

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Appeal of Richardson Place
Neighborhood Association (“RPNA”)

BZA Order No. 19441

MOTION OF PROPERTY OWNER TO STAY EFFECTIVENESS OF ORDER

Pursuant to Subtitle Y § 701.2 of the Zoning Regulations, OTD 410-412 Richardson Place LLC (“OTD”) seeks to stay the effectiveness of the Order during the pendency of its Motion for Reconsideration. DCRA does not oppose a stay while the Board of Zoning Adjustment (“BZA” or “Board”) considers OTD’s Motion for Reconsideration. Pursuant to Subtitle Y § 701.3, the Board shall grant a stay only upon finding that all four of the following criteria are present:

- a. The party seeking the stay (or, in the case of a stay to be issued on the Board’s own motion, the party in whose favor the stay would be ordered) is likely to prevail on the merits of the motion for reconsideration or rehearing, the sua sponte review, or the appeal;*

OTD’s Motion for Reconsideration, submitted concurrently with OTD’s request for a stay, clearly indicates how the Board’s Order is erroneous, and thus is likely to succeed on the merits. The Board granted the appeal based on the fact that “the planned co-living use potentially would not be established and operated consistent with a two-family flat” and “the ‘co-living’ arrangement could potentially alter the character of the neighborhood See BZA Order No. 19441, page 6.. However, as described in the Motion for Reconsideration, the Board’s conclusions do not flow from the actual evidence of record; the Board’s conclusions are contrary to law and contrary to the Board’s own statements; and the Order does not meet the standards of the D.C. Court of Appeals. Therefore, OTD believes the Board will grant it’s Motion for Reconsideration and will deny the appeal.

b. Irreparable injury will result if the stay is denied;

There is no question that OTD and its tenants will suffer irreparable harm if the requested Stay is denied. OTD constructed substantial, expensive, permanent improvements in good faith and reasonable reliance on the Department of Consumer and Regulatory Affairs (“DCRA”) approval. In this case, the original building permits were issued on in 2011 and the building was under roof on in April 2016, and the appeal at issue was filed six months after then. At no time has OTD changed the use of the properties; the use was approved as “flats” in 2011, and OTD intends to operate the buildings as “flats”.

If the stay is denied and the Order takes effect, DCRA will be required to revoke properly issued building permits and certificates of occupancy for occupied buildings, and OTD will be required to evict tenants that have been living in the buildings for nearly two years. In order to evict a tenant, the landlord must go through the judicial process, which includes proper notice of an eviction proceeding, and the eviction must be scheduled and supervised by the U.S. Marshals Service.¹ *See* DC Code § 42-3505.01 *et. seq.* Moreover, OTD cannot simply evict its tenants just because its certificate of occupancy has been revoked. The landlord must receive a judgment of possession before evicting the tenant. *Id.* Thus, OTD and its tenants will be irreparably harmed if tenants are evicted before the Board and any other reviewing authority has a chance to reconsider the Order. A stay would obviate this obvious pitfall.

c. Opposing parties will not be harmed by a stay; and

RPNA cannot credibly argue that they will be irreparably harmed by staying the effectiveness of the Order. A stay will preserve the current state of affairs—which has existed for nearly two years—until the Board can address OTD’s Motion for Reconsideration.

¹ It is uncertain under District law as to whether OTD could maintain a Landlord-Tenant action against a tenant that is not in default under their lease agreement.

d. The public interest favors the granting of the stay.

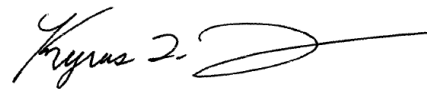
The public interest decisively favors a stay. The public has a vested interest in seeing that this dispute is resolved on the merits in manner that minimizes disruption to OTD and its tenants, who live and work in District, and are tax payers that contribute to vitality of the District. Moreover, the District has a vested interest in the provision of diverse types of housing as proposed by OTD. “ Diversity means maintaining and enhancing the District’s mix of housing types. Housing should be developed for households of different sizes, including growing families as well as singles and couples.” 10 DCMR 217.3. Specifically, the District of Columbia Comprehensive Plan encourages “cooperatives, shared housing, and co-housing (housing with private bedrooms, but shared kitchens and common areas) as a more affordable alternative to condominiums” which is exactly the need served by the existing flats. 10 DCMR 505.9. A rush to revoke properly issued building permits and certificates of occupancy without additional consideration of the merits of the appeal is contrary to the District’s goals.

For all the foregoing reasons, OTD requests that the Board stay enforcement of the Order during the pendency this Motion for Reconsideration.

Respectfully submitted,

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By:



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