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Courtroom Number: 2510  
Location: District 1 Court  
Cook County, IL

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3/28/2019 3:47 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2019CH04084

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# EXHIBIT A

**ZONING BOARD OF APPEALS  
CITY OF CHICAGO**

City Hall Room 905  
121 North LaSalle Street  
Chicago, Illinois 60602  
TEL: (312) 744-3888



**RECEIVED**

**FEB 19 2019**

**CITY OF CHICAGO  
ZONING BOARD OF APPEALS**

**William J. Deakin Trust & Lisa M.  
Diehlmann Trust**

APPLICANT

**1848 N. Lincoln Avenue**

PREMISES AFFECTED

**404-18-Z**  
CALENDAR NUMBER

**December 21, 2018**

HEARING DATE

**ACTION OF BOARD**

**THE VOTE**

The application is approved.

Blake Sercye  
Shaina Doar  
Sol Flores  
Sam Toia  
Amanda Williams

**AFFIRMATIVE    NEGATIVE    ABSENT**

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**FINDINGS OF THE ZONING BOARD OF APPEALS  
IN THE MATTER OF THE VARIATION APPLICATION FOR 1848 N.  
LINCOLN AVENUE BY WILLIAM J. DEAKIN TRUST & LISA M.  
DIEHLMANN TRUST**

**I. BACKGROUND**

The William J. Deakin Trust & the Lisa M. Diehlmann Trust (collectively, the "Applicant") submitted a variation application for 1848 N. Lincoln Avenue (the "subject property"). The subject property is currently zoned RM-5 and is located in the City's Old Town Triangle District (the "District").<sup>1</sup> The subject property is currently improved with a single-family home (the "home"), which home has been designated by the City's Commission on Chicago Landmarks ("Landmarks") as a contributing building of the District. The Applicant proposed to erect a rear addition to the home, which addition would expand the home's livable space, incorporate an elevator and provide an attached garage. To permit this rear addition, the Applicant sought a variation to reduce: (1) the front setback feature 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.

<sup>1</sup> The District was established pursuant to ordinance adopted by the City Council of the City ("City Council") on September 28, 1977, and published in the Journal of Proceedings of the City Council for such date at pages 6058 through 6059.

**APPROVED AS TO SUBSTANCE**

*act. Toia*  
**act. CHAIRMAN**

## II. PUBLIC HEARING

### A. The Hearing

The ZONING BOARD OF APPEALS held a public hearing on the Applicant's variation application at its regular meeting held on November 16, 2018, after due notice thereof as provided under Section 17-13-0107-B of the Chicago Zoning Ordinance and by publication in the *Chicago Sun-Times*, and as continued without further notice pursuant to Section 17-13-0108-A of the Chicago Zoning Ordinance. Forty-Third Ward Alderman Michelle Smith (the "Alderman") was present. The Applicant's trustees (and beneficiaries) Mr. William J. Deakin and Ms. Lisa M. Diehlmann were present. The Applicant's attorney Mr. Nicholas Ftikas, the Applicant's architect Mr. John DeSalvo, and Mr. Deakin and Ms. Diehlmann's daughter Ms. Ava Diehlmann were also present. Also testifying in support of the application were Ms. Mary Rosenberg, Mr. Ken Walden, and Mr. Howard Stoller. The Old Town Triangle Association (the "Association") opposed the application. Testifying in opposition to the application on behalf of the Association were Ms. Karen Pfendler, Ms. Janet Lougee, and Ms. Diane Gonzalez. The Association's attorney Ms. Amy Kursen and the Association's architect Ms. Denise Arnold were present. Also testifying in opposition to the application were Mr. Alan Lougee, Ms. Kathryn Hyer, and Mr. George Blakemore. In accordance with the ZONING BOARD OF APPEALS' Rules of Procedure, the Applicant had previously submitted its proposed Findings of Fact and the Association had previously submitted its Statement of Opposition. With the exception of Mr. Blakemore's testimony, the statements and testimony given during the public hearing were given in accordance with the ZONING BOARD OF APPEALS' Rules of Procedure.

The ZONING BOARD OF APPEALS stated that it expected both the Applicant and the Association to present their arguments fairly so that the ZONING BOARD OF APPEALS would have the evidence it needed to determine whether or not the Applicant's request met all necessary standards for a variation under the Chicago Zoning Ordinance.

The Alderman made a statement stating that although she had facilitated dialogue between the Applicant and the Association, the two parties had not been able to reach an agreement.

The Applicant's attorney Mr. Nicholas Ftikas stated that the subject property was a uniquely shaped polygon that contained 2,339 square feet of total area. He stated that the subject property was designated as a through lot under the Chicago Zoning Ordinance<sup>2</sup> and therefore had frontages on both North Lincoln Avenue and North Lincoln Park West. He stated that the Applicant owned the subject property and that the home on the subject property had been in existence for about 140 years. He stated that North Lincoln Avenue served as the home's primary frontage and that North Lincoln Park West functioned as the rear of the lot. He stated that the subject property had no alley access but that the subject property is served by an existing curbcut off of North Lincoln Park West. He

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<sup>2</sup> See Section 17-17-02177 of the Chicago Zoning Ordinance.

stated that while the home had been separated into a series of apartments, Mr. Deakin and Ms. Diehlmann planned to convert the home back into a single-family residence. He stated that the proposed plan of development for the home included a complete restoration of the masonry façade and the historic windowlines. He stated that the requested variation was for the Applicant's proposed rear addition to the home, including rear livable space, an elevator and an attached one-story garage. He explained to the ZONING BOARD OF APPEALS the technical nature of the requested relief sought and then stated as a commitment to both the community and the Alderman, Mr. Deakin and Ms. Diehlmann would not only be incorporating Chicago common brick as the primary building material for said rear addition but also would be using a carriage-house style door for the proposed garage instead of a typical aluminum mechanical door.

Mr. Ftikas then submitted and the ZONING BOARD OF APPEALS accepted into evidence a copy of the agenda of the Landmarks Permit Review Committee showing the recommendation of approval from Landmarks' staff. In response to questions asked by the ZONING BOARD OF APPEALS, he stated that as the Association's primary concern with the requested variation was the variation's compatibility and consistence with the District, the recommendation of approval from Landmarks' staff helped establish that Mr. Deakin and Ms. Diehlmann's proposed plan of development for the home did not violate the character of the neighborhood.

The Applicant presented the testimony of its co-trustee and beneficiary Mr. William Deakin. Mr. Deakin testified that he currently resided at 2170 N. Lincoln Avenue but that the Applicant owned the subject property. He testified that the subject property was a uniquely shaped polygon with a 25' frontage on North Lincoln Avenue. He testified that North Lincoln Avenue ran on a diagonal at this location and then testified more specifically as to the unique shape of the subject property, in that about halfway back from the North Lincoln Park Avenue frontage, the subject property angles to run perpendicular to North Lincoln Park West.

Mr. Ftikas directed the ZONING BOARD OF APPEALS to the survey and site plan.

Mr. Deakin testified that the subject property did not have access to a public alley and was classified as a through lot under the Chicago Zoning Ordinance as it had two technical fronts. He testified that the primary front was North Lincoln Avenue and the other front was on North Lincoln Park West. He testified that the subject property contained about 2,339 square feet of total lot area which was substandard compared to a standard City lot of 25' x 125'.<sup>3</sup> He testified that the home was currently a 140 year old four-story, four-unit building that spans the width of the subject property. He testified that therefore the home was non-conforming under the Chicago Zoning Ordinance in its present state. He testified that the home has been designated a contributing building of the District. He testified that he planned to renovate and rehabilitate the home so that it is once again a single-family residence. He testified that he planned to reside in said home with his family. He then testified as part of the proposed program of development, there would be a four-story rear addition with an attached one-story garage. He testified that

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<sup>3</sup> A standard City 25' x 125' lot would have 3,125 square feet of total lot area.



said addition with garage was important to him because his thirteen year old daughter Ms. Ava Diehlmann ("Ava") needed the home to be fully accessible.<sup>4</sup> He testified that the proposed attached garage will incorporate interior ramps to and from the proposed elevator. He testified that Ava would use the elevator to access each of the home's four floors. He testified that the proposed attached garage has been designed to meet ADA standards and would allow Ava to directly access the home. He then testified as to other ADA compliant renovations he and Ms. Diehlmann planned to make to the home, such as ADA compliant hallways, bedrooms and bathrooms as well as adjustments to the kitchen.

He testified this need for the home to meet ADA standards drove the design of the proposed development. He testified that he had been working on said design for the last two years. He testified that he and his wife were very fortunate to find a home in the District that had an existing curbcut. He testified that he had inspected the subject property prior to the Applicant purchasing it. He testified that at the time of purchase, he confirmed the subject property contained: (1) an attached accessory building that was an old coal house; and (2) a surface parking space.

Mr. Ftikas stated that pictures of both the coal house and the surface parking space had been included in the Applicant's proposed Findings of Fact.

Mr. Deakin then testified that access to both the coal house and the surface parking space came from the subject property's existing curb cut on North Lincoln Park West. He testified that the Applicant's proposed one-story attached garage maintained the same space and configuration on the subject property as the coal house and surface parking space. He testified that the height of the proposed attached garage would be 12', the same height as the coal house. He testified that although the coal house had been demolished, he had saved the Chicago common brick from the demolition and planned to reuse it in the construction of the proposed garage. He testified that the existing conditions of the coal house and the surface parking space were what made him believe that the home on the subject property could be his family's home.

Mr. Deakin then testified as to the permitting process for the subject property, which in addition to having many reviews by representatives from both Landmarks and the Illinois Historic Preservation Agency ("IHPA") was also the result of a mistake by the City's Department of Buildings ("Buildings"). He testified that such mistake led to Buildings issuing a building permit for the proposed plan of development, including the rear addition with attached garage. He testified that it was only when his architect submitted a building permit revision, that Buildings realized its mistake. He testified that rather than receiving a revised building permit, he instead received a zoning denial letter. He testified that therefore any allegation that the work on the subject property was done without a permit was simply not true.

In response to questions by the ZONING BOARD OF APPEALS, Mr. Ftikas stated the rear of the home is therefore an active construction site. He stated that the Applicant cannot use the building permit due to the need for the requested variation. He stated that

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<sup>4</sup> For clarification, Ava utilizes a wheel-chair.

permitting history of the subject property had been more complicated than it needed to be, especially as the Applicant had not learned that it required a variation until 6 months into construction.

Mr. Ftikas then presented and the ZONING BOARD OF APPEALS accepted into the record letters of support for the Applicant's requested variation.

The ZONING BOARD OF APPEALS noted when it received the Applicant's proposed Findings of Fact and the Association's Statement of Opposition it had been disappointed by the amount of people who implied that the decision of the ZONING BOARD OF APPEALS would be based on popularity. It reminded all present that the ZONING BOARD OF APPEALS did not care about popularity and that it accepted letters in support and in opposition of applications into the record solely for information said letters might contain with respect to the criteria necessary for a variation under the Chicago Zoning Ordinance.

In response to remarks made by Mr. Ftikas, the ZONING BOARD OF APPEALS noted that it always emphasized how important it was to have live testimony instead of letters. It then stated that although having live testimony from adjoining neighbors was helpful, the ZONING BOARD OF APPEALS did not discount testimony simply because one did not live immediately adjacent to the subject property.

The Applicant presented the testimony of its architect Mr. John DeSalvo. Mr. DeSalvo testified that he is a licensed architect in the State of Illinois and has testified before the ZONING BOARD OF APPEALS, Landmarks and other zoning and building approval boards throughout the state. He testified the he is familiar with the subject property. He testified that the subject property is a uniquely shaped, substandard through lot that lacks alley access. He testified that it is located in the District and is improved with the home which is non-conforming under the Chicago Zoning Ordinance. He testified that taken together, these existing lot conditions create practical difficulties or particular hardships that the requested variation will overcome. He testified that his program of development included a contextual addition at the back of the home. He testified that both Landmarks and IHPA had instructed the Applicant that: (1) the front façade had to be restored; and (2) the existing interior stair inside the home had to remain. He testified that as the stair had to remain and as Ava needed an elevator to access the floors of the home, the Applicant needed to put an elevator behind the existing stair. He testified that Landmarks and IHPA indicated that this was fine as long as the elevator was not visible from the street.

He testified that the Applicant needed the proposed rear addition because the ADA accessible hallways and bathroom required more space than there was currently in the home, especially the proposed ADA accessible apartment for Ava in the basement. He testified that therefore the proposed rear addition (excluding the attached garage) pushed out 4' from the north end of the home. He testified that the Applicant was therefore parallel to North Lincoln Park West with its proposed addition. He testified that Landmarks position with respect to the proposed addition was that the front side of the

home was "sacred" but what was done on the rear side of the home was not an issue. He testified that the subject property was an unusual lot that had been created due to the fact the City's grid system was bifurcated by Lincoln Avenue, which ran diagonally. He testified that the subject property was therefore an anomaly. He testified that he believed that when the home was constructed in 1889, the back of the home was used for stabling horses and coal delivery.

He testified that he had tried to be respectful in his proposed plan of development in that the proposed attached garage would mimic the height of the coal house and be comprised of the same type of brick. He testified that to make the attached garage ADA accessible, it had to have an 18' wide interior. He testified that as the home already has 0' side setbacks and as the existing interior stair is located on the very edge of the home, the Applicant required a 0' side setback for the elevator penthouse. He testified that because the subject property is a through lot, the Applicant also requires a front feature setback reduction from Lincoln Park West for the parking component. He testified that due to the subject property's irregular size and shape and the location of the existing home on the subject property, there is not enough space or area on the subject property to meet the 20' required front feature setback. He then testified that with respect to the proposed garage, he is attempting to meet ADA standards and provide sufficient loading and unloading space for a handicap vehicle and handicap equipment. He testified that even so he has been able to design the attached garage so that it does not encroach into the technical front setback (only the front feature setback) for North Lincoln Park West.

In response to questions by the ZONING BOARD OF APPEALS, Mr. Ftikas stated that while no law requires the Applicant to make the proposed addition ADA compliant, in order for Ava to use the home, the proposed addition had to be ADA compliant.

Mr. DeSalvo then testified that Ava would most likely never use the front of the home as there are 3 steps down to the front basement entrance and 12 steps leading to the main front entrance. He reiterated that the Applicant had to keep the front of the home "as is" and that the rear of the home would be her only access.

In response to questions from the ZONING BOARD OF APPEALS, Mr. DeSalvo testified that while he did look at other options in designing the proposed addition, the options – especially the one presented by the Association – were not viable. He testified that the Association's proposal for a garage built underneath the existing home was not viable due to the fact the home was built on a zero lot line with party walls. He testified that the home is 24' wide. He testified in order to create an angled 18' wide garage door underneath the home as the Association proposed, one would have to support the entire rear first floor of the home with a very deep steel beam across the length. He testified that such support would come with hefty liability because one would have to insure that the buildings to the north and south of the subject property would not collapse. He testified that Lloyd's of London might insure such a thing, but he had done similar projects in the past and such projects had either been abandoned or severely damaged other properties.

Mr. Ftikas stated that with the shared party walls, the 140 year old sand foundation of the home and the sand foundation of the existing building to the north of the subject property, there are a lot of variables from a construction standpoint – as well as from a insurance and financial standpoint – that make the project unfeasible.

Mr. DeSalvo then testified that to support the whole back of a 140 year old house was structurally very difficult. He testified such a venture would also be costly, as not only would the home have to be supported but also the adjoining buildings. He testified that he had contacted structural contractors and they had advised him against the Association's proposal. He testified that he also did not agree with the Association's proposal to create a 50' driveway to go into the back of the home.

In response to this, the ZONING BOARD OF APPEALS then asked if there were any other design alternatives that would not have required the requested variation.

Mr. Ftikas stated that as the home was already nonconforming in that it was built on 0' side setbacks, any addition would require a side setback reduction. He then invited the ZONING BOARD OF APPEALS to look at the survey of the subject property and stated that he did not believe there was any scope of work that included a rear addition (even without the attached garage) that would not trigger a variation.

In response to questions from the ZONING BOARD OF APPEALS, Mr. Ftikas reiterated that any addition to the home would require a variation to reduce the side setback. He stated that a rear addition might not require a variation to reduce the rear setback but a side setback reduction would definitely be required as the home existed with a 0' side setback.

Mr. DeSalvo testified that the proposed rear addition is intended to follow the existing wall lines of the home. He testified that this was particularly difficult because of the way the home spans the width of the irregularly shaped lot, even as the lot angles towards Lincoln Park West. He testified that there were no side setbacks provided on the subject property at present. He testified that the Applicant's proposed side setback reduction therefore would not change the existing condition of the subject property. He testified that nevertheless his proposed plan of development provides 2' of side setback on the north side of the proposed garage and 3'11" side setback on the south side of the proposed garage. He testified that these setbacks provided significantly more spacing that one saw on a typical lot-line-to-lot-line rear garage or, in the case of the subject property, the prior coal house.

He testified that he had served as project architect for other residential properties in the District, including a property approximately 200 yards away from the subject property. He testified that he is therefore very familiar with the area and is aware of other front curbcuts, front garages and front parking stalls in the District. He testified that such things were not the predominant condition of the District but that they did exist. He testified that he – along with Mr. Deakin, Ms. Deilhmnn, and Ava – put together a group of photographs depicting ten garage structures that exist in or around the District. He

then submitted and the ZONING BOARD OF APPEALS accepted into the record said photographs.

In response to questions by the ZONING BOARD OF APPEALS, Mr. DeSalvo testified he had been project architect for three properties in the District over the last 10 years. He testified that in that same 10 years, he had been project architect for 50 buildings in the City. He testified that all of these buildings had been in Lincoln Park, Bucktown or Old Town.

He then continued his testimony with respect to the photographs. He testified that one of the depicted garages was very similar to the Applicant's proposed attached garage. He testified that his proposed plan of development is in character with other homes and buildings in the immediate area. He testified that his proposed plan of development provides the most functional rear addition and accessible solution to meet the needs of Mr. Deakin and his family. He testified that his proposed plan of development is a functional response to size and shape of the subject property, the subject property's designation as a through lot and the home. He testified that should the ZONING BOARD OF APPEALS grant the requested variation, said variation would overcome the aforementioned hardships or practical difficulties. He testified that the granting of the requested variation will not be detrimental to the public welfare or injurious to other property in the area. He testified that the requested variation will not impair an adequate supply of light and air to adjacent property. He testified that the requested variation will not increase the danger of fire or endanger the public safety. He testified that the requested variation will not substantially increase congestion in the public street. He testified that the requested variation will not substantially diminish or impair property values. He testified that the requested variation will not alter the essential character of the locality.

The Applicant presented the testimony of Ava. Ava testified that her parents own the subject property and that she hopes to one day live in the home. She testified that she and her parents toured the neighborhood to find other examples of curbcuts and garages that face the street. She testified that in the area bounded by Wisconsin Street to the north, Wells Street to the east, North Avenue to the south and Mohawk Street to the west, there are 18 front curbcuts and 55 garages that face the street. She then submitted and the ZONING BOARD OF APPEALS accepted into the record a lay survey she had done, denoting where she had found both garages and/or curbcuts that face the street.

Mr. Ftikas stated that this concluded the Applicant's case-in-chief.

Ms. Mary Rosenberg, staff attorney at Access Living in Chicago, testified in support of the application.

Mr. Ken Walden, managing attorney at Access Living in Chicago, testified in support of the application.



Mr. Howard Stoller, of 1823 Lincoln Park West, testified in support of the Applicant's application.

In response to questions by the ZONING BOARD OF APPEALS, Mr. Ftikas stated that with respect to reasonable rate of return, the proposed plan of development was not a "developer project." He stated that the Applicant's request was not motivated by financial gain but instead based on a lifestyle need.

The Association's attorney Ms. Amy Kurson was granted leave to cross-examine Mr. DeSalvo. Mr. DeSalvo testified that he was not a structural engineer. He testified he did not agree with the Association's proposed design. He testified that there would be living space on all four floors of the home. He testified that previously the home had been split up into one-bedroom apartments, although he did not actually see anyone living there. He testified that after construction had been completed on the home, there would be a main kitchen as well as a kitchen in the basement apartment. He testified that there would be one family room and one media room. He testified he had not obtained a structural engineer's report or estimates of insurance costs with respect to the Association's design.

The Association presented the testimony of Ms. Karen Peterson. Ms. Peterson testified that she was a licensed real estate broker in the City and had been licensed for 32 years. She testified that she began her career in Old Town. She testified that she had lived in Old Town since 1986 and currently resided at 1810 N. Lincoln Park West. She testified that in the course of her career, she had sold probably 50 properties in Old Town. She testified that she had also managed the 18 unit building at 334 W. Menomonee over the course of 7 years and all units were leased without parking for very high amounts. She testified that because the subject property had been leased, occupied and lived in prior its sale, the subject property yielded a reasonable rate of return without a garage. She testified that other properties within Old Town area also yielded a reasonable rate of return without a garage. She testified that the clients she had worked with over the years wish to live in Old Town because it was beautiful and historic and therefore did not mind the lack of a car. She testified that since 2010, she is aware of 70 properties in Old Town that have sold without a garage or access to parking. She testified that having two dwelling units on the subject property would substantially increase the subject property's value because one could live in the main unit and use the rental income from the smaller unit to help pay for the property taxes. She testified that adding both a roofdeck and a garage to the subject property would also increase the value of the subject property because having a garage in Old Town was a luxury.

In response to questions by the ZONING BOARD OF APPEALS, Ms. Peterson testified that she did not know when the subject property stopped being leased. She testified she did not know what the lease payments were. She testified she did not know why the prior owner sold the subject property.

The Association presented the testimony of Ms. Karen Pfendler. Ms. Pfendler testified that she resided at 1808 North Lincoln Park West and had done so almost her

entire life. She testified that the prior owner of the subject property had had several strokes and had difficulty getting up and down. She testified that he was therefore not able to take care of the subject property. She testified that she believed this was why the subject property was placed on the market. She testified that the subject property had been on the market for 3-4 years as the prior owner was not a man of means and could not take care of the subject property. She testified that she believed due to his physical problems, he had been forced to move into a retirement home.

In response to questions from the ZONING BOARD OF APPEALS, Mr. Alan Lougee, of 1830 and 1832 North Lincoln Park West, testified that 3 other people had resided at the subject property at the same time as the prior owner. He testified that he lived about 100 yards or 200 feet from the subject property. He testified that he could see the space where the proposed garage was to be located from his home.

Ms. Pfendler then testified that the majority of people living in Old Town Triangle lived without a garage. She testified that she did not believe that living without a garage was a hardship and that one should just park on the street. She testified that there are other properties in the Old Town Triangle area without alleys. She testified that 7 listed streets had no alleys and that there are 13 primary residential streets in Old Town Triangle. She testified that she and her brother counted 355 buildings on these primary streets of which 71 had garages. She testified that St. Michael's Court and Fern Court (as well as other streets in Old Town Triangle) had originally been alleys. She testified that many of the pictures that the Applicant had submitted as evidence of garages were originally back-facing to front-facing houses on Sedgwick Avenue and then ultimately incorporated into carriage houses. She testified that they were not freestanding garages but were built into the home and were used as dwelling units.

In response to questions by the ZONING BOARD OF APPEALS, Ms. Pfendler testified that said structures are currently used to put cars in. She testified that, however, Fern Court had not originally been a street but an alley.

In response to further questions by the ZONING BOARD OF APPEALS, Ms. Kurson stated that the 71 number is the number of total garages in the Old Town Triangle not the number of street-facing garages. She stated that the 71 number included street-facing garages.

The Association presented the testimony of Ms. Janet Lougee, of 1830 North Lincoln Park West. She testified that she practiced as an architect. She testified that as the subject property is a through lot, it has two front yards. She testified that she lived directly across the street from the subject property. She testified that she therefore looked at the front yards of the properties across the street. She testified that it would be an anomaly to look at someone's backyard. She testified that this part of North Lincoln Park West is extremely historical, as it had both Victorian-like and German-style homes. She testified that there were five row houses by Louis Sullivan on the street and another set of row houses north of that. She testified that most of the homes were English basement style with the first entry partially up off the street. She testified that she did not have a

garage. She testified that the value of her home had increased with the average rate of increase over the years but that said value was not dependent on whether or not she had a garage.

She testified that she did not agree with prior testimony that the proposed garage was similar to the coal house that previously existed on the subject property. She testified that the coal house, with its funky, multi-colored and psychedelic smokestack, was part of the historic character of the neighborhood. She testified that the coal house was small in scale and had originally held coal. She testified that the coal house was at least 13' away from the street while the proposed garage will be only 12' away from the street. She testified the proposed garage will be 12' high and 20' wide which would be a totally different massing from the prior coal house. She testified that the proposed garage would take away a lot of green space.

The ZONING BOARD OF APPEALS stated that it was only the fact that the proposed addition included an attached garage that triggered the request for the front feature setback reduction. It stated that if the Applicant were just building an addition without an attached garage the front feature setback reduction would not be triggered.

Ms. Lougee testified that this was correct. She then testified that nevertheless one could not build a structure from the standpoint that it was in a historic neighborhood which was not deemed to allow structures to be built. She testified that if one wanted to keep a historic landmark status, one should not be building buildings.

The ZONING BOARD OF APPEALS stated that such an issue was before Landmarks not the ZONING BOARD OF APPEALS.

Ms. Lougee testified that she agreed with this statement and that in this hearing she could only speak to the zoning issues.

Ms. Kurson stated that the subject property was very unique in that it had a curbcut. She stated that while some of the Association's members had opinions on how the curbcut came to exist, she did not think such opinions were particularly relevant other than for the fact that just because the curbcut existed did not grant the Applicant the right or need to erect a garage.

Ms. Lougee testified just because a subject property in a historic district had empty space, it did not mean that it should be filled up just because said empty space was unattractive. She testified that there is a different judgment call as to who decides what may go in the empty space. She testified that if there is precedence of setting a new piece of architecture in a historic district, the historic district would be lost.

The ZONING BOARD OF APPEALS stated it was not a precedence setting body, but that in every case it heard, it did carefully try to understand what each party thought was the character of the neighborhood.



The Association presented the testimony of its architect Ms. Denise Arnold. Ms. Arnold testified that she was an architect that specialized in accessibility codes and laws. She testified that the majority of her work was: (1) helping people with disabilities; (2) reviewing accessibility codes for Fair Housing Act complaints; and (3) helping other architects for accessibility code compliance. She testified that she had analyzed the proposed plan of development and prepared a report summarizing her findings. She testified that such report had previously been submitted to the ZONING BOARD OF APPEALS in the Association's Statement of Opposition and that, in her opinion, the proposed variation was not necessary to accommodate a person with a disability. She testified that she questioned the Applicant's use of "ADA" and "ADA compliant" as nothing she had seen in the Applicant's plans or drawings met any standard. She testified that she did not believe the design for the proposed garage would be accessible at the end of the day. She testified that the floor of the proposed garage is designed at a slope. She testified that the garage door is too short for a handicapped accessible van. She testified that the current design also does not have accessible gates or an accessible route adjacent to the garage. She testified that this meant there would not be an accessible access point for the rear of the home to street level, which would leave Ava trapped in the ground floor level apartment. She testified that she tried to look for solutions that provided more access for Ava.

She then testified that the ADA typically does not affect housing, unless it is transient housing such as hotels, hospitals or extended living facilities. She testified that the actual laws and codes to look at for private housing was the Fair Housing Act ("Act"). She testified that the Act is a very minimum requirement in that it provided a mode of entry into a home but did not necessarily lead to comfortable living if one had a disability. She testified that the Illinois Accessibility Code (the "Code") was the code that provided 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's plans and drawings. She testified that she wished to see the proposed plans be more usable for disabled persons.

She testified that due to the sloped grade of the proposed garage, the garage would not be usable for a person in a wheelchair. She testified that Ava would be in a dangerous situation and would tip over backward. She testified that the reason she provided the Applicant with a 40' driveway was that it allowed for a garage that would be usable for Ava. She testified that the 40' driveway was the only way to get a true 1:12 (or 8.33%) maximum slope with a level landing after 30', which is what the Code required. She testified that she did not believe such a long driveway would be dangerous, even though her design for the garage required one to back up into the garage. 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 Ava. She testified that the extension off of the existing home was not necessary to accommodate the elevator. She testified that the proposed roofdeck would not be accessible to Ava. She testified that Mr. Deakin and Ms. Diehlmann should want to create accessible spaces that would allow for the inclusion of their entire family.

The Applicant presented the testimony of Ms Diane Gonzalez, of 218 W. Menomonee Street. Ms. Gonzalez testified that she was the in-house historian for the Association. She testified that she was one of the members on the committee that sought and obtained landmark designation in both 1977 and 1984.<sup>5</sup>

Ms. Kurson then asked Ms. Gonzalez if the neighborhood had a plan.

Mr. Ftikas objected to such question.

Ms. Kurson argued that the criteria necessary for a variation required the ZONING BOARD OF APPEALS to consider if the neighborhood had a community plan.<sup>6</sup>

The ZONING BOARD OF APPEALS sustained Mr. Ftikas' objection as there was no criteria requiring the ZONING BOARD OF APPEALS to consider the local neighborhood plan.

Ms. Gonzalez then testified that if the variation were granted, the essential character of the neighborhood would be altered. She testified that garage dominant design was absolutely inconsistent with the character of the neighborhood. She testified that there were no street-facing garages on the 1800 block of North Lincoln Park West. She testified that, however, the 1800 block of North Lincoln Park West had 13 significant structures, which was the highest designation one could seek when one is looking for landmark status. She testified that this block was one of the most significant blocks in the District and again reiterated that there were no street-facing garages. She testified that it would be more supportive of the District to leave an empty space rather than erect a garage. She testified that although the District had some coach houses, coach houses came later. She testified that the home on the subject property is from the 1880s. She testified that for the most part coach houses were erected between 1910 and 1920 and were used to house the automobiles of wealthy residents. She testified that servants lived in the upper floors of the coach houses, which was considered quite prestigious. She testified that many of the exhibits presented to the ZONING BOARD OF APPEALS by the Applicant as evidence of garages were actually coach houses and that therefore they were not examples of garages in the neighborhood.

Ms. Kurson then again raised the community plan criteria and specifically quoted Section 17-1-0506.

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<sup>5</sup> The 1977 designation was the designation by City Council of the District. The 1984 designation was a designation by the National Historic Register. At no time was the ZONING BOARD OF APPEALS presented clear evidence as to: (1) whether or not the boundaries of the District were coterminous with the boundaries of the National Historic Register designation; and (2) whether or not the subject property was located within the boundaries of the National Historic Register designation.

<sup>6</sup> Specifically, Ms. Kurson was referring to Section 17-1-0506 of the Chicago Zoning Ordinance, which states that the Chicago Zoning Ordinance was adopted for the purpose of "implementing the policies and goals contained with officially adopted plans, including the Central Area Plan." The list of the City's officially adopted plans is maintained by the City's Department of Planning and Development at: [https://www.chicago.gov/city/en/depts/dcd/provdrs/planning\\_and\\_policydivision/svcs/community-plans.html](https://www.chicago.gov/city/en/depts/dcd/provdrs/planning_and_policydivision/svcs/community-plans.html). Neither the District nor the National Historic Register designation appears on this list.

Ms. Gonzolez then testified that the Association created a neighborhood plan in 1948. She testified that during urban renewal, the Association created a second plan which led to the District designation by City Council in 1977. She testified that the Association went further and obtained National Historic Register status. She testified that the Association 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.

In response to questions by the ZONING BOARD OF APPEALS, Ms. Gonzolez testified that she believed the back of the home to be a primary elevation because it fronts one of the District's most significant streets. She testified that had there been a garage there, it would have been there long before 2018. She testified that the proposed garage is therefore a very new concept for the subject property. She testified that there is a curbcut on the subject property as well as a place to pull one's car in so that it is off the street.

She then testified as to the series of photographs depicting ten garage structures that Mr. DeSalvo had previously entered into the record. She testified that the garage at 227 W. Willow had been erected prior to the establishment of the District. She testified that the garage structure at 321 W. Menomonee was actually a coach house erected between 1910 and 1920. She testified that the garage structure at 213-215 W. Menomonee was mid-century modern and built in the 1960s. She testified that the garage structure at 217-221 W. Menomonee was a very old auto coach house or garage space dating from the 1920s. She testified that the Association was not happy with the existence of the garage structure at 1732 N. North Park, but that she did not believe it was actually a garage and believed it instead opened into a backyard. She testified that she believed 1728 N. North was another garage structure that merely opened into a backyard. She testified that the garage structure at 300 W. Willow was done prior to the establishment of the District and would not be allowed today. She testified that the garage structure at 1729 Orleans was a coach house. She testified that 438 W. Eugenie is a side street and the garage structure shown in the picture belonged to a home that fronts on the main street of St. Michael's Court. She then testified as to the fact that St. Michael's Court, Fern Court, Hudson Court and Crilly Court all have the problem in that it was unclear whether they were streets or alleys.

In response to questions by the ZONING BOARD OF APPEALS, Ms. Gonzalez conceded that they were all currently designed streets, with the exception of Crilly Court which had been vacated in 1912.

She then testified that the garage structure at 1750 N. Sedgwick was new construction made to look like mid-century modern. She testified that the garage structure at 1718 St. Michael Court highlighted the problem of whether St. Michael's court was a street or an alley because it was unclear if the yard beyond the gate was a front yard or a back yard.

She then testified that while these were great examples, they were not all old and they were not seeking designation by Landmarks. She testified that some were, in fact, current additions.

In response to questions by the ZONING BOARD OF APPEALS, she testified that she did not believe that the newer garages in the pictures cut against her argument because the District designation only applied to buildings built before 1930. She testified that anything built after 1930 was not governed by District rehabilitation standards. She testified that she believed the curbcut on the subject property was from the 1990s.

Mr. Lougee testified that the curbcut on the subject property was from 1995. He testified that the curbcut had been denied but that it appeared despite its denial.

Mr. Ftikas stated that the Applicant had a historic photograph of the subject property that it had obtained due to its work with Landmarks. He stated that the photograph was considered circa 1950 and showed the gate at the North Lincoln Park West property line. He stated that even if the curbcut only dated from 1995 that was well before the Applicant owned the subject property. He stated it was the Applicant's contention that the curbcut had been there as far back as 1950.

Ms. Kurson stated that the Association was not asking for the elimination of the curbcut and, in fact, acknowledged the existence of the curbcut. She stated, however, that a curbcut is not probative that one should have a garage.

The ZONING BOARD OF APPEALS stated that while a curbcut does not suggest there has to be a garage it did suggest that there was some sort of activity that would be benefited by a curbcut.

Ms. Kurson stated that there had been a coal house on the subject property and therefore there were probably coal deliveries.

Ms. Gonzalez testified that she did not move into the District until 1974 and in 1974 there was a gate. She testified that the City's Department of Streets and Sanitation picked up garbage at the gate. She testified that the gate allowed people who lived in the home to access North Lincoln Park West. She testified that the curbcut did not arrive until the 1990s.

Ms. Kurson stated that this concluded the Association's case-in-chief.

In response to questions by the ZONING BOARD OF APPEALS, Ms. Gonzalez further testified that at the beginning of the history of the subject property, there might have been a shed or a stable. She testified that if there had originally been a garage, there would still be a garage on the subject property as no one would want to give a garage up. She testified that to her knowledge there had never been a coach house or garage on the subject property.

Mr. Lougee then testified in opposition to the application. He testified that Mr. Deakin and his family had lived at 2170 N. Lincoln Avenue for the last 10 years without a garage. He testified that if Mr. Deakin and his family required a garage, they should have built a garage at 2170 N. Lincoln Avenue. He testified that the home was not subject to ADA standards and accessibility issues could be accommodated by a ramp.

Ms. Kathryn Hyer, of 1838 North Lincoln Park West, testified in opposition to the application. She testified that the Applicant's proposed garage was not consistent in terms of scale, size and style with the neighborhood.

Mr. George Blakemore, address unknown, testified in opposition to the application. He testified that he objected to the variation because the subject property was in the District.

Mr. Ftikas was granted leave to cross-examine Ms. Peterson. Ms. Peterson further testified that when the home on the subject property functioned as a four-dwelling unit, it had no onsite parking. She then testified that she recognized the photograph currently depicted on the presentation screen. She testified that such photograph depicted the North Lincoln Park West frontage of the subject property. She testified that such photograph depicted a parking pad. She testified that such parking pad was not a garage but rather access for a car to go on. She testified that the photograph depicted a car parked on said parking pad. She testified that she did not know when that picture was taken and had never seen a car sitting there. She testified that she had lived on the street since 2011.

Ms. Ftikas was granted leave to cross-examine Ms. Gonzalez. Ms. Gonzalez further testified that the District's designation went through City Council. She testified that when she testified to a neighborhood plan, she meant the guidelines for historic districts set forth by the National Park Service and the Secretary of the Interior. She testified that as Old Town was such a unique neighborhood, Landmarks came up with additional standards. She then testified that although the Association had plans, such plans had not been adopted by City Council.

In response to the Association's testimony, Mr. DeSalvo further testified when he met with Ms. Arnold, he provided the Applicant's proposed plan of development for the subject property. He testified that based on Ms. Arnold's recommendations, he had made the proposed garage door 8'3" in height. He testified that he had always provided an accessible slope to the floor of the proposed garage. He testified that he had provided for a 8% slope ramp on the side of the garage that is 3' wide exclusive of the handrails. He testified that this had always been in his plan but that he had since clarified it on the drawings.

In response to questions by the ZONING BOARD OF APPEALS, Mr. DeSalvo testified that accessibility guidelines called for a slope grade of 8.33%. He testified there was not a risk of Ava tipping in her wheelchair because he was providing less of a slope than the 8.33% allowed by Code. He testified that within the home, his program of

development called for safety handrails, accessible bathrooms, accessible bedrooms and accessible kitchen space. He testified that because the home has certain features that cannot be removed – such as its façade – he did not have the option to clear a floor to make the home fully accessible. He testified that considering alternative plans was not one of the criteria for a variation.

The ZONING BOARD OF APPEALS stated that when it raised questions regarding alternative options, it did so with respect to the criteria that the practical difficulty or particular hardship had not created by a person currently having an interest in the subject property (i.e., a self-created hardship).

In response to questions by the ZONING BOARD OF APPEALS, Mr. DeSalvo testified that he had originally located the elevator at the front of the home but that Landmarks and IHPA had turned down this design. He testified that both Landmarks and IHPA required the existing stair to remain exactly where it was. He testified that, consequently, he had to locate the elevator elsewhere. He testified that he wanted the elevator to remain in close proximity to the circulation of the home, which he believed the current design iteration had achieved by placing the elevator and the stair next to each other and along the north side of the home. He testified that due to this placement, he had to push the elevator back behind the stair and then a bit more so that the elevator would not be visible from the sightlines from the streetscape of North Lincoln Avenue.

Mr. Ftikas stated that the general rule from Landmarks when one was introducing new construction to a contributing building was that the new construction should not be visible from the streetscape.

The ZONING BOARD OF APPEALS stated it was familiar with Landmarks' general rule.

The ZONING BOARD OF APPEALS then thanked both sides for presenting their arguments in such a respectful manner.

Mr. Ftikas then made his closing argument.

Ms. Kurson then made her closing argument.

#### B. Criteria for a Variation

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; 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 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.

### III. FINDINGS OF FACT.

After careful consideration of the evidence, testimony and the entire record, including the Applicant's proposed Findings of Fact and the Association's Statement of Opposition, the ZONING BOARD OF APPEALS hereby makes the following findings with reference to the Applicant's applications for variations 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 subject property is irregularly shaped, is substandard in size, is improved with a nonconforming home and is a through lot. Further, Landmarks has designated the nonconforming home a contributing building of the District; such designation mandates that the home's existing façade and interior stairway cannot be altered. Due to all of this, strict compliance with the regulations and standards of the Chicago Zoning Ordinance would create practical difficulties or particular hardships for the subject property.

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

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.

After careful consideration of the evidence, testimony and the entire record, including the Applicant's proposed Findings of Fact and the Association's Statement of Opposition, the ZONING BOARD OF APPEALS hereby makes the following findings with reference to the Applicant's applications for variations 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.*

As the Applicant will continue to own and Mr. Deakin, Ms. Dielmann and their family will reside at the subject property, reasonable rate of return is, in this instance, more in terms of livability of the home than monetary value. In particular, the ZONING BOARD OF APPEALS notes that the requested variation is so that the home will be fully accessible for Ava. The ZONING BOARD OF APPEALS finds Mr. DeSalvo a very credible witness with respect to the accessibility of the proposed addition.

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

The subject property's irregular shape, substandard lot size, and through lot status are unique circumstances. The ZONING BOARD OF APPEALS agrees with Mr. DeSalvo's testimony regarding the fact that the subject property is an "anomaly" as most residential property in the City corresponds to the classic grid system (i.e., a rectangular lot with one street frontage and a rear alley). Further, the nonconforming home and its designation as a contributing building in the District are also unique circumstances in that they limit where an addition to the home can be placed. These unique circumstances are not generally applicable to other residential property in the City.

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



The variation will allow the Applicant to build the proposed addition. The Applicant's proposed addition has been carefully designed so that it will fit within the character of the District. This careful design is evident in the Applicant's rendering, especially when such rendering is compared to the photographs presented to the ZONING BOARD OF APPEALS by Mr. DeSalvo of other garage structures in or around the District. Moreover, the subject property's North Lincoln Park West frontage has always functioned as the subject property's rear, as evidenced by the gate, the prior coal house and the parking pad. In fact, the proposed addition is a great improvement over the parking pad, especially as the proposed addition will reuse the Chicago common brick saved from the demolition of the coal house.

After careful consideration of the evidence, testimony and the entire record, including the Applicant's proposed Findings of Fact and the Association's Statement of Opposition, the ZONING BOARD OF APPEALS hereby makes the following findings with reference to the Applicant's applications for variations 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 particular physical surroundings of the subject property (i.e., the fact it is bordered by both Lincoln Park and North Lincoln Park West and therefore has two primary frontages), the particular shape (i.e., the irregularly shaped lot and substandard lot size), and the particular topographical condition (i.e., the nonconforming home and designation of the home as a contributing building in the District) result in particular hardship upon the Applicant. Particular hardship results upon the Applicant because if the strict letter of the regulations were carried out and the variation were not granted, the Applicant would not be able to erect the proposed addition. The proposed addition is needed for the home to be fully accessible and so Mr. Deakin, Ms. Dielmann and their family – especially Ava – may live in the home.

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 subject property's irregular shape, substandard lot size, through lot status and nonconforming home that is a contributing building in the District are not conditions applicable, generally, to other property within a RM-5 zoning district.

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

The purpose of the variation is so the home can be fully accessible and so that Mr. Deakin and Ms. Diehlmann and their family – especially Ava – may reside in the home; therefore, 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.*

Mr. Deakin and Ms. Deilhmnn did not create the subject property's irregular shape, substandard lot size or through lot status. They also did not create the nonconforming home and did not create the home's designation as a contributing building in the District.

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.*

Granting the variation will allow the Applicant to erect the proposed addition. As noted above, this proposed addition has been carefully designed so that it will fit within the character of the District. Because the proposed addition will fit within the character of the District and will be located wholly within the subject property, it 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.

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.*

As noted above, the variation will allow the Applicant to erect the proposed addition. Since the 4-story portion of the proposed addition is very minor and the majority of the proposed addition is a 1-story garage, the variation will not impair an adequate supply of light and air to adjacent properties – especially as the immediately adjacent properties share party walls with the home. The proposed addition will not substantially increase congestion in the public streets because although the Applicant is removing the parking pad from the subject property, the proposed addition will have a garage. The proposed addition will not be built unless and until it receives a valid building permit from Buildings and therefore will not increase the danger of fire or endanger the public safety. The proposed

addition will not significantly diminish or impair property values within the neighborhood because the proposed addition has been carefully designed to fit within the character of the District.

#### IV. 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 and the Association's Statement of Opposition, 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.*.