 (Pa. 1998). A dimensional variance allows for the reasonable adjustment of the zoning regulation in order to utilize the property as desired. *Dunn v. Middletown Twp. Zoning Hearing Bd.*, 143 A.3d 494, 501 (Pa. Commw. Ct. 2016).

When considering a dimensional variance for purposes of determining unnecessary hardship, a Zoning Hearing Board is able to consider multiple factors not applicable to the use variance test, such as the financial hardship created by any work necessary to bring the property into strict compliance with the ordinance and the characteristics of the surrounding neighborhood. *Soc'y Created to Reduce Urban Blight v. Zoning Bd. of Adjustment*, 771 A.2d 874, 877 (Pa. Commw. Ct. 2001). A dimensional

variance therefore compels a slightly lower standard than a use variance, but must still address the aforementioned factors, including the showing of an unnecessary hardship. *Tri-Cty. Landfill, Inc. v. Pine Twp. Zoning Hearing Bd.*, 83 A.3d 488, 520 (Pa. Commw. Ct. 2014).

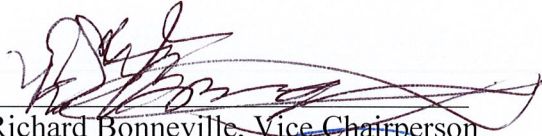
Based upon the testimony as discussed above, the Board believes that the Applicant has presented evidence of a sufficient hardship.

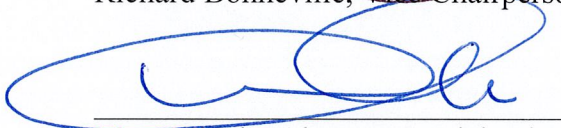
The Board believes that allowing the relief as requested would be consistent with the character of the neighborhood.

**DECISION:**

And Now, this 15<sup>th</sup> day of **August, 2024**, in consideration of application for variance of Reedlee Leasing, Inc. and after a public hearing, the Zoning Hearing Board hereby grants Applicant's request to allow

1. A variance from Section 220-46A of the Code to allow parking in the front yard as set forth in Exhibit B-3, and
2. A variance from Section 220-202A1 of the Code to reduce the buffer yard from the 25 feet required to 15 feet along the northwestern side of the property as set forth in Exhibit B-3.

  
Richard Bonneville, Vice Chairperson

  
Marc Migala, Alternate Participating Member

(Written Decision of Findings issued this 15<sup>th</sup> day of August, 2024)