

**BZA Appeal No. 19441**

**Presentation of  
OTD 410-412 Richardson Place LLC**

**Hearing Date: March 22, 2017**

## Allegations of the Appeal

1. Whether DCRA erroneously issued alteration-and-repair building permits where the applicant indicated the intended use of the property as “two, two-family flats (4 units).”
2. Whether DCRA properly permitted the project as “flats,” given the intended use of the property.
3. Whether DCRA’s issuance of the building permits was arbitrary and capricious, given the prior owner’s alleged, proposed use of the property.
4. Whether the intended use is consistent with the permitted uses as defined in the 1958 Zoning Regulations.

# Zoning Appeal Filing Requirements

A zoning appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier (11-Y DCMR § 302.2).

A zoning appeal may only be taken from the first writing that reflects the administrative decision complained of to which the appellant had notice. No subsequent document, including a building permit or certificate of occupancy, may be appealed unless the document modifies or reverses the original decision or reflects a new decision (11-Y DCMR § 302.5)

# Time Line of the Appeal

Aug 31, 2011	DCRA issues building permit for <u>flat</u> at 412 Richardson Place, NW
Apr 22, 2013	DCRA issues building permit for <u>flat</u> at 410 Richardson Place, NW
July 2014	J. Wilson, President of RPNA, purchased home at 415 Richardson Place, NW and saw an empty foundation with a “dug-out basement.”
April 2016	Steven Bible “noticed one or two permits... posted on the windows of the first floor of the property.”
Apr 20, 2016	OTD purchases the Properties (already under roof)
May 2016	Meeting between J. Wilson and Peter Stuart (OTD) and P. Stuart stated he intended to complete construction of the flats.
May 16, 2016	Correspondence from P. Stuart to J. Wilson expressing OTD has no intent to change the use, or use the properties as anything other than a flat.
July 2016	Appellant saw that OTD’s “supervision began in earnest” and “contractors began installing the façade and refurbishing the interior.”



# Time Line of the Appeal

Sept 27, 2016	DCRA issues OTD permit for completion of work at 412 Richardson Place, NW
Oct 20, 2016	DCRA issues OTD permit for completion of work at 410 Richardson Place, NW
Dec 16, 2016	Appellant files appeal to the Board of Zoning Adjustment
Feb 2, 2017	DCRA issues OTD Certificate of Occupancy for 412 Richardson Place, NW
Feb 13, 2017	DCRA issues OTD Certificate of Occupancy for 410 Richardson Place, NW

## Critical Questions Re: 410 and 412 Richardson Place, NW

1. Are 410 and 412 Richardson Place, NW two separate buildings?
2. Is each building constructed as a flat?
3. Will each building be used as a flat?

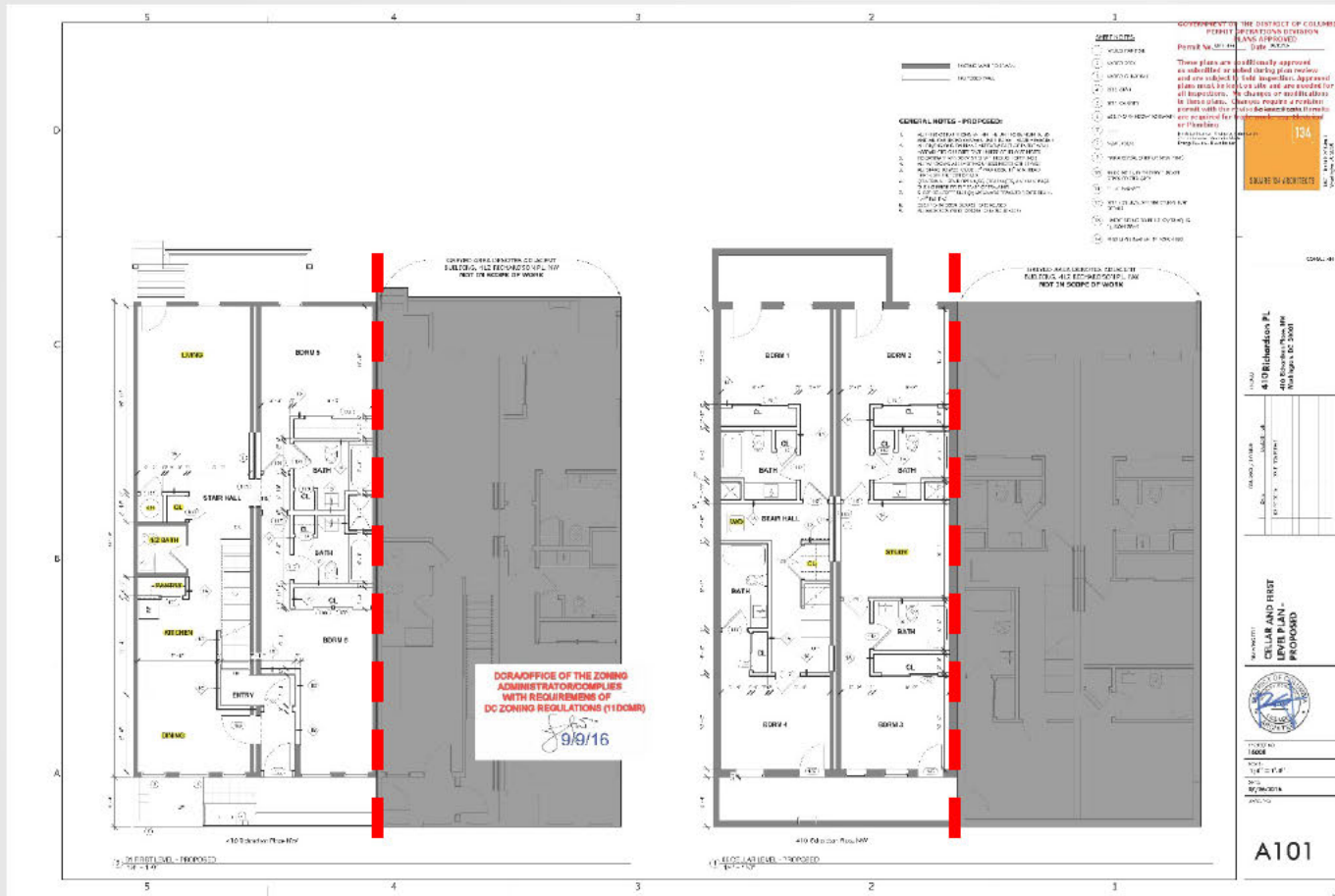
## 410 and 412 Richardson Place, NW are Separate Buildings

Building - a *structure* having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.  
(emphasis added)

11 DCMR § 199.1 (1958)

# 410 and 412 Richardson Place, NW are Separate Buildings

*“When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building”*



410 Richardson Place, NW (First Level and Cellar)









# Each Building is a “Flat” / “Two-Family Dwelling”

Flat - a *two-family dwelling*. (emphasis added)

Dwelling, two-family - a *dwelling* used exclusively as a residence for two (2) *families* living independently of each other. A two-family dwelling is a flat. (emphasis added)

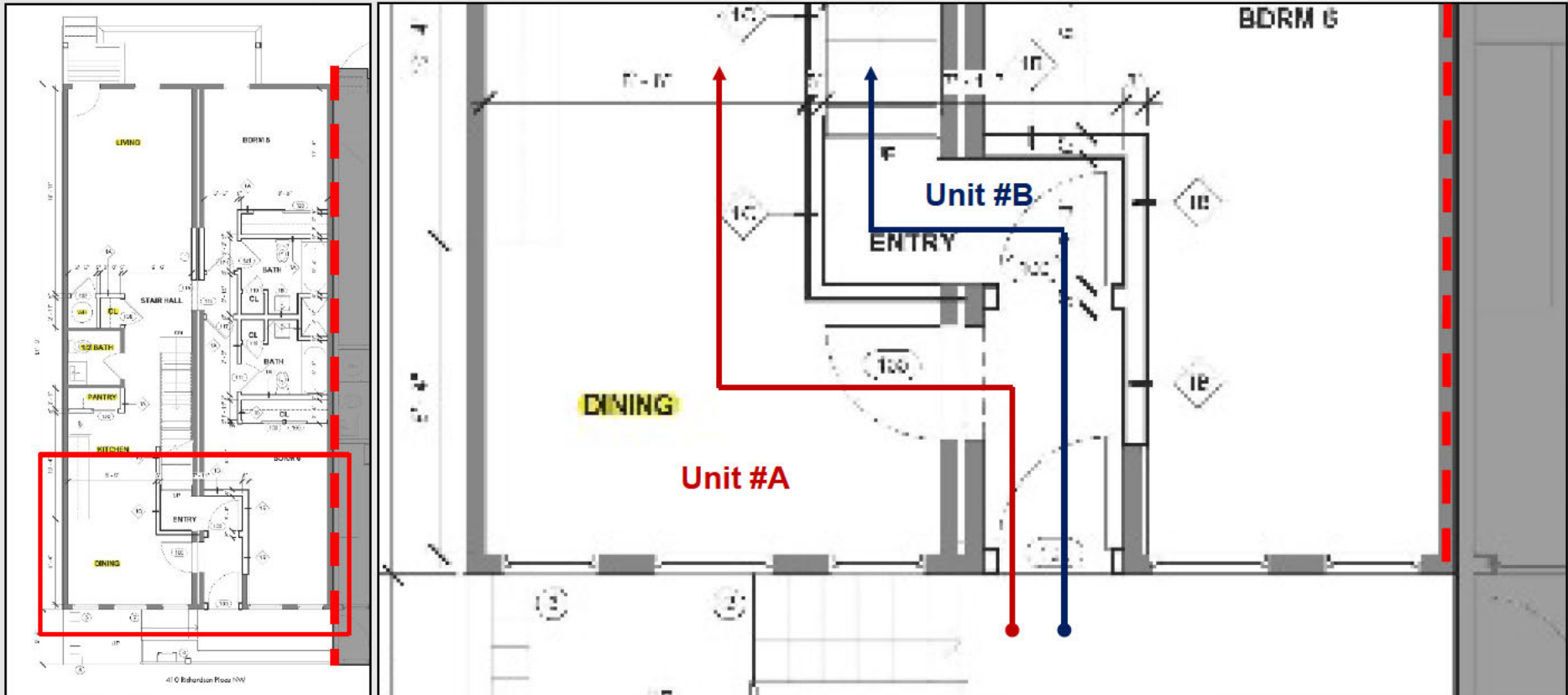
Dwelling - a building designed or used for human habitation. When used without a qualifying term, it shall mean a one-family dwelling. (emphasis added)

11 DCMR § 199.1 (1958)



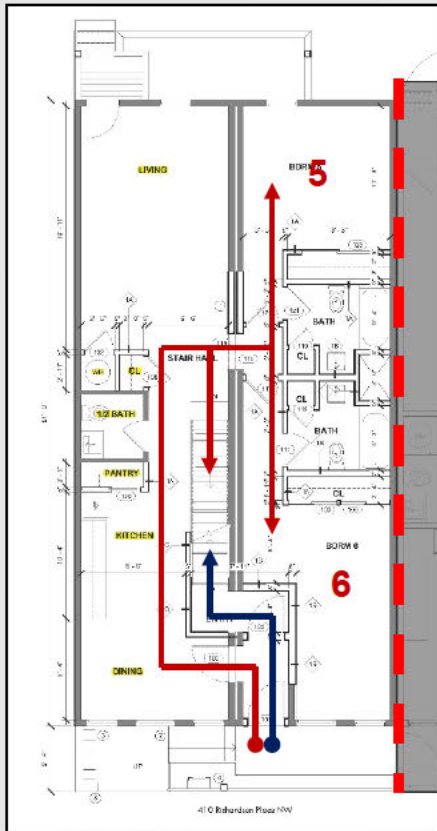
# Each Building is a “Flat” / “Two-Family Dwelling”

410 Richardson Place, NW

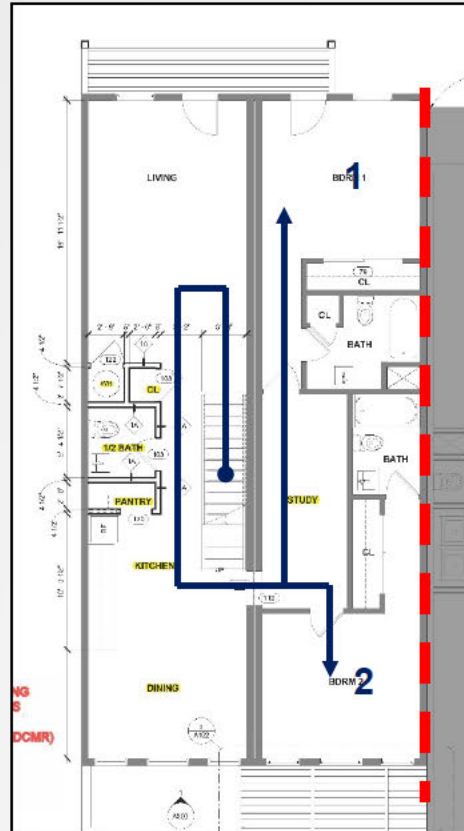
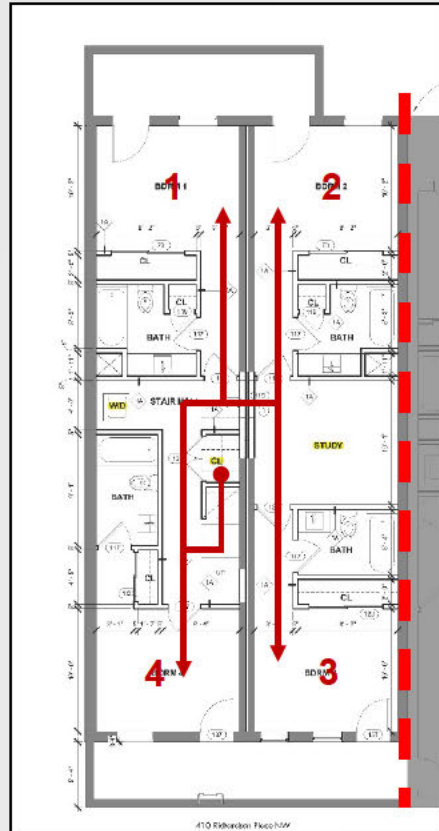


# Each Building is a “Flat” / “Two-Family Dwelling”

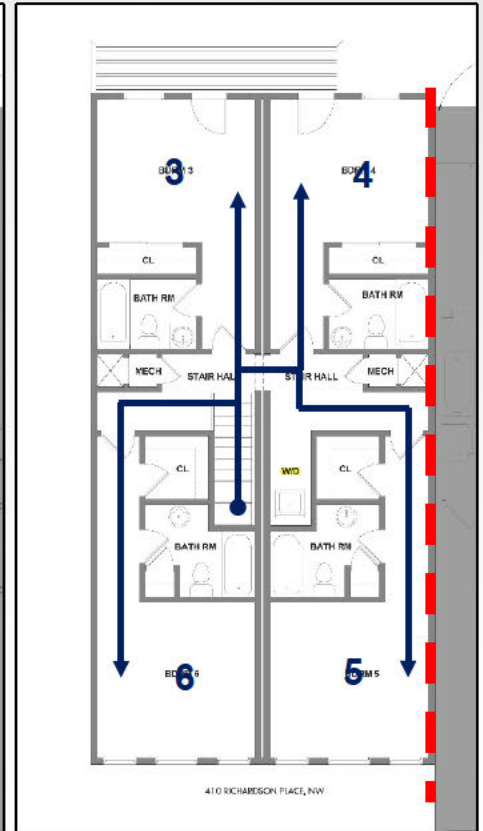
410 Richardson Place, NW



Unit #A

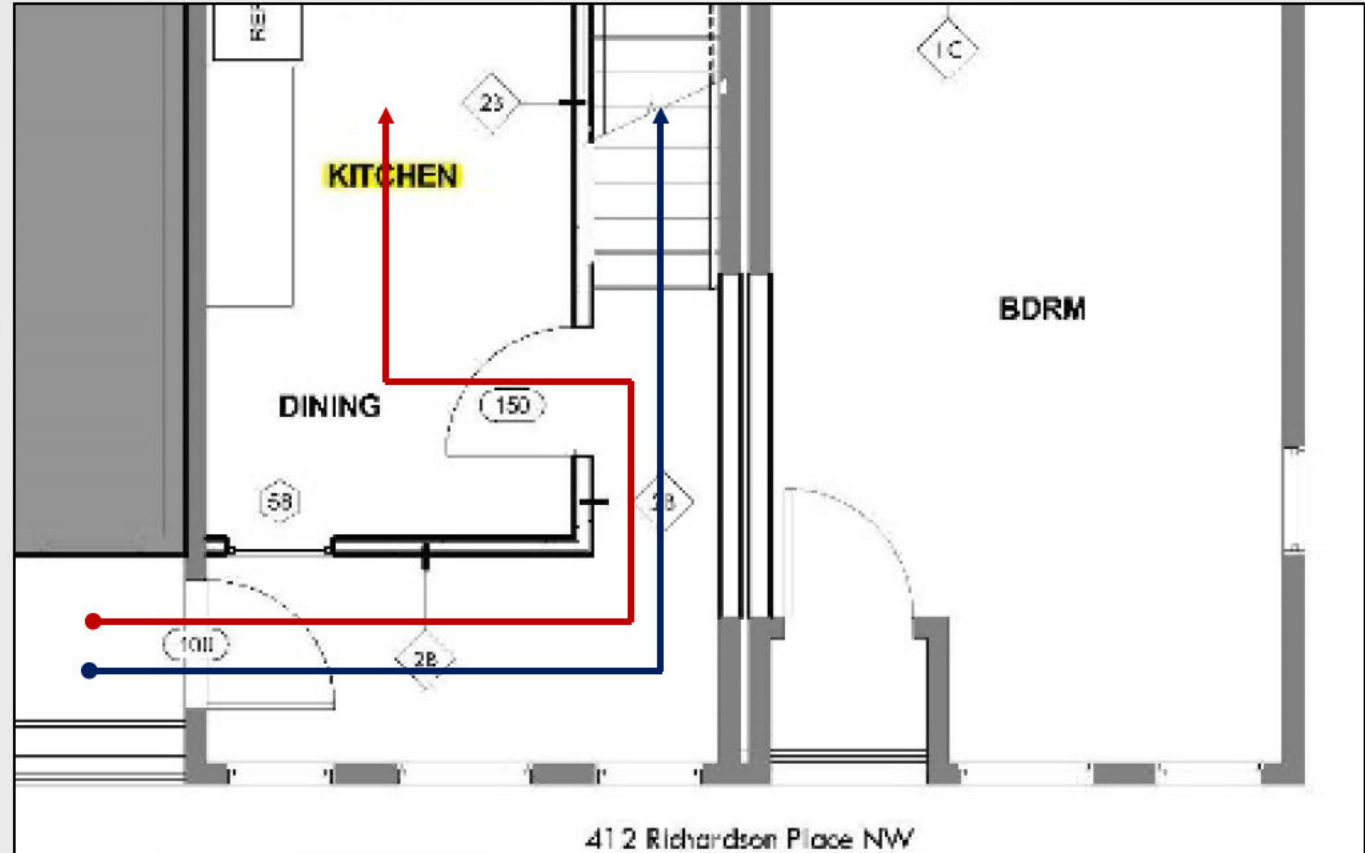
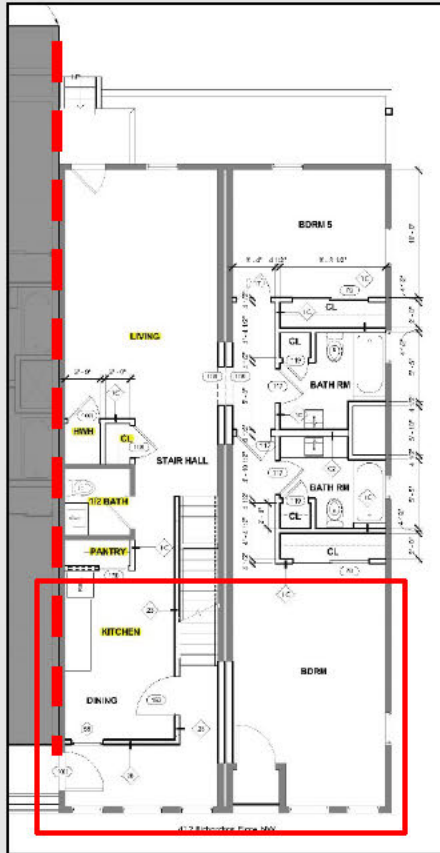


Unit #B



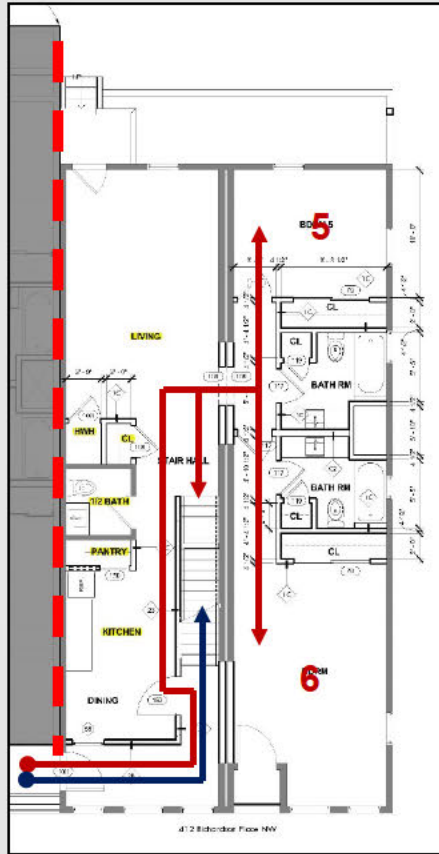
# Each Building is a “Flat” / “Two-Family Dwelling”

412 Richardson Place, NW

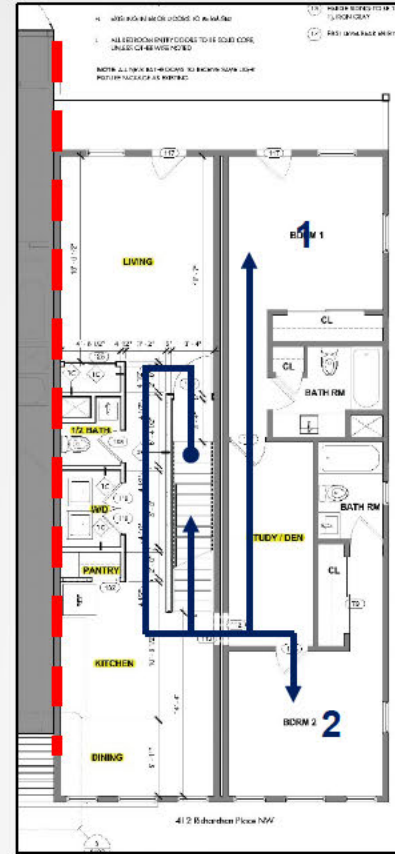
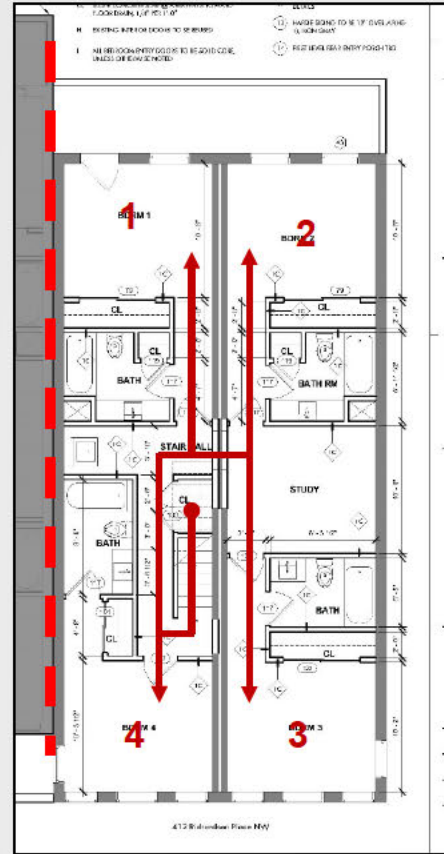


# Each Building is a “Flat” / “Two-Family Dwelling”

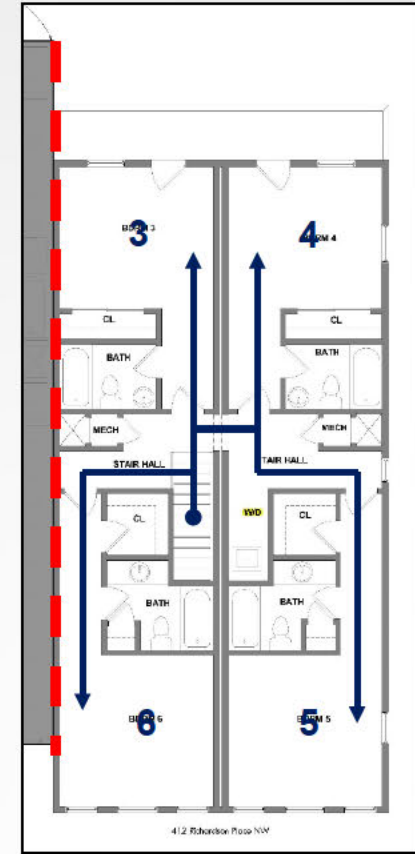
## 412 Richardson Place, NW



Unit #A



Unit #B





## Residents of Each Unit Qualify as a “Family”

Family - one (1) or more persons related by blood, marriage, or adoption, or **not more than six (6) persons who are not so related**, including foster children, living together as a single house-keeping unit, using certain rooms and housekeeping facilities in common; provided, that the term family shall include a religious community having not more than fifteen (15) members.  
(19 DCR 281) (emphasis added)

11 DCMR § 199.1 (1958)

# Residents of Each Unit Qualify as a “Family”

## Affidavit of Common Living (Exhibit 32H1):

- Each individual unit will have one lease signed by the six residents of the unit.
- Each unit will have a maximum occupancy of six residents per unit.
- The **six residents of each unit** will be:
  - Responsible for choosing their bedroom within their unit;
  - Jointly and severably liable for rent;
  - Jointly responsible for the conduct of other residents in their unit;
  - Jointly responsible for upkeep of their respective unit;
  - Jointly responsible for protecting the unit from theft and robbery;
  - Allowed to use and occupy the common areas and facilities of their respective unit.

## Residents of Each Unit Qualify as a “Family”

Family - one (1) or more persons related by blood, marriage, or adoption, or not more than six (6) persons who are not so related, including foster children, **living together as a single house-keeping unit, using certain rooms and housekeeping facilities in common**; provided, that the term family shall include a religious community having not more than fifteen (15) members.  
(19 DCR 281) (emphasis added)

11 DCMR § 199.1 (1958)

“[i]n the past, courts have interpreted [the phrase ‘single housekeeping unit’] in a rather elastic way, generally ruling that any living arrangement which makes use of unified house-keeping facilities satisfies such an ordinance.”

RATHKOPF’S THE LAW OF ZONING AND PLANNING 23-33



# Residents of Each Unit Qualify as a “Family”

## Other Cases Cited by the Appellant (outside the District of Columbia)

- *Armstrong v. Balt. (Md. 2009)* - Four unrelated individuals living in a dwelling unit where each bedroom was rented by separate lease and gave tenant sole use of their bedroom and shared use and occupancy of common areas constituted a single housekeeping unit.
- *In re Appeal of Miller (Pa. 1986)* - Homeowner that allowed unrelated elderly and handicapped persons to live with her constituted a single housekeeping unit.
- *Robertson v. Baptist Hosp. (Ky. 1954)* - A group of twenty nurses who rented a large house near the hospital where they worked constituted a single housekeeping unit.
- *Borough of Glassboro v. Vallorosi (NJ 1990)* - Ten unrelated college students living in the same house were a single housekeeping unit.
- *Linn County v. City of Hiawatha (Iowa 1981)* - A foster home in which a married couple cared for six unrelated, developmentally-disabled children constituted a single housekeeping unit.



# Residents of Each Unit Qualify as a “Family”

## Webster’s Unabridged Dictionary

- “Words not defined in this section shall have the meanings given in Webster’s Unabridged Dictionary” 11 DCMR § 199.2(g) (1958)
- Housekeeping –
  - 1: **the management of a house and home affairs**
  - 2: the care and management of property and the provision of equipment and services (as for an industrial organization)
  - 3: the routine tasks that must be done for a system to function or to function efficiently.

# Residents of Each Unit Qualify as a “Family”

Residents within each separate unit at 410 and 412 Richardson Place, NW will live independent of one another

- The lease will govern each family’s relationship/operation as a single housekeeping unit:
  - Single lease will govern each unit;
  - Tenants will chose their own bedrooms;
  - Tenants will be jointly and severably liable for rent;
  - Tenants will jointly be responsible for utilities such as gas, electricity, and internet;
  - Tenants will be responsible for the conduct of other tenants such as loud and objectionable houses, sights, and odors;
  - Tenants will be responsible for daily maintenance and upkeep of their respective units such as cleaning, trash disposal, and ordinary repairs;
  - Tenants will be responsible for protecting the unit from theft or robbery.

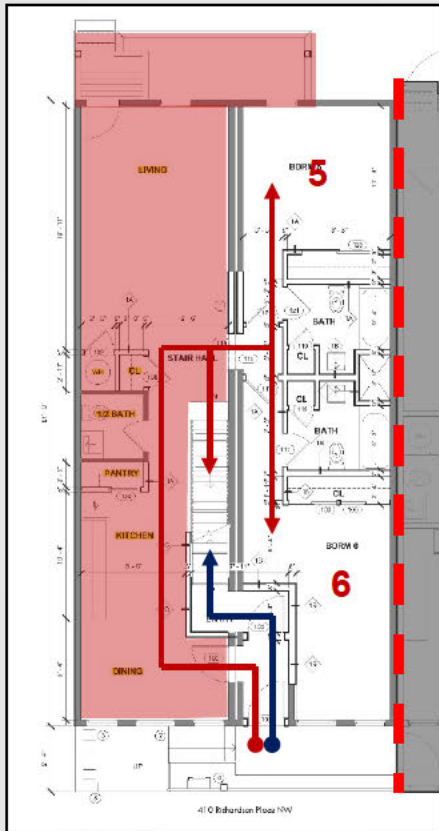
## Residents of Each Unit Qualify as a “Family”

Family - one (1) or more persons related by blood, marriage, or adoption, or not more than six (6) persons who are not so related, including foster children, living together as a single house-keeping unit, using certain rooms and housekeeping facilities in common; provided, that the term family shall include a religious community having not more than fifteen (15) members.  
(19 DCR 281) (emphasis added)

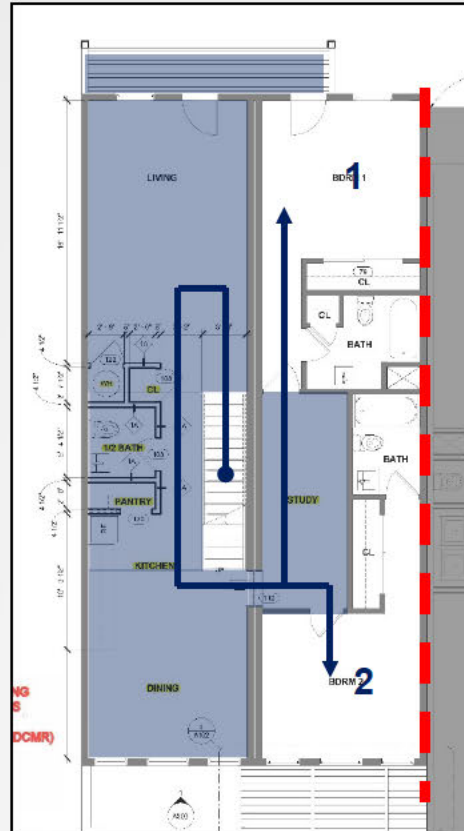
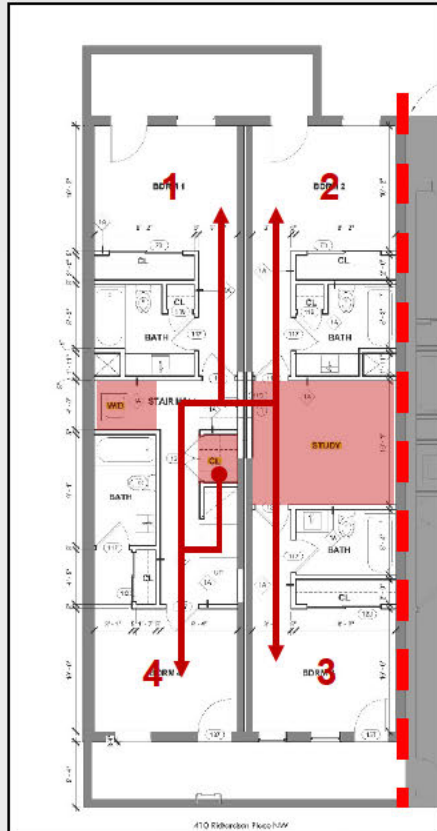
11 DCMR § 199.1 (1958)

# Residents of Each Unit Qualify as a "Family"

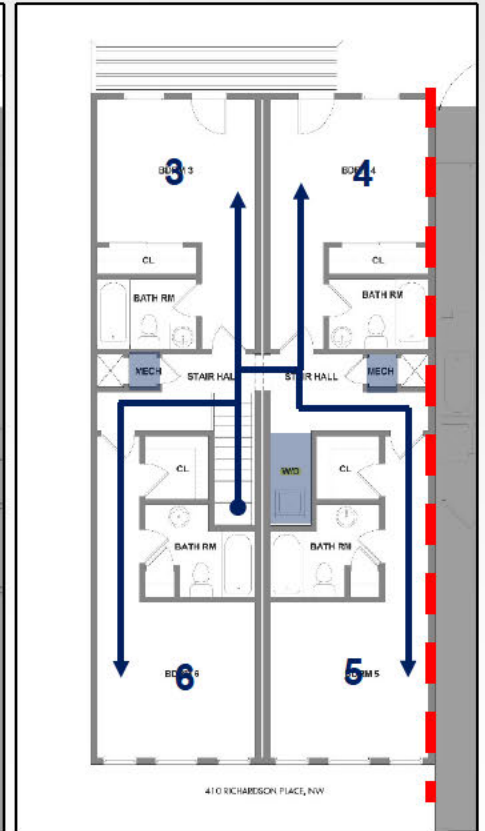
410 Richardson Place, NW



Unit #1



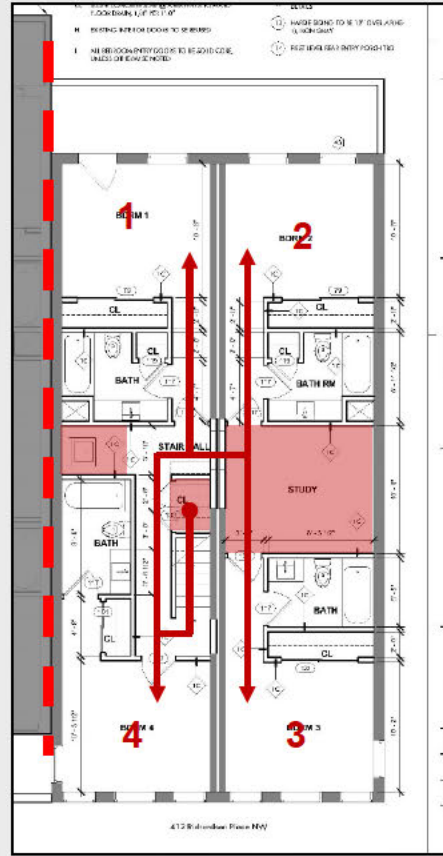
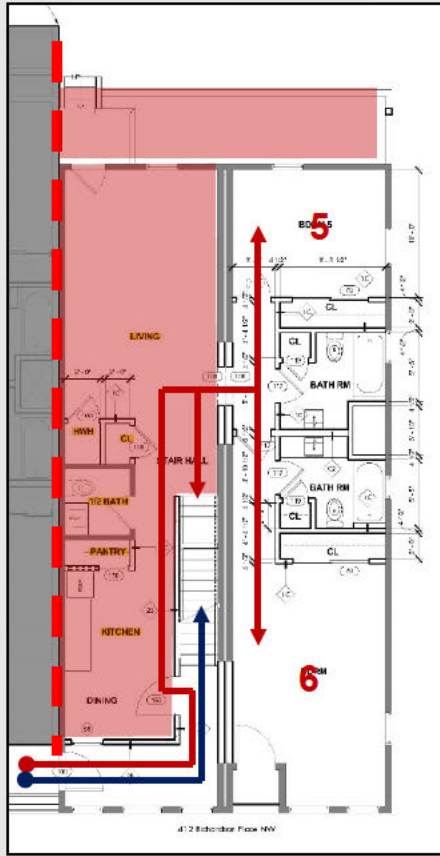
Unit #2



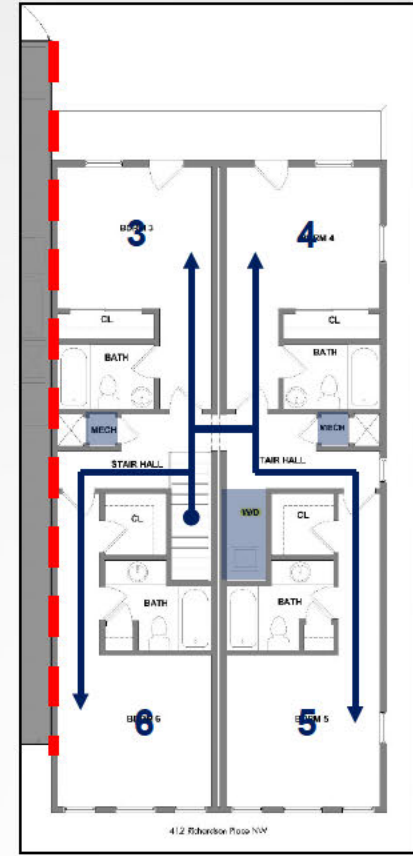
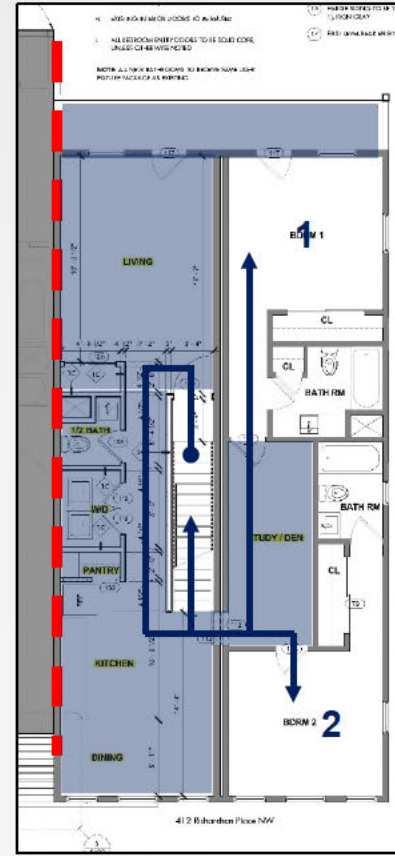


# Residents of Each Unit Qualify as a "Family"

## 412 Richardson Place, NW



Unit #A



Unit #B

# 410 Richardson Place, NW will be Used as a Flat

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
**Application for Certificate of Occupancy**

Application Date: \_\_\_\_\_ C of O Number: \_\_\_\_\_  
 APPLICATION FEE IS NON-REFUNDABLE; CERTIFICATE FEE IS BASED ON SQUARE FOOTAGE  
 Erasing, Crossing Out, Whiting Out, or Otherwise Altering Any Entered Information Will Void This Application

**INFORMATION ON THE BUILDING/PROPERTY**

- Property Address 410 RICHARDSON PLACE NW
- Building/Property Owner's Name OTD 410-412 RICHARDSON PLACE LLC
- Phone 202-888-6480 Email: PETER@DCOAKTREE.COM
- Property Square \_\_\_\_\_ Suffix \_\_\_\_\_ Lot \_\_\_\_\_
- Number of Floors 3
- Zone RF-1 Overlay (if applicable) \_\_\_\_\_

**APPLICANT INFORMATION**

- Applicant's Name (see instructions) OTD 410-412 RICHARDSON PLACE LLC
- Trade name of business (if applicable) \_\_\_\_\_
- Applicant's Mailing Address 1400 KEY BLVD, SUITE 100, ARLINGTON, VA 22209
- Applicant's Day Phone # \_\_\_\_\_ Cell # 301-502-7559 Email Address K.BROWN@MONTAGEDEVGROUP.COM

**INFORMATION ON PREMISES/ OCCUPANCY**

- (choose one)  Ownership Change  Use Change  Load Change  Revision  New Bldg
- Proposed use of Premises FLAT (2 FAMILY)
- Prior use of Premises N/A C of O # N/A
- Proposed Occupancy Load \_\_\_\_\_
- Area Occupied by Proposed Use \_\_\_\_\_ sq. ft.
- List Floors of a building to be Occupied by Proposed Use CELLAR, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>
- Does your business sell or rent any goods or provide any services that could be described as sexually-oriented?  Yes  No If yes, please fill out the supplemental form.
- Is your business a Medical Marijuana Dispensary or Production Facility?  Yes  No
- Was this use approved by an order of the BZA or ZC?  Yes  No If yes, provide order # and date of approval: \_\_\_\_\_
- Is there a building permit associated with this application?  Yes  No If yes, provide building permit # B1611470
- What use was listed on the building permit? \_\_\_\_\_
- Were all inspections conducted and approved?  Yes  No
- Is off-street parking on the property provided for this use?  Yes  No If yes, number of spaces: 2

**ATTESTATION AND SIGNATURE**

I certify that all of the statements on this application are true to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia.

Applicant or Agent's Signature [Signature] Date 12/29/2016  
 \*If you are an applying as an Agent on behalf of the Applicant, attach completed Authorization Form

Making a false statement on this application can result in the denial or revocation of your certificate of occupancy and criminal penalties, under D.C. Official Code § 22-2405, of a fine up to \$1000 and/or imprisonment up to 180 days.

For more information about C of Os, please visit [dcra.dc.gov](http://dcra.dc.gov) and click on Permits/Zoning

Exhibit E

Government of the District of Columbia  
 Department of Consumer and Regulatory Affairs

1100 4th Street SW  
 Washington DC 20024  
 (202) 442-4400  
[dcra.dc.gov](http://dcra.dc.gov)



**C of O**

**CERTIFICATE OF OCCUPANCY**

PERMIT NO. **CO1700955**

Issued Date: **02/13/2017**

Address: <b>410 RICHARDSON PL NW</b>	Zone: <b>RF-1</b>	Ward: <b>5</b>	Square: <b>0507</b>	Suffix: <b></b>	Lot: <b>0102</b>
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Description of Occupancy:  
 A TWO-FAMILY FLAT WITH (2) OFF-STREET PARKING SPACES

Permission Is Hereby Granted To: <b>OTD 410-412 RICHARDSON PLACE, LLC</b>	Trading As: <b>OTD 410-412 RICHARDSON PLACE</b>	Floor(s) Occupied <b>CELLAR &amp; 1ST-3RD</b>	Occupant Load: <b>2</b> No. of Seats
Property Owner: <b>OTD 410-412 RICHARDSON PLACE, LLC</b>	Address: <b>1400 KEY BLVD STE 100 ARLINGTON, VA 22209-1518</b>	BZA/PUD Number:	Occupied Sq. Footage: <b>5360</b> PERMIT FEE: <b>\$85.18</b>
Building Permit Number (if applicable): <b>B1611470</b>	Type of Application: <b>Use Change</b>	Approved Building Code Use: <b>Two-Family Flat - R-3</b>	Approved Zoning Code Use: <b>Flat, [two-family dwelling]</b>
		Approved Zoning General Use: <b>Residential</b>	

**Conditions/Restrictions:**  
 THIS CERTIFICATE MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS MAIN ENTRANCE, EXCEPT PLACES OF RELIGIOUS ASSEMBLY. Use complies with DCMR Title 11 (Zoning) and Title 12 (Construction).  
 As a condition precedent to the issuance of this Certificate, the owner agrees to conform with all conditions set forth herein, and to maintain the use authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all spaces whose use is authorized by this Certificate and to require any changes which may be necessary to ensure compliance with all the applicable regulations of the District of Columbia.

Director: Melinda Bolling	Permit Clerk: <u>[Signature]</u> John McFarland	Expiration Date:
2/13/2017 TO REPORT WAIVER, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL CALL THE DC INSPECTOR GENERAL AT 1-800-521-1038		





# 412 Richardson Place, NW will be Used as a Flat

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
**Application for Certificate of Occupancy**

Application Date: \_\_\_\_\_ C of O Number: \_\_\_\_\_  
 APPLICATION FEE IS NON-REFUNDABLE; CERTIFICATE FEE IS BASED ON SQUARE FOOTAGE

Erasing, Crossing Out, Whiting Out, or Otherwise Altering Any Entered Information Will Void This Application

**INFORMATION ON THE BUILDING/PROPERTY**

- Property Address 412 Richardson Pl NW
- Building/Property Owner's Name OTD 410-412 Richardson Place LLC
- Phone 202-888-6480 Email: peter@dcoaktree.com
- Property Square 0507 Suffix \_\_\_\_\_ Lot 0101
- Number of Floors 3
- Zone RF-1 Overlay (if applicable) \_\_\_\_\_

**APPLICANT INFORMATION**

- Applicant's Name (see instructions) OTD 410-412 Richardson Place LLC
- Trade name of business (if applicable) \_\_\_\_\_
- Applicant's Mailing Address 1400 Key Blvd, Suite 100, Arlington, VA 22209
- Applicant's Day Phone # \_\_\_\_\_ Cell # 301-502-7559 Email Address kwonnie@montagedevgroup.com

**INFORMATION ON PREMISES/ OCCUPANCY**

- (choose one)  Ownership Change  Use Change  Load Change  Revision  New Bldg
- Proposed use of Premises FLAT (2 FAMILY)
- Prior use of Premises N/A C of O # N/A
- Proposed Occupancy Load 2 units
- Area Occupied by Proposed Use 5360 sq. ft.
- List Floors of a building to be Occupied by Proposed Use cellar, 1st, 2nd, 3rd
- Does your business sell or rent any goods or provide any services that be described as sexually-oriented?  Yes  No If yes, please fill out the supplemental form.
- Is your business a Medical Marijuana Dispensary or Production Facility?  Yes  No
- Was this use approved by an order of the BZA or ZC?  Yes  No If yes, provide order # and date of approval: \_\_\_\_\_
- Is there a building permit associated with this application?  Yes  No If yes, provide building permit # B1611A70
- What use was listed on the building permit? \_\_\_\_\_
- Were all inspections conducted and approved?  Yes  No
- Is off-street parking on the property provided for this use?  Yes  No If yes, number of spaces: 2

**ATTESTATION AND SIGNATURE**

I certify that all of the statements on this application are true to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia.

Applicant or Agent's Signature PS Date 12-27-2016  
 \*If you are an applying as an Agent on behalf of the Applicant, attach completed Authorization Form

Making a false statement on this application can result in the denial or revocation of your certificate of occupancy and criminal penalties, under D.C. Official Code § 22-2405, of a fine up to \$1000 and/or imprisonment up to 180 days.

For more information about C of Os, please visit [dcra.dc.gov](http://dcra.dc.gov) and click on Permits/Zoning

Government of the District of Columbia  
 Department of Consumer and Regulatory Affairs  
 1100 4th Street SW  
 Washington DC 20024  
 (202) 442-4400  
[dcra.dc.gov](http://dcra.dc.gov)

**C of O**  
**CERTIFICATE OF OCCUPANCY**

PERMIT NO. **CO1700918** Issued Date: **02/02/2017**

Address <b>412 RICHARDSON PL NW</b>		Zone <b>RF-1</b>	Ward <b>5</b>	Square <b>0507</b>	Suffix	Lot <b>0101</b>
Description of Occupancy: <b>FLAT (TWO FAMILY DWELLING)</b>						
Permission is Hereby Granted To: <b>OTD 410-412 RICHARDSON PLACE LLC</b>	Trading As: <b>OTD 410-412 RICHARDSON PLACE</b>	Floor(s) Occupied <b>Cellar &amp; 1st-3rd</b>	Occupant Load: <b>2</b> No. of Seats			
Property Owner: <b>OTD 410-412 RICHARDSON PLACE, LLC</b>	Address: <b>1400 KEY BLVD STE 100 ARLINGTON, VA 22209-1518</b>	BZA/PUD Number:	Occupied Sq. Footage: <b>5360</b>			
Building Permit Number (if applicable)		Type of Application: <b>Use Change</b>	Approved Building Code Use: <b>Two-Family Flat - R-3</b> Approved Zoning Code Use: <b>Flat, [two-family dwelling]</b> Approved Zoning General Use: <b>Residential</b>			
<b>Conditions/ Restrictions:</b>						
THIS CERTIFICATE MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS MAIN ENTRANCE, EXCEPT PLACES OF RELIGIOUS ASSEMBLY. Use complies with DCMR Title 11 (Zoning) and Title 12 (Construction). As a condition precedent to the issuance of this Certificate, the owner agrees to conform with all conditions set forth herein, and to maintain the use authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all spaces whose use is authorized by this Certificate and to require any changes which may be necessary to insure compliance with all the applicable regulations of the District of Columbia.						
Director: <b>Melinda Bolling</b>	Permit Clerk: <b>John McFarland</b>	Expiration Date:				
220017		TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-021-1550				

## 410 and 412 Richardson Place, NW are not...

Apartment house - any building or part of a building in which there are three (3) or more apartments, or three (3) or more apartments and one (1) or more bachelor apartments, providing accommodation on a monthly or longer basis. (36 DCR 7627-7628) (emphasis added)

11 DCMR § 199.1 (1958)

- 410 Richardson Place, NW and 412 Richardson Place, NW are two separate buildings, each containing *only* two dwelling units. Thus, each building is a flat and not an apartment house.



## 410 and 412 Richardson Place, NW are not...

Tenement house - a building or part of a building containing three (3) or more tenements, or any building or part of a building containing any combination of three (3) or more tenements and apartments.

Tenement - One (1) or more habitable rooms in an apartment house, under the exclusive control of the occupant of the apartment house.

11 DCMR § 199.1 (1958)

- 410 Richardson Place, NW and 412 Richardson Place, NW are not an apartment house; and therefore, the habitable rooms within each unit are not tenements, and thus neither property can be a tenement house.

## 410 and 412 Richardson Place, NW are not...

Rooming house - a building or part thereof that provides sleeping accommodations for three (3) or more persons who are not members of the immediate family of the resident operator or manager, and in which accommodations are not under the exclusive control of the occupants...  
(36 DCR 7627) (emphasis added)

11 DCMR § 199.1 (1958)

- 410 Richardson Place, NW and 412 Richardson Place, NW *will not* have a resident operator or manager, the residents of each separate unit *will* have exclusive control of their respective unit, and each unit within each flat will be used for preparation and eating of meals.

## Critical Questions Re: 410 and 412 Richardson Place, NW

1. Are 410 and 412 Richardson Place, NW two separate buildings? **YES**
2. Is each building constructed as a flat? **YES**
3. Will each building be used as a flat? **YES**

*410 and 412 Richardson Place, NW are two separate buildings each containing a flat consisting of two units that are each occupied by not more than six unrelated persons living together as a single housekeeping unit that use certain rooms and housekeeping facilities in common.*