

November 28, 2012

VIA HAND DELIVERY

D C Board of Zoning Adjustment
441 4th Street NW, Suite 210S
Washington, DC 20001

Re BZA Case No 18463 – Pre-Hearing Submission and Motion to Accept Late Filing

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Dear Members of the Board

Enclosed please find one original and 20 copies of the applicant's pre-hearing submission for the above-referenced case scheduled for a public hearing on December 11, 2012

The Applicant requests that the Board waive, for good cause, the requirements of Section 3113.8 and accept this late submission because of ongoing negotiations with the ANC. At its meeting on November 8th, the ANC voted to authorize the single member district representative ("SMD") to negotiate with the Applicant regarding the acceptable number of units for the proposed project. The ANC voted to support the number that the SMD ultimately settled on based on community input and negotiation with the Applicant. The Applicant and the SMD engaged in extensive negotiations that, despite the Thanksgiving holiday, lasted until the night before the pre-hearing submission was due (November 27). While the parties made great progress, unfortunately, the Applicant and ANC were not able to come to complete agreement. However, these ongoing negotiations delayed the Applicant's ability to finalize its submission, and one extra day was necessary to complete the enclosed materials. Because of this extensive effort to reach a compromise with the ANC, the Applicant requests that the Board accept this pre-hearing submission one day late. Because these negotiations were with the ANC (and, indirectly, the community), the rights of any party will not be prejudiced by granting this waiver.

Should you or your staff have any questions, please do not hesitate to contact me

Sincerely,



Cary R. Kadlecsek

Enclosures
DCDOCS\7064693.1

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18463

EXHIBIT NO. 25

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2012, copies of the attached letter and enclosure were delivered via U S Mail or messenger to the following:

ANC 6A
P.O. Box 75115
Washington, DC 20013

Paul Goldstein
D.C. Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024

A handwritten signature in black ink, appearing to read 'Cary Kadlecek', is written over a horizontal line.

Cary Kadlecek

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of CAS Riegler Real Estate Development
ANC 6A

BZA Application No. 18463
Hearing Date December 11, 2012

APPLICANT'S PRE-HEARING STATEMENT

This is the application of CAS Riegler Real Estate Development (the "**Applicant**") for variance relief to allow the conversion of an old school building into an apartment house. The property that is the subject of this application is 901 D Street, NE (Square 938, Lot 809) (the "**Property**") The Property is included in the R-4 Zone District

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment ("**BZA**" or "**Board**") approve a variance from Section 401 (minimum lot dimensions) of the Zoning Regulations (11 DCMR § 401) The Property's lot area permits 21 residential units as a matter-of-right The proposed project provides 25 residential units

The original application requested variances from Section 404 (rear yard) and Section 406 (open court) As described below, this relief is no longer requested

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Section 3103.2 of the Zoning Regulations (11 DCMR § 3103.2)

III. DESCRIPTION OF PROPERTY AND SURROUNDING AREA

The Property is located in the Stanton Park neighborhood of Ward 6 and contains approximately 19,454 square feet of land area, which is considerably larger than nearly all other

properties in the surrounding area. The Property is a corner lot bounded by D Street to the north, a row dwelling to the south, 9th Street to the west, and a row dwelling and a public alley to the east

The Property is improved with a square, three-story brick building constructed as a school (the Edmunds School) in 1903. The building is located at the northwestern corner of the Property and is set back from all adjacent property lines. In fact, the uniform row dwelling streetscape along both D and 9th Streets is interrupted by the large open areas to the east and south of the building. These open areas contain a playground to the south of the building and nonconforming surface parking to the east and southeast of the building. The building was used as a school until 1979, and it is now used by the DC Teachers Credit Union as a commercial credit union. The Property is included in the Capitol Hill Historic District, and the building is contributing to that historic district.

The surrounding neighborhood is almost exclusively residential. To the west, the neighborhood is primarily moderate density residential with two- and three-story row houses and flats, with a church directly across 9th Street. To the north, south, and east, the neighborhood is characterized by moderate density two and three-story row dwellings and flats. Other nearby blocks have similar characteristics.

IV. THE PROPOSED PROJECT

The proposed project will convert and add to the existing historic building to construct a multifamily residential building, thereby returning the block to entirely residential use and closing the streetscape for a uniform appearance. Architectural plans are included in Exhibit A. The Property will be subdivided to create a conforming two-unit flat to the east that is not part of this application. The project will include an addition to the south of the existing building where there is now large gap in the streetscape between the existing building and the adjacent row dwelling. The addition will allow the Applicant to close a gap in the streetscape and to recreate the feeling of a

complete residential block consistent with the rest of the neighborhood. Completing gaps in the streetscape is an important design policy for both historic districts and pedestrian-oriented planning.

In total, the project will include 25 units. The existing school building will be converted to contain 22 units, and the addition to the south of the historic building (on the site of the existing playground) will be three three-story row dwellings.¹ The project will attain a maximum height of 40 feet, will have an irregular conforming rear yard of 26-52 feet (average depth of 33.6 feet), and will provide 13 parking spaces (nine are required) in a surface lot in the rear yard. The parking will be accessed via one curb cut on 9th Street, and a driveway will pass between the existing building and the addition. Because the alley to the east is elevated above the grade of the Property, it is not feasible to access the parking area from the alley. Some of the parking will be partially covered with an accessory structure that will provide a deck for residents. The existing building and the three row dwellings will be connected by a bridge above the driveway so that the project is all one building for zoning purposes.

The conversion of the existing building will result in three levels of apartments. Two of the floors will be above grade, and one floor will be partially below grade. The area between the building and 9th and D Streets will be improved with landscaping and a berm (replacing solid concrete), so some of the lowest-level units will have access to recessed patios. Within the building, a central core will provide an elevator, hallways and first floor concierge area, while the two existing stairwells at the west and east sides of the building will be retained. The apartments will line all four sides of the building. The Applicant carefully designed the apartments so that each would have adequate living space and ample light and air while accommodating the interior columns, bearing walls, stairwells, and existing windows that were located to accommodate the

¹ Since the existing building and row dwellings will constitute one building for zoning purposes, the entire project will be on one record lot.

classrooms in the original schoolhouse. The converted building will contain a mixture of studio, one-, and two-bedroom apartments

In consultation with the Historic Preservation Office (“HPO”), the Applicant designed the conversion and the addition to integrate the project into the historic district and to provide a continuation of the row dwellings for the length of the 9th Street block. In order maintain its historic character and in response to concerns from the HPO, the existing building’s interior will retain the majority of its structural and architectural elements, and the exterior will remain virtually unchanged. These important historic considerations for extensive interior preservation resulted in the necessity of providing the exact number of proposed units in the existing historic building.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The burden of proof for area variance relief is well established. The Applicant must demonstrate that (1) the property is affected by an exceptional or extraordinary situation or condition, that (2) the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that (3) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A 2d 535, 541 (D.C. 1972). As described below, this application demonstrates that the proposed project meets the three-part test for area variance relief.

A. The Property is Affected by an Exceptional Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A 2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. Furthermore, the Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A 2d 1164, 1167 (D.C. 1990),

that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors ” Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

The Property’s exceptional condition arises from the confluence of its building size and shape, the extensive preservation of a historic structure designed as a school, and the presence of an underground heating oil tank. The detached building is unique for its large square shape and interior features in a historic neighborhood dominated by row dwellings and flats. Further, the site has an underground heating oil tank that is no longer used, but it must be removed and the land remediated at considerable expense to the Applicant.

Since the building was designed as a school, it has a deep, thick square shape. The building’s horizontal dimensions are 85 by 83 feet. This deep square shape worked well to accommodate 34 by 24 foot classrooms and large common spaces, but it is not well-suited for an apartment building with a central corridor that requires each unit to have multiple rooms, sufficient and usable living space, windows, and adequate light and air. Effectively, it is 20 feet too wide for a typical double-loaded corridor.

Finally, and most importantly, the presence and extensive exterior and interior preservation of the large contributing historic building creates an exceptional condition. Except for a few minor changes, the building’s exterior will be retained in its entirety. Unlike many other projects that involve conversion of a historic building, this project also will include extensive preservation of the interior, which includes preserving the stairwells, window placement, and columns and radiating bearing walls. The building was designed to accommodate classrooms and pedagogical functions, so it is not well suited to accommodate apartments. The core of the building contains 12 large

masonry columns arranged in the same square shape as the building, and thick masonry bearing walls radiate toward the building's exterior from the columns. The two large stairwells will also be preserved. The windows are spaced to accommodate classrooms that are each one large room. This structural configuration creates a unique and challenging situation for converting the building into residential use. Thus, the Property's exceptional condition arises from its uniquely large size, square shape, and the presence and extensive preservation of the interior of a contributing historic structure that was designed as a school. These factors result in an apartment house conversion that is very atypical of that traditionally found in the R-4 zone.

B Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The appropriate test is whether the strict application of the zoning regulations results in a "practical difficulty." In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that "[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." In area variances, applicants are not required to show "undue hardship" but must satisfy only "the lower 'practical difficulty' standards." Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider "a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty'." Increased expense and inconvenience to applicant for a variance are among the factors for BZA's consideration." Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)), see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include "the severity of the variance(s) requested", "the weight of the burden of strict compliance"; and "the

effect the proposed variance(s) would have on the overall zone plan.” Gilmartin, 579 A 2d at 1171
Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is *burdensome*, not impossible.

The Applicant would be faced with a practical difficulty arising from the shape of the building, the extensive preservation of the interior, and the removal of the underground oil tank if it were to fully comply with the Zoning Regulations with respect to minimum lot area. Section 401 requires that the Property contain a land area of at least 900 square feet per unit for a conversion of building existing prior to 1958 in the R-4 zone into an apartment house. This section of the Zoning Regulations concerns only the conversion of an existing building, so the practical difficulty in this case arises out of the conversion of the existing school building, not the addition of the row dwellings.² In converting the school building, the Applicant would face a practical difficulty arising from the Property’s exceptional conditions if it were required to comply with this land area requirement. The proposed 22 apartments for the existing building is the only number that allows for both functional and marketable units due to the building’s unique, deep square shape. Locating all 25 of the proposed units in the existing building and eliminating the townhouses would be objectionable from a design perspective (uniform streetscape), would be less desirable by the neighborhood (appearance of a completed block), and would result in even more layout challenges.

Based on careful study of the 12 columns and the bearing walls, the Applicant was able to design an apartment house that will provide both habitable rooms (i.e., access to light and air) along the building’s perimeter and functional back rooms (i.e., bathrooms and closets) closer to the building’s center, but this design resulted in 22 optimal apartments. If the Applicant were to decrease the number of units, then the columns and bearing walls would increase the difficulty of

² The Zoning Regulations (Sections 330.5(c) and 401.11) are silent on the issue of an addition to a converted pre-1958 building in the R-4 zone, so the variance relief requested in this case concerns the practical difficulty of converting the existing school building into an apartment house.

achieving apartments that do not have too many dark and narrow spaces. The diagram on page 6 of Exhibit A demonstrates how apartment layouts contain dark and narrow spaces near the building's center, so fewer units would be larger with equal or greater amounts of dark and narrow spaces. Ultimately, the proposed units are the most functional and marketable within the constraints of the existing building. Fewer apartments would be too large, too dark, and too inefficient to be marketable at price that allows for an economically feasible project.

The 12 columns plus the bearing walls that radiate from them in the center of the historic building create an extraordinary design challenge for residential units. The area in the center of the columns occupies 15% of the floor area, most of which would otherwise be used for apartments. However, the presence of the columns forces the units to the outside of the columns along the building's exterior because it is very difficult to design functional apartment space as well as an efficient common hallway inside of the columns. In addition, the spacing of the columns creates a difficulty in organizing the entries to the units. Because of this challenge, fewer units would result in more deeper and larger, more inefficient interior circulation spaces in the apartments as an accommodation to the locations of the entries. If the columns did not exist, then this space could be connected with the perimeter rooms with access to light and air. In turn, this would allow for the placement of the apartment entries in such a way that allows for regularly shaped rooms with better light and air to fewer apartments. However, this is not the case.

As discussed above, the majority of the bearing walls must be retained per discussions with HPO, thereby creating a difficulty for the Applicant in designing efficient and marketable apartments. The locations of the walls and resulting clear spaces between the walls results in an unusual demolition plan that will constrain the room sizes for the apartments, as illustrated in Exhibit B. Partial demolition of the walls is necessary to create openings for adequately sized rooms, otherwise the rooms would be too small to be functional. The bearing walls generally will

bisect rooms in the apartments, so it will be necessary to create openings wide enough to provide continuity in the rooms. More apartments, as proposed, will preserve more of the walls from partial demolition because they can remain as walls separating the apartments, however, fewer apartments would necessitate more demolition to provide openings and continuity between rooms within the apartments.

In addition to the column and wall restrictions, the placement of the windows exceptionally constrains the apartment house design. The windows are in fixed locations that create difficulties in arranging interior partitions between rooms and demising walls between units to maximize the efficiency of the building, as well as ameliorating the unusual condition of the building's width. This condition contrasts with new construction, where full latitude to place windows in optimal locations is possible. In general, the studios must have one window. The one-bedroom apartments must have at least one more window so that the bedroom has its own. The problem is further exacerbated by the two-bedroom apartments, for which each bedroom must have a window. Because of the challenges presented by the existing window placement, it is very difficult to create a layout for 18 matter-of-right units that would be desirable to residents. With a scheme for fewer units, the Applicant would face considerable design challenges creating units that are efficient, functional, and/or have sufficient air and light to the unusually deep and dark interior spaces. In fact, an 18-unit scheme would result in multiple deep and dark units that have fewer windows and some units that have more windows but are excessively large. In either case, the units would be undesirable and unmarketable. The proposed 22-unit scheme for the school building will allow the Applicant to balance the necessity of windows with the appropriate size of the apartments.

In addition, the two large stairwells create a difficulty in locating the apartment entrances so that they are both Building Code-compliant and allow for apartment layouts without excessive dark and narrow spaces. Much like the column placement, the stairwells drive the design in such a way

that fewer than the proposed number of apartments would necessitate overly large units and/or units with excessively dark and narrow spaces.

Once the Applicant accounted for the building's square shape, 12 columns, bearing walls, window placement, and two large stair shafts, the design resulted in 22 marketable apartments. In short, these exceptional conditions drove the design of the conversion. These constraints resulted in a pattern of apartments that will utilize the window lines well and will allow for Building Code-compliant placement of the apartment entrances.³ The average size of the studios will be 510 square feet, the average size of one-bedrooms will be 745 square feet, and the average size of two-bedrooms will be 1375 square feet. This proposed design minimized long, dark, and narrow corridors, it reduced deep interior spaces without access to light and air, and it provided sufficient light and air through the windows to appropriately sized perimeter rooms and spaces. The Applicant conducted extensive market research on the apartment market both in the District and in this neighborhood.

For the 22 proposed apartments, each of these sizes is typical or slightly large for the prices and standards of desirable apartments in this neighborhood, as shown in Exhibit C. This exhibit demonstrates that the one-bedroom units typical in the proposed project (400-800 square feet) would be marketable at a price that allows for an economically feasible project. Since the Applicant is burdened with the additional expense of environmental remediation for removal of the underground oil tank, the cost per unit increases above what is typical for adaptive reuse of a building, so the sale price per square foot must be maintained at or above this level. However, as Exhibit C shows, once units exceed approximately 800 square feet in size, the price per square foot declines to a level that renders the project economically nonviable. Without the requested variance

³ The Building Code requires that entrances be located off a connecting fire-resistant rated corridor with protected access and two means of egress (exit stairs) but cannot be directly accessed from within the exit stairs.

relief, a typical one-bedroom in the existing building would be too large (800-1000 square feet), such that it would be marketable only at a price that is too low for a feasible project given the additional remediation cost.

Furthermore, if the Applicant were to design the conversion to include only 18 or fewer matter-of-right units, then the apartments simply would be unmarketable at a viable price because of the resulting layouts. Because of the constraints of the columns, bearing walls, window placement, and stairwells, 18 units would have several problems rendering them unmarketable at a reasonable price. First, they would be very large simply because of the partitioning of a large existing building the units would increase in size, on average, by 18%, which amounts to nearly 200 square feet for a one-bedroom. The resulting sizes would be considerably larger than the market demands.⁴ Second, each of the apartments would contain long, narrow, and dark spaces to connect them to the common central hallway. Third, the units would be unusually deep and dark because they would not be able to incorporate a sufficient number of windows and because their configurations would have to accommodate the columns and entry placements. While a large apartment alone would not necessarily be unmarketable, a large apartment, with narrow and dark spaces would be difficult to sell at a viable price based on even a cursory understanding of the market. The Applicant can say with confidence that no one would be interested in buying an excessively large apartment with oddly configured rooms and little light at a price that is commensurate with the market. Though fewer units would technically comply with the Zoning Regulations, the Applicant would be faced with a considerable burden because of the extreme difficulty they would have in marketing and selling them due to the Property's unique structure.

⁴ Based on the Applicant's market research, the typical size of a recently-sold new construction one-bedroom (smaller than 800 square feet) in this neighborhood is approximately 638 square feet

C Relief can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan

The requested variance relief would not be detrimental to the public good or the Zone Plan. The proposed addition is compatible with the neighboring buildings and will actually improve the 9th Street streetscape by extending the row of row dwellings for nearly the entire length of the block, giving it a more harmonious appearance and feel.

The thoughtful design of the entire project will integrate well with the neighborhood and will satisfy planning and historic considerations for infill development. The level of density proposed – effectively a small apartment house with three row dwellings – is equally compatible with the surrounding neighborhood. The proposed ratio of land area per unit is 778 square feet per unit, and this is only nominally smaller than the required ratio of 900 square feet per unit. Consequently, the three row dwellings will not create an incompatible level of density in a row dwelling zone and neighborhood by closing a gap in the streetscape. With 22 units proposed for the existing building, the project's density will be only marginally greater than is otherwise permitted as a matter-of-right. Overall, the project will not create an unsuitable level of density since the Zoning Regulations explicitly permit small apartment houses (conversions) and row dwellings in the R-4 zone. The addition of only four units more than what is otherwise permitted as a matter-of-right on such a large property will not impair the intent of the R-4 zone or the Zoning Regulations since the project will provide adequate parking, will not adversely affect the light and air of neighboring properties, will not be visually intrusive, and will not create uses that are incompatible with the neighborhood.

Most importantly, the proposed project will not have a noticeable adverse impact on neighboring properties. The project will enhance the building's exterior historic features, and it will improve the streetscape by eliminating the surrounding concrete and installing landscaping. Also,

the project will provide more parking than is required, so neighbors will not be confronted with adverse parking or traffic impacts. This is particularly true when the current use is considered: as a credit union, the existing use generates large amounts of traffic throughout the day. The proposed residential use will eliminate most of that traffic and will provide more than enough off-street parking to accommodate the demand of the residents.

The project will not adversely impact light or air to neighboring buildings. Because the additions have been designed to conform to the specifications of row dwellings otherwise permitted in the R-4 zone, they will not have any adverse impact to neighboring properties. Similarly, the bridge will not affect neighboring light and air because its placement between the existing building and the addition will make it imperceptible to adjacent properties. All of the apartments in the converted building will be within the envelope of the existing structure, so they, too, will not have any adverse impact on light and air.

The project will maintain a large amount of open space at its rear, so the adjacent properties will not experience restrictions on light and air. The proposed rear yard will be, on average, much deeper and contain much more area than the required minimum, and there will be nominal changes to the exterior of the existing building. Thus, the project will have ample open space to minimize any possible visual intrusion, any sense of excessive density, or any restrictions on light and air to neighboring properties. Because the proposed project will not have an adverse impact on surrounding properties or the public good, it will not impair the intent, purpose, or integrity of the Zone Plan.

VI. EXHIBITS

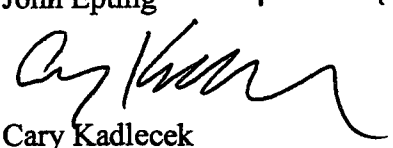
EXHIBIT A	Architectural Plans and Drawings
EXHIBIT B	Demolition Plans
EXHIBIT C	Recently Sold New Construction Apartments in Market Area
EXHIBIT D	Architect's Resume

VII. CONCLUSION

Because of the foregoing reasons, this application satisfies the criteria for area variance relief. The Applicant respectfully requests that the Board approve this application.

Respectfully submitted,
GOULSTON & STORRS, P.C.


John Epting


Cary Kadlecek