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12-Feb-79

- ~~Partial~~ Expert Report sent to attorney
- Cover letter
- feb 20, 1979 letter

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**Alan Mallach/Associates
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February 12, 1979

**David J. Frizell, Esq.
Frizell, Pozycki & Wiley
Post Office Box 247
Metuchen, New Jersey 08840**

RE: Pozycki et als. v Manalapan

Dear David:

Attached you will find the first half of my report, as we discussed last week, dealing exclusively with the facial features of the Manalapan zoning ordinance. Since Tony's data on vacant/developable land in the various so-called least cost zones was not available by today, and since I will be away until Friday the 16th, I felt it was preferable to put this into the mail to you now, and supplement it with an analysis of the effects of the vacant land data in about a week.

I hope you will find this interesting and useful. After reviewing the ordinance in detail it seems clear to me that, even if the zones were reasonably situated and adequate in size, the ordinance would still fail on its face.

Let me have your reactions to this.

Sincerely,

Alan Mallach

AM:ms
enc.

ZONING ORDINANCE ANALYSIS - MANALAPAN TOWNSHIP

prepared by Alan Mallach Associates

The following analysis is based on the zoning ordinance introduced at the Manalapan Township Committee meeting of January 10, 1979. The analysis deals exclusively with the facial aspects of the ordinance itself; a subsequent analysis, based on the vacant land analysis being done separately, will review the ordinance in the context of the availability and character of the land zoned for the various uses. Since the focus of this analysis is on the question of 'least cost' housing, a short definition of this concept that has been used here precedes the discussion of the ordinance.

Least Cost Housing

Although the New Jersey Supreme Court was hardly obscure in its application of the term 'least cost housing' in the Oakwood at Madison decision, it is nevertheless necessary to frame an operational definition of the term, since certain aspects that are clearly relevant to a zoning ordinance analysis may not have been dealt with explicitly in the decision. There are two elements clearly stated:

- (1) the standards to which housing is to be built shall be not more than is required to meet minimum health and safety needs; and
- (2) there shall be no cost-generating requirements superimposed on the building standards.

With regard to the former, there are clear standards available with regard to many features, such as lot size, density, and floor area, some of which have been promulgated in Supreme Court decisions. The latter is a less precise term; in essence, we believe that the Court is saying that any ordinance feature that can be dispensed with without impairing health and safety needs, or which imposes a burden on the development which need not be imposed; e.g., the facility or service could legitimately be provided by the municipality, must be done away with if the zoning is to be genuinely least cost.

An additional aspect is that of subsidized housing, or low and moderate income housing. Although least cost housing is not by definition the same as low and moderate income housing, the latter is at least a subset of least cost housing. Therefore, the question "assuming subsidies are available, can subsidized housing be built in this zone?" is an additional test of whether the ordinance provisions are genuinely least cost.

The Manalapan Ordinance

The greater part of the Township has been zoned for large lot single family development. These are the R-40 (including R-40/30 and R-40/20 cluster options) and R-20 zones, requiring lots that are slightly under one acre and 1/2 acre in size. In addition to large lots and frontage requirements, these

MANALAPAN ORDINANCE (2)

zones, as can be seen in the Table below, also require interior habitable floor areas well above health and safety requirements. In short, nothing in any of these zones can be (or, most likely, is meant to be by the Township) construed as even remotely least cost.

TABLE 1: REQUIREMENTS OF SINGLE FAMILY & TWO FAMILY ZONES

zone	lot size	minimum habitable floor area				
		interior	corner	1 story	1 1/2 story	2 story
R-40	40,000 ft ²	200'	220'	1500 ft ²	1800 ft ²	2000 ft ²
R-40/30	30,000 ft ² (available only with 50 acre tract and 25% open space dedication)	150'	165'	1400 ft ²	1600 ft ²	1800 ft ²
R-40/20	20,000 ft ² (available only with 30 acre tract and 50% open space dedication)	100'	150'	1200 ft ²	1400 ft ²	1600 ft ²
R-20	20,000 ft ²	100'	150'	1200 ft ²	1400 ft ²	1600 ft ²
R-15	15,000 ft ² (not zoned as such. available as option in RC-2 and RC-4 zones)	85'	125'	1200 ft ²	1400 ft ²	1600 ft ²
RC-1	7,500 ft ² (available only with 50 acre tract and 40% open space dedication)	75'	85'	800 ft ²	1000 ft ²	1200 ft ²
RC-4 2 FAMILY	20,000 ft ² <i>30,000 ft²</i>	85'	125'	1200 ft ² per family without regard to number of stories <i>500 / 550 / 1100</i>		

The township has created, in addition, a series of separate zones in which provision has been made for other uses than large lot single family houses, and in which the argument may be made that they are least cost housing. These zones, and the uses permitted in them, are as follows:

RM	single family houses and townhouses
RC-1	'small lot' single family house clusters
RC-2	single family houses and townhouses
RC-3	townhouses and garden apartments
RC-4	single family houses and 2 family houses.

The table on the following page summarizes the principal requirements of each of these zones. Since each zone mandates various 'packages' of different uses, it is appropriate to analyze (a) the requirements for each use; and (b) the combined effects in each zone.

(1) single family houses: single family houses are required as part of the 'package' in all but the RC-3 zone. In the RM zone, they must meet R-20 standards, and in the RC-2 and RC-4 zones they must meet R-15 standards. Both of these sets of standards is clearly exclusionary, in that large lots as well as large floor areas are required.

TABLE 2: STANDARDS FOR MULTIFAMILY OPTIONS

zone	minimum acres in tract	minimum open space	required percentages of gross acreage			gross density*
			SF	TH	GA	
RM	100 acres	none	60%	40%	0	3.53
RC-1	50 acres	60% 40%	40% 60%	0	0	1.83 2.74
RC-2	40 acres	1/3	1/3	1/3	0	2.82
RC-3	<u>30 acres</u> 15 Acres	1/3	0	1/3	1/3	5.33
RC-4	-----	not specified	-----	-----	-----	3.94 2.70 1.5

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*see narrative for computation of gross density. density for RC-4 assumes all 2 family houses

Handwritten calculations:

7500
1500
345
570

43 | 9500 | 43520
3500
5500

1.5

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On the face of it, the provisions of the RC-1 zone would appear to be more reasonable. 7,500 ft², although not the smallest lot feasible, is on the small size, and 800 ft² floor area, although again not the smallest possible, is as small as a plausible single family detached house is likely to be.

Although the individual lots, however, may only be 7,500 ft², the actual density of development permitted in the RC-1 zone is only ~~1.83~~ dwelling units per acre, which is effectively a large lot zone. This density was calculated as follows: 2.74

- (a) ~~60%~~ ^{40%} of the tract must be set aside for open space, so that roads as well as lots must be located in the remaining 40%.
- (b) if we assume a 50' total right of way for streets, further assume that each street will have a house or lot on either side, and that all lots will be at the minimum 75', the added square footage per lot is 25' (half of 50') x 75 or 1875 ft². Total lot area is 9375 ft².
- (c) if we assume that 10% of the lots are corner lots, which by ordinance must have at least 8500 ft² and 85' frontage and add 85' x 25' for street area, we find that the lot area of 10% of the lots is 8500 + 2125, or 10,625 ft².

thus, the acreage required per lot on the average is

$$\frac{(9375 \times 9) + 10625}{10} = 9500 \text{ ft}^2 \div \frac{.60}{.40} = \frac{15840 \text{ ft}^2}{23750 \text{ ft}^2}$$

a total of ~~23,750~~ ^{15,840} ft² of gross site area is required for each lot on which a house is constructed in the RC-1 zone.

Thus, the overall density of the site is ~~greater than~~ ^{similar to} that of the ~~R-20~~ ^{R-15} zone. Furthermore, a bona fide least cost small lot zone, in our judgement should:

- (a) allow lot sizes without clustering of at very must 6,000 to 7,500 ft² or less;
 - (b) with reasonable clustering, such as a 20% to 30% open space standard, allow lots of 4,000 to 5,000 ft²;
 - (c) allow frontages of 40' to 50'.
 - (d) allow mobile homes to be placed on residential lots. Mobile homes are explicitly prohibited by the Manalapan Township zoning ordinance (21-5.5.m.8)
- (2) townhouses: townhouses are required as part of the 'package' in the RM RC-2 and RC-3 zones. In all cases, the requirements are the same, and are embodied

MANALAPAN ORDINANCE (5)

in the provisions of the RM zone (21-7.5). Although townhouses, as a housing type, are a particularly important least cost housing type, the ordinance contains a variety of provisions which effectively ensure that townhouses will not be least cost:

check setbacks

(a) so-called 'aesthetic' standards such as a maximum of 8 units/structure (21-7.5.d.1.a.5), setback variation or 'zigzag' requirements (a.7 and a.8) and architectural variation requirements (a.1) increase construction costs;

(b) the requirement that all units be constructed for sale (a.2) reduces market flexibility, imposes the requirement that subdivision procedures and fees be imposed, and effectively prevents the only major available source of housing subsidies from being used (see below);

50' setbacks

(c) the requirement that 100 contiguous acres (in the RM zone), 40 in the RC-2 and 20 in the RC-3, be available to utilize the multifamily option works directly against the 'overzoning' standard in the Oakwood decision by reducing the amount of land available to less than that contained in the area zoned;

150' from existing street

(d) the maximum square footage standard for interior floor area of 1250 ft² effectively works as a bedroom ceiling; i.e., a means of discouraging larger units, and thus reducing the number of school children from the development;

(e) the requirement that all units be 150' or more from perimeter boundaries (a.10) is both unnecessary and costgenerating, as it increases infrastructure costs to the development;

(f) the density requirement of no more than 6 DU/acre on site area after subtraction of open space is clearly too low, and well below reasonable health and safety standards.

Generally accepted density standards for townhouses are from 6 to 10 DU per gross acre; i.e., over the total tract. Although the term 'gross' is used in the Manalapan ordinance, the meaning is clearly that of gross acreage (including streets and sidewalks) after subtraction of open space. Unless the gross density is adequate to provide for a high net density, so that significant economies are obtained, the housing is not least cost.

Thus, we conclude that the townhouses permitted in any of the multifamily zones are not least cost housing by any reasonable definition. They are low density, contain arbitrarily cost-generating provisions, are limited in terms of land availability for development as provided under the ordinance, and in addition contain such egregious provisions as 21-7.5.e.1 "sidewalks shall be cleared of snow, etc." .

The requirement that all units be provided for sale prevents application of the Section 8 housing subsidy program to a development in the Township, since, even if there were no other cost-generating provisions in effect, this program provides only for rental housing subsidies. There is no zone in the Township in which one can construct a straightforward apartment or townhouse rental development, and qualify for Federal housing subsidies.

*all apt.
and for
all rental*

MANALAPAN ORDINANCE (6)

(3) Two family houses: two family houses are permitted in the RC-4 zone. Unlike the other 'special' zones, there are no minimum tract or open space requirements in this zone. The provisions, however, are far from least cost:

(a) the effective lot area required is $16,112.5 \text{ ft}^2$ per dwelling unit ($32,225 \text{ ft}^2$ per structure) calculated as done above for the RC-1 zone. This is not small lot or least cost density. The overall site density may not exceed ~~3.94~~ DU/acre
2.70 $500/950/1100 - 2 \text{ story}$

(b) a minimum floor area of 1200 ft^2 is required for each dwelling unit. This is substantially in excess of health and safety requirements for all but the very largest families.

As a result, the provisions of the RC-4 for two family houses do not provide for least cost housing.

(4) garden apartments: garden apartments are permitted in one zone, the RC-3 zone, where they may not occupy more than 1/3 of the tract area (see Table 2). Although the provisions for garden apartments are not as onerous as those governing townhouses, there are still a number of clearly unreasonable ones:

(a) the density requirement of 10 DU/acre, after open space has been subtracted, is clearly too low. Reasonable standards are 10 to 15 DU/gross acre for garden apartments;

(b) the requirement for ~~30~~¹⁵ contiguous acres reduces available land for development, as previously noted with regard to townhouses;

(c) the requirement that units have no more than 2 stories prevents the efficient use of land for apartment development;

(d) the requirement of 1.8 parking spaces per dwelling unit is unreasonably high (standards which varied on the basis of unit size would be preferable)

(e) the requirement of 250 ft^2 per unit for playground space over and above the open space dedication (as we read this ordinance) is unreasonable; a reasonable standard should (1) be linked to the number of children in the development, which can easily be projected; and (2) be included in the open space requirement;

(f) the requirement that 3 bedroom units contain an extra half bathroom is not required by health and safety standards; it is, rather, a convenience standard that should not be imposed by ordinance.

It should be recognized that the floor area standards for garden apartments in the ordinance are not excessive; indeed, are very close to those resulting from the application of the HUD Minimum Property Standards. The fact remains, however, that

MANALAPAN ORDINANCE (7)

for the various reasons cited above, the garden apartment provisions of the ordinance do not provide for least cost housing.

(5) other housing types: It should be noted that there are two other housing types which are generally considered vehicles for provision of least cost housing; (a) mobile homes, which are explicitly prohibited by the ordinance; and (b) mid-rise (four to seven stories) housing for senior citizens, which is specifically provided for under the subsidy programs, and which is prevented by virtue of the height restrictions of the ordinance.

If we turn to the zone districts themselves, a few points can be added. It should be apparent that since none of the components of any of the zoning 'packages' is least cost, none of the packages can be. Indeed, the requirement that the RM, RC-2, and RC-3 zones (all of the multifamily zones) contain at least two separate housing types in separate parts of the tract, is in itself costgenerating, since by requiring a mixture of housing types, standards, and in some cases, tenure arrangements, unrelated either to health and safety or to housing market demand, the sole effect is to increase the difficulties to the developer or sponsor. We have noted that it is impossible to construct a straightforward rental development in the Township, which is, in the final analysis, the housing needed by the lower income households who are not economically in a position to become homeowners.

Overall densities in these zones are extremely low; only in the RC-3 zone does the gross density of the development exceed 4 units per acre. The following is the basis for density calculation by zone:

RM zone

60% single family under R-20 standards as follows:

- (1) 90% interior lots @ $20,000 \text{ ft}^2 + 2,500 \text{ ft}^2 (100 \times 25) = 22,500 \text{ ft}^2$
- (2) 10% corner lots @ $24,000 \text{ ft}^2 + 3,750 \text{ ft}^2 (150 \times 25) = 27,750 \text{ ft}^2$
- (3) average square footage per house in R-20 = $23,025 \text{ ft}^2$ or 1.89 DU/acre

40% townhouses @ 6 DU/acre

$$(6 \times .4 =) 2.40 + (1.89 \times .6 =) 1.13 \quad 2.40 + 1.13 = 3.53 \text{ DU/acre}$$

RC-1 zone

as calculated above, ^{2.74}~~1.85~~ DU/acre

RC-2 zone

1/3 open space providing no dwelling units

MANALAPAN ORDINANCE (8)

1/3 single family under R-15 standards as follows:

- (a) 90% interior lots @ $15,000 \text{ ft}^2 + 2125 \text{ ft}^2 (85 \times 25) = 17,125 \text{ ft}^2$
- (b) 10% corner lots @ $20,000 \text{ ft}^2 + 3125 \text{ ft}^2 (125 \times 25) = 23,125 \text{ ft}^2$
- (c) average square footage per house in R-15 = $17,725 \text{ ft}^2$ or 2.458 DU/acre

1/3 townhouses @ 6 DU/acre

$$(1/3 \times 6) + (1/3 \times 2.458) + (1/3 \times 0) = 2 + 0.82 + 0 = 2.82 \text{ DU/acre}$$

RC-3 zone

1/3 open space providing no dwelling units

1/3 townhouses @ 6 DU/acre

1/3 apartments @ 10 DU/acre

$$(1/3 \times 6) + (1/3 \times 10) + (1/3 \times 0) = 2 + 3.33 + 0 = 5.33 \text{ DU/acre}$$

RC-4 zone

RC-4 zone can be developed either as single family under R-15 or as two family under special RC-4 provisions, or any combination of the two. Single family density under R-15 provisions, as shown above, is 2.458 DU/acre.

two family density is as follows:

- (a) 90% interior lots @ $\frac{3}{20,000 \text{ ft}^2 + 2125 \text{ ft}^2 = 22,125 \text{ ft}^2}$
- (b) 10% corner lots @ $\frac{3}{20,000 \text{ ft}^2 + 3125 \text{ ft}^2 = 23,125 \text{ ft}^2}$
- (c) average square footage per two family house in RC-4 = $\frac{3}{22,225 \text{ ft}^2}$
- (d) average square footage per unit = $\frac{3}{22,225 \div 2 = 11,112.5 \text{ ft}^2}$ or $\frac{3}{2.70} \text{ DU/acre}$

It should be noted that all of these densities involving single lots are maximum densities, and are not likely to be achieved in practice except rarely.

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February 20, 1979

David J. Frizell, Esq.
Frizell, Pozycki & Wiley
Post Office Box 247
Metuchen, New Jersey 08840

Dear David:

As per your request I have reviewed the provisions for Planned Retirement Communities (PRCs) in the Manalapan Township Zoning Ordinance. I am inclined to agree with you that it may be an effective starting point for a zoning remedy in the Township. In addition to removal of the basic provision that residents be limited to senior citizens, however, I feel that there are a number of other provisions that would also have to be deleted before the zoning district could be considered a genuinely least cost remedy:

- (a) setbacks of 150' from all boundary lines are not reasonable;
- (b) a height limitation of 35' is not reasonable;
- (c) requirement that 50% of the tract be dedicated for open space is excessive;
- (d) minimum floor area requirements of 750 ft² for a one bedroom and 900 ft² for a two bedroom unit are excessive.

In addition, it should be noted that the requirement that each tract contain 75 acres, although not inherently undesirable, would be undesirable in the event that the PRC becomes the sole means of building least cost housing in the Township. There should be alternatives available (particularly for small lot single family houses) which could be utilized on smaller parcels. Also, the requirement that the tract have "convenient access to shopping facilities for residents" could be used to turn down otherwise reasonable sites. An alternative would be that the developer provide shopping within the development, or transportation. Finally, there are a variety of requirements specific to senior citizens' needs that would have to be deleted.

Alan

Mallach

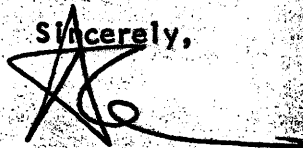
Associates

David J. Frizell (2)

February 20, 1979

I hope that this information is useful to you. I have enclosed a copy of my current vitae, and am looking forward to getting together in March.

Sincerely,

A handwritten signature in black ink, appearing to be 'Alan Mallach', written over the word 'Sincerely,'.

Alan Mallach

AM:ms
enc.