GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No 16927-A of the Public Welfare Foundation and Manna, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the lot area and lot width requirements under § 401, a variance from the lot occupancy requirements under § 403, a variance from the rear yard requirements under § 405, a variance from the parking space location requirements under subsection 2116.1, and a variance from the building on alley lots provisions under subsection 2507.2, to allow the construction of 10 single-family row dwellings in the R-4 District at premises rear 1300 block of Temperance Court, N.W. (Square 274, Lots 57-61, and 804 through 820 (1 through 12 per sub.)).

HEARING DATE: October 22, 2002
DECISION DATES: December 10, 2002, January 14, 2003, February 4, 2003, April 1, 2003

DATE OF DECISION ON RECONSIDERATION: October 7, 2003

ORDER DENYING RECONSIDERATION

On August 25, 2003, the applicants, the Public Welfare Foundation and Manna, Inc. ("Applicants"), moved for reconsideration of the Board of Zoning Adjustment's ("Board") August 15, 2003 order denying their application for variance relief. *See,* § 3126 of Title 11 of the District of Columbia Municipal Regulations ("DCMR"). In their Motion for Reconsideration ("Motion"), the Applicants reiterated their arguments and set forth several alleged errors in the Board's decision.

Although the Board remains sympathetic to the Applicants' desire to provide affordable housing, it is not persuaded by the Motion for Reconsideration. The Applicants claim in their Motion that they are not basing their requests for relief on either economics or the fact that the lots at issue are served by less-than-thirty-foot alleys. Instead, they say the variance relief is based on the fact that the lots suffer from an exceptional condition in that they are surrounded by alleys, and therefore, their depth cannot be increased. (*See,* Motion at 3.) The Board fails to see how this is any different from any other lot, whether it be surrounded by streets, other property owners, or alleys. The depths of these properties cannot be increased either.

CASE NO. 16927
EXHIBIT NO. 50

Board of Zoning Adjustment
District of Columbia
CASE NO.16927
EXHIBIT NO.50

Thus the fact that these lots are surrounded by alleys does not make them unique and the Board can find no other extraordinary or exceptional condition of the property. One lot is a long, rectangular parcel and the other is a smaller, square parcel. Together, they encompass 12,785.55 square feet. Also, as stated in the order, and even upon reconsideration, the Board can find no credible showing of practical difficulties by the Applicants. Moreover, the practical difficulties the Applicants allege stem from trying to build a density of development out of proportion with the amount of land available and its restricted access.

The parcels could sustain development, but not at the density the Applicants propose. The Board continues to conclude that, at the density proposed by the Applicants, the project would result in substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map and could potentially result in detriment to the public good. *See,* 11 DCMR § 3103. The Board interprets § 2507 of the zoning regulations as disfavoring construction of any dwellings on alley lots and as prohibiting one-family dwellings on alley lots without street access through alleys at least 30 feet wide. Clearly, § 2507 was enacted to prevent overcrowding of dwellings on alley lots and the Applicants' proposed project could end up creating just the scenario that § 2507 was enacted to prevent.

Before granting a variance, the Board must seriously consider all the legally relevant aspects of the request, including the magnitude of the relief requested. *See, e.g., In the Matter of National Meritt v. Weist,* 41 N.Y. 2d 438, 441, 361 N.E.2d 1028, 393 N.Y.S.2d 279 (Ct. App. 1977). ("[T]he magnitude of the desired area variance ... is significant since the greater the variance in area restrictions the more severe the likely impact upon the community.") The magnitude of the zoning relief requested is indicative that the Applicants are attempting to undertake too much on a property too small and too poorly-served access-wise to sustain it. Matter-of-right standards set forth in the regulations are considered the maximum optimal conditions in the particular zone and should not be discarded lightly. Further, where the regulations imply a clear policy choice against a use, such as § 2507's restrictive treatment of dwellings on alley lots, the Board is not free to ignore this implication.

The Board can grant variances only when the required proofs are made and when the magnitude of the relief requested does not do violence to the zone plan as embodied in the zoning regulations and map. The Applicants have not made the required proofs and their proposed development would substantially impair the zone plan. The Board has considered the evidence in the record, including the reports of other agencies, as well as the Motion on Reconsideration, but is not convinced that its decision should be changed. The Motion is therefore **ORDERED DENIED.**

VOTE: **3-1-1** (Geoffrey H. Griffis, Anthony J. Hood, and David A. Zaidain, to deny; Curtis L. Etherly, to grant; the fifth member, not having heard the case, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: FEB - 6 2004

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT. LM/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

BZA APPLICATION NO. 16927-A

As Director of the Office of Zoning, I hereby certify and attest that on FEB - 6 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Nathan W. Gross, AICP
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004

Chairperson
Advisory Neighborhood Commission 1B
P.O. Box 73710
Washington, D.C. 20056

Single Member District Commissioner 1B02
Advisory Neighborhood Commission 1B
P.O. Box 73710
Washington, D.C. 20056

Jim Graham, City Councilmember
Ward One
1350 Pennsylvania Avenue, N.W.
Suite 406
Washington, D.C. 20004

Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY: Jerrily Kress

JERRILY R. KRESS, FAIA
Director, Office of Zoning