

**ZONING BOARD OF APPEALS
CITY OF CHICAGO**

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ZBA

APR 27 2023

**CITY OF CHICAGO
ZONING BOARD
OF APPEALS**

Connolly Brothers, LLC
APPLICANT

12-23-Z
CALENDAR NUMBER

3135 N. Oakley Avenue
PREMISES AFFECTED

March 17, 2023
HEARING DATE

ACTION OF BOARD

THE VOTE

The variation application is approved.

Brian Sanchez, Chairman
Angela Brooks
Zurich Esposito
Sam Toia

AFFIRMATIVE	NEGATIVE	ABSENT
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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**FINDINGS OF THE ZONING BOARD OF APPEALS
IN THE MATTER OF THE VARIATION APPLICATION FOR 3135 N.
OAKLEY AVENUE BY CONNOLLY BROTHERS, LLC.**

I. SUMMARY

Connolly Brothers, LLC (the "Applicant") submitted a variation application for 3135 N. Oakley Avenue (the "subject property") in order to convert a two (2) dwelling unit building to a three (3) dwelling unit building. The ZONING BOARD OF APPEALS held a public hearing on the Applicant's application. At the public hearing, the Applicant's representative and its witnesses offered testimony in support of the application. The chief of staff for the 32nd ward alderman offered testimony in opposition to the application. After the conclusion of the public hearing, the ZONING BOARD OF APPEALS approved the application.

II. APPLICATION BACKGROUND

The subject property is located in the 32nd Ward of the City of Chicago (the "City"). The subject property is zoned RS-3 and is improved with a two-story principal building (the "building") and a two-story coach house (the "coach house"). The Applicant purchased the subject property in 2020. At that time, the building contained three (3) dwelling units and the coach house contained two (2) dwelling units for a total of five (5) dwelling units on the subject property. When the Applicant applied for a permit to renovate the building, the City challenged the number of legal dwelling units in the

building. At issue was the building's basement unit. The prior owner of the building had applied for a building permit in 2007 that authorized removal of the building's basement unit. This work had never been done, and in consequence, the City's Office of the Zoning Administrator (the "Zoning Administrator") refused to issue the Applicant an official certificate of zoning denial for the subject property. This refusal to issue an official certificate of zoning denial culminated in the Applicant appealing the decision of the Zoning Administrator to this ZONING BOARD OF APPEALS in April 2022.¹ The ZONING BOARD OF APPEALS found that the Zoning Administrator erred in refusing to issue an official certificate of zoning denial. The Applicant subsequently obtained an official certificate of zoning denial for the subject property.

Pursuant to Section 17-13-1101-A of the Chicago Zoning Ordinance, the ZONING BOARD OF APPEALS is authorized to grant a variation for any matter that is expressly authorized as an administrative adjustment. Section 17-13-1003-BB of the Chicago Zoning Ordinance expressly authorizes an administrative adjustment as follows:

17-13-1003-BB Existing Density. In the case of building permit applications for the repair, remodeling, or alteration of a residential building that has been in lawful existence for 20 or more years and in which there is sufficient documentary evidence provided to the Zoning Administrator that the residential building has been converted, altered or used for at least the previous 20 years from the date of application pursuant to this Section for a greater number of dwelling units than existed at the time of construction of the residential building, the Zoning Administrator is authorized to approve an administrative adjustment to make zoning certification for the total density not to exceed more than 1 unit above its original construction.

Therefore, the Applicant submitted a variation application to the ZONING BOARD OF APPEALS.

III. PUBLIC HEARING

The ZONING BOARD OF APPEALS held a remote public hearing² on the Applicant's variation application at its regular meeting on March 17, 2023, after due notice thereof as provided under Sections 17-13-0107-A(9) and 17-13-0107-B of the Chicago Zoning Ordinance and by publication in the *Chicago Tribune* and as continued without further notice as provided under Section 17-13-0108-A of the Chicago Zoning Ordinance. In accordance with the ZONING BOARD OF APPEALS' Rules of Procedure (eff. August 20, 2021), the Applicant had submitted its proposed Findings of Fact. The Applicant's managing member Mr. Bert Connolly and its attorney Mr. Nick Fitkas were present. The Applicant's project architect Mr. Thomas Montgomery was also present. Present and in opposition to the application was Mr. Paul Sajovec the chief of staff for the 32nd ward alderman (the "Alderman"). The statements and testimony

¹ Board Cal. No. 124-22-A.

² In accordance with Section 7(e) of the Open Meetings Act, 5 ILCS 120/1 *et seq.*

given during the public hearing were given in accordance with the ZONING BOARD OF APPEALS' Rules of Procedure and its Emergency Rules (eff. November 1, 2021).³

The Applicant's attorney Mr. Nick Ftikas, of 221 N. LaSalle, Suite 3800, Chicago, IL 60601, offered a brief overview of the application.

The Applicant's managing member Mr. Bert Connolly, of 9147 S. 83rd Court, Hickory Hills, IL 60457, offered sworn testimony in support of the application.

The Applicant's project architect Mr. Thomas Montgomery, of 1701 W. 18th Place, Chicago, IL 60608, offered sworn testimony in support of the application.

Mr. Paul Sajovec the Alderman's chief of staff offered sworn testimony in opposition to the application.

In response to questions by the ZONING BOARD OF APPEALS, Mr. Sajovec offered further testimony.

In response to Mr. Sajovec's testimony, Mr. Connolly offered further testimony.

Mr. Ftikas then offered a brief closing statement.

IV. OVERVIEW OF CRITERIA

Pursuant to Section 17-13-1107-A of the Chicago Zoning Ordinance, no variation application may be approved unless the ZONING BOARD OF APPEALS finds, based upon the evidence presented to it in each specific case, that: (1) strict compliance with the standards of the Chicago Zoning Ordinance would create practical difficulties or particular hardships for the subject property; and (2) the requested variation is consistent with the stated purpose and intent of the Chicago Zoning Ordinance.

Pursuant to Section 17-13-1107-B of the Chicago Zoning Ordinance, in order to determine that practical difficulties or particular hardships exist, the ZONING BOARD OF APPEALS must find evidence of each of the following: (1) the property in question cannot yield a reasonable return if permitted to be used only in accordance with the standards of the Chicago Zoning Ordinance; (2) the practical difficulties or particular hardships are due to unique circumstances and are not generally applicable to other similarly situated property; and (3) the variation, if granted, will not alter the essential character of the neighborhood.

Pursuant to Section 17-13-1107-C of the Chicago Zoning Ordinance, in making its determination of whether practical difficulties or particular hardships exist, the ZONING BOARD OF APPEALS must take into consideration the extent to which evidence has been submitted substantiating the following facts: (1) the particular physical

³ Such Emergency Rules were issued by the Chairman in accordance with his emergency rule-making powers set forth in the Rules of Procedure.

surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the property owner as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out; (2) the conditions upon which the petition for a variation is based would not be applicable, generally, to other property within the same zoning classification; (3) the purpose of the variation is not based exclusively upon a desire to make more money out of the property; (4) the alleged practical difficulty or particular hardship has not been created by any person presently having an interest in the property; (5) the granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located; and (6) the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

V. FINDINGS OF FACT

After careful consideration of the evidence, testimony and the entire record, including the Applicant's proposed Findings of Fact, the ZONING BOARD OF APPEALS hereby makes the following findings with reference to the Applicant's application for a variation pursuant to Section 17-13-1107-A of the Chicago Zoning Ordinance:

1. *Strict compliance with the regulations and standards of the Chicago Zoning Ordinance would create practical difficulties or particular hardships for the subject property.*

The building has remained vacant for the last three (3) years as the Applicant has attempted to obtain a building permit. As such, the legalization of the basement dwelling unit is now a critical to the viability of the Applicant's renovation of the building. As such, strict compliance with the regulations and standards of the Chicago Zoning Ordinance would create practical difficulties or particular hardships for the subject property in that without the variation, the building would be limited to two dwelling units. As Mr. Connolly testified, the third dwelling unit is necessary to make renovation viable. Therefore, without the variation, the building would remain unrenovated, which the ZONING BOARD OF APPEALS finds a particular hardship for the subject property.

2. *The requested variation is consistent with the stated purpose and intent of the Chicago Zoning Ordinance.*

The requested variation will allow for not only the building's basement dwelling unit to be legalized but also for the entire building to be renovated. As such, the requested variation is consistent with the stated purpose and intent of the Chicago Zoning Ordinance, specifically by: (1) promoting the public health, safety and general welfare pursuant Section 17-1-0501 by allowing a currently vacant

building to be renovated; (2) preserving the overall quality of life for residents and visitors pursuant to Section 17-1-0502 by allowing three newly renovated dwelling units to enter the market; (3) protecting the character of established residential neighborhoods pursuant to Section 17-1-0503 as the plans and drawings show that the renovations will keep the present exterior of the building while allowing three currently vacant dwelling units to be considerably improved, especially the basement dwelling unit; (4) maintaining orderly and compatible land use and development patterns pursuant to Section 17-1-0508 by legalizing the existing basement dwelling unit; (5) ensuring adequate light, air, privacy and access to property pursuant to Section 17-1-0509 because the building's setbacks and height will not change; (6) promoting rehabilitation and reuse of older buildings pursuant to Section 17-1-0511 by allowing for the renovation to the building; and (7) maintaining a range of housing choices and options pursuant to Section 17-1-0512 by allowing for the renovation of three currently vacant dwelling units.

After careful consideration of the evidence, testimony and the entire record, including the Applicant's proposed Findings of Fact, the ZONING BOARD OF APPEALS hereby makes the following findings with reference to the Applicant's application for a variation pursuant to Section 17-13-1107-B of the Chicago Zoning Ordinance:

1. *The property in question cannot yield a reasonable return if permitted to be used only in accordance with the standards of the Chicago Zoning Ordinance.*

The building is currently vacant and – from the pictures – is in disrepair. As Mr. Connolly testified, due to the three years it has taken for the Applicant to resolve the zoning issues with respect to the basement dwelling unit, the ability to rent the basement dwelling unit has become critical for financial viability of the renovation. As such, without the requested variation, the ZONING BOARD OF APPEALS finds that the subject property cannot yield a reasonable return.

2. *The practical difficulties or particular hardships are due to unique circumstances and are not generally applicable to other similarly situated property.*

The ZONING BOARD OF APPEALS finds that the practical difficulties or particular hardships are due to the unique circumstances of the Applicant purchasing a property with five (5) dwelling units and then learning that the City only considered four (4) of those dwelling units legal due to the 2007 deconversion permit that was never acted upon. Such circumstances are not generally applicable to other residential property.

3. *The variation, if granted, will not alter the essential character of the neighborhood.*

The ZONING BOARD OF APPEALS agrees with the Applicant that the building itself has been in existence for over fifty years. This can clearly be seen from the pictures of the building. Moreover, the ZONING BOARD OF APPEALS agrees with the Applicant that the basement dwelling unit has existed in the building for at least twenty years since the time the Applicant applied for the variation. This can clearly be seen from the pictures of the gas meters. Indeed, the ZONING BOARD OF APPEALS agrees with Mr. Ftikas' assessment that the building was most likely built with all three units. As such, the variation will not alter the essential character of the neighborhood but will instead allow the building to continue to consist of three residential dwelling units. Again, the variation is solely to allow the legalization of the basement dwelling unit. It will not alter the height or setbacks of the building. The ZONING BOARD OF APPEALS does not at all agree with Mr. Sajovec's contention that the five (5) dwelling units on the subject property would alter the essential character of the neighborhood, especially when there is an eight (8) dwelling unit building on the same block.

After careful consideration of the evidence, testimony and the entire record, including the Applicant's proposed Findings of Fact, the ZONING BOARD OF APPEALS hereby makes the following findings with reference to the Applicant's application for a variation pursuant to Section 17-13-1107-C of the Chicago Zoning Ordinance:

1. *The particular physical surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the property owner as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.*

The topographical condition of the subject property – that is, the fact that the building is improved with three (3) dwelling units but the City will only recognize two (2) of these dwelling units – results in particular hardship upon the Applicant. As Mr. Connolly testified, the basement dwelling unit is critical to the financial viability of the building's renovation. This is much more than a mere inconvenience.

2. *The conditions upon which the petition for the variation is based would not be applicable, generally, to other property within the same zoning classification.*

The ZONING BOARD OF APPEALS finds that the Applicant purchasing a property with five (5) dwelling units and then learning that that the City only considered four (4) of those dwelling units legal due to the 2007 deconversion permit that was never acted upon is a condition that would not be applicable, generally, to other property within the RS-3 zoning classification.

3. *The purpose of the variation is not based exclusively upon a desire to make more money out of the property.*

The variation is intended to resolve a permitting issue created by the prior owner of the building in 2007 and – ultimately – bring the building into full compliance with both the Chicago Zoning Ordinance and the Chicago Building Codes. As such, the purpose of the variation is not based exclusively upon a desire to make more money out of the subject property.

4. *The alleged practical difficulty or particular hardship has not been created by any person presently having an interest in the property.*

The illegality of the basement dwelling unit was created by the prior owner of the subject property when it applied for a permit to deconvert the unit in 2007. The Applicant did not purchase the subject property until 2020; therefore the practical difficulty or particular hardship in this matter has not been created by any person presently having an interest in the subject property.

5. *The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.*

The variation will allow the Applicant to renovate the building and return the three (3) dwelling units to the rental market. The variation will not allow for any changes to the building's height or setbacks. As such, the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the subject property is located. Indeed, the renovation of the building will improve public welfare.

6. *The variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.*

The variation will allow the Applicant to legalize the basement dwelling unit and renovate the building. Since the variation will not alter the building's height or setbacks, the variation will not impair an adequate supply of light and air to adjacent properties. As the building has always contained three (3) dwelling units with no on-site parking, the proposed variation will not substantially increase congestion in the public streets. As Mr. Montgomery testified, renovations to the building will be fully permitted, so the variation will not increase the danger of fire or danger the public safety. As the variation will allow a vacant building to be renovated, the variation will not substantially diminish or impair property values within the neighborhood.

VI. CONCLUSION

For all of these reasons, the ZONING BOARD OF APPEALS finds that the Applicant has proved its case by evidence, testimony and the entire record, including the Applicant's proposed Findings of Fact, covering the specific criteria for a variation pursuant to Sections 17-13-1107-A, B and C of the Chicago Zoning Ordinance.

The ZONING BOARD OF APPEALS hereby approves the Applicant's application for a variation, and the Zoning Administrator is authorized to permit said variation.

This is a final decision subject to review under the Illinois Administrative Review Law, 735 ILCS 5/3-101 *et seq.*

APPROVED AS TO SUBSTANCE

By: 

Brian Sanchez, Chairman

I, Janine Klich-Jensen, staff person for the ZONING BOARD OF APPEALS, certify that I caused this to be placed in the USPS mail, postage prepaid, on 4/27, 2023.


Janine Klich-Jensen