

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2019CH04084

OLD TOWN TRIANGLE ASSOCIATION, an Illinois not-for-profit)
corporation, and KATHRYN HYER,)

Plaintiffs,)

v.)

THE ZONING BOARD OF APPEALS OF THE CITY OF)
CHICAGO, BLAKE SERCYE, in his official capacity as a member)
of the Chicago Zoning Board of Appeals, SOL FLORES, in her)
official capacity as a member of the Chicago Zoning Board of)
Appeals, SAM TOIA, in his official capacity as a member of the)
Chicago Zoning Board of Appeals, SHAINA DOAR, in her official)
capacity as a member of the Chicago Zoning Board of Appeals,)
AMANDA WILLIAMS, in her official capacity as a member of the)
Chicago Zoning Board of Appeals, WILLIAM J. DEAKIN,)
individually and as trustee of the WILLIAM J. DEAKIN TRUST, and)
LISA M. DIEHLMANN, individually and as trustee of the LISA M.)
DIEHLMANN TRUST,)

Defendants.)

Case No.

**VERIFIED COMPLAINT FOR ADMINISTRATIVE REVIEW
AND DECLARATORY RELIEF**

Plaintiffs OLD TOWN TRIANGLE ASSOCIATION, an Illinois not-for-profit corporation (“OTTA”) and KATHRYN HYER (collectively, “Plaintiffs”), by their counsel, REYES KURSON, LTD., for their Complaint for Administrative Review and Declaratory Relief against Defendants THE ZONING BOARD OF APPEALS OF THE CITY OF CHICAGO (“ZBA”), and, in their official capacities as members of the ZBA, Defendants BLAKE SERCYE, SOL FLORES, SAM TOIA, SHAINA DOAR, and AMANDA WILLIAMS, and also Defendants WILLIAM J. DEAKIN, individually and as trustee of the WILLIAM J. DEAKIN TRUST (“Deakin Trust”) and LISA M. DIEHLMANN, individually and as trustee of the LISA M. DIEHLMANN TRUST (“Diehlmann Trust”) (collectively, William Deakin, the Deakin Trust, Lisa Diehlmann and the Diehlmann Trust are referred to as “Applicant-Defendants”), state as follows:

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INTRODUCTION

1. The primary purpose of the OTTA is to preserve and protect the historical property within the Old Town Triangle District, one of Chicago's oldest landmark districts. As discussed below, this is a case where, well before they went to hearing before the ZBA to request variations, Applicant-Defendants and their attorney started working behind the scenes – without complying with Chicago ethics rules on lobbying -- to obtain support from City officials and others. They also waited until a stop work order was issued to disclose or discuss their plans with either the OTTA or other concerned neighbors.

2. The Old Town District was designated a landmark in 1977 to preserve the unique historic and architectural character and aesthetic of the residential neighborhood known as the Old Town Triangle. It is a civic treasure enjoyed not just by its residents, but by the people of Chicago and countless tourists who take biking and walking tours through the District every day. This case illustrates that the OTTA's job is an essential, and often difficult, one. There are those, like the Applicant-Defendants here, who are, or claim to be, drawn to the Old Town Triangle by its historic charm, but believe that the very rules that have preserved the District against a growing onslaught of modifications and development should not apply to them. Applicant-Defendants knew when they bought the 100+ year old historically significant residential building that it was a landmarked building, but then decided it needed dramatic changes to accommodate their needs. They planned, among other things, to create a separate apartment unit that could be rented out, but the most controversial change was to add a new structure, a garage, in the front yard facing a primary street that was packed with landmarked homes – without garages. The garage was drastically out of character with the rest of the block and the District.

3. Applicant-Defendants stalled until the eleventh hour before having any real discussions with or making any meaningful disclosures about their plans to the OTTA and their neighbors, but they

and their attorney did make the time to talk with various City officials about those plans, apparently engaging in unregistered lobbying as part of the process. These tactics were designed to discourage real scrutiny by the ZBA when it came time for the hearing and, unfortunately, they seemed to have worked. At the hearing, the Applicant-Defendants did not produce evidence or testimony that spoke to or met the standards for obtaining a variance and relied largely on emotional appeal. OTTA and its experts and members, including the individual Plaintiff, participated in the hearing, submitting evidence and testimony showing the gaping holes in Applicant-Defendants' evidence and failure to address or meet the relevant standards for obtaining variations, but it fell on deaf ears. The ZBA's final decision essentially adopted Applicant-Defendants' proposed findings of fact and ignored OTTA's and they unanimously approved the Variation Application. (A true and correct copy of the final decision is attached as Exhibit A.) The ZBA's final decision is against the manifest weight of the evidence, lacks evidentiary support and does not include the detailed findings of fact expressly required when granting a variation; the decision also is invalid as the product of a violation of the ethics laws.

PARTIES

Plaintiffs And Their Standing

4. Plaintiff OLD TOWN TRIANGLE ASSOCIATION, is an Illinois not-for-profit corporation in good standing and a community organization ("OTTA"). Its principal place of business is 1763 North North Park Avenue, Chicago Illinois 60614. OTTA's stated purpose is to improve conditions of life, work, recreation, health and safety, foster and develop a neighborhood plan, work to maintain the historic, landmark buildings and district around those buildings; and to host, aid, assist and sponsor neighborhood activities in the Old Town Triangle area of Chicago, which is bounded by North Avenue, Clark Street and the former Ogden Avenue. The Old Town Triangle District landmark designation was approved by the City Council on September 28, 1977.

5. As discussed further below, prior to the hearing in this matter, counsel for the OTTA advised the ZBA that they would formally object to Applicant-Defendants' requested variations and submitted detailed proposed findings of fact in opposition to the Variation Application, as well as a list of witnesses who would provide opposition testimony at the hearing. They also submitted letters in opposition to the Variation Application. At the hearing, no one objected to OTTA's participation and, through its counsel, OTTA introduced evidence, put on lay witnesses and expert witnesses and cross-examined the Applicant-Defendants' witnesses.

6. Plaintiff, KATHRYN HYER ("Ms. Hyer"), is a resident of Chicago, Cook County, Illinois, who resides at 1828 North Lincoln Park West, Chicago, Illinois, 60614, which is less than 250 feet from 1848 North Lincoln Avenue. Ms. Hyer is a longstanding member of the OTTA. Ms. Hyer lives in a house which, like many others on the block, has been designated as architecturally significant. The requested variations adversely affect her property. She entered her appearance at the hearing and objected to the requested variations. She also testified and submitted a letter to the ZBA that her property would be substantially affected by the requested variation.

7. Section 11-13-7 of the Illinois Municipal Code provides, in relevant part, that:

"[a]ny property owner within ... 250 feet ... who entered his or her appearance and objected at the board of appeals hearing, and who shows that his or her property will be substantially affected by the outcome of the decision of the board may, without proof of any specific, special, or unique damages to himself or herself or his or her property or any adverse effect upon his property from the proposed variation or special use, seek judicial relief from any order or decision of the board of appeals under the Administrative Review Law"

65 ILCS 5/11-13-7.

Defendants

8. Defendant ZBA is established pursuant to Article 11 of Title 17 of the Municipal Code of Chicago, Illinois, and has jurisdiction to, *inter alia*, hear appeals from any order, requirement, decision or determination made by the Zoning Administrator of the City of Chicago. The ZBA's principal place

of business and current address is 121 North LaSalle Street, Chicago, Illinois 60602. On information and belief, this also is the address of the principal place of business of the individually-named ZBA member defendants listed below in Paragraphs 9-13, below.

9. Defendant, BLAKE SERCYE, at all relevant times was the Chair of and a member of the ZBA. On information and belief, he resides in Illinois.

10. Defendant, SOL FLORES, is and at all relevant times was a member of the ZBA. On information and belief, she resides in Illinois.

11. Defendant, SAM TOIA, is and at all relevant times was a member of the ZBA. On information and belief, he resides in Illinois.

12. Defendant, SHAINA DOAR, is and at all relevant times was a member of the ZBA. On information and belief, she resides in Illinois.

13. Defendant, AMANDA WILLIAMS, is and at all relevant times was a member of the ZBA. On information and belief, she resides in Illinois.

14. Defendant, WILLIAM J. DEAKIN TRUST, upon information and belief, is a holder of beneficial interest in real estate bearing PIN 14-33-408-017-0000 commonly known as and located at 1848 North Lincoln Avenue, Chicago, IL 60614 (the "Property").

15. Defendant, WILLIAM J. DEAKIN, upon information and belief, is a resident of Chicago in Cook County, Illinois and is a trustee and beneficiary of the WILLIAM J. DEAKIN TRUST.

16. Defendant, LISA M. DIEHLMANN TRUST, upon information and belief, is also a holder of beneficial interest in the Property.

17. Defendant, LISA M. DIEHLMANN, upon information and belief, is a resident of Chicago in Cook County, Illinois and a trustee and beneficiary of the LISA M. DIEHLMANN TRUST.

JURISDICTION AND VENUE

18. Under Section 11-13-13 of the Municipal Code, 65 ILCS 11-13-13, final decisions of the ZBA are subject to judicial review under the Administrative Review Law, 735 ILCS 5/3-101, *et seq.* (the “Administrative Review Law”). There has been a final administrative decision by the ZBA in this matter, Resolution/Calendar Number 404-18-Z, that is subject to review. *See* Exhibit A. Under Section 3-104, of the Administrative Review Law, the Circuit Court of Cook County has jurisdiction and venue over this action because the hearing culminating in the final decision was held in Chicago, Illinois in Cook County. Venue also is proper because the Property is in Cook County. *See* 735 ILCS 5/3-104.

19. This Complaint is timely filed pursuant to Section 3-103 of the Administrative Review Law, by reason of being filed before March 29, 2019. The final decision was served upon Plaintiffs when it was mailed on February 22, 2019; March 29, 2019 is within thirty-five (35) days after that date.

20. This Court also has subject matter jurisdiction to grant declaratory relief because (1) there is an actual and justiciable controversy between Plaintiffs and the ZBA and Applicant-Defendants, Ill. Const. 197, Art. VI, Sec. 9; and (2) Plaintiffs seek a declaratory judgment, 735 ILCS 5/2-701. This Court has personal jurisdiction over the ZBA and its members, as well as the Applicant-Defendants, because the ZBA’s principal place of business is in and the ZBA members and Applicant-Defendants reside in Illinois and the conduct at issue here occurred in Illinois. 735 ILCS 5/2-209.

RELEVANT FACTS COMMON TO ALL COUNTS

The Property

21. The Property at issue here, real estate bearing PIN Number 14-33-408-017-0000, commonly known as and located at 1848 North Lincoln Avenue in Chicago, Illinois 60614 (the “Property”), is classified as Residential Multi-Unit District, RM-5, and is located within the boundaries of the Old Town Triangle District, a multi-block zone designated by the Commission on Chicago

Landmarks (“Landmark Commission”) as a landmark district (the “District”). This designation, as noted in the final decision, *see id.* at 1 n.1, was approved by the City Council on September 28, 1977.

22. The Property when purchased had been designated by the Landmark Commission as a building that “contributes” to the District; it was a three-story residential building that had been split into and used as apartments. The Property has frontage on both North Lincoln Avenue and on North Lincoln Park West without an intervening alley, and therefore meets the definition of a “through lot” under Section 17-17-02177 of the Chicago Zoning Ordinance.

Defendants-Applicants Acquire The Property And Set To Work On Expanding It Before Seeking A Variation Or Allowing Any Community Scrutiny

23. On information and belief, the Applicant-Defendants purchased the Property in 2015.

24. Applicant-Defendants at some point decided that they wished to convert the Property into a single-family residence for their family. The planned construction was intended to increase the living space in the building generally, incorporate an elevator, create a small apartment unit and to add a new structure, an attached one-story garage with a roof deck, facing onto Lincoln Park West.

25. Much later, on July 9, 2018, in order to obtain the variations necessary to accomplish such major changes, Applicant-Defendants would file with the ZBA an application for a “variation to reduce: (1) the front setback feature [on North Lincoln Park West] from the required 20' to 12'; (2) the north and south side setback from 2' to 0'; (3) the combined side setback from 5' to 0'; and (4) the open space along the north and south end of the lot from 5' to 0' on each side.” (“Variation Application”).

26. Well before the Variation Application was filed, however, Applicant-Defendants were taking steps to redevelop the Property. In November of 2017, they got a permit from the City of Chicago Department of Buildings to convert the Property to a single-family home. They began construction.

27. It was only after multiple calls and complaints by neighbors and members of the OTTA, who noticed that there was substantial excavation going on at the Property, that the Buildings Department realized it had made an error in granting the permit. A stop work order was issued.

28. OTTA reached out to Applicant-Defendants to discuss their plans. Defendant-Applicants put them off. There had been no mention of the planned garage. It was not until August of 2018 that OTTA and their neighbors saw any plans or were able to talk with Applicant-Defendants in any detail about them. When they finally learned of the garage, OTTA and its members and other neighbors tried in good faith to work with Applicant-Defendants to come up with a plan to accommodate both their concerns about preserving the historic character of the District generally and Lincoln Park West more specifically and Applicant-Defendants' concerns with accessibility. There were talks for several months and the hearing on the Variation Application was continued, but it proved fruitless. OTTA even, at its own expense, had an architect who specialized in accessibility issues prepare an alternative plan for the garage. Applicant-Defendants rejected it.

29. Further, on information and belief, during essentially this same time period between July 9, 2018 when the Variation Application was filed, and December 21, 2018 when the ZBA hearing took place, and possibly for several months before that, Nick Ftikas, the attorney for Applicant-Defendants, had a series of meetings, conversations and email exchanges with the local alderman, Michelle Smith (both separately and also with her Chief of Staff), about the Property. Upon information and belief, during this period, to garner support Mr. Ftikas had communications about the Property with representatives of the City of Chicago Department of Planning and Development Permit Review Staff, and with the Mayor's Office for People with Disabilities and with the Landmarks Commission.

30. On information and belief, Mr. Ftikas was not during this period, and is not now, registered with the City of Chicago Board of Ethics as a lobbyist for the Property or Applicant-Defendants. Lobbyist registrations may be accessed at <https://data.cityofchicago.org/Ethics/Lobbyist-Data-Lobbying-Activity/pahz-egmi/data>.

Standards for Zoning Variations

31. Sections 17-13-1107-A, B, and C of the Chicago Zoning Ordinance set out the requirements for approving a variation. The ZBA only can approve a variation if it makes findings based on evidence showing:

1. strict compliance with the regulations and standards of this 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 this Zoning Ordinance. (See Sec. 17-1-0500).

Id. at §17-13-1107-A. Regarding (2), some of the things listed as falling within the stated purposes and intent of the Zoning Ordinance are: protecting the character of established residential neighborhoods, implementing the policies and goals contained with officially adopted plans, and maintaining orderly and compatible land use and development patterns. *See* Sec. 17-1-0503, 506 and 508.

32. In determining practical difficulties or particular hardships, the ZBA 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 this 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.

Chicago Zoning Ordinance §17-13-1107-B (emphasis in original).

33. In its review of the evidence, the ZBA also must consider the following factors:

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;
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.

Chicago Zoning Ordinance §17-13-1107-C (emphasis in original).

34. Furthermore, if the ZBA *approves* a variation, it is required to make *specific* findings of fact. *See* Chicago Zoning Ordinance, §17-13-1107-A, *supra*, (ZBA “may not approve a variation “unless it makes findings, based upon the evidence presented to it...”); *Kimball Dawson, LLC v. City of Chicago Dep’t of Zoning and City of Chicago Zoning Board*, 369 Ill. App. 3d 780, 788 (1st Dist. 2006).

Chicago Ethics Ordinance Lobbyist Registration Requirements

35. Section 2-156-005 of the Chicago Ethics Ordinance defines a “lobbyist” as:

any person who, on behalf of any person other than himself, or as any part of his duties as an employee of another, undertakes to influence any legislative or administrative action, including but not limited to: . . . (2) a zoning matter . . . or (10) any other determination made by an elected or appointed City official or employee of the City with respect to the procurement of goods, services or construction; provided, however, that a person shall not be deemed to have undertaken to influence any legislative or administrative action solely by submitting an application for a City permit or license or by responding to a City request for proposals or qualifications.

The term “lobbyist” shall include, but is not limited to, any attorney, accountant, or consultant engaged in the above-described activities; provided however, that an attorney shall not be considered a lobbyist while representing clients in a formal adversarial hearing ...

See id. at §2-156-005.

36. Section 2-156-210 of the Chicago Ethics Ordinance provides that:

[e]ach lobbyist shall register and file reports with the board of ethics as provided in this Article. This section shall extend to any person who undertakes to influence

any legislative or administrative action as any part of his duties as an employee of another, regardless of whether such person is formally designated as a lobbyist by his employer.

See id. at §2-156-210.

37. Section 2-156-510 of the Chicago Ethics Ordinance provides that:

All city contracts shall include a provision requiring compliance with this chapter. Any contracts negotiated, entered into, or performed in violation of any of the provisions of this chapter shall be voidable as to the city, including any contract entered into with any person who has retained or employed a non-registered lobbyist in violation of Section 2-156-305 for the purpose of, negotiating, soliciting or otherwise seeking the contract. *Any permit, license, ruling determination or other official action of a City agency applied for or in any other manner sought, obtained or undertaken in violation of any of the provisions of this chapter shall be invalid and without any force or effect whatsoever.*

See id. at §2-156-510 (emphasis added).

The December 21 Hearing on the Variation Request

38. The hearing on the Variation Request took place on December 21, 2018.

39. Prior to the hearing both OTTA and Applicant-Defendants by their counsel had submitted proposed findings of fact to the ZBA, as well as supporting materials including letters from neighbors and others who supported and objected to the Variation Application.

Applicant-Defendants' Case

40. At the hearing, Mr. Deakin testified that the requested variations, including the attached one-story garage, were designed to meet certain standards of the Americans with Disabilities Act (“ADA”) to be accessible to his daughter, who uses a wheelchair.

41. Applicant-Defendants presented the testimony of their architect, Mr. John DeSalvo (“Mr. DeSalvo”). He testified that to make the attached garage ADA accessible, it had to have an 18' wide interior. He testified that as the Property already has 0' side setbacks and as the existing interior stair is located on the very edge of the home, the Applicant-Defendants required a 0' side setback for the elevator penthouse. He testified that because the Property is a through lot, the Applicant-Defendants also require

a front feature setback reduction from Lincoln Park West for the parking component. He testified that due to the Property's irregular size and shape and the location of the existing home on the Property, there is not enough space or area on the Property to meet the 20' required front feature setback. Mr. DeSalvo also testified he was attempting to make the garage meet ADA standards and provide sufficient loading and unloading space for a handicap vehicle and handicap equipment.

42. Applicant-Defendants' counsel conceded at the hearing that they were not required to make the Property ADA-compliant. Neither Mr. Deakin nor Mr. DeSalvo professed to be an ADA or accessibility expert.

Plaintiffs' Case

43. Plaintiff OTTA next presented its case, including the testimony of several of its members, including Plaintiff Ms. Hyer, as witnesses.

44. Ms. Karen Peterson ("Ms. Peterson") testified that she currently resided at 1810 North Lincoln Park West and that she was a licensed real estate broker in the City for 32 years who in the course of her career, had sold approximately 50 properties in Old Town. She testified that because prior to its sale the Property had been leased, occupied and lived in, it yielded a reasonable rate of return without a garage and that other properties in the Old Town area without a garage also yielded reasonable rates of return. She testified that she was aware of 70 properties in Old Town that have sold without a garage or access to parking since 2010. She testified that adding both a roof deck and a garage to the subject property would increase the value of the property because having a garage in Old Town was a luxury. She testified that having two dwelling units would substantially increase the Property's value because you could use the rental income from the smaller unit to help pay the property taxes.

45. OTTA presented the testimony of Ms. Denise Arnold ("Ms. Arnold"), an architect specializing in accessibility codes and laws. Ms. Arnold testified that the majority of her work was: (1) helping people with disabilities; (2) reviewing accessibility codes for Fair Housing Act ("FHA")

complaints; and (3) helping other architects with accessibility code compliance. She testified that the ADA typically does not apply to private housing. She testified that for private housing you look to the FHA, which provides the minimum requirement for the mode of entry into a home. She testified that the Illinois Accessibility Code (the "Code") was what provided for things like clear floor space, the ability to transfer from a wheelchair to a toilet and the location of grab bars. She testified that she did not see anything of this nature in the Applicant-Defendants' plans and drawings. Ms. Arnold testified that, even if the ADA did apply, the Applicant-Defendants' proposed plans for the garage did not meet ADA standards and that she did not believe the design would be accessible because:

- the garage door was too low for a handicapped-accessible van,
- there was no accessible gate or route adjacent to the garage, meaning there would be no accessible access point for the rear of the home to street level,
- the proposed garage was designed at a slope, leaving a person in a wheelchair in danger of tipping over backward.

46. Ms. Arnold testified that the only way to get a true 1:12 (or 8.33%) maximum slope with a level landing after 30', which is what the Illinois Accessibility Code required, was a 40' driveway. She testified that she did not believe losing first floor living space for a garage would be a hardship and that it was most important to make the upper living floors fully accessible for the daughter. She testified that the extension off the existing building was not necessary to accommodate the elevator and that the proposed roof deck would not be accessible to the daughter.

47. OTTA presented its historian, Ms. Diane Gonzalez, who testified that the 1800 block of North Lincoln Park West, where the Property is located, has 13 "significant" structures -- the highest designation you can seek when looking for landmark status. She testified that this block was one of the most significant in the District. She also testified that, as there were no street-facing garages on the 1800 block of North Lincoln Park West, a garage-dominant design was inconsistent with the character of the neighborhood and it would be more supportive of the District to leave an empty space than erect a garage.

48. Ms. Gonzalez then testified that the OTTA created a neighborhood plan in 1948. She testified that during urban renewal, the OTTA created a second plan which led to the District being given landmark designation by the City Council in 1977. She testified that the OTTA went further and obtained National Historic Register status for the District. She testified that the OTTA followed the standards set forth by the Secretary of the Interior and the National Park Service, as well as the guidelines and restrictions set forth by Landmarks. She testified that constructing a garage in the front of a lot is not consistent with any of these plans. She testified that while garages and stables may have been erected on the back of a lot, they were not allowed on the front of a lot.

49. Plaintiff Kathryn Hyer, a member of OTTA, also testified as an objector, stating that she currently resided at 1828 North Lincoln Park West and that the Property was inconsistent with the neighborhood. She also had submitted to the ZBA a letter describing the adverse effect that granting the Variation Application would have on her significant home and the neighborhood.

The Final Decision And Its Findings Of Fact

50. Applicant-Defendants failed to provide evidence to meet the standards for obtaining a variation.

51. Despite this failure of proof by Applicant-Defendants, and the overwhelming evidence against the Variation Application, on or about February 19, 2019, the ZBA unanimously approved the Variation Application. *See* Exhibit A at 1.

52. The Findings of Fact in the ZBA's decision are not "specific" as required by the Zoning Ordinance. Rather, as set forth below, they are general and based largely on Applicant-Defendants' proposed findings rather than the actual evidence adduced at the hearing. *See* Exhibit A at 18-22.

COUNT I **ADMINISTRATIVE REVIEW**

53. Plaintiffs re-allege and incorporate Paragraphs numbered 1 through 53, above, as if set forth fully herein.

54. At the ZBA hearing, in opposition to and to object to Applicant-Defendants' Variation Application, the OTTA appeared by its attorney and members, and Ms. Hyer appeared and testified.

55. The ZBA's final decision is reviewable under the Administrative Review Law.

56. The final decision adversely affects Plaintiffs. Each of the Plaintiffs have an interest and stake in the preservation of the District and will suffer the detrimental effects the approved variations will have. The individual Plaintiff lives near the Property and her property will be injured or otherwise adversely affected by the variations the ZBA approved, particularly the new front-facing garage, which is inconsistent with the surrounding landmarked structures and will significantly alter the character of the street and the neighborhood.

57. This action has been brought within the 35 days required by the Administrative Review Law.

58. Applicant-Defendants, as set forth above, did not prove at the hearing that they were entitled to the requested variations.

59. The final decision is against the manifest weight of the evidence. The evidence of record is that, *inter alia*, the Property historically operated without a garage, indicating that it is reasonable for the property to so operate, that other properties within the District that do not have a garage yield reasonable rates of return, that a garage-dominant design is absolutely inconsistent with the essential character of the Old Town Triangle neighborhood, incompatible with the historic buildings on the block and incompatible with the City's character standards, that allowing a front yard parking garage for one family does not promote the common good and would benefit only the Applicant-Defendants, that reducing the setback on the secondary front yard will be a danger to pedestrians, and that accessibility issues can be addressed by other means not disruptive to the character of the neighborhood. At the hearing, Applicant-Defendants never claimed they could not live at the Property without having a garage in the front yard or that there was no other design for a garage that would accommodate accessibility

needs. OTTA presented as an expert an architect specializing in accessibility who testified that the Property could be improved to accommodate those needs while still meeting the requirements of the Zoning Ordinance. Further, she testified that she saw nothing in the Applicant-Defendants' plans that made the garage accessible for a person in a wheelchair and that the sloping floor it included was a tipping hazard. She testified that there were alternative designs, one of which she had prepared and that had been shared with the Applicant-Defendants, that would make the garage accessible and safe and would comply with the Zoning Ordinance as well as the 1949 community plan and the District's 1977 landmark designation ordinance.

60. Further, the ZBA approved Applicant-Defendants' Variation Application without including specific findings of fact, as required by the Zoning Ordinance.

61. For example, the ZBA notes that the Property was irregularly shaped, substandard in size and that its façade and interior stairway could not be altered due to its landmark designation but fails to include any explanation as to how any or all of these conditions prevented Applicant-Defendants from complying with the Zoning Ordinance without practical difficulties or particular hardships. ZBA also failed to distinguish which finding related to which specific variations requested.

62. Additionally, with respect to the stated intent and purpose of the Zoning Ordinance, the ZBA merely quotes the Zoning Ordinance, stating that:

The requested variation protects the character of established residential neighborhoods pursuant to Section 17-1-0504. The requested variation promotes rehabilitation and reuse of older buildings pursuant to Section 17-1-0511 of the Chicago Zoning Ordinance. The requested variation maintains a range of housing choices and options pursuant to Section 17-1-0512 of the Chicago Zoning Ordinance.

See Exhibit A at 19. There is nothing said about how or in what way the requested variations did these things. Applicant-Defendants did not present any evidence that the variations would protect the neighborhood or maintain a range of housing choices.

63. The ZBA's findings also fail to explain how each of the requested variations conforms to Section 17-1-0506 of the Zoning Ordinance, which requires among other things that they implement the policies and goals of adopted plans. Applicant-Defendants offered nothing on this at the hearing. By contrast, the OTTA presented evidence about its community plan dating from 1949 and the District's landmark designation ordinance dating from 1977 and how the proposed variations are inconsistent with such plans. The ZBA similarly failed to explain how each of the requested variations conforms to Section 17-1-0508, which requires that the variations maintain "orderly and compatible land use and development patterns." Again, the Applicant-Defendants did not present any evidence on this.

64. The ZBA's finding that the practical difficulties at the Property are due to unique circumstances and are not applicable to similarly-situated property merely restates findings about the size and shape of the Property. While it cites the analysis of Mr. DeSalvo saying that these circumstances limit where an addition to the building may be placed, the presence of an existing structure always limits where an addition may be constructed. The ZBA made findings that circumstances in this case are unique and inapplicable to similarly-situated properties because the Property contributes to the District. However, when approximately forty percent of the buildings on the block are contributing, it is hard to see the Property as unique in that respect.

65. Apart from and in addition to the above-mentioned problems with the final decision, it appears that unregistered lobbying was involved in Applicant-Defendants' efforts to obtain the requested variations. If so, the final decision is invalid under the City's ethics laws.

66. Judicial review and reversal of the ZBA's final decision is sought for reasons including, but not limited, to:

- (a) The evidence presented by Applicant-Defendants did not support the final decision granting the Variation Application;
- (b) The final decision is arbitrary and capricious, and against the manifest weight of the evidence, which overwhelmingly supports Plaintiffs' contention that the variations should not be approved;

- (c) The final decision did not include the specific findings of fact required by law;
- (d) There was unregistered lobbying in connection with the Variation Application; and
- (e) All other errors that are in the record.

67. Plaintiffs request that the ZBA file an answer consisting of the entire record and transcript of evidence and proceedings from the December 21, 2018 hearing, and any other materials in the administrative record required and allowed by the Administrative Review Law. *See* 735 ILCS 5/3-108.

68. Further, under Section 3-111(a) of the Administrative Review Law, this Court has the power to “stay the decision of the administrative agency in whole or in part pending the final disposition of the case,” to reverse the final decision in whole or in part, or to reverse and remand the final decision and to state the questions requiring further hearing or proceedings and to give such other instruction as may be proper. *See* 735 ILCS 5/3-111(a)(1), (5) and (11).

69. Plaintiffs request a stay of the final decision pending this action.

WHEREFORE, Plaintiffs respectfully request that this Court:

- (a) Review the final decision approving Applicant-Defendants’ Variation Application and enter an order that reverses that decision, or alternatively, remands it with instructions for further hearings or proceedings;
- (b) Enter an order declaring that the final decision is invalid and ineffective under Section of the Chicago Ethics Code§2-156-510 due to Applicant-Defendants’ attorney’s failure to register as a lobbyist;
- (c) Enter an order revoking any permits issued to Applicant-Defendants pursuant to the final decision;
- (d) Stay the Board’s final decision pending resolution of the instant action; and
- (e) grant any additional relief this Court deems appropriate and just.

Count II
DECLARATORY RELIEF

70. Plaintiffs re-allege and incorporate Paragraphs 1 through 52, above, as if set forth fully herein.

71. Pursuant to section 2-701 of the Illinois Code of Civil Procedure, “[t]he court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested.” 735 ILCS 5/2-701(a).

72. There is an actual controversy between Plaintiffs and the ZBA and the Applicant-Defendants.

74. Plaintiffs have been and will be adversely affected by the final decision.

75. As noted above, on information and belief, during a period of several months preceding the December 21, 2018 hearing, the attorney for Applicant-Defendants engaged in lobbying activities on their behalf in connection with the Property without registering as a lobbyist with the Board of Ethics.

76. The Chicago Ethics Ordinance provides that “[a]ny permit, license, ruling determination or other official action of a City agency applied for or in any other manner sought, obtained or undertaken in violation of any of the provisions of this chapter shall be invalid and without any force or effect whatsoever. *See id.* at §2-156-510.

77. On information and belief, unregistered lobbying in violation of the Ethics Ordinance occurred in connection with seeking approval of the requested variations and obtaining the final decision. If that is the case, the final decision is invalid.

WHEREFORE, Plaintiffs respectfully request the following relief:

- (a) A declaratory judgement finding that the final decision is invalid and unenforceable; and
- (b) any additional relief this Court deems appropriate and just.

Respectfully submitted,

By: 
One of Plaintiffs' Attorneys

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Claudette Miller
Ryan Navarra
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Chicago, IL 60661
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

OLD TOWN TRIANGLE ASSOCIATION, an Illinois not-for-profit corporation, and KATHRYN HYER,)

Plaintiffs,)

v.)

THE ZONING BOARD OF APPEALS OF THE CITY OF CHICAGO,)
BLAKE SERCYE, in his official capacity as a member of the Chicago)
Zoning Board of Appeals, SOL FLORES, in her official capacity as a)
member of the Chicago Zoning Board of Appeals, SAM TOIA, in his)
official capacity as a member of the Chicago Zoning Board of Appeals,)
SHAINA DOAR, in her official capacity as a member of the Chicago)
Zoning Board of Appeals, AMANDA WILLIAMS, in her official capacity)
as a member of the Chicago Zoning Board of Appeals, WILLIAM J.)
DEAKIN, individually and as trustee of the WILLIAM J. DEAKIN)
TRUST, and LISA M. DIEHLMANN, individually and as trustee of the)
LISA M. DIEHLMANN TRUST,)

Defendants.)

Case No.)

VERIFICATION

Under penalties as provided by law in accordance with Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in the Verified Complaint for Administrative Review and Declaratory Relief are true and correct, except as to matters stated to be on information and belief, and, as to those matters, the undersigned certifies that she verily believes the same to be true.

Dated: 3/27/19

Old Town Triangle Association

By: Karen Pfendler
Title: President

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

OLD TOWN TRIANGLE ASSOCIATION, an Illinois not-for-profit)
corporation, and KATHRYN HYER,)

Plaintiffs,)

Case No.)

v.)

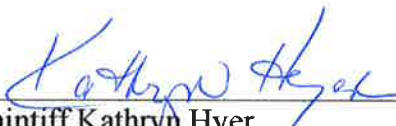
THE ZONING BOARD OF APPEALS OF THE CITY OF)
CHICAGO, BLAKE SERCYE, in his official capacity as a member)
of the Chicago Zoning Board of Appeals, SOL FLORES, in her)
official capacity as a member of the Chicago Zoning Board of)
Appeals, SAM TOIA, in his official capacity as a member of the)
Chicago Zoning Board of Appeals, SHAINA DOAR, in her official)
capacity as a member of the Chicago Zoning Board of Appeals,)
AMANDA WILLIAMS, in her official capacity as a member of the)
Chicago Zoning Board of Appeals, WILLIAM J. DEAKIN,)
individually and as trustee of the WILLIAM J. DEAKIN TRUST,)
and LISA M. DIEHLMANN, individually and as trustee of the)
LISA M. DIEHLMANN TRUST,)

Defendants.)

VERIFICATION

Under penalties as provided by law in accordance with Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in the Verified Complaint for Administrative Review and Declaratory Relief are true and correct, except as to matters stated to be on information and belief, and, as to those matters, the undersigned certifies that she verily believes the same to be true.

Dated: 3/27/2019



Plaintiff Kathryn Hyer

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

OLD TOWN TRIANGLE ASSOCIATION, an Illinois not-for-profit)
corporation, and KATHRYN HYER,)

Plaintiffs,)

v.)

THE ZONING BOARD OF APPEALS OF THE CITY OF)
CHICAGO, BLAKE SERCYE, in his official capacity as a member)
of the Chicago Zoning Board of Appeals, SOL FLORES, in her)
official capacity as a member of the Chicago Zoning Board of)
Appeals, SAM TOIA, in his official capacity as a member of the)
Chicago Zoning Board of Appeals, SHAINA DOAR, in her official)
capacity as a member of the Chicago Zoning Board of Appeals,)
AMANDA WILLIAMS, in her official capacity as a member of the)
Chicago Zoning Board of Appeals, WILLIAM J. DEAKIN,)
individually and as trustee of the WILLIAM J. DEAKIN TRUST, and)
LISA M. DIEHLMANN, individually and as trustee of the LISA M.)
DIEHLMANN TRUST,)

Defendants.)

Case No.)

**AFFIDAVIT/VERIFICATION BY CERTIFICATION
PURSUANT TO SECTION 3-105 OF THE ADMINISTRATIVE REVIEW LAW AND
SECTION 1-109 OF THE CODE OF CIVIL PROCEDURE**

I, Ryan A. Navarra, pursuant to Section 3-105 of the Administrative Review Law, 735 ILCS 3-105 and Section 1-109 of the Code of Civil Procedure, 315 ILCS 5-109, state as follows:

1. I am a legal adult of sound mind, have personal knowledge of the facts stated in this affidavit/verification and, if called upon to do so, could testify competently to those facts.

2. I am an attorney licensed to practice law in the State of Illinois.

3. I execute this affidavit in accordance with Section 3-105 of the Administrative Review Law, 735 ILCS 5/3-105, and Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109.

4. I am one of the attorneys representing the Old Town Triangle Association and Kathryn Hyer, plaintiffs in this matter, and identify the last known address of each defendant upon whom service shall be made by registered or certified mail as follows.

5. On information and belief, the current address of the Zoning Board of Appeals of the City of Chicago ("ZBA") is City Hall Room 905, 121 North LaSalle Street, Chicago, Illinois 60602 according to information contained on its website as well as the return address found on the envelope enclosing its Resolution in this matter mailed to me.

6. On information and belief, the current address of Blake Sercye is City Hall Room 905, 121 North LaSalle Street, Chicago, Illinois 60602 based upon his/her being a member of the ZBA.

7. On information and belief, the current address of Shaina Doar is City Hall Room 905, 121 North LaSalle Street, Chicago, Illinois 60602 based upon his/her being a member of the ZBA.

8. On information and belief, the current address of Sol Flores is City Hall Room 905, 121 North LaSalle Street, Chicago, Illinois 60602 based upon his/her his being a member of the ZBA.

9. On information and belief, the current address of Sam Toia is City Hall Room 905, 121 North LaSalle Street, Chicago, Illinois 60602 based upon his/her being a member of the ZBA.

10. On information and belief, the current address of Amanda Williams is City Hall Room 905, 121 North LaSalle Street, Chicago, Illinois 60602 based upon his/her being a member of the ZBA.

11. On information and belief, the address of William J. Deakin, individually, is 1848 N. Lincoln Avenue, Chicago, Illinois 60614.

12. On information and belief, the additional address of William J. Deakin, individually, is 2170 N. Lincoln Avenue, Chicago, Illinois 60614.

13. On information and belief, the address of William J. Deakin, as trustee of the William J. Deakin Trust is 1848 N. Lincoln Avenue, Chicago, Illinois 60614.

14. On information and belief, the additional address of William J. Deakin, as trustee of the William J. Deakin Trust is 2170 N. Lincoln Avenue, Chicago, Illinois 60614.

15. On information and belief, the address of Lisa M. Diehlmann, individually, is 1848 N. Lincoln Avenue, Chicago, Illinois 60614.

16. On information and belief, the additional address of Lisa M. Diehlmann, individually, is 2170 N. Lincoln Avenue, Chicago, Illinois 60614.

17. On information and belief, the address of Lisa M. Diehlmann, as trustee of the Lisa M. Diehlmann Trust, is 1848 N. Lincoln Avenue, Chicago, Illinois 60614.

18. On information and belief, the additional address of Lisa M. Diehlmann, as trustee of the Lisa M. Diehlmann Trust, 2170 N. Lincoln Avenue, Chicago, Illinois 60614.

19. On information and belief, the address of Nicholas J. Ftikas, is Law Offices of Samuel V.P. Banks, 221 North LaSalle Street, 38th Floor, Chicago, Illinois 60601.

20. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

FURTHER AFFIANT SAYETH NAUGHT

Dated: 3/28/19



One of Plaintiffs' Attorneys

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