

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 19441-A in Appeal No. 19441 of Richardson Place Neighborhood Association, pursuant to 11 DCMR Subtitle Y § 302, from decisions made on September 27, 2016, and October 20, 2016, by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permits No. B1611469 and B1611470, and subsequently to issue Certificates of Occupancy No. CO1700955 and CO1700918, to allow two adjacent flats in the R-4 District at premises 410 and 412 Richardson Place, N.W. (Square 507, Lots 101 and 102).¹

HEARING DATE: March 22, 2017
DECISION DATE: May 17, 2017
ORDER ISSUANCE DATE: February 4, 2019
STAY DECISION DATE: February 21, 2019

ORDER GRANTING STAY

By Order issued February 4, 2019, the Board granted an appeal submitted on December 16, 2016, by the Richardson Place Neighborhood Association (the “Appellant”), a non-profit citizens’ association comprising owners of approximately ten residences on or adjacent to Richardson Place, N.W., to challenge the decisions of the Department of Consumer and Regulatory Affairs (“DCRA”) to issue two building permits and two related certificates of occupancy that allowed two flats on adjacent lots at 410 and 412 Richardson Place, N.W. (Square 507, Lots 101 and 102).

The parties in this proceeding are the Appellant; DCRA; Oaktree Development LLC, doing business as OTD 410-412 Richardson Place LLC, the owner of the property that is the subject of the appeal (“OTD” or the “Property Owner”); and Advisory Neighborhood Commission (“ANC”) 5E, the ANC in which the subject property is located.

On February 11, 2019, the Property Owner submitted a motion to stay the effectiveness of the Board’s Order granting the appeal pursuant to Subtitle Y § 701.2. The motion was served on the other parties in accordance with Subtitle Y § 407.3, and at a public meeting on February 13, 2019, the Board set the deadline for responses from the parties as February 19, 2019, in accordance with Subtitle Y § 407.4. At the public meeting, the Board indicated its intent to deliberate on the motion for stay at a public meeting on February 20, 2019; the meeting was postponed to February 21,

¹ This order refers to provisions and zone districts in effect under the Zoning Regulations of 1958 when the decision was made. The 1958 Regulations were repealed as of September 6, 2016, and replaced by the 2016 Regulations; however, the repeal and adoption of the replacement text have no effect on the validity of the Board’s decision in this case or of this Order.

2019, since the District of Columbia Government was closed due to inclement weather on the originally scheduled date.

FINDINGS OF FACT

1. The property that is the subject of this appeal is two adjoining lots located at 410 Richardson Place, N.W. (Square 507, Lot 102) and 412 Richardson Place, N.W. (Square 507, Lot 101).
2. Building permits were issued in 2011 and 2013 to a prior owner of the subject property to authorize construction of a flat on each lot. The prior owner began construction at the site in 2014 and sold the property to the current owner in April 2016. The original building permits were extended, and the Property Owner filed for revised permits to reflect a change in ownership. The revised building permits were issued on September 27, 2016, for 412 Richardson Place, N.W. and October 20, 2016, for 410 Richardson Place, N.W.
3. The Appellant met with a representative of the Property Owner on October 31, 2016, for the purpose of learning more about the planned operation of the new construction. The Property Owner indicated that Oaktree Development LLC would enter into a master lease of the subject property with Common Living, Inc., which would operate the buildings as a total of 24 living units, each of which would be individually leased in an arrangement known as “co-living.” One of the units would be leased to a representative of Common Living, who would act “as a sort of superintendent of the entire property.” (Exhibit 9.)
4. The Property Owner obtained certificates of occupancy authorizing use of the properties as two-family flats on February 2, 2017 (412 Richardson Place, N.W.), and February 13, 2017 (410 Richardson Place, N.W.).

CONCLUSIONS OF LAW AND OPINION

Pursuant to Subtitle Y §§ 701.1 and 701.2, the Board may order the effectiveness of a final decision and Order of the Board stayed pending reconsideration of that Order. In accordance with Subtitle Y § 701.3, the Board may grant a party’s request for a stay only upon finding that all four of the following criteria are present: (a) the party seeking the stay is likely to prevail on the merits of the motion for reconsideration; (b) irreparable injury would result if the stay is denied; (c) opposing parties would not be harmed by a stay; and (d) the public interest favors the granting of the stay.

With regard to the first element, the Board notes the Property Owner’s arguments, made in its related motion for reconsideration, challenge the Board’s decision to grant the appeal. The Board concludes that a stay of the effectiveness of the Order will maintain the status quo for a brief additional period until the Board can fully address the claims of the Property Owner.

With regard to irreparable injury absent a stay, the Property Owner states that “[t]here is no question that OTD and its tenants will suffer irreparable harm if the requested Stay is denied,” since DCRA would otherwise be required to revoke building permits and certificates of occupancy issued for the buildings “and OTD will be required to evict tenants that have been living in the buildings for nearly two years.” (Exhibit 50.) The Appellant complains that “OTD and Common

have operated as though the decision did not even happen, subsequently populating the subject property with tenants....” (Exhibit 52.) However, despite its opposition to the Property Owner’s request for a stay, the Appellant did not oppose “a 30-day maximum” stay so that tenants could have time to relocate, an acknowledgement that harm would result absent a stay.

With regard to the third element, the Board finds that opposing parties would not be harmed by a stay. The Appellant did not claim that approval of a stay would cause any harm to the association or its members. According to the Property Owner, DCRA had no objection to the requested stay.

Finally, the Board concludes that the public interest favors a stay, which will prevent the revocation of the Property Owner’s certificates of occupancy until the Board has an opportunity to address the Property Owner’s claims of error in the reconsideration proceeding. The Board expects to deliberate on the motion for reconsideration at a public meeting on March 20, 2019.

The Board is required to give “great weight” to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)). The affected ANC, ANC 5E, was served with a copy of the Property Owner’s motion for stay, but did not submit a response. The Board’s decision as to whether to grant the requested stay is not a final decision, in light of the Property Owner’s motion for reconsideration of its Order granting the appeal, but concerns only whether the status quo should be maintained until the Board makes a decision on reconsideration. (*See Appeal No. 18027* (Order granting stay, issued November 25, 2009).) The ANC was also served with a copy of the Property Owner’s motion for reconsideration on the same day it was filed, and has been provided an opportunity to submit a written report before the Board makes a final decision on the motion for reconsideration.

For the reasons stated, it is hereby **ORDERED** that the motion for **STAY** is **GRANTED** until the date of issuance of a written decision and Order on the related motion for reconsideration of the Board’s Order granting the appeal, issued on February 4, 2019.

VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Anthony J. Hood to GRANT the stay; Lorna L. John not participating.)

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 8, 2019

THE STAY FORMALLY ORDERED HEREIN BECAME FINAL AND EFFECTIVE UPON THE RECORDATION OF THE BOARD'S VOTE TO GRANT THE STAY ON FEBRUARY 21, 2019.