

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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BZA Application No.
Hearing Date:

Application of CAS Riegler Real Estate Development
ANC 6A

APPLICANT'S STATEMENT

This is the application of CAS Riegler Real Estate Development (collectively, the "Applicant") for variance relief to allow the conversion of a 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"). A Surveyor's plat is included in Exhibit C. The Property is included in the R-4 Zone District. An excerpt of the Zoning Map is included in Exhibit D.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment ("BZA" or "Board") approve variances from the following section of the Zoning Regulations:

1. Section 401 (minimum lot dimensions): The Property's lot area permits 23 residential units. The proposed project provides 30 residential units.
2. Section 404 (rear yard): The minimum required rear yard is 20 feet for the width of the lot. The proposed rear yard does not extend the width of the lot.
3. Section 406 (open court): The minimum required open court width is 12 feet. A portion of one proposed open court has a width of eight feet.

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18463

EXHIBIT NO.

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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 21,254 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 (Edmunds School) in 1903. The building is located at the northwestern corner of the Property and is set back from adjacent property lines. The Property also contains a playground to the south of the building and 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 working credit union. The Property is included in the Capitol Hill Historic District, and the building is contributing to that historic district.

The surrounding area is almost exclusively residential. To the west, the neighborhood is primarily moderate density residential with two- and three-story rowhouses 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. Architectural plans and photos of the Property are included in Exhibit E. The project will include

additions to both the south and east of the existing building to where there are now large gaps in the streetscape between the existing building and the adjacent row dwellings. These additions will allow the Applicant to close gaps in the streetscape and to recreate the feeling of a complete residential block. Completing gaps in the streetscape is an important design policy for both historic districts and pedestrian-oriented planning. The project will attain a maximum height of 35.3 feet and will provide 14 parking spaces in a surface lot in the rear yard.

In total, the project will include 30 units: 22 units will be in the historic building, and eight units will be in the additions. The addition to south of the historic building (on the site of the existing playground), facing 9th Street, will appear as three three-story row dwellings that will contain a total of four units. The two “row dwellings” closest to the historic building, Townhouses A and B, will contain one unit each, and the “row dwelling” furthest from the historic building, Townhouse C, will be a “flat” containing two units. The addition to the east, facing D Street, (Townhouse D) will also appear as a three-story row dwelling but will contain four units. The additions will connect to the historic building so that the project is all one building for zoning purposes.

The project will not have a fully conforming rear yard since Townhouse D will occupy some of the area of the between the rear of the existing building and the rear property line. Using 9th Street as the front of the building, the rear yard will be the area behind the historic building and the area behind the addition along 9th Street (Townhouses A-C). The rear yard will range in depth from 26 to 52 feet, but it will not extend the full width of the lot.

In addition, the project will create an open court between Townhouse D and the existing building. The court will be 12 feet wide from the ground up to the top of the existing building. There, the existing building has a roof overhang that will narrow the open court to a nonconforming width of eight feet.

The additions have been designed to integrate the project into the historic district and to provide a continuation of the rowhouses for the length of the 9th Street and D Street blocks. But for a few changes to accommodate its conversion into a residential use, the building's exterior will remain virtually unchanged so that it preserves its historic character. This important historic consideration resulted in the necessity of separating the additions and creating the perception that the "row dwelling" additions are separate and distinct from the historic structure.

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 outlined 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 size, building setback, and presence of a historic structure designed and used for a school. The Property is considerably larger than most other lots in its vicinity, and it is surrounded by open gaps in the streetscape on both its 9th and D Street frontages because the building is set back from all adjacent property lines. As discussed previously, this neighborhood, especially west of 9th Street, is predominantly characterized by two and three story row dwellings and flats on small lots. Most buildings also adjoin their property lines. The Property contains more land area than almost any other property in its vicinity and the open space along its two street frontages, because of the building setbacks, is equally unusual for the neighborhood.

Finally, and most importantly, the presence and preservation of the large contributing historic building creates a unique condition. The building will be retained in its entirety, except for a few minor changes to the exterior. The building was designed to accommodate classrooms and pedagogical functions, so it is not well suited in its current state to accommodate apartments. The core of the building contains 12 concrete columns, and the windows are spaced to accommodate classrooms. 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, the building's setbacks from adjacent property lines, its improvement with a large contributing historic structure that was designed and used as a school.

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 presence of the historic building, location of the building, and lot size if it were to fully comply with the Zoning Regulations with respect to lot area, rear yard, and open court.

Without the ability to maximize the number of matter-of-right units, the project would not be feasible. The land value is based on what is permitted as a matter-of-right, so the project would not be financially viable if the land were acquired at a value based on 23 units but only able to provide 22 units. The 12 columns in the center of the historic building create an extraordinary design challenge for residential units. In addition to working around the columns, aligning the units to have windows creates a situation where no more than 22 units work well for the existing

building. Because of the challenges presented by the existing structure, it is very difficult to create a layout for 23 units that would be desirable to residents. With a scheme for 23 units, the Applicant would face considerable design challenges creating units that are efficient and that have sufficient air and light. In fact, a 23-unit scheme results in deep and dark units that would be very difficult to market. Thus, the only way to achieve the full 23 matter-of-right units for the site is to construct an addition. This is where the historic limitations contribute to the practical difficulty.

Historic considerations would not allow for just one addition that partially completed the streetscape gap on either D or 9th Streets. Rather, the entirety of both gaps must be closed to accommodate historic concerns. However, the gaps along both 9th and D Street are so large that only one unit in either location would be so large that it would not be a marketable unit in this neighborhood. Effectively, it would create one large single family dwelling that would be much larger than anything in the neighborhood and not marketable as such a giant house. Therefore, multiple units are necessary in the additions that will fill the gaps in the streetscape. In creating units that are optimal in size for this location and market, the plan resulted in eight units in the additions, which is seven more than permitted as a matter-of-right. The project would not be financially feasible without the proposed number of units.

Similarly, the Applicant would be faced with a considerable burden if it were to provide a rear yard that extends the full width of the site. As discussed above, the building is set back from adjacent property lines that create gaps in the streetscape. If the building were adjacent to one of its property lines, as is typical for this neighborhood, then providing a rear yard would be more consistent with the historic development pattern. However, by constructing an addition, the gap in the D Street streetscape must be closed to accommodate historic concerns. This historic accommodation makes it necessary for another addition along D Street (Townhouse D). Accommodating historic concerns to close both streetscape gaps cannot be accomplished while also

providing a conforming rear yard. The result is that the project will not have a fully conforming rear yard even though the area of the rear yard will exceed what is required.

Further, the Applicant would face a considerable difficulty resulting from the presence of the historic building if it were to provide an open court with a conforming width. Because of historic considerations, the overhang from the existing building cannot be eliminated. Also, the width of Townhouse D cannot be narrowed to accommodate the open court. If the townhouse were narrowed by eight feet, then it would be too narrow to be marketable and would render the project infeasible because of the Applicant's inability to construct a marketable unit.

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 additions are compatible with the neighboring buildings and will actually improve the streetscape. The thoughtful design 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 four flats – is equally compatible with the surrounding neighborhood. With 30 units proposed for the Property, the project's density is not much greater than is otherwise permitted as a matter-of-right.

More importantly, the proposed project will not have a noticeable adverse impact on neighboring properties. 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 enough off-street parking to accommodate the demand. Also, the additions will not adversely impact light or air to neighboring buildings. Because the additions have been designed to mimic row dwellings,

they will be no different than what could be constructed as a matter-of-right elsewhere in the neighborhood. Further, the project will maintain a large amount of open space at its rear, so many of the adjacent properties will not experience disruptions in their available light and air.

The proposed rear yard may not extend the full width of the site, but the proposed rear yard will range from 26 to 52 feet deep. Thus, it will provide a separation to allow for adequate light and air to adjacent properties. In addition, the area of the proposed rear yard (4,838 square feet) will exceed the area of the required rear yard of 26 feet deep for its entire width (4,159 square feet). Only the row dwelling directly to the east and adjacent to Townhouse D will be impacted, but if Townhouse D were on a separate lot it could be constructed as matter-of-right. Further, most of the Property's eastern property line borders a public alley, which will further buffer residences to the east. Thus, the impact of the proposed addition would be the same or less than if another conforming row dwelling were constructed in the same location.

Finally, the proposed open court will not adversely impact light or air available to either the existing building or Townhouse D. As described above, the court will be wider than required for most of its height; it is only because of the overhang that it is narrower than required. That the court has a nonconforming width is merely a technicality: this narrower width only occurs with the overhang, so it would be imperceptible to anyone in Townhouse D or the existing building that it is anything less than 12 feet wide. Surrounding properties would be unaffected by this proposed open court width. Because the proposed project will not have an adverse impact on surrounding properties, it will not be detrimental to the public good or the Zone Plan.

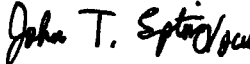
VI. EXHIBITS

EXHIBIT A	Application Form, Self-Certification Form, and Authorization Letters
EXHIBIT B	Statement in Support
EXHIBIT C	Surveyor's Plat
EXHIBIT D	Excerpt of Zoning Map
EXHIBIT E	Architectural Plans and Drawings, including Photos of Property
EXHIBIT F	Names and Addresses of all Property Owners within 200 Feet of the Property

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