

BEFORE THE BOARD OF ZONING ADJUSTMENT  
OF THE DISTRICT OF COLUMBIA

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Application of CAS Riegler Companies  
ANC 2F

APPLICANT'S STATEMENT

This is the application of the CAS Riegler Companies (the "**Applicant**") for variance and special exception relief to allow the construction of a mixed-use multifamily residential building with ground-floor retail. The property that is the subject of this application is 1101 Rhode Island Avenue NW and 1100 Q Street NW (Square 310, Lots 33 & 807) (the "**Property**"). A Surveyor's plat is included in Exhibit C. The Property is included in the C-2-A 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 the six following areas of relief from the Zoning Regulations:

1. Variance from Section 2604.1 (floor area ratio): The maximum permitted FAR, as modified by this section, is 3.0. The proposed FAR is 3.15.
2. Variance from Section 2604.2 (lot occupancy): The maximum permitted residential lot occupancy, as modified by this section, is 75%. The proposed lot occupancy for only the first floor is 90%.
3. Variance from Section 2101.1 (off-street parking): The required parking for the project is 20 spaces. The project will provide 13 parking spaces.

BOARD OF ZONING ADJUSTMENT  
District of Columbia  
CASE NO. 18668  
EXHIBIT NO. 4

4. Variance from Section 2115.1 (size of parking spaces): The required size for parking spaces is nine feet wide and 19 feet long. Eight of the parking spaces will have compact dimensions of eight feet wide and 16 feet long.
5. Variance from Section 2116.12 (setback of parking spaces from lot lines): Parking spaces within a structure shall be set back at least 20 feet from lot lines abutting a public street. Three of the parking spaces in the underground garage are set back less than 20 feet from the lot line abutting Rhode Island Avenue.
6. Special exception under Section 411.11 (roof structure): The roof structure shall be set back from all exterior walls a distance equal to its height and must have walls of equal height. Portions of the roof structure will not be set back at a 1:1 ratio from some exterior walls, and it will have walls of varying heights.

## **II. JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations (11 DCMR §§ 3103.2 and 3104.1).

## **III. DESCRIPTION OF PROPERTY AND SURROUNDING AREA**

The Property is located in the Logan Circle/Shaw neighborhood of Ward 2 and contains approximately 11,172 square feet of land area. The Property is an irregularly-shaped through lot bounded by Q Street and row dwellings to the north, Rhode Island Avenue to the south, 11<sup>th</sup> Street

to the east, and a 10-foot wide public alley to the west. The grade of the Property increases from south to north.

The Property is currently used as a parking lot, repair center, and office for taxis. Much of the Property is covered in asphalt, and a small building occupies the northern end of the site. Prior to its use as a taxi service center, the Property contained a gas station for which the underground storage tanks may still remain. The exiting building will be razed, and the site will undergo extensive environmental remediation to allow for the new mixed-use building.

The surrounding area is a mix of residential, commercial, and municipal uses. To the west, the neighborhood is primarily moderate density residential with flats, apartment buildings, and two- and three-story townhouses. To the north across Q Street, the properties are improved primarily with moderate and medium density apartment buildings. Across 11<sup>th</sup> Street to the east is a large public park: the Shaw Recreation Center and Cardozo Playground. Across Rhode Island Avenue to the south are flats, small commercial uses, and small apartment buildings. Further south along 11<sup>th</sup> Street are moderate density mixed-use, residential, and commercial buildings containing apartments, retail, and small offices. The Applicant's offices occupy a building one block to the south at 11<sup>th</sup> and P Streets.

#### **IV. THE PROPOSED PROJECT**

The proposed project will remove an undesirable detrimental taxi lot and enliven an under-used corner to construct a sustainable, mixed-use building with apartments and ground-floor retail. Architectural plans and photos of the Property are included in Exhibit E. The ground-floor retail will occupy the corner of 11<sup>th</sup> and Rhode Island and further west along Rhode Island Avenue. Apartments, underground parking, and a landscaped courtyard will comprise the remainder of the building.

The Applicant designed the building to engage the streets as much as possible. The retail at the corner and along Rhode Island Avenue will draw pedestrians and will activate the streetscape. Similarly, the ground-floor residential units facing 11<sup>th</sup> Street will have direct street entrances to further relate the building to the street.

The building will include approximately 40 residential units in all four stories. The building will attain a height of 50 feet, an FAR of 3.15, and a lot occupancy of 90% at the ground level. Above the ground floor, the building will have a conforming lot occupancy of 75%. The majority of the roof structure will be 10 feet – 6 inches tall, and the elevator overrun will be 18 feet - 6 inches tall. The roof structure will be set back from all exterior walls an equal distance except from a portion of the public alley and from portions of the rear courtyard. The building will provide 13 parking spaces in an underground garage, and eight of the parking spaces will have a compact size of 8' x 16'.

The building will have an inverted “L” shape and will be oriented around an elevated rear courtyard. The building will wrap the courtyard to the south and east, thereby creating a large open space with extensive landscaping and greenery (i.e., a green roof) that will cover part of the underground parking and will provide a nice outdoor amenity for residents. Most entrances to the residential units on floors 2-4 will be via an outdoor corridor adjacent to the courtyard. Such open corridors will allow these units to receive light and air from both ends (windows onto both the street and the courtyard), which would not be the case for an interior single-loaded corridor. The large courtyard will allow for continued light and air to the residences to the north of the Property. Also, the green roof will provide a pleasant view for both residents of the building and for the residences to the north.

Automobile and bicycle parking will be in an underground facility accessed via a ramp off the public alley to the west. Eight of the 13 parking spaces will be compact in size to allow the

garage to accommodate as many cars as possible. The underground garage will not be entirely below grade because of difficulties of excavating deeply on a very contaminated site. The ceiling of the parking garage will be approximately 1 foot – 4 inches above grade at the property line along Rhode Island Avenue, and it will increase to approximately 7 feet – 6 inches above grade at the ramp from the alley. The courtyard will include the green roof over the parking garage, and the parking garage roof will be raised above grade to provide the necessary clearance for the parking spaces below it.

#### **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 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. 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 its use history and resulting ground contamination. The environmental report attached as Exhibit F explains the site contamination and other environmental conditions of the Property. The Property was used as a gas station from approximately 1922 to 1973. During the Property's life as a gas station, eleven underground gasoline and oil storage tanks were installed. This is an abnormally large number of tanks for a site of this size. When the gas station ceased operation, these tanks were abandoned and left to deteriorate underground and contaminate the soil. Four tanks were subsequently removed, but the fate of the seven others is unknown. Thus, the Applicant may need to remove up to seven storage tanks and will conduct the appropriate remediation during construction. The soil is already contaminated from the tanks, and the contamination may be even greater if the seven other tanks remain.

Since the gas station closed, the Property has been used as a parking lot and repair station for taxis. Leaking fluids from the taxis has contributed to the ground contamination. The result of this history is that Property's soil is very contaminated, and the deeper that the Applicant digs, the more remediation is necessary, and the more contaminants are exposed to the environment.

*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.

In this case, complying with the Zoning Regulations with respect to lot occupancy, FAR, off-street parking, parking space size, and parking space setback would create a practical difficulty for the Applicant. The exceptional condition affecting the Property results in a project design that is not otherwise feasible without the requested areas of relief. The practical difficulty arises from the extensive site contamination and the containment burden the Applicant would face by excavating deeply. The design of the building results from the Applicant’s need to minimize the amount of excavation in order to avoid excessive exposure of contaminated soil and the extraordinary cost that would accompany remediation for deeper excavation. While the Applicant will remediate the site pursuant to a District Department of the Environment-approved plan, the cost and risk of remediation increases exponentially with a deeper excavation.

All of the requested variance relief is interrelated because of the necessity to avoid extensive excavation and exposure of contaminants. The garage will not be entirely below grade because of

the need to minimize excavation. If the garage were sunk lower, then the remediation cost will skyrocket, and the risk from exposure to more contaminated soil would grow considerably. The result of this significant burden is that the roof of the parking garage will be above grade and will increase lot occupancy and FAR to above the matter-of-right limits. The parking could be in an uncovered a surface lot to avoid the increase in lot occupancy and FAR, and the project would then be conforming in these respects. However, the covered green roof over the parking garage creates a more pleasant visual and environmental asset for both building residents and nearby residences. The absence of the green roof over the parking garage creates a difficulty for the Applicant in complying with the required green area ratio. Its absence would also create a burden for the Applicant in creating a marketable, sustainable, low-impact, and generally high-quality project.

If the project were to provide the required number of off-street parking spaces, then the Applicant would face a significant construction and remediation and containment burden. Because of the Applicant's difficulty in excavating deeper underground, as discussed above, the project is able to reasonably provide only one level of underground parking in the specified location (because access must be off the alley). Since some of the underground level is occupied by residential units and utility space, the parking area is limited to its given location at the northwest section of the Property. The parking could not be extended to the eastern portion of the site because of a significant loss of efficiency due to the building shape and required drive aisles: only a few parking spaces could be added at a significant cost.

In addition, the difficulty in providing another underground level of parking prevents the parking from extending the entirety of the Property under the building. The additional cost for this extra level of parking, because of greater remediation and containment for more excavation, would be prohibitively expensive and would result in design difficulties for drive aisles, access, and

efficiency. The proposed parking scheme maximizes the number of spaces within a minimized excavated area.

If the parking spaces were all conforming in size (i.e., some were not compact), then even fewer spaces would be provided in the garage. Thus, the burden in complying with the parking space size requirement arises out of the Applicant's attempt to minimize the amount of relief for the number of parking spaces.

Finally, the difficulty that the Applicant would encounter in setting all parking spaces back at least 20 feet from Rhode Island Avenue is closely related to that for providing the required number of conforming spaces. As discussed above, sinking the roof of the parking garage to below grade would be burdensome. Also, the Applicant's attempt to maximize the number of spaces in the underground garage results in some of the spaces being located adjacent to the property line along Rhode Island Avenue. Complying with this regulation would result in the provision of even fewer spaces in the garage when none of these spaces would be visible from the public street.

*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 will not be detrimental to the public good or the Zone Plan. The additional FAR and lot occupancy result solely from the raised green roof above the parking garage and in the courtyard, but they would not create an adverse impact. The additional FAR and lot occupancy do not accommodate additional residential or retail indoor space. In fact, the FAR and lot occupancy of the building without the roof over the parking would be conforming. The additional FAR and lot occupancy are the consequence of providing a better, visually-appealing, and more sustainable building. The green courtyard will provide a more aesthetically pleasing outdoor space for residents, and it will minimize the impacts of new construction on neighboring properties by having open green space as opposed to a surface parking lot. Also, it will allow the building to more easily comply with the green area ratio. The additional FAR and lot occupancy

will not add bulk or height that would impair light, air, or visual aesthetics to neighboring properties: the residential and retail portion of the building would remain the same without the roof over the parking. Thus, there would be no perceivable impact from the additional FAR and lot occupancy other than a benefit to the neighbors.

The requested relief for number of parking spaces will not adversely affect the availability of on-street parking in the neighborhood. The provided amount of parking is sufficient for this transit-rich location. The Shaw Metro station is approximately four blocks away. Multiple Capital Bikeshare stations are within several blocks, and both Q and 11<sup>th</sup> Streets have dedicated bike lanes. In addition, Metrobus lines run along 11<sup>th</sup> Street and Rhode Island Avenue directly in front of the Property. Many services, such as a grocery store, drug store, and restaurants are within ½ mile of the Property. Accordingly, the Applicant anticipates that few residents will own cars and that the demand for off-street parking will be limited. The provided number of parking spaces will adequately serve the demand without residents of the building parking on the street.

Similar to the number of parking spaces, the compact size of some of the parking spaces will not cause parking spillover onto neighboring streets, so relief from the size requirement for parking space dimensions will not have an adverse impact. Compact spaces will adequately serve all building residents who own cars, and nearly all cars that residents are likely to own will be accommodated in compact spaces. Indeed, the size of the parking spaces will not deter residents from buying/renting the spaces.

Finally, there will be no adverse impact from the relief from the setback requirement in Section 2116.12 because the roof of the parking garage is above grade by only approximately 1'-4", and the parking spaces adjacent to the Rhode Island Avenue property lines will not be visible from the exterior of the building. The clear intent of this regulation is to prevent parking spaces in

structures from being visible from adjacent public streets. The fact that it applies in this case is a mere technicality since none of the underground spaces will be visible from the street. From Rhode Island Avenue, the roof of the parking garage will appear as building foundation, and any passer-by would not know that it is part of the underground parking garage. In this case, the regulation does nothing to enhance the streetscape.

The proposed project will be appropriate for the location, and it will not have adverse impacts on neighboring property. The proposed FAR, lot occupancy, number of parking spaces, size of parking spaces, and location of parking spaces will be appropriate for this location without causing adverse impacts on neighboring properties. Thus, the proposed project will not be detrimental to the public good or the Zone Plan.

**VI. THIS APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF  
FOR ROOF STRUCTURE SETBACK**

Section 411.11 provides that “where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the [Board] shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements...” Accordingly, under this Section, the Board may approve a roof structure that does not satisfy the setback requirement under Section 400.7 and the requirement that enclosed walls be of equal height under Section 411.5 when compliance would be restrictive, prohibitively costly, or unreasonable because of conditions of relating to the building. The proposed roof structure will not be set back from the alley and rear courtyard at certain points, and it will not have walls of equal height.

Complying with the required roof structure setback from the alley and rear courtyard would be overly restrictive to the Applicant. The Applicant designed the building to contain as much mechanical equipment in the roof structure as possible and to provide a landing to outdoor roof terraces. This allows for better design of the units and for better building aesthetics by eliminating as much mechanical equipment from view as possible. If the penthouse were to be set back from the alley and rear court a distance equal to its height, then the Applicant's ability to enclose all of the necessary functions would be significantly restricted. Furthermore, this penthouse location allows for the most efficient layout of units and common spaces below, and a shift in the penthouse location would result in greater building inefficiency. Optimal efficiency dictates that roof access should be near the rear of the units, so the penthouse is located to accommodate this. Placing all of the mechanical equipment and the stairs and landings for the units below in an efficient orientation results in the placement of the penthouse closer to the alley than is otherwise permitted.

The nonconforming setback will not adversely affect neighboring properties. The nonconforming setback from the alley will be at limited points and not for the entirety of the penthouse, so it will be minimally noticeable. In addition, that the nonconforming setback is adjacent to the alley minimizes how perceptible it will be since anyone standing in the 10-foot alley would not be able to see the penthouse. Furthermore, the nonconforming setback from the rear courtyard will not result in the penthouse looming over neighboring properties on the property line since the courtyard will act as a separation buffer for most of the penthouse. Also, it will not affect light and air to neighboring properties because of its placement and the building height differentials. The roof structure will have the least visual impact at its proposed location because it will be adequately set back from all adjacent streets. Accordingly, the requested roof structure relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

Complying with the requirement for equal heights of enclosing walls would be unnecessarily restrictive for the Applicant. Except for the elevator overrun, the penthouse will have a uniform height of 10'-6". The Applicant lowered the height of the penthouse to minimize its appearance, and the elevator overrun is taller only to accommodate necessary mechanical equipment. Without the requested relief, the penthouse would be unnecessarily large when most of its functions could be accomplished in a smaller structure, like the one proposed. Thus, the intent of this Section to prevent unsightly penthouses will be better served with the proposed penthouse.

By reducing penthouse wall heights everywhere except for the elevator overrun, the Applicant will reduce the possibility of adversely affecting neighboring property more than would one larger structure of uniform wall height. The visual impact of the penthouse from the vantage points where it is visible will be significantly lessened as proposed. Also, the shorter properties to the north will see less of the proposed penthouse than if it were a uniform height. Therefore, it will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps

## **VII. 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 | Environmental Report                                                       |
| EXHIBIT G | Names and Addresses of all Property Owners within 200 Feet of the Property |

### VIII. CONCLUSION

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

Respectfully submitted,  
GOULSTON & STORRS, PC

  
John Epting

  
Cary Kadlecek

Date: September 13, 2013