

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington, D.C. 20001

Appeal of Richardson Place Neighborhood Association

BZA Appeal 19441

**DCRA’S SUBMISSION PER BOARD’S REQUEST FOR INFORMATION
AVAILABLE TO ZA AT APPROVAL OF CERTIFICATES OF OCCUPANCY**

Pursuant to the Board’s request made at the hearing on March 22, 2017, DCRA hereby submits the “information the ZA had when he was reviewing the certificate of occupancy”¹ for (i) the two family flat authorized by building permit B1611469 (the “**410 Permit**”) and located at 410 Richardson Place, N.W. – CO1700955 (the “**410 Building CofO**”); and (ii) the two family flat authorized by building permit B1611470 (the “**412 Permit**”) located at 412 Richardson Place, N.W. – CO1700918 (the “**412 Building CofO**”, and collectively with the 410 Building CofO, the “**410/412 CofOs**”).

The owner of 412 Richardson Place, N.W., OTD 410-412 Richardson Place LLC (the “**Owner**”), submitted an application for the 412 Building CofO - for a change in ownership and in use from the prior single family use to a “flat two family” use - on December 29, 2017 (**Attachment A**). DCRA accepted this application as complete on December 30, 2017; the ZA approved it on January 13, 2017, and DCRA issued the 412 Building CofO on February 2, 2017 (**Attachment B**).

The owner of 410 Richardson Place, N.W., also the Owner, submitted an application for the 410 Building CofO - for a change in ownership and in use from the prior single family use to a “flat (2 family)” use - on December 29, 2017 (**Attachment C**). DCRA accepted this application as complete on January 5, 2017; the ZA approved it on February 2, 2017; and DCRA issued the 410 Building CofO on February 13, 2017 (also **Attachment C**).²

In reviewing the applications for the 410/412 CofOs, the ZA had the respective CofO applications, as verified by a Wall Check (a field survey confirming the location of the building

¹ BZA Appeal 19441, Transcript of the March 22, 2017 hearing (the “**Transcript**”), at 437, repeating request made at 430.

² DCRA Counsel apologizes for his inadvertent error at the March 22, 2017 hearing, stating that the 410 Building CofO was issued on March 13, 2017, when it in fact it had been issued on February 13, 2017. Transcript at 424.

exterior in relation to the property lines) and a zoning inspection which was conducted and approved on January 5, 2017 for the 412 Building CofO, and on February 1, 2017 for the 410 Building CofO. This zoning review confirmed the Owner's representations in the applications for the 410/412 CofOs, and for the 410 Permit and 412 Permits, that the proposed use of 410 and 412 Richardson Place would be as "flats" in compliance with the definition of that use in the Zoning Regulations.

The ZA also had available Appellant's filings with the Board in this appeal (BZA Appeal No. 19441, Exhibits 9-9N), which at the time of approval of the 410/412 CofOs consisted of several media stories, screenshots of the website of the Owner's property manager, Common Living ("**Common**") announcing the anticipated rental availability at 410 and 412 Richardson Place, N.W., and Appellant's allegations of how Common would operate the two flats at 410 and 412 Richardson Place, N.W. if the ZA approved the 410/412 CofOs.

The affidavit of Common's CFO, executed on March 13, 2017, but discussed with DCRA at least a month earlier, confirmed in writing the Owner's prior representations in the applications for the 410 Permit, the 412 Permit, and the 410/412 CofOs, as corroborated by the zoning review and inspection, that the proposed use would comply with the Zoning Regulations, and that the Owner's property manager would also comply with the Zoning Regulations – in response to Appellant's allegations to the contrary.

As DCRA cited in the March 22, 2017 hearing, the Board has previously upheld the ZA's discretion to evaluate evidence submitted by an applicant for a building permit and by opponents - and specifically the weight to be granted to an applicant's affidavit vis-à-vis evidence submitted by opponents - in BZA Appeal No. 15588:

"The Board notes that the Zoning Regulations do not make reference to the type of evidence that the Zoning Administrator should require in making decisions about land use. Absent such guidance from the Zoning Regulations, the Board is of the opinion that the Zoning Administrator has the discretion to accept whatever evidence he deems appropriate under the circumstances."³

Moreover, as the ZA stated at the March 22, 2017 hearing in this appeal, the evaluation of a CofO application is based on the applicant's representations made as to the proposed use for which the CofO is requested.⁴ Once issued, a CofO **only** authorizes the use specified by the

³ BZA Appeal 19441, Transcript, at 425-6 and 429.

⁴ BZA Appeal 19441, Transcript, at 388-9, 405, and 407.

CofO: “Later [after the issuance of a CofO], as we’ve said, if [the actual use] deviates from that [use authorized by a CofO], it’s an enforcement matter.”⁵ The ZA’s enforcement tools include revocation of a CofO.⁶

DCRA therefore asserts that the ZA properly reviewed and approved the 410 Permit and the 412 Permit, the original subject of the appeal, and the 410/412 CofOs subsequently incorporated into this appeal, as compliant with the Zoning Regulations and that Appellant has failed to meet Section X-1101.2’s burden of proof to demonstrate that the ZA erred in this decision.

Respectfully submitted,
CHARLES THOMAS
General Counsel
Department of Consumer and Regulatory Affairs

Date: 5/1/17

/s/ Maximilian L.S. Tondro
Maximilian L. S. Tondro (D.C. Bar # 1031033)
Assistant General Counsel, Office of General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., Suite 5266
Washington, D.C. 20024
(202) 442-8403 (office) / (202) 442-9477 (fax)
maximilian.tondro@dc.gov
Attorney for Department of Consumer and Regulatory Affairs

⁵ BZA Appeal 19441, Transcript, at 419.

⁶ BZA Appeal 19441, Transcript, at 389-90, 392-3, and 398-400.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May 2017, a copy of the foregoing Pre-Hearing Statement was served via electronic mail to:

James J. Wilson, President
Richardson Place Neighborhood Association
415 Richardson Place, N.W.
Washington, D.C. 20001
rpna@jamesjwilson.com
Appellant

Advisory Neighborhood Commission 5E
[no chair nor address listed]
5E@anc.dc.gov [no longer valid]

Kyrus L. Freeman
Holland & Knight
800 17th Street, N.W., Suite 1100
Washington, D.C. 20006
kyrus.freeman@hkllaw.com
Counsel for Owner

Katherine McClelland, Single Member Advisory
Neighborhood Commissioner 5E06
413 Richardson Place, NW
Washington, D.C. 20001
5E06@anc.dc.gov

/s/ Maximilian L.S. Tondro

Maximilian L.S. Tondro

ATTACHMENT A

Application for Certificate of Occupancy CO1700955 for 412 Richardson Place, N.W.
(attached separately as “BZA Appeal 19441 – 412 Richardson CofO Application”)

ATTACHMENT B

Certificate of Occupancy CO1700918 for 410 Richardson Place, N.W.
(attached separately as “410 CO”)

ATTACHMENT C

Application and Certificate of Occupancy CO1700955 for 410 Richardson Place, N.W.
(attached separately as “410 CO and Application”)