

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 19311-A in Application No. 19311 of Manna, Inc., pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the FAR requirements under § 402.4, the lot occupancy requirements under § 403.2, and the rear yard requirements under § 404.1, and a special exception from the residential development requirements under § 353, to construct 12 row dwellings in the R-5-A District at premises 2200-2210 Hunter Place, S.E. (Square 5812, Lot 118).

HEARING DATES: July 6, 2016 and July 12, 2016¹
DECISION DATE: July 19, 2016

CORRECTED SUMMARY ORDER²

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 8A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8A, which is automatically a party to this application. ANC 8A did not submit an official report regarding this application. However, at the hearing on July 12, 2016, the Applicant stated that they met with the ANC's Executive Committee in May a year ago, attended a constituent meeting last fall, and was scheduled to present before the full ANC in June but the ANC meeting was cancelled. The Applicant noted that the ANC members did not have questions regarding the project. The Applicant was scheduled to attend the ANC meeting to be

¹ The Applicant requested a postponement of the July 6, 2016 hearing, and the hearing was held on July 12, 2016.

² This order corrects the final order in Application No. 19311 which erroneously recorded the vote as 4-0-1 on page 3. The correct vote is 3-0-2 as noted herein. In all other respects, the order remains the same.

BZA APPLICATION NO. 19311-A
PAGE NO. 2

held on July 18, 2016. The Board left the record open to receive an ANC report or some communication about the ANC's position on the application after that meeting.

On July 18, 2016, an email memorandum from the Single Member District Commissioner for ANC 8A-04 was filed into the record. The email stated that the Applicant

attended ANC 8A's Executive Meeting on Monday, July 18 to present the organization's updated BZA Application.... At the conclusion of the presentation, Commissioners expressed general support for the updated application and moved to put a Letter of Support on the agenda for its August 2016 public meeting....

(See Exhibit 48.)

At the BZA Public Meeting of July 19, 2016, the Board acknowledged receipt of the ANC email and decided not to hold its decision in abeyance to wait for the official ANC report to be filed in August.

The Office of Planning ("OP") submitted a report dated June 28, 2016 recommending approval of the application subject to two conditions: "1. Provision of solar panels on the flat roofs of the row houses; 2. The applicant work [sic] with DC Water to resolve the issue of the proposed storm sewer extension across Pomeroy Road." (Exhibit 44.) At the hearing on July 12, 2016, OP testified in support of the application. On July 7, 2016, counsel for the Applicant filed a statement addressed to OP stating that the Applicant would be willing to comply with the conditions. (Exhibit 46.)

The D.C. Department of Transportation submitted a report dated July 6, 2016 expressing no objection to the application. (Exhibit 45.)

Variance Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for variances from the floor area ratio requirements under § 402.4, the lot occupancy requirements under § 403.2, and the rear yard requirements under § 404.1. The only parties to this case were the Applicant and ANC 8A which expressed support for the application. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking variances from §§ 402.4, 403.2, and 404.1, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without

BZA APPLICATION NO. 19311-A
PAGE NO. 3

substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 353 - the residential development requirements. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 353, that the requested relief can be granted, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 41B1-41B2 – REVISED ARCHITECTURAL DRAWINGS – PART 1 AND PART 2, AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall provide solar panels on the flat roofs of the row houses.
2. The Applicant shall work with DC Water to resolve the issue of the proposed storm sewer extension across Pomeroy Road.

VOTE: 3-0-2 (Anita Butani D’Souza; Frederick L. Hill, and Jeffrey L. Hinkle to APPROVE; Marnique Y. Heath and Peter G. May not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this summary order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

BZA APPLICATION NO. 19311-A
PAGE NO. 4

FINAL DATE OF ORDER: July 25, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX

BZA APPLICATION NO. 19311-A
PAGE NO. 5

DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.