

**LOWER ALLEN
ZONING HEARING BOARD**

IN THE MATTER OF: 702 Nailor Drive
 Zone: Multifamily Residential District (R-3)
 Applicant/Owner: Reedlee Leasing, Inc.
 Application No. 2024-08

REQUEST FOR: **APPEAL OF ZONING DETERMINATION AND IN THE
ALTERNATIVE, DIMENSIONAL VARIANCES FOR
ZONING RELIEF TO HAVE PARKING IN THE FRONT
YARD AND TO REDUCE THE SIDE YARD BUFFER**

BEFORE: Moran, Chair
 Bonneville, Vice-Chair
 Migala, Participating Alternate Member

DECISION

The Applicant, Reedlee Leasing, Inc. (applicant) requested the following zoning relief relative to the property located at 702 Nailor Drive, Lower Allen Township, Pennsylvania (property):

1. Grant appeal of zoning determination that the change from a ten (10) unit apartment building to nine (9) townhomes is not a substantial change in plans requiring new zoning relief; or
2. In the alternative to (1) above, applicant request two dimensional variances for zoning relief from the Lower Allen Township Zoning Ordinance (ordinance) to allow parking in the front yard and reduce the required buffer along the northwestern side of the property.

The Board considered and decided Applicant's requests at the November 21, 2024 hearing.

EXHIBITS

- B-1 Application for appeal of zoning determination and variance with attached narrative, deed and zoning determination.

B-2 Certificate of Service of public notice and written notice of hearing for zoning requests

A-1 Plans for prior and current proposal

FINDINGS OF FACT

1. On or about October 18, 2024, Reedlee Leasing, Inc. (Applicant) filed an appeal of a zoning determination that its multiple townhome proposal was a substantial change from a prior multiple apartment proposal so as to require new zoning relief, and in the alternative, an application for two dimensional variances to have parking in the front yard and zoning relief from the required buffer along the northwest side of the property.

2. A hearing on the application took place on November 21, 2024.

3. Public notice of the hearing on the application was published in the Patriot News on November 5, 2024, and November 12, 2024. Notice of the hearing was posted at the Lower Allen Township Municipal Building and on Township's website on November 1, 2024, and placed on the property on November 6, 2024.

4. Notice of the hearing was mailed to Applicant and adjoining property owners on November 6, 2024.

5. No objections as to the method and timing of notice and advertising were raised.

6. No objections as to any of the exhibits submitted into the record at the hearing were raised.

7. The property is located in the Multifamily Residential (R-3) Zoning District.

8. The Applicant has standing to pursue the zoning relief requested as it is the owner of the property.

9. Testimony at the hearing on behalf of applicant was taken from Zane Geist, (project manager) of Integrated Consulting. Applicant was represented by David Getz, Esquire. Theresa Jone, a nearby resident, testified on her own behalf in support of the proposal.

10. Applicant purchased the property at 702 Nailor Drive in August 2023,

11. The property, an approximate .75 acre lot, is triangular in shape and located at the corner of Cedar Run Drive and Nailor Drive.

12. Since the property is a corner lot, the Lower Allen Township Zoning Ordinance requires two front yard setbacks and two side yard setbacks, in addition to the buffer around the property.

13. The property is encumbered by a 20 foot wide sanitary sewer and storm sewer easement which runs through the lot from east to west and restricts the location of the proposed building.

14. Applicant is proposing to construct nine (9) two story townhomes on the property and provide 18 off-street parking spaces.

15. The proposed use is a permitted use in the R-3 District.

16. The surrounding neighborhood is comprised of multifamily dwelling uses.

17. Applicant applied for zoning relief in the form of two dimensional variances in July 2023 for its proposal to construct a ten (10) unit apartment building on the property.

18. An apartment building featuring ten (10) one bedroom units requires 12 off-street parking spaces.

19. The requests were for zoning relief to have parking in the front yard and to reduce the side yard buffer.

20. The variances were approved by the Lower Allen Township Zoning Hearing Board (Board) by decision dated August 15, 2024.

21. The instant proposal has a different layout for the structure on the property.

22. The townhome proposal requires more parking than the prior apartment proposal which affects the design of the lot.

23. The instant proposal is a substantial change from the prior proposal.

24. The proposed dimensional variances to allow parking in the front yard and reduce the side yard buffer will not alter the character of the neighborhood or substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.

CONCLUSIONS OF LAW

1. The Lower Allen Township Zoning Hearing Board has jurisdiction to hear the above-captioned 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 and B-2 and A-1 were properly admitted into evidence.

4. Lower Allen Township sustained its burden that the current townhome proposal was a substantial change from the prior apartment building proposal in accordance with the attached discussion and decision.

5. Applicant sustained its burden of proof for two (2) dimensional variances from Section 220-46(A) and Section 220-202(A)(1) of the Lower Allen Township Zoning Ordinance in accordance with the attached discussion and decision.

DISCUSSION

The property is located in the Multifamily Residential (R-3) Zoning District which is regulated by Article 7 of Chapter 220 – Lower Allen Township Zoning Ordinance (Ordinance). Applicant appealed a zoning determination that a change in proposal and plans was not a substantial change requiring new zoning relief. In the alternative, applicant requests two (2) dimensional variances from the Township Zoning ordinance in order to establish parking in the front yard and reduce the buffer along the northwest side of the property to construct nine (9) townhomes with an 18 space off street parking area lot.

ZONING APPEAL

Applicant requested a zoning determination that it's prior dimensional variances granted by the Board remain valid and applicable to the current townhome proposal. By letter dated October 3, 2024, the Township Zoning Officer issued a determination that the proposed nine (9) unit townhome complex with 18 parking spaces located in the front yard is a substantial change from the prior ten (10) unit apartment building proposal which was granted the variances at the July 18, 2024 Board hearing. Applicant appealed that determination to the Board in accordance with Section 220-269.B(8) of the ordinance.

As applicant's counsel noted in the application narrative, the Board determines the meaning of the ordinance, and in this instance whether there has been a substantial change to applicant's proposal. The Board is not to engage in a narrow review of a zoning officer's decision, based only on the materials offered to the zoning officer, but is required to make

findings based on the proceedings conducted before the Zoning Hearing Board. Bethlehem Manor Vill., LLC v. Zoning Hearing Board, 251 A.3d 448, 460-461 (Pa. Commw. 2021)

There is no definition of what may constitute a substantial change to a plan/proposal, however, it should include a review of the density of the development and its requirements under the ordinance. Also, the review must include evaluating other changes to the footprint of the proposal.

The nine unit townhome complex requires two parking spaces per unit, but the ten unit one bedroom apartment building requires one space per unit and space for every five units for visitors. **Section 220-239(A)** This difference in type of dwellings results in the townhomes requiring 18 off street parking spaces and the apartment building requiring 12 off street parking spaces. Applicant has a different layout for each off-street parking lot of the respective proposals. The apartment building is one structure but the townhomes are separated by a open area into sets of five and four dwelling developments. The townhome proposal has increased the impervious coverage of the lot compared to the apartment building, although it still complies with the ordinance requirements.

The Board determines that the changes in the initial proposal, from a townhome complex to an apartment building, constitutes a substantial change in plans and requires new zoning relief in accordance with the ordinance.

VARIANCE

In reviewing the application requesting the dimensional variance, the Zoning Hearing Board must take into account the criteria as set forth in Section 220-269 of the Township Zoning Ordinance which states the following;

Section 220-269 Zoning Hearing Board

C. Variances.

The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship upon the applicant. The Zoning Hearing Board may, by rule, prescribe the form of application and may require application to the Zoning Officer. The Zoning Hearing Board may grant a variance, provided that the following findings are made where relevant in a given case:

- (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 chapter in the district in which the property is located.
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this chapter and that the authorization of a variance is therefor necessary to enable the 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 district 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.
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and represent the least modification possible of the regulation in issue. In granting any

variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter.

Lower Allen Township, PA, Township Code § 220-269(C) (2009).

In the alternative, applicant submitted a request for two dimensional variances to (1) allow parking in the front yard, and (2) reduce the buffer on the northwest 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*, 554 Pa. 249, 264, 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. 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, the economic detriment to the applicant if the variance was denied, 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. 2001). Unreasonable economic burden may be considered in determining the presence of unnecessary hardship. *Yeager v. Zoning Hearing Bd. Of City of Allentown*, 779 A.2d 595, 598 (Pa. Cmwlth. 2001) In *Marshall v. City of Philadelphia*, 97 A.3d 323 (Pa. 2014), the Pennsylvania Supreme Court stated “This Court has repeatedly made clear that in establishing hardship, an applicant for a variance is not required to show that the property at issue is valueless without the variance or that the property cannot be used for any permitted purpose” *Id.* at 330 A dimensional variance therefore compels a

slightly lowered standard from a use variance, but must still address the aforementioned factors, including the showing of an unnecessary hardship. *Tri-Cnty. Landfill, Inc. v. Pine Twp. Zoning Hearing Bd.*, 83 A.3d 488, 520 (Pa. Commw. 2014). The reason for treating a dimensional variance more leniently than a use variance is that the applicant is asking for nothing more than a reasonable adjustment of the zoning regulations for the purpose of utilizing the property in a manner consistent with the zoning regulation. *Hertzburg* at p. 264

Applicant has requested a variance from Section 220-46(A) which states:

§ 220-46. Site design standards

In addition to performance standards contained within Article XIX, the following additional site design standards are applicable for any new construction within the R-3 Multifamily Residential District:

- A. Off-street parking. Off-street parking/loading and unloading areas shall be provided in accordance with provisions set forth in Article XXIV herein. Such parking shall only be located to the side or rear of buildings.

Lower Allen Township, PA, Township Code, § 220-46(A) (2009).

Applicant requests a variance to allow parking in the front yard of the property.

Applicant has also requested a variance from Section 220-202(A), which states:

§ 220-202. Buffering requirements.

A. Buffering standards. Where required, buffering shall consist of an area no less than five feet in width, unless otherwise stated within the specific zoning district, containing an area to visually buffer land uses. The following standards apply:

- (1) Where nonresidential uses and multifamily and single-family attached dwellings abut residential uses within the same zoning district, excluding such uses located within the MUN Mixed-Use Neighborhood and C-1 Neighborhood Commercial Districts, a buffer yard of 25 feet shall be provided, unless otherwise indicated herein.

Lower Allen Township, PA, Township Code, § 220-202(A) (2009).

Applicant requests a variance to reduce the buffer from 25 feet to 15 feet along the northwestern side of the property to allow the construction of townhome complex without encroaching on the sewer/stormwater easement.

The triangular shape of the property is unique compared to the other rectangular lots in the neighborhood. The property is located on a corner lot which requires two 30 foot front yard setbacks and two 15 foot side yard setbacks, as well as a 25 foot buffer around the property. The property is encumbered by a 20 foot sewer/stormwater easement that runs east to west through the property. This restricts the location of the structure on the property.

Due to the shape of the property and the various setback and buffer requirements, and the sewer/stormwater easement, it is not possible to construct the parking in the side or rear of the townhomes. Also, it is not possible to construct the townhomes and meet the buffer requirements along the entirety of the northwestern side of the property, and meet the off-street parking ordinance requirements. Applicant did not create the condition or location of the property.

The property has many multifamily housing uses in the immediate vicinity, including townhomes and apartment developments. 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 buildings in the area have parking located in the front yard. The proposed use will not adversely impact the neighborhood.

The requested variances are the least modification to the ordinance to allow reasonable use of the property. The nine (9) unit townhome complex is less than the permitted number of units (15 units per unit/approximate .75 acre lot) in the R-3 District.

ORDER

Applicant's appeal of the zoning determination dated October 3, 2024 (see B-1 Ex. C of applicant's application) is denied.

Applicant is granted the following relief:

- (1) a dimensional variance from Lower Allen Township Zoning Ordinance Section 220—46(A) which limits off-street parking to the side or rear of buildings; and
- (2) a dimensional variance from Lower Allen Township Zoning Ordinance Section 22-202(A)(1) which requires a 25 foot buffer yard around the property when multifamily and single family attached dwellings abut residential uses within the same zoning district.

Applicant is able to establish parking in the front yard of the property and encroach approximately 10 feet into the 25 foot buffer along the northwestern side of the property consistent with the plans submitted by Applicant with its application and Ex. A-1 submitted at the November 21, 2024 hearing before the Board.

The variance requests apply to the property located at 702 Nailor Drive, Lower Allen Township, PA.

LOWER ALLEN TOWNSHIP ZONING HEARING BOARD

Date: 12/30/2024 | 4:05 PM By Ann Moran
Ann Moran, Chair