

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18463-A of CAS Riegler Real Estate Development, Motion for Modification of Condition No. 3 in Order No. 18463, pursuant to § 3129.7 of the Zoning Regulations.

The original application, was pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements (section 401) to allow the conversion of and addition to an existing building into an apartment house in the R-4 District at premises 901 D Street, N.W. (Square 938, Lot 809).

HEARING DATE (Original Application):	December 11, 2012
DECISION DATE (Original Application):	December 18, 2012
FINAL ORDER ISSUANCE DATE (No. 18463):	December 21, 2013
HEARING DATES FOR MODIFICATION:	October 29, 2013
MODIFICATION DECISION DATES:	September 24, 2013 and October 29, 2013

SUMMARY ORDER ON REQUEST FOR MODIFICATION

BACKGROUND

On December 18, 2012, the Board of Zoning Adjustment (the “Board” or “BZA”) approved CAS Riegler Real Estate Development’s (the “Applicant”) original request for a variance from the lot area requirements under § 401, to allow the conversion of and addition to an existing building into an apartment house in the R-4 District at premises 901 D Street, N.W. (Square 938, Lot 809). The approval was given pursuant to four enumerated conditions, including Condition No. 3, whereby the Applicant is obligated to pay the cost for installing a Capital Bikeshare station at a location agreed upon by the Applicant and Advisory Neighborhood Commission (“ANC”) and provided that the Capital Bikeshare is able to find a suitable location.

Specifically, Condition No. 3 stated:

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“The Applicant shall pay the cost for installing a Capital Bikeshare station at a location agreed upon by the Applicant and the ANC, provided that Capital Bikeshare is able to find a suitable location.”

BZA Order No. 18463, approving the original request, was issued on December 21, 2012. (Exhibit 37.)

MOTION FOR MODIFICATION

On August 29, 2013, the Applicant filed a Request for Minor Modification of Condition No. 3 in Order No. 18463, pursuant to § 3129.7 of the Zoning Regulations with a Certificate of Service providing notice by electronic mail and first class mail to the Office of Planning (“OP”) and Advisory Neighborhood Commission (“ANC”) 6A, the affected ANC. (Exhibits 41 and 42.) The Applicant requested modification of Condition No. 3 so as to limit its financial contribution to \$25,000 for the cost of the installation of a Capital Bikeshare station.

The Applicant had proposed paying the cost of installing a Capital Bikeshare station after extensive negotiation and having reaching an agreement with ANC 6A. It was that agreement upon which the Board based its approval of the original application. The Applicant offered this condition in response to the ANC’s concerns about traffic and as a transportation demand measure. At the time, both the ANC and the Applicant agreed that the proposal was a reasonable offer without knowing the full cost of installing a Capital Bikeshare station.¹

Subsequently, after conversations with the District Department of Transportation (“DDOT”), the Applicant learned that the cost of installing a Capital Bikeshare station would be a minimum of \$75,000, which is a significantly greater amount than either the ANC or the Applicant anticipated. The Applicant indicated that this will add a major cost to a project for which the Applicant did not account. The Applicant noted that the relative burden of the full cost of a Capital Bikeshare station is much greater than the potential impact of the relief that the Applicant was granted.

The Applicant stated that it continued to want to honor its commitment to the ANC of having a Capital Bikeshare station installed nearby. As soon as it learned of the significant installation cost, the Applicant met with the ANC to discuss a possible solution to the unanticipated cost. According to the Applicant, the ANC agreed that this expenditure was much greater than they had anticipated and that they did not intend for the Applicant to incur such a large expense.

¹ At the hearing on the modification request, the Board questioned the Applicant on why the Applicant and ANC did not know the full cost. The Applicant replied that during negotiations with the ANC for the original case, it had asked if the ANC knew how much the installation would cost. The Single Member District told them that based on his prior experience with such an installation, he believed the cost was \$25,000. As the negotiations were completed only shortly before the public hearing on the original application, the Applicant did not check the estimate it had been given.

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As a result, the Applicant is seeking to modify the condition to limit any such financial contribution to \$25,000. At the time of the original approval, both the Applicant and ANC agreed that the proposal had been a reasonable offer. However, neither knew the full cost of installing a Capital Bikeshare station. Through discussions with DDOT, the Applicant discovered that the full cost of installing a Capital Bikeshare station is approximately \$75,000. The Applicant and ANC subsequently have met and agreed that the Applicant's proposed contribution of \$25,000 is consistent with the agreement that the parties previously reached. (Exhibit 41.)

Pursuant to § 3129.7, the Board conducted a public hearing on the requested modification on October 29, 2013.² OP filed a report dated September 17, 2013 (Exhibit 44) stating that it had no objection to the Board granting approval of the requested modification³ and appeared at the hearing. The affected ANC, ANC 6A, which was a party in support to the underlying case, filed a report dated September 14, 2013 in support of the modification request. The ANC's report indicated that at a duly noticed and scheduled public meeting with a quorum present, the ANC voted 6-0-0 to support the modification request. The ANC stated that the amount of \$25,000 was consistent with the agreement previously reached by the ANC and the Applicant and an appropriate contribution toward the expense of the Capital Bikeshare station. (Exhibit 43.)

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3129, that the requested modification can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. No parties opposed this modification. Accordingly, a decision of the Board to grant this modification would not be adverse to any Party.

The Board concludes that the Applicant's proposed Modification of Condition No. 3 is well supported and consistent with requirements of § 3129.7 of the Zoning Regulations and represents a modification that does not change the material facts the Board relied upon in approving the original application.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law.

² This case had originally been placed on the September 24, 2013 Public Meeting agenda. At the meeting on September 24th, the Board found that the modification could not be deemed minor and decided without a hearing, as it did not involve the modification of plans. The Board requested additional information and moved the case to the October 29, 2013 Public Hearing agenda for a public hearing, per § 3129.7 of the Zoning Regulations.

³ Although OP expressed some concerns for modification requests such as these, it ultimately indicated that it had no objection to granting this Applicant's request. (Exhibit 44.)

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It is therefore **ORDERED** that this application for modification of Condition No. 3 be **GRANTED SO THAT CONDITION NO. 3 IS MODIFIED TO READ AS FOLLOWS:**

3. The Applicant shall pay \$ 25,000 of the cost for installing a Capital Bikeshare station at a location agreed upon by the Applicant and the ANC, provided that Capital Bikeshare is able to find a suitable location. This condition shall be satisfied once the Applicant makes the payment.

In all other respects, Order No. 18496 and the conditions approved therein remain unchanged.

VOTE ON ORIGINAL APPLICATION ON DECEMBER 18, 2012: 4-0-1

(Lloyd L. Jordan, Nicole C. Sorg, and Jeffrey L. Hinkle to APPROVE, Michael G. Turnbull to approve by absentee ballot; one Board seat vacant.)

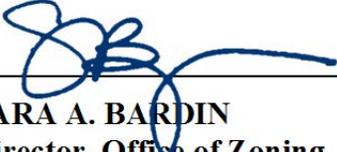
VOTE ON MODIFICATION OF CONDITION NO. 3 (OCTOBER 29, 2013): 3-0-2

(Lloyd J. Jordan, Marcie I. Cohen, and S. Kathryn Allen to APPROVE; Jeffrey L. Hinkle, not present or voting; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this summary order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: November 4, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.