

ZONING BOARD OF APPEALS
CITY OF CHICAGO

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ZBA

JUL 18 2022

CITY OF CHICAGO
ZONING BOARD
OF APPEALS

Connolly Brothers, LLC

APPELLANT

124-22-A

CALENDAR NUMBER

3135 N. Oakley Avenue

PREMISES AFFECTED

April 22, 2022

HEARING DATE

ACTION OF BOARD

THE VOTE

The decision of the Zoning
Administrator is reversed.

Timothy Knudsen,
Chairman
Zurich Esposito
Brian Sanchez
Jolene Saul
Sam Toia

AFFIRMATIVE NEGATIVE ABSENT

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**FINDINGS OF THE ZONING BOARD OF APPEALS
IN THE MATTER OF THE APPEAL OF A DECISION BY THE ZONING
ADMINISTRATOR BY THE CONNOLLY BROTHERS, LLC.**

I. BACKGROUND

Connolly Brothers, LLC (the “Appellant”) owns 3135 N. Oakley (the “subject property”). The subject property is located in a RS-3 zoning district and is currently improved with a two-story principal building at the front of the subject property (the “principal building”) and a two-story coach house (the “coach house”) at the rear of the subject property. The Appellant purchased the subject property in 2020 and began a program of renovation. During its program of renovation, the Appellant discovered that the garden unit of the principal building had never been established as a legal dwelling unit. The Appellant thus attempted to seek an administrative adjustment from the Office of the Zoning Administrator (“Zoning Administrator”) to establish the garden unit of the principal building as a legal dwelling unit pursuant Section 17-13-1003-BB of the Chicago Zoning Ordinance, which reads as follows:

17-13-1003-BB Additional Dwelling Unit. In the case of building permit applications for the repair, remodeling, and/or alteration of buildings that have been in lawful existence for 50 or more years, containing not more than 6 dwelling units, sought to correct Notices of Violation cited by the Department of Buildings, or for the voluntary rehabilitation of such

structures, in which there is evidence that the building has been converted, altered or used for a greater number of dwelling units than existed at the time of its construction, the Zoning Administrator is authorized to approve an administrative adjustment to make zoning certification of the increased density, not to exceed more than 1 unit above its original construction, upon review of documented evidence supporting such increase in density.

The Zoning Administrator informed the Appellant that due to the building permit history for the subject property, namely the September 2007 building permit to deconvert the garden unit, that the Appellant was not eligible for an administrative adjustment. The Appellant then attempted to seek a variation before the ZONING BOARD OF APPEALS pursuant to Section 17-13-1101-A of the Chicago Zoning Ordinance, which reads as follows:

17-13-1101-A The Zoning Board of Appeals is authorized to grant a variation for any matter expressly authorized as an administrative adjustment in Sec. 17-13-1001.

However, the Zoning Administrator denied the Appellant the opportunity to come before the ZONING BOARD OF APPEALS. In particular, the Zoning Administrator refused to issue to the Appellant an official denial of zoning certification.¹ The Zoning Administrator's refusal to issue an official denial of zoning certification was made pursuant to Section 17-16-0503-A of the Chicago Zoning Ordinance, which reads as follows:

17-16-0503-A City officials may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements thereon upon which there is an uncorrected violation of a provision of this Zoning Ordinance or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the City. This provision applies regardless of whether the current property owner or applicant is responsible for the violation in question.

The Appellant appealed such refusal to issue an official denial of zoning certification to the ZONING BOARD OF APPEALS. As part of its request relief, the Appellant asked that the ZONING BOARD OF APPEALS reverse the Zoning Administrator's decision to refuse to issue an official denial of zoning certification to the Appellant. In the alternative, the Appellant asked the ZONING BOARD OF APPEALS to unilaterally legalize the basement garden unit.

II. PUBLIC HEARING

A. The Hearing

¹ An official denial of zoning certification is necessary for a complete application for a variation.

The ZONING BOARD OF APPEALS held a public hearing on the Appellant's appeal at its regular meeting of April 22, 2022, after due notice thereof as provided under Section 17-13-1206 of the Chicago Zoning Ordinance. In accordance with the ZONING BOARD OF APPEALS' Rules of Procedure (eff. August 20, 2021), the Appellant had submitted its proposed Findings of Fact. The Appellant's manager Mr. Neil Connolly and its attorney Mr. Nick Ftikas were present. Assistant Zoning Administrator Mr. Steven Valenziano was present. The statements and testimony 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).²

The Appellant's attorney Mr. Nick Ftikas made his arguments. In particular, he stated that while the Appellant understood that the Zoning Administrator was within its jurisdiction to deny the Appellant an administrative adjustment, the Zoning Administrator could not unilaterally deny the Appellant the right to make its case before the ZONING BOARD OF APPEALS.

The Assistant Zoning Administrator Mr. Steven Valenziano made his arguments. In particular, he testified that as there were uncorrected violations for the subject property (which the September 2007 building permit had been issued to correct) that the Zoning Administrator had withheld the official certification of zoning denial pursuant to Section 17-16-503-A. He further testified that if the Appellant proceeded to correct the outstanding violations under the September 2007 building permit, the Appellant would not be able to legally establish the basement garden unit (as part of the September 2007 building permit was to deconvert the illegal basement garden unit).

In response to these arguments, the ZONING BOARD OF APPEALS asked both Mr. Ftikas and Mr. Valenziano to discuss the contradiction inherent between Sections 17-13-1003-BB and 17-16-0503-A, and after said discussion, asked each party to reconcile the sections in light of Section 17-1-1002 of the Chicago Zoning Ordinance, which reads as follows:

17-1-1002 Conflict with Other City Regulations. If the provisions of this Zoning Ordinance are inconsistent with one another, or if they conflict with provisions found in other adopted ordinances or regulations of the city, the more restrictive provision will control. The more restrictive provision is the one that imposes greater restrictions or more stringent controls on development.

Both parties made their respective arguments.

Mr. Ftikas then provided a brief timeline of events that led the Appellant to the ZONING BOARD OF APPEALS. Mr. Valenziano confirmed this timeline.

B. Criteria

² Such Emergency Rules were issued by the Chairman in accordance with his emergency rule-making powers set forth in the Rules of Procedure.

Pursuant to Section 17-13-1201 of the Chicago Zoning Ordinance, the ZONING BOARD OF APPEALS is granted authority to hear and decide appeals when it is alleged there is an error in any order, requirement, decision or determination by the Zoning Administrator in the administration or enforcement of the Chicago Zoning Ordinance.

Pursuant to Section 17-13-1208 of the Chicago Zoning Ordinance, an appeal may only be sustained if the ZONING BOARD OF APPEALS finds that the Zoning Administrator erred. Pursuant to Section 17-13-1207 of the Chicago Zoning Ordinance, the Zoning Administrator's decision must be granted a presumption of correctness by the ZONING BOARD OF APPEALS, placing the burden of persuasion of error on the Appellants.

III. FINDINGS OF FACT.

After careful consideration of the evidence, testimony and the entire record, the ZONING BOARD OF APPEALS hereby makes the following findings with respect to the Appellants' appeal:

1. The narrow issue on appeal is whether or not the Zoning Administrator erred in refusing to issue the Appellant an official denial of zoning certification.
2. The ZONING BOARD OF APPEALS finds that the Zoning Administrator did err in refusing to issue the Appellant an official denial of zoning certification. The ZONING BOARD OF APPEALS finds that there is an inherent contradiction with respect Sections 17-13-1003-BB and 17-16-503-A of the Chicago Zoning Ordinance. As set forth in Section 17-1-1002 of the Chicago Zoning Ordinance, the more restrictive provision of the Chicago Zoning Ordinance controls. The ZONING BOARD OF APPEALS find that Section 17-13-1003-BB of the Chicago Zoning Ordinance is the more restrictive provision because – by its plain language – it imposes greater restrictions and more stringent controls on the development of the subject property.
3. The ZONING BOARD OF APPEALS declines to consider the Appellant's request to unilaterally legalize the basement garden unit. That is far beyond the scope of the Appellant's appeal. The only issue before the ZONING BOARD OF APPEALS is whether or not the Zoning Administrator erred in refusing to grant the Appellant an official denial of zoning certification.

IV. CONCLUSION

For all of these reasons, the ZONING BOARD OF APPEALS finds that the Appellants have met their burden of persuasion that the Zoning Administrator has erred as required by Section 17-13-1208 of the Chicago Zoning Ordinance.

Pursuant to Section 17-13-11207 of the Chicago Zoning Ordinance, the ZONING BOARD OF APPEALS hereby reverses the decision of the Zoning Administrator, and the Zoning Administrator is hereby ordered to issue the official denial of zoning certification to the Appellant.

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: _____



Timothy Knudsen, 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 7/18/, 2022.

