

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4TH STREET, N.W., 2ND FLOOR S
WASHINGTON, D.C. 20002**

Appeal of Senior Dwelling, Inc.

BZA Appeal No. 18820

SENIOR DWELLING, INC.'S PRE-HEARING STATEMENT

Senior Dwelling, Inc. ("Senior Dwelling"), pursuant to the District of Columbia municipal regulations, files this Pre-hearing Statement in support of its appeal of a notice of revocation received on April 21, 2014. Senior Dwelling operates rooming houses in the District of Columbia. Senior Dwelling obtained certificates of occupancy to operate rooming houses, and the District of Columbia thoroughly inspected Senior Dwelling to confirm Senior Dwelling operated rooming houses. Senior Dwelling has learned through related litigation that the District of Columbia previously investigated Senior Dwelling in 2009 and 2010 and found that Senior Dwelling operated rooming houses in accordance with District of Columbia law. See reports attached at Exs. G, H, I.

Only in the last several months before sending a notice of revocation did the District of Columbia send an army of different staffpeople in to find some reason to try to shut down Senior Dwelling. The District has refused all efforts to resolve the matter.

DISCUSSION

Rosemary Ogbenna, owner of Senior Dwelling, never actually received a Notice to Revoke Licenses ("Notice") with respect to Certificate Nos. CO169076 and CO169061 (collectively, "Certificates"), which permit her to operate 223 56th Place NE and 225 56th Place

NE in the District of Columbia (hereinafter collectively referred to as “223 and 225”) as rooming houses, but undersigned counsel received and accepted such notice effective as of April 21, 2013. See Exhibit A. The Notice came after months, characterized at times by almost daily visits from multiple District of Columbia government officials, including a barrage of unannounced inspections by various agencies (sometimes multiple inspections on the same day) meant to harass Senior Dwelling and Ms. Ogbenna, and displace residents at 223 and 225 who depend on Senior Dwelling for affordable housing.

Senior Dwelling operates rooming houses in the District of Columbia that provide affordable housing for lower income residents, including many on fixed income, some of which who are elderly veterans. These individuals do not receive services through Senior Dwelling. However, given their age, some residents receive some form of government assistance or benefits, with services being provided by various organizations in the District of Columbia unrelated to Senior Dwelling. All that is common with elderly citizens, whether in houses, condos or any other residence.

The Notice references a December 3, 2014 investigation that “revealed that the 223 and 225 were being operated as assisted living residences and/or community residences facilities.” Notice, p. 2. The Notice also states “it was discovered” that the residents of 223 and 225 are “provided assisted living services and supervision from outside sources unrelated to Senior Dwelling, Inc.” Notice, p. 2.

As detailed fully below, many residents of 223 and 225 receive benefits and services from outside organizations, however, these services are not provided by Ms. Ogbenna or Senior Dwelling, and are wholly separate from the residents’ living arrangements. Ms. Ogbenna should not be penalized for providing affordable housing to District residents, simply because some of

her tenants receive government assistance and benefits. There are many buildings in the District that house individuals that receive government assistance without subjecting their landlords to additional housing regulations, or automatically converting such residences into community residence facilities. Indeed, the District previously investigated Senior Dwelling and determined that Senior Dwelling did operate rooming houses.

Senior Dwelling provides an important service by providing affordable housing to elderly persons and/or veterans. Senior Dwelling obtains referrals from social service providers who are discharging residents from homes or facilities where such residents do need enhanced services, to a place where they can live independently. To the extent that any official considers that Senior Dwelling is a CRF, Senior Dwelling would limit in the future the types of residents who could be eligible to live in Senior Dwelling's rooming houses.

1. 223 and 225 are in Full Compliance With All Applicable Building and Zoning Codes

As of March 19, 2014, a building inspector has inspected both 223 and 225 and reported there are no code violations. See Exhibit B for his report, including resume of Sheldon Faison. Various District of Columbia inspectors had visited 223 and 225 in the past, and noted violations, but Senior Dwelling corrected any violations that existed.

If there are any code violations, Senior Dwelling would be more than happy to correct it immediately. However, Ms. Ogbenna has a right to full disclosure regarding exactly what violations are pending against 223 and 225, a chance to correct any remaining violations, as well as an opportunity to demonstrate that both properties are in full compliance so that she may maintain the Certificates and the residents of 223 and 225 can stay in their homes.

Over the years, Senior Dwelling has cooperated with all inspections, and corrected matters brought to Ms. Ogbenna's attention. Even when Ms. Ogbenna thought claimed

violations were incorrectly noted, or even just without basis, she still fixed the issues and cooperated with the District.

Late last year, in December 2013, given a flurry of visits, Senior Dwelling served various FOIA requests to the District government try to obtain information as to any inspections or issues. Senior Dwelling received no internal documents whatsoever, but has received this Notice in April 2014.

2. 223 and 225 Are Licensed and Operated as Rooming Houses, and Have Operated as Such; Senior Dwelling Has No Individualized Service Plans

Ms. Ogbenna has obtained the appropriate rooming house license for both 223 and 225. She, through Senior Dwelling, operates both as a rooming house, defined in the District of Columbia Code of Municipal Regulations as “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.” 11 DCMR §199.1. These are precisely the type of accommodations Senior Dwelling provides at 223 and 225. Each property has nine (9) rooms, shared restrooms and a shared kitchen, and a common kitchen.

The definition for ALR provided in the District of Columbia Code is clearly in contrast to the way 223 and 225 are operated. District of Columbia Code § 44-102.01 provides that ALR “means an entity, whether public or private, for profit or not for profit, that combines housing, health, and personalized assistance, in accordance to individually developed service plans, for the support of individuals who are unrelated to the owner or operator of the entity.”

Neither 223 or 225 combine “housing , health, and personalized assistance, in accordance with individually developed service plans . . .” The residents of 223 and 225 are able to live independently and affordably at 223 and 225. Ms. Ogbenna does not operate either facility

according to an individually developed service plan, and does no more than provide her tenants with an affordable place to live comfortably and independently. Neither property constitutes an ALR.

3. 223 and 225 Are Licensed and Operated as Rooming Houses and Are Not Community Residence Facilities

As stated above, Ms. Ogbenna has obtained the appropriate license to operate 223 and 225 as rooming houses and has done so for over five years in compliance with law. District of Columbia Code § 44-501 defines a Community Residence Facility (“CRF”) as “a facility that provides a sheltered living environment for individuals who desire or need such an environment because of their physical, mental, familial, social, or other circumstances, and who are not in the custody of the Department of Corrections.”

Ms. Ogbenna does not provide a “sheltered living environment” for the individual residents of 223 and 225, nor does she cater to any specific group of individuals. The residents of 223 and 225 sought out Ms. Ogbenna rooming house because she provides affordable rooms and the ability for her residents to live independently. Many of the residents of 223 and 225 are elderly, or are veterans, and have limited income and cannot afford to live in an apartment of their own. At 223 and 225, they are able to enjoy the independence of having their own space on their income. As noted above, many residents receive various government benefits, however, no services are provided by Senior Dwelling. All residents of 223 and 225 work with outside organizations who provide various services to the residents based on their benefits.

4. The DCRA Filed a Separate Proceeding, Which Provides a Proper Forum to Address Particular Code Violations

It should be noted that Ms. Ogbenna received a Notice to Revoke Licenses on March 18, 2014 with respect to License Nos. 680003734 and 680003735 (collectively, “Licenses”),

separate from this proceeding before the BZA, which permit her to 223 and 225 as rooming houses. See Exhibit C. That forum is likely the proper forum to address issues of any code violations, but the District has also forged ahead with this proceeding to revoke Senior Dwelling's certificates of occupancy. Ms. Ogbenna filed an appeal and requested a hearing in that matter, which is currently pending before the District of Columbia Office of Administrative Hearings. Senior Dwelling would like to continue operating 223 and 225, providing affordable housing to District residents in need, and was willing to work with the District to circumscribe certain types of tenants if needed, but has been rebuffed at every turn. Senior Dwelling complies with all applicable housing requirements for rooming houses, however, Ms. Ogbenna is open to restructuring the way the properties are run, and to be more conscious of the types of tenants she takes on for each property.

5. The District and DCRA Are Doing Everything in Their Power to Harass Ms. Ogbenna and Put Senior Dwelling Out of Business

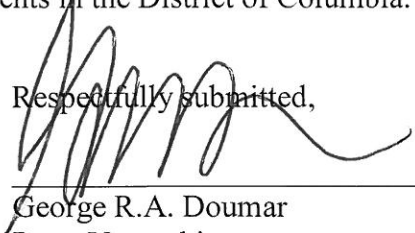
A distressing number of government officials have regularly visited Senior Dwelling's rooming houses over many years, alleging the need to conduct various inspections and interviewing residents and home health agents. See Exhibits F-I. No matter how many times the District confirmed that Senior Dwelling ran rooming houses, staffpersons kept coming back until they could find something wrong. Specifically, DCRA seemingly exceeded its typical protocol by initiating enforcement actions mere days following an inspection. See Deposition of Thomas Smoot at Exhibit D. DCRA's inspector in the civil case brought by Senior Dwelling recently admitted that in his many years, he had never inspected a facility under the circumstances and in the manner he inspected Senior Dwelling. See Exhibit D. The fact is, Senior Dwelling properly operates rooming houses, and should be allowed to continue to do so.

These unannounced and daily visits by various persons are unwarranted and disruptive to both the residents and the operations of Senior Dwelling. Consequently, the residents have become irritated at the regular interrogations, and Senior Dwelling's reputation is now at issue.

For the foregoing reasons, the appeal should be granted, and Senior Dwelling should be allowed to keep its Certificates and continue to operate 223 and 225 as rooming houses, providing affordable housing to lower income residents in the District of Columbia.

DATED: September 9, 2014

Respectfully submitted,



George R.A. Doumar
Roya Vasseghi
Doumar Martin, PLLC
2000 N. 14th Street, Suite 210
Arlington, Virginia 22201
Phone (703) 243-3737
Fax (703) 524-7610
Email: gdoumar@doumarmartin.com

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4TH STREET, N.W., 2ND FLOOR S
WASHINGTON, D.C. 20002**

Appeal of Senior Dwelling, Inc.

BZA Appeal No. 18820

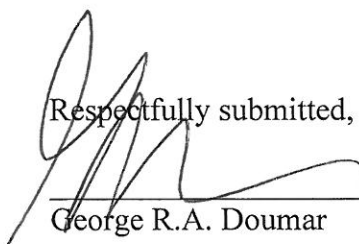
EXHIBIT LIST

- A. Notice to Revoke Certificates of Occupancy (not including all exhibits which may be used at the hearing)
- B. Faces Inspectors Report for 223 & 225 56th Place NE Washington, DC 20019, including resume of Mr. Faison
- C. Notice to Revoke Licenses (not including all exhibits which may be used at the hearing)
- D. Excerpts from Thomas Smoot Deposition, September 3, 2014
- E. Excerpts from Sharon Mebane Deposition, September 3, 2014
- F. Log of visitors to 223 and 225, including business cards left by various District of Columbia government officials upon arrival
- G. January 7, 2010 Memorandum from Jude Jules to Sharon Mebane
- H. January 5, 2010 Memorandum from Theodore F. Lomax to Sharon Mebane, indicating 5033 North Capitol Street, N.E.
- I. January 5, 2010 Memorandum from Louis Woodward to Sharon Mebane

Including any exhibits that the District of Columbia might use, and exhibits for impeachment and rebuttal.

DATED: September 9, 2014

Respectfully submitted,


George R.A. Doumar

Roya Vasseghi
Doumar Martin, PLLC
2000 N. 14th Street, Suite 210
Arlington, Virginia 22201
Phone (703) 243-3737
Fax (703) 524-7610
Email: gdoumar@doumarmartin.com

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4TH STREET, N.W., 2ND FLOOR S
WASHINGTON, D.C. 20002**

Appeal of Senior Dwelling, Inc.

BZA Appeal No. 18820

WITNESS LIST

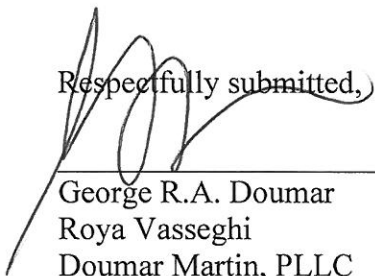
1. Rosemary Ogbenna – Ms. Ogbenna is expected to testify that she runs 223 and 225 as rooming houses, and not CRFs or Assisted Living Facilities. Ms. Ogbenna is also expected to testify as to the frequency of visits from DC Government officials inspecting 223 and 225 and interviewing her residents, often without a notice of violation or a basis for the visit. Ms. Ogbenna is expected to testify that she has always cooperated with these visits and inspections, despite whether she believed there was a basis, and has always promptly corrected any violations.
2. Mercy Udeh – Ms. Udeh is expected to testify that she is a resident at Senior Dwelling and is not, and never was, employed by Senior Dwelling in any capacity. Ms. Udeh has lived at Senior Dwelling for many years and has gotten to know some of the other residents. As a rooming house, residents share a kitchen, and often, when Ms. Udeh cooks for herself, she shares food with some of the other residents. Ms. Udeh is never paid or told to do this, she does so out voluntarily, because she knows the residents. Ms. Uden is expected to testify that she has never dispensed medications or been the recipient of resident's funds.

3. Sheldon Faison – Mr. Faison is expected to testify that 223 and 225 are in compliance with all applicable building codes, and were in compliance when various DC Government officials were issuing notices of violations to Ms. Ogbenna for the properties.
4. Thomas Smoot – Mr. Smoot is expected to testify about the inspections of 223 and 225 that he was involved in, including procedures and protocols for DCRA inspections.
5. Kevin Meredith – Mr. Meredith is expected to testify about the inspections of 223 and 225 that he was involved in, including procedures and protocols for DCRA inspections.

Including any witnesses that the District of Columbia might use, and witnesses for impeachment and rebuttal.

DATED: September 9, 2014

Respectfully submitted,



George R.A. Doumar
Roya Vasseghi
Doumar Martin, PLLC
2000 N. 14th Street, Suite 210
Arlington, Virginia 22201
Phone (703) 243-3737
Fax (703) 524-7610
Email: gdoumar@doumarmartin.com