

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING/MEETING

+ + + + +

TUESDAY,

SEPTEMBER, 23, 2014

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened in Room 220 South, 441 7th Street, N.W., Washington, D.C., pursuant to notice, pursuant to notice, at 9:36 a.m., Lloyd J. Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN, Chairperson  
MARNIQUE HEATH, Commissioner  
JEFFREY HINKLE, Commissioner  
ANTHONY HOOD, Commissioner

BZA STAFF PRESENT:

CLIFFORD MOY, Board Secretary  
SHERRY GLAZER, ESQ., Office of the D.C.  
Attorney General

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS, Zoning Specialist

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REDIRECT

DIRECT

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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:36 a.m.)

3 CHAIRMAN JORDAN: Good morning.

4 It's September 23, 2014 and we're here for the  
5 Meeting of the Board of Zoning Adjustment and  
6 Hearing of the Board of Zoning Adjustment. We're  
7 located in Room 220-S at 441 4th Street, N.W.  
8 If we could please come to order.

9 My name is Lloyd Jordan, Chairperson  
10 of the Board; with me are seated Commissioners  
11 Marnique Heath, Jeffrey Hinkle and Anthony  
12 Hood. At my right is Jeffrey Hinkle.

13 Please be advised that these  
14 proceedings are Webcast live and also being  
15 recorded by a court reporter who is seated to  
16 my right, so therefore I'm going to ask you to  
17 refrain from any disruptive noises here in the  
18 hearing room today. And so again a good time  
19 to silence any device that rings or vibrates  
20 loudly.

21 If you're going to provide any  
22 testimony by way of statement or read anything

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1 to the Board or address the Board in any manner,  
2 I'm going to ask you to do two things, the first  
3 of which is to complete two witness cards per  
4 person, that's two witness cards per person, and  
5 prior to testifying give those cards to the  
6 court reporter who is seated to my right.

7  
8 So that's two witness cards per  
9 person and give the cards to the court reporter  
10 prior to testifying.

11 The second thing I'm going to need  
12 you to do is to now stand and take the oath which  
13 will be given by Mr. Moy, the Board Secretary.  
14 So if you're going to provide any statement or  
15 address the Board we'll need you to stand and  
16 get sworn in by Mr. Moy.

17 (WITNESSES SWORN)

18 CHAIRMAN JORDAN: Okay. All  
19 right. Mr. Moy, let's call the first case  
20 please on the meeting docket.

21 MR. MOY: Yes sir. Good morning,  
22 Mr. Chairman and Members of the Board. The

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1 first component of the Board Hearing today is  
2 the expedited review calendar and on the  
3 calendar there are two special exception cases  
4 under Section 223.

5 They are application No. 18831 of  
6 Kira D. Vol, V-o-l, and Application No. 18832  
7 of Nancy Herman.

8 CHAIRMAN JORDAN: Well, let's go  
9 back. Is there any other announcement -- I  
10 guess we have no announcements on any of the  
11 cases today do we? No. Okay.

12 Does this case 18831 have an  
13 affidavit of posting?

14 MR. MOY: No sir. As a matter of  
15 fact, this morning I double-checked the  
16 official record as well and there is no filing  
17 for an affidavit of posting.

18 CHAIRMAN JORDAN: Okay. Do we have  
19 the applicant here for this case, 18831? The  
20 applicant for 18831? Okay. Let's just  
21 reschedule that Mr. Moy if we can contact the  
22 applicant.

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1                   MR. MOY:     Okay.   Staff will take  
2     care of that, Mr. Chairman.

3                   CHAIRMAN JORDAN:   Thank you.   And  
4     we can proceed on.

5                   MR. MOY:     Okay.   Then the second  
6     application on the review calendar is 18832 of  
7     Nancy Herman and that's before the Board for  
8     deliberation.

9                   CHAIRMAN JORDAN:       Okay.     In  
10    reviewing this case I think it's ready for  
11    relief.   Does anybody have any issues with it?  
12    Anything we need to discuss?   Are we ready to  
13    deliberate?   Then I would move that we grant  
14    the relief requested in 18832.

15                   COMMISSIONER HEATH:    I'll second.

16                   CHAIRMAN JORDAN:    Motion made and  
17    seconded.   All those in favor of the motion  
18    signify by saying aye.   Those opposed nay.

19                   (VOTE TAKEN)

20                   The motion carries.   Mr. Moy?

21                   MR. MOY:     Staff would record the  
22    vote as 4-0.   This on the motion of Chairman

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1 Jordan to approve application No. 18832 of Nancy  
2 Herman, special exception relief under  
3 Section 223, not meeting side yard requirement.  
4 Second the motion Ms. Heath and also in support  
5 Mr. Hood and Mr. Hinkle. We have a Board member  
6 not present today and the motion carries, sir.

7 CHAIRMAN JORDAN: Okay. All  
8 right. Then let's just continue down the  
9 order.

10 MR. MOY: Is there a-- whatever you  
11 want.

12 CHAIRMAN JORDAN: No, semi-order.

13 MR. MOY: Thank you, sir. I just  
14 wanted to get that on the record.

15 CHAIRMAN JORDAN: I know. You were  
16 trying to back into it. Okay. So the next  
17 application for a public hearing before the  
18 Board is application No. 18842.

19 MR. MOY: Yes, this is of the  
20 Government of the District of Columbia. This is  
21 a request for special exceptions under  
22 subsection 2713(a) and that's all I have for

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1 this morning on this case, Mr. Chairman.

2 CHAIRMAN JORDAN: Okay. Can we  
3 have the parties for 18842 to come to the witness  
4 table please.

5 Good morning. Just make sure your  
6 microphone is on and you'll get a bright glowing  
7 green light. Now let's try it again. There  
8 you go. Give us your name please.

9 MR. RICHMOND: Roger Richmond with  
10 the Office of Unified Communications.

11 CHAIRMAN JORDAN: Okay. Mr.  
12 Richmond, I don't think -- I know there's been  
13 a request to waive hearing notice and etc., but  
14 I don't think we've had one in the file from the  
15 applicant. I know we have the Office of  
16 Planning request that this get expedited, so I  
17 don't know if you've made one. We can take one  
18 orally now and then you can supplement the  
19 record, make sure the Office of Zoning has that.

20 I would move that we waive the  
21 hearing notice requirement for this matter  
22 since it's an issue of public safety and the

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1 District of Columbia communications system  
2 public safety and so I would move that we waive  
3 it.

4 COMMISSIONER HINKLE: Second.

5 CHAIRMAN JORDAN: The motion made  
6 and second. All those in favor say aye. Those  
7 opposed nay.

8 (VOTE TAKEN)

9 Great. I think we have sufficient  
10 information in the file to grant the relief  
11 requested by the Office of -- well excuse me,  
12 from the applicant. Unless there's some other  
13 issues that the Board needs to hear from the  
14 applicant then we'll just proceed on.

15 We're at the point where normally  
16 the applicant has the opportunity to present  
17 something to the Board but we believe that it's  
18 not necessary.

19 MR. RICHMOND: Okay.

20 CHAIRMAN JORDAN: So you have the  
21 right to waive any presentation and we can  
22 proceed on.

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1 MR. RICHMOND: Okay. We waive.

2 CHAIRMAN JORDAN: Okay. Let's  
3 turn to the Office of Planning and see if there's  
4 anything in addition that needs to be said.

5 MS. THOMAS: Good morning, Mr.  
6 Chairman and Members of the Board. Office of  
7 Planning has nothing additional.

8 CHAIRMAN JORDAN: All right. Thank  
9 you. Is there a representative here from  
10 Department of Transportation for this case?  
11 Anyone from the Department of Transportation?  
12 We do have a letter of no objection from the  
13 Department of Transportation supporting the  
14 relief -- well not objecting to the relief.

15 Is there anyone here from ANC5-D?  
16 ANC5-D? I don't think we have a letter in the  
17 file from ANC5-D do we?

18 MR. MOY: No sir.

19 CHAIRMAN JORDAN: Okay. Is there  
20 anyone here wishing to speak in support of the  
21 application? Anyone wishing to speak in  
22 support? Anyone wishing to speak in

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1 opposition? Anyone in opposition?

2 Then let's close the record on this  
3 matter with what we already have. Is the Board  
4 ready to deliberate?

5 COMMISSIONER HINKLE: Yes. Thank  
6 you, Mr. Chair. Perhaps we could ask the Office  
7 of Planning. At the end of their report they  
8 note that there was some discussion with the  
9 ANC, is that correct?

10 MS. THOMAS: Yes, I did get  
11 information from the applicant and we didn't get  
12 a report as such but they were in conference with  
13 the ANC.

14 CHAIRMAN JORDAN: Okay. Let me  
15 ask the applicant, is this 190-foot or is it 200?  
16 The record's kind of mixed whether or not it's  
17 195-foot antennae or it's a 200? What's the--

18 MR. RICHMOND: The actual monopole  
19 is 195 feet. It slightly exceeds that with the  
20 lightning arresters.

21 CHAIRMAN JORDAN: Slightly  
22 exceeds? We want to be sure to give the proper

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1 relief because if you're not with the proper  
2 height someone will surely come in here and say  
3 that you don't have authority to do it. So  
4 what's the total height?

5 MR. KAVALERI: The tower is 195  
6 feet and there's a 5-foot lightning arrester.  
7 It's a rod for lightning protection.

8 CHAIRMAN JORDAN: Okay. So  
9 that's 200?

10 MR. KAVALERI: Yes. But for FAA  
11 purposes the tower is considered 195-feet.

12 CHAIRMAN JORDAN: All right. So  
13 my motion is that we approve the relief  
14 requested up to 200 feet. Let's go 205 feet.  
15 I'm trying to help you here. Go ahead and box  
16 yourself all you want but 205-feet. So I would  
17 move that we grant the relief with the height  
18 205-feet.

19 COMMISSIONER HOOD: Second.

20 CHAIRMAN JORDAN: Motion made and  
21 second. Any discussion? All those in favor of  
22 the motion signify by saying aye. Those

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1       opposed nay.

2                       (VOTE TAKEN)

3                       The motion carries. Mr. Moy?

4                       MR. MOY: Staff would record the  
5       vote as 4-0. It's on the motion of Chairman  
6       Jordan to approve the application for the relief  
7       requested under I believe its plans, approved  
8       plans under Exhibit No. 2 that was filed.

9                       Also in support of the motion Mr.  
10       Hood -- or rather Mr. Hood seconded the motion.  
11       Also in support Ms. Heath and Mr. Hinkle and we  
12       have a Board member not present. Motion  
13       carries, Mr. Chairman, and as you said wording  
14       will be of a height up to 205-feet.

15                      CHAIRMAN JORDAN: Okay. Summary  
16       please.

17                      MR. MOY: Yes sir.

18                      CHAIRMAN JORDAN: Okay. Thank  
19       you. Sorry to have such a rough time for you  
20       today we save it for some other people. 18821  
21       please.

22                      MR. MOY: The next application on

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1 deck is 18821 of Jemal's Hecht's LLC and Petco.  
2 This is a request, Mr. Chairman, for special  
3 exceptions for animal boarding, pet grooming  
4 and pet store under sections 802.21, .25 and and  
5 .26.

6 CHAIRMAN JORDAN: Okay. Would  
7 you identify yourself please?

8 MS. BATTIES: I'm sorry. Leila  
9 Batties with the law firm of Holland & Knight,  
10 good morning, on behalf of the applicant,  
11 co-applicants in this case Jemal's Hecht's and  
12 Petco Animal Supply Store, Inc.

13 CHAIRMAN JORDAN: Okay. Let me ask  
14 a question. So we're clear, there's a couple  
15 of different things in the record. This is a  
16 C-M-3. Not a C-M-1, right?

17 MS. BATTIES: C-M-3.

18 CHAIRMAN JORDAN: Yes, something  
19 else in here was showing C-M-1. Let me  
20 question, what's the load management plan?

21 MS. BATTIES: That pertains more  
22 to the operation of the retail space overall not

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1 specific to this retail unit but they have what  
2 three or four retail bays here at the site and  
3 so there will be a loading management plan for  
4 the entire development.

5 CHAIRMAN JORDAN: It's not  
6 developed yet?

7 MS. BATTIES: Well, it's under  
8 construction, right.

9 CHAIRMAN JORDAN: So the loading  
10 management plan is not-- okay. That was a  
11 concern by Office of Planning and I don't know  
12 if you've had conversation with them about the  
13 load management plan.

14 This is probably one of the first dog  
15 cases, and you've had some dog cases--

16 MS. BATTIES: I have.

17 CHAIRMAN JORDAN: Some pet cases  
18 that I don't think that there's any issue with  
19 since this is in a C-M-3 zone in a commercial  
20 industrial area and it's not really abutting any  
21 residential. You know you've challenged this  
22 with the neighbors and--

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1 MS. BATTIES: Yes, I know. My  
2 favorite type of cases.

3 CHAIRMAN JORDAN: I know. You're  
4 becoming the pet woman. But no, we appreciate  
5 this case. I don't think I have any issues.  
6 Does the Board have--

7 COMMISSIONER HINKLE: No, Mr.  
8 Chair. Just a quick question and I don't think  
9 it has any bearing on this case but the structure  
10 was built, this parking structure was built so  
11 if the marketing conditions in the future are  
12 right, it could be converted to a residential.  
13 Is that correct?

14 MS. BATTIES: I'll let Paul speak  
15 to that.

16 COMMISSIONER HINKLE: Because  
17 it's I think an interesting approach.

18 CHAIRMAN JORDAN: First introduce  
19 yourself.

20 MR. MILLSTEIN: Good morning, Paul  
21 Millstein, Douglas Development Corporation.

22 CHAIRMAN JORDAN: Okay. Thank

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1       you.

2                   COMMISSIONER HINKLE:       It's just  
3       interesting but again it doesn't have any  
4       bearing to this case I think. Thank you.

5                   CHAIRMAN JORDAN:       Any other  
6       questions from any other members of the Board?  
7       Okay. You know the drill and if you wish to  
8       say something but you know you've got a pet case  
9       which is going through right now, you have the  
10      opportunity to do so or we can process on.

11                  MS. BATTIES:       We'll stand on the  
12      record. Nothing further.

13                  CHAIRMAN JORDAN:       Does the Office  
14      of Planning have anything in addition to report?

15                  MS. THOMAS:       No, Mr. Chair. The  
16      Office of Planning will stand on the record of  
17      approval. Thank you.

18                  CHAIRMAN JORDAN:       Thank you.  
19      Anyone from the Department of Transportation  
20      for this matter? We do have a letter of no  
21      objection from the Department of Transportation  
22      to the requested relief. Anyone here from

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1       ANC-5D?       ANC-5D?       We have a letter  
2       recommending approval from ANC-5D, and that's  
3       unusual too so you're just batting 1000 today.

4               COMMISSIONER HOOD:    Mr. Chairman,  
5       let me just add, and I'm not going to do a whole  
6       lot of talking.

7               CHAIRMAN JORDAN:    Oh here we go.

8               COMMISSIONER HOOD:    Let me just  
9       add, this particular case there have been some  
10      PUDs and stuff that's happened in the Zoning  
11      Commission and I notice this particular  
12      applicant always has the partnership with the  
13      ANC and the community. So I want to commend them.  
14      I see this is zoning areas and I see it's  
15      continuing over to the BZA hearing so I want to  
16      commend them for putting this forward. And I  
17      will tell you that it reveals to me from the  
18      record, from this case and the other previous  
19      cases that we've had dealing with the site or  
20      this area, it's a partnership.

21              So continue the good work. It looks  
22      like the letter from Kathy Henderson, as I've

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1       stated before, doesn't come lightly. I've been  
2       working with her for years. So that means a lot  
3       to have a letter of support from her and from  
4       her ANC. So thank you, Mr. Chair.

5                   CHAIRMAN JORDAN: Thank you, Mr.  
6       Hood. Is anyone here wishing to speak in  
7       support of the application? Anyone wishing to  
8       speak in support?

9                   Anyone wishing to speak in  
10      opposition? Anyone in opposition?

11                  Let's turn back to the applicant.  
12      I've just got a couple of questions on the  
13      conditions. Conditions that a load  
14      management plan shall be implemented to reduce  
15      tenant loading conflicts. No loads shall  
16      occur on New York Avenue at any time. The loading  
17      dock manager shall be identified to schedule and  
18      coordinate the use of the loading facilities  
19      among the tenants.

20                  Is there any other condition for  
21      this that we need to implement that I've missed?

22                  MS. BATTIES: No. We are planning

1 with all of those.

2 CHAIRMAN JORDAN: Okay. Office  
3 of Planning, is that good?

4 MS. THOMAS: Yes.

5 CHAIRMAN JORDAN: Okay. Well  
6 then we will close the hearing and move to  
7 deliberation. I would move that we grant the  
8 relief requested with the conditions as I've  
9 just read them.

10 COMMISSIONER HEATH: I'll second.

11 CHAIRMAN JORDAN: Motion made and  
12 second. All those in favor of the motion aye.  
13 Those opposed nay.

14 (VOTE TAKEN)

15 The motion carries. Mr. Moy?

16 MR. MOY: Staff would record the  
17 vote as 4-0. This on the motion of Chairman  
18 Jordan to approve the application for special  
19 exceptions requested as well as the three  
20 conditions. Second the motion Ms. Heath. Also  
21 in support Mr. Hood and Mr. Hinkle. We have a  
22 Board member not present with us and I believe

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1 just for the record these are revised plans  
2 under Exhibit 30(c) and (d).

3 CHAIRMAN JORDAN: Okay. Thank  
4 you. Summary order.

5 MR. MILLSTEIN: Thank you, sir

6 MS. BATTIES: Thank you very much,

7 CHAIRMAN JORDAN: Mr. Moy, give me  
8 one second here.

9 MR. MOY: Okay. While there's a  
10 pause, Mr. Chairman, I just want to go take a  
11 couple of steps back. On the first case on the  
12 calendar I didn't give a date. What I'd like to  
13 do I think to allow the applicant time to post  
14 and meet with the ANC, I would have a date of  
15 October 28th on the expedited review calendar  
16 for that day. That's it.

17 CHAIRMAN JORDAN: Let's call 18767  
18 please.

19 MR. MOY: Application No. 18767 of  
20 Darryl R. Clark. Mr. Chairman, this is an  
21 application where the applicant is requesting  
22 multiple variance relief under lot area, lot

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1 width, side yard and parking requirements as  
2 well as pervious surface requirements under  
3 section 412. Thank you.

4 CHAIRMAN JORDAN: Oh so we do have  
5 the ANC letter. Let me read it a second here.

6 MR. MOY: Yes, that arrived  
7 actually today this morning under Exhibit 30,  
8 Mr. Chairman.

9 CHAIRMAN JORDAN: Got it. Okay.  
10 I'm good. Please identify yourself.

11 MR. CLARK: Good morning. I'm  
12 Darryl Clark owner of 305--

13 CHAIRMAN JORDAN: Would you make  
14 sure your microphone is on please. Push the  
15 button and there'll be a bright glowing green  
16 light. Yes, there you go.

17 MR. CLARK: I'm sorry. Good  
18 morning. I am Darryl Clark the owner of 305 and  
19 307 55th Street, N.E.

20 CHAIRMAN JORDAN: Good. Welcome,  
21 Mr. Clark. This is a matter which unusually has  
22 everybody's support. I think the application

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1 and the documents support the relief that you  
2 requested. I don't have any questions. I  
3 don't know if the Board has any other questions  
4 we need to drill down on that you want to hear  
5 from the applicant.

6 Typically, when we're at that point  
7 the applicant waives doing a presentation and  
8 we can proceed on, if that's okay. Office of  
9 Planning?

10 MS. THOMAS: Nothing Additional.  
11 I'd just like to point out that he did ask for  
12 relief from the pervious surface requirements  
13 but, like I said in my report, he didn't  
14 understand what that meant.

15 CHAIRMAN JORDAN: Okay. We can  
16 just stop there. It's not necessary. Anyone  
17 here from the Department of -- well I'm sure you  
18 don't have any questions of planning because you  
19 can't do anything but get yourself in trouble.  
20 Anyone here from the Department of  
21 Transportation to offer in this case?  
22 Department of Transportation?

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1 Oh excuse me. Is there anyone here  
2 from ANC-7C? ANC-7C. We do have a letter from  
3 ANC-7C who supports this project. Is there  
4 anyone here wishing to speak in support of the  
5 application? Anyone in support? Anyone in  
6 opposition? Anyone in opposition?

7 Then let's close the record on this  
8 case and move to deliberation. I would move  
9 that we grant the relief in this matter.  
10 Second?

11 COMMISSIONER HEATH: I'll second.

12 CHAIRMAN JORDAN: Any discussion  
13 Board? Motion made and second. All those in  
14 favor signify by saying aye. Those opposed  
15 nay.

16 (VOTE TAKEN)

17 The motion carries. Mr. Moy?

18 MR. MOY: Staff would record the  
19 vote a 4-0. This on the motion of Chairman  
20 Jordan for the relief requested. This is on the  
21 revised plans under Exhibit 26(c). Second the  
22 motion Ms. Heath. Also in support Mr. Hood and

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1 Mr. Hinkle and a Board member not present.

2 Motion carries, Mr. Chairman.

3 CHAIRMAN JORDAN: Okay. Summary  
4 order please.

5 MR. MOY: Thank you, sir.

6 CHAIRMAN JORDAN: All right.  
7 Let's do 18792, case 18792.

8 MR. MOY: Application No. 18792.  
9 This is of The Preparatory School of D.C. This  
10 is a request for a special exception for a  
11 private school, 120 students and 10 staff under  
12 section 206, as advertised.

13 CHAIRMAN JORDAN: Good morning.

14 MR. MOY: One other note, Mr.  
15 Chairman, as far as I know there's no affidavit  
16 or posting--

17 CHAIRMAN JORDAN: Yes, I was going  
18 to ask that. Please identify yourselves.

19 MR. REAVIS: Richard Reavis, vice  
20 principal.

21 MS. NORTH: Betty North,  
22 principal/owner.

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1 CHAIRMAN JORDAN: Say it again.

2 MS. NORTH: Founder and owner  
3 Betty North.

4 CHAIRMAN JORDAN: We don't have an  
5 affidavit or a posting. Was this posted? Was  
6 the required signage posted in the property?  
7 Okay. We're going to move this -- you don't  
8 even have to answer. The look on your face  
9 tells me no it didn't happen. So we're going  
10 to move this. When's our next date that we can  
11 put in and give them time? You're familiar with  
12 the process of getting from the Office of Zoning  
13 across the hall the big orange sign that you have  
14 to post on the property for 14 days.

15 You have to let the community know  
16 that something's going on. You've got to let  
17 the community know that you're doing some  
18 things. And do we have an ANC letter here?

19 MS. NORTH: Yes, you do.

20 CHAIRMAN JORDAN: No, we don't  
21 have a letter. We don't have a letter in our  
22 file from the ANC so you need to make sure in

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1       this interim period of time that the ANC, that  
2       that letter that you say exists is in our file.  
3       Mr. Moy, when can we comfortably put this in?

4               MR. MOY:           Well, not only  
5       comfortably but to allow the time requirement  
6       and then also with the ANC. So staff would  
7       suggest--

8               CHAIRMAN JORDAN:    I think they  
9       said you've met with the ANC and the ANC issued  
10      a letter. Is that what you're saying?

11              MS. NOERTH:    Yes, we met with them  
12      twice.

13              CHAIRMAN JORDAN:    And did they  
14      issue a letter do you know?

15              MS. NORTH:    Yes, they said that  
16      they were going to send it to the Board of  
17      Zoning.

18              CHAIRMAN JORDAN:    So you don't  
19      know there's a letter? You're saying there was  
20      a letter?

21              MS. NORTH:    Yes. They did it.  
22      They completed, the second meeting--

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1 CHAIRMAN JORDAN: Do you have a  
2 copy of the letter?

3 MS. NORTH: No, they said they  
4 were going to give me a copy.

5 CHAIRMAN JORDAN: Okay. Let me go  
6 back to what I was saying.

7 MS. NORTH: No. No.

8 CHAIRMAN JORDAN: I said there is  
9 no ANC letter in the file. There is no letter.  
10 They told you they were going to do one but you  
11 haven't seen it and we haven't seen it.

12 MS. NORTH: We'll start all over  
13 again.

14 CHAIRMAN JORDAN: So you need to  
15 get back with them just to make sure. Okay?

16 MS. NORTH: All right.

17 CHAIRMAN JORDAN: So Mr. Moy?

18 MR. MOY: Staff would suggest  
19 October 21st, Mr. Chairman.

20 CHAIRMAN JORDAN: Okay. So we'll  
21 move this to October 21st. So you've got your  
22 work to do. You need to get the placards from

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1 across the hall and notice the property, take  
2 pictures, photos that it's actually up for the  
3 period of time that we're talking about.

4 Contact the ANC and see if they've  
5 issued the letter. Ask them can you come by and  
6 get it in your hand and if you get it in your  
7 hand bring it and file it across the hall again  
8 -- no, online. Excuse me. Everything's  
9 online nowadays. Okay?

10 MS. NORTH: That's what they told  
11 me they were doing because it's online.

12 CHAIRMAN JORDAN: That's okay.  
13 They're very busy and they don't get paid and  
14 they're working hard doing other things and they  
15 deal with a lot of this. So we'll move it to  
16 October 21st, correct?

17 MR. MOY: Yes sir.

18 CHAIRMAN JORDAN: Okay.

19 MR. REAVIS: Thank you.

20 MS. NORTH: I'll go get that now?

21 CHAIRMAN JORDAN: Oh yes. Feel  
22 free. Just do what you want. I would advise

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1       you to go do it today while you're here.

2               Let's take a kind of mid-morning  
3 break. Let's do ten minutes and then we'll come  
4 back and we'll head off with 824.

5               MR. MOY:     Yes sir.     Thanks.

6               (A BRIEF RECESS WAS TAKEN)

7               CHAIRMAN JORDAN:   Are we ready?

8               MR. MOY:     Yes.     This would be  
9 application No. 18824 of Bryant Gardner. Mr.  
10 Chairman, this is requested relief under  
11 multiple variances, lot occupancy, rear yard,  
12 closed court and non-conforming structure as  
13 advertised.     Plans under Exhibit 5 and I  
14 believe, Mr. Chairman, there's a letter of  
15 authorization that was filed yesterday under  
16 Exhibit 35.

17               CHAIRMAN JORDAN:     Okay.     All  
18 right.     Good morning.     Make sure your  
19 microphones are on and then I'm going to need  
20 you to identify yourselves.     Okay. Please  
21 identify.

22               MR. GARDNER:     Good morning. I am

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1 Bryant Gardner, I am the applicant and home  
2 owner for 1740 Church Street.

3 MS. PATRICK: Good morning. I'm  
4 Gayle Patrick. I'm the architect.

5 MR. WALKER: And I'm V. Jerome  
6 Walker of the--

7 CHAIRMAN JORDAN: Let's make sure  
8 your microphone is on.

9 MR. WALKER: Now it's on. I'm V.  
10 Jerome Walker, Agent assisting Mr. Gardner.

11 CHAIRMAN JORDAN: All right. I  
12 think we understand generally what's happening  
13 in this file and the record. You're trying to  
14 put up a rooftop deck. You're situated next to  
15 the Keegan Theater. You're aware the Office of  
16 Planning recommends denial and that they don't  
17 believe this property has any uniqueness. You  
18 want to address the Board and provide us why you  
19 believe this property is unique and you should  
20 receive the relief requested.

21 MR. WALKER: Yes, Mr. Chairman.  
22 Thank you. I have seen the Office of Planning

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1 submission yesterday, that was on file  
2 yesterday, that said that the development of the  
3 Keegan Theater may ameliorate the effects, but  
4 I haven't seen a denial recommendation so thank  
5 you for telling me. I'm a little behind the  
6 eight-ball on that.

7 To answer the question  
8 specifically, we believe -- or I believe -- the  
9 property is unique because of the Keegan  
10 Theater. Because of the configuration it's the  
11 only cut-through in the block as it exists so  
12 there's a lot of traffic there creating security  
13 issues as set forth in our burden of proof.

14 We have experienced numerous thefts  
15 of personal property. We've also experienced  
16 parking issues, folks parking in our area, and  
17 this is due in part we believe because of the  
18 Keegan Theater. They have Thursday, Friday,  
19 Saturday and Sunday performances and we love the  
20 Keegan Theater, I'm not putting them down. But  
21 it's just the fact of having 100 or 120 people  
22 coming by four nights a week and also having the

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1 pass-through on the block creates a lot of  
2 traffic.

3 And even without the pass-through.  
4 Because I know that OP had mentioned that  
5 there's plans to build some kind of lobby up  
6 front that might stop that pass-through.

7 Even if that goes through, and we  
8 don't know for sure that it will because there  
9 are funding shortfalls and I would submit that  
10 the property should be evaluated as it stands  
11 not as it might be. But even if it goes through,  
12 it's still an open parking area with a revolving  
13 cast of characters coming through and a lot of  
14 traffic that creates that security issue.

15 So we have requested this in order  
16 to preserve security, protect from the rats and  
17 the trash that are there as a result of the  
18 dumpster and improve the property.

19 CHAIRMAN JORDAN: The Keegan  
20 dumpster, is that what you're--

21 MR. WALKER: Yes sir.

22 CHAIRMAN JORDAN: And it's right

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1 next to your property?

2 MR. WALKER: Yes sir.

3 CHAIRMAN JORDAN: And how does the  
4 deck help this situation?

5 MR. WALKER: Putting the deck on  
6 top of the garage. The deck gives the children  
7 a safe place to play so, you know, in order to  
8 put up the garage we would need to take down the  
9 existing deck and so to replace that we would  
10 put a deck back up on top of the garage.

11 CHAIRMAN JORDAN: So you're using  
12 the garage as a buffer between you and the Keegan  
13 to keep the flow of people down and the other  
14 issues that you're being affected by?

15 MR. WALKER: In part, yes. It's  
16 to protect the parking, you know, No. 1 to keep  
17 people from parking unauthorized on the spots.

18 CHAIRMAN JORDAN: On the spots,  
19 meaning in your property?

20 MR. WALKER: Yes sir.

21 CHAIRMAN JORDAN: They are parking  
22 on your property?

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1                   MR. WALKER:    I don't know if it's  
2                   the Keegan people or not.   I mean that's the  
3                   assumption.    There's a car there, you ticket  
4                   it, you have it towed. You ask them to move.  
5                   Whether they're actors or patrons I don't know.

6                   CHAIRMAN JORDAN:       But does it  
7                   coincide with when there's an event at the  
8                   Keegan?

9                   MR. WALKER:    I would say more or  
10                  less but it's four nights a week so it's hard  
11                  to say for sure and it's on weekends too because  
12                  the busy 17th Street entertainment area is just  
13                  at the end of the block.

14                  CHAIRMAN JORDAN:       Okay.    All  
15                  right.   Board, any other questions you want to  
16                  ask?    I'm sure we're going to have other  
17                  questions.   Board, anything else you want to  
18                  ask?

19                  Then let's turn to the Office of  
20                  Planning and Ms. Brown-Roberts if you would.

21                  MS. BROWN-ROBERTS:    Thank you, Mr.  
22                  Chairman and Members of the Board.   Maxine

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1 Brown-Roberts of the Office of Planning. Since  
2 we submitted a report I had asked for a number  
3 of things to be addressed and the applicant did  
4 submit the majority of the things we asked for.

5 I also had a further look at the  
6 plans for the theater and I notice that although  
7 there's going to be an addition, the addition  
8 does not extend the full length of the property.  
9 In addition to that, they are not proposing to  
10 put up a fence to separate the applicant's  
11 property from the theater property.

12 And so therefore that space will  
13 still allow, although it won't allow a  
14 cut-through, it will still be open for anyone  
15 to park. So I don't think that the construction  
16 on the Keegan will address that parking issue  
17 that he has.

18 And so that is why, you know, we  
19 would look and say, yes that has sort of given  
20 him an exceptional situation because just from  
21 the activities on the theater property is  
22 definitely affecting him.

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1                   There is one other issue.    The  
2                   information that was provided did not address  
3                   the closed court, and when I went out and I met  
4                   with the applicant and saw the applicant on site  
5                   and he explained to me that there is a basement  
6                   apartment, and under the building Code they need  
7                   to have a second means of egress.

8                   And so if they were to close off the  
9                   closed court area then they would not be able  
10                  to provide that second means of egress and  
11                  therefor I think they do meet the exceptional  
12                  situation regarding the court.

13                  For the rear yard, if they were to  
14                  minimize the rear yard, then the car would not  
15                  be able to be accommodated on the site so they  
16                  do need to have that extra space.       And  
17                  therefore, based on those things, I think we  
18                  would recommend approval.   And I'm available  
19                  for questions.

20                  CHAIRMAN JORDAN:    Thank you.    I  
21                  don't have any questions.   I think I'm on the  
22                  same page with you on that.

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1           Is there anyone here from the Department  
2           of Transportation for this case? Anyone from  
3           the Department of Transportation? We do have  
4           a letter of no objection to the request for  
5           relief submitted by the Department of  
6           Transportation.

7                     Anyone here from ANC-2B? ANC-2B?  
8           We do have a letter of support from ANC-2B  
9           supporting the request for relief. Is there  
10          anyone here wishing to speak in support of the  
11          application? Anyone in support? Anyone in  
12          opposition? Anyone in opposition? Then we  
13          would normally turn back to the applicant for  
14          any rebuttal but I don't believe we need so. I  
15          believe we can close the record on what's been  
16          submitted on paper and what's been deduced at  
17          this hearing. Yes, go ahead.

18                    COMMISSIONER HOOD: I know Ms.  
19          Brown-Roberts elaborated a lot and I'm just  
20          curious and maybe I'm missing -- did she change  
21          her position?

22                    CHAIRMAN JORDAN: Yes.

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1 MS. BROWN-ROBERTS: I'm sorry, can  
2 I just--

3 CHAIRMAN JORDAN: Okay. Go  
4 ahead.

5 MS. BROWN-ROBERTS: Yes. I mean  
6 in our report we had said that we could not  
7 recommend approval and I think with the  
8 subsequent submission and the site visit that  
9 gave us, you know, stronger ground to recommend  
10 approval.

11 COMMISSIONER HOOD: Okay. And I  
12 also thought I saw a letter from the theater in  
13 support.

14 MR. MOY: Yes.

15 COMMISSIONER HOOD: There was?  
16 Okay. I just want to make sure.

17 CHAIRMAN JORDAN: So we'll close  
18 the hearing and I would move that we grant the  
19 relief requested in this application.

20 COMMISSIONER HEATH: Second.

21 CHAIRMAN JORDAN: Last week  
22 everybody was fighting for the microphone.

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1 Today is just like oh-- Motion made and second.  
2 Any unreadiness? All in support of the motion  
3 signify by saying aye. Those opposed nay?

4 (VOTE TAKEN)

5 The motion carries. Mr. Moy?

6 MR. MOY: Staff would record the  
7 vote as 4-0. This on a motion of Chairman  
8 Jordan to approve the application for the  
9 request for the four variance relief -- yes,  
10 four -- variance relief. This is under  
11 submitted plans in Exhibit 5.

12 Second the motion, Ms. Heath, also  
13 in support Mr. Hood and Mr. Hinkle. Board  
14 member not present today.

15 CHAIRMAN JORDAN: All right.  
16 Summary order please.

17 MR. MOY: Thank you, sir.

18 CHAIRMAN JORDAN: Thank you very  
19 much. Thank you all.

20 MS. PATRICK: Thank you.

21 CHAIRMAN JORDAN: Last case  
22 please.

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1                   MR. MOY:     Yes sir. The last case on  
2     the docket is Appeal No. 18820 of Senior  
3     Dwelling, Inc., pursuant to 11 DCMR 3100 and  
4     3101 from the April 21, 2014 decision of the  
5     Zoning Administrator to revoke rooming house  
6     Occupancy Certificates Nos. -- and I'm going to  
7     cite this for the record -- 169076 and 169061  
8     in the R-2 District at 223 and 225 56th Place,  
9     N.E.

10                  CHAIRMAN JORDAN:     Okay. Please  
11     identify yourselves.

12                  MR. DOUMAR:         Good morning, Mr.  
13     Chairman and the Board. I'm George Doumar, I'm  
14     the attorney for Senior Dwelling, Inc. With me  
15     is my colleague, Roya Vasseghi, who's an  
16     attorney also representing Senior Dwelling,  
17     Inc., from my office.

18                  MS. OGBENNA:         I'm Rosemary  
19     Ogbenna, owner Senior Dwelling--

20                  CHAIRMAN JORDAN:     Is it--

21                  MS. OGBENNA:         Ogbenna.

22                  MR.         DOUMAR:                 That's

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1 O-g-b-e-n-n-a, is her last name, your Honor.

2 MR. POSTULKA: John Postulka,  
3 Assistant Attorney General for DCRA.

4 MR. LEGRANT: Good morning. Matt  
5 LeGrant. I'm the zoning administrator from  
6 DCRA.

7 MS. ALLSOPP: Good morning.  
8 Runako Allsopp, Assistant Attorney General for  
9 DCRA.

10 CHAIRMAN JORDAN: Okay. I was  
11 just looking at, Mr. Doumar, your witness list.

12 MR. DOUMAR: Yes,

13 CHAIRMAN JORDAN: And I'm not  
14 necessarily going to have all these witnesses  
15 testify. We want--

16 MR. DOUMAR: I understand, your  
17 Honor.

18 CHAIRMAN JORDAN: Let me finish.  
19 You and I can't--

20 MR. DOUMAR: I apologize.

21 CHAIRMAN JORDAN: We need to home  
22 in on the issues and I'm looking at your witness

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1 list and what is being offered for people to  
2 testify. To me the issue is how the property  
3 is being used and whether or not it fits within  
4 the guidelines of being a rooming house.

5 I'm not concerned, and the Board is  
6 not concerned about the number of people who  
7 have come by the inspection and the process that  
8 was used for an inspection unless they're going  
9 to those sole issues.

10 So I think it is Mr. Faison, Mr.  
11 Slood and who else? Mr. Meredith? I think  
12 they're kind of -- I don't believe that they have  
13 anything that's probative of the true issue.

14 MR. DOUMAR: I agree, Mr.  
15 Chairman. We're not planning -- we just filed  
16 the witnesses just as a matter of precaution.  
17 We actually have at most probably one and maybe  
18 two.

19 Now I do have a preliminary matter,  
20 Your Honor. Looking at the District's brief,  
21 just for the record they cited a case, I looked  
22 at their cases just over the weekend and there

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1 was a Curry Brothers v. District of Columbia BZA  
2 case, your Honor. And in that case, and I think  
3 it is a similar case involving revocation  
4 certificates of occupancy and in that case it  
5 involved a car repair business that had a  
6 certificate of occupancy to sell cars.

7 But I note that the procedure  
8 followed there, that the District of Columbia  
9 Court of Appeals said the procedure was to  
10 submit a notice of revocation, give the  
11 applicant a chance to challenge that before the  
12 D.C. Board of Administrative Hearings, then the  
13 applicant lost at that level, then went up to  
14 the Board of Zoning Adjustment.

15 And although the Court suggested  
16 that maybe they weren't required to go through  
17 that procedure under the Regs but as a matter  
18 of due process, the District of Columbia Court  
19 of Appeals said that was the standard procedure  
20 and that's what was followed.

21 But here, Mr. Chairman, what's  
22 happened is we have two proceedings, that is

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1       there is a notice of revocation on the same  
2       grounds submitted to the DCRA by the DCRA which  
3       required Senior Dwelling to appeal to the Office  
4       of Administrative Hearing. Senior Dwelling  
5       did that and that proceeding is in process.  
6       The judge there has kind of put a hold on it  
7       pending what happens here.

8                       And then they also filed, after  
9       that, filed and re-filed this proceeding to  
10      revoke and we got this notice, Senior Dwelling  
11      got a notice--

12                     CHAIRMAN JORDAN:     Let's back up.  
13      I think you've kind of jumbled some things here  
14      as I understand the record.

15                     First of all, they didn't file this  
16      proceeding. It had to come from you, the  
17      applicant, to file the proceeding.

18                     MR. DOUMAR:         Understood, your  
19      Honor.

20                     CHAIRMAN JORDAN:     Okay. And it's  
21      my understanding that there's two kinds of  
22      tracking violations here. One is a zoning

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1 violation which has been issued by the Zoning  
2 Administrator which this Board has jurisdiction  
3 over, and my other understanding -- and correct  
4 me if I'm wrong -- that the other are  
5 code-related violations non-zoning.

6 MR. DOUMAR: Well, I think you are  
7 wrong, your Honor. Looking at the notice to  
8 revoke licenses the primary basis is the same,  
9 that there are zoning violations relating to the  
10 use of the rooming house license as a community  
11 residence facility, your Honor. So I just  
12 didn't--

13 CHAIRMAN JORDAN: Well first let  
14 me go back, I jumped ahead of myself. You said  
15 you had a preliminary matter arising out of the  
16 case and so what are you addressing the Board?  
17 Are you making a motion to the Board for  
18 something?

19 MR. DOUMAR: Yes, your Honor. I'm  
20 suggesting that the proper procedure would be  
21 to have the D.C. Office of Administrative  
22 Hearing finish its hearing first and then if

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1 Senior Dwelling loses there -- and I think the  
2 important think for the D.C. Court of Appeals  
3 says is that the burden of proof is on the DCRA  
4 at the Office of Administrative Hearing, then  
5 the burden of proof shifts to the appellant here  
6 at the BZA, your Honor.

7 So I think for that reason I think  
8 the standard procedure would be to complete the  
9 other proceeding first, the Office of  
10 Administrative Hearing, and then if Senior  
11 Dwelling loses there we appeal here.

12 So my motion would be to at least  
13 defer or stay this proceeding pending the DCRA  
14 Office of Administrative Hearing proceeding we  
15 already have, your Honor. And that's based on  
16 the Curry Brothers v. the D.C. Board of Zoning  
17 Appeals case that was cited in the DCRA's  
18 hearing brief.

19 CHAIRMAN JORDAN: Yes?

20 MR. POSTULKA: Mr. Chairman, the  
21 two cases are completely separate. This is the  
22 proper body to consider zoning regulations and

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1       it's interesting that this motion is made now  
2       because the reason that the OAH case is stayed  
3       is because they actually asked that this Board  
4       be allowed to decide--

5                   CHAIRMAN JORDAN:     Let me ask you.  
6       What is before Office of Administrating  
7       Hearing?

8                   MR. POSTULKA:     A licensing issue.  
9       Whether or not the license provides--

10                  CHAIRMAN JORDAN:     So I was correct  
11       when I said I thought this was tracking. One  
12       was a zoning issue, the other is a non-zoning  
13       issue. Is that correct?

14                  MR. POSTULKA:     Exactly. The CFO  
15       is wrong and so is the license.

16                  CHAIRMAN JORDAN:     That's what I  
17       thought. That's what I thought.

18                  MR. DOUMAR:     Your Honor, could I--

19                  CHAIRMAN JORDAN:     No, I'm done. I  
20       understand completely and I was on track when  
21       I said initially that I thought there was two  
22       different tracks here. One was another code

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1 violation which was non-zoning, and the licence  
2 here is non-zoning related.

3 This Board has jurisdiction over  
4 zoning matters. What's before us is your appeal  
5 filed regarding the zoning violations and the  
6 revocation issued by the Zoning Administrator.  
7 This is the proper body for it.

8 I've heard your motion, heard your  
9 discussion and I'm going to deny it.

10 So let's then move on to kind of home  
11 in on these issues.

12 MR. DOUMAR: Yes, your Honor.

13 CHAIRMAN JORDAN: So how long do  
14 you think it would take with your presentation  
15 to the Board?

16 MR. DOUMAR: Probably an hour or  
17 less, your Honor.

18 CHAIRMAN JORDAN: Oh it's going to  
19 be less than that on this issue.

20 MR. DOUMAR: Well, your Honor, I  
21 have Rosemary Ogbenna the owner of Senior  
22 Dwelling. She's going to be a witness here.

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1                   CHAIRMAN JORDAN:     Let's do this.  
2     Why don't you--

3                   MR. DOUMAR:         And I can make a  
4     brief opening statement.

5                   CHAIRMAN JORDAN:     Yes, well tell  
6     me -- let's see if we really do need an hour.  
7     We can block this in for an hour but I really,  
8     you know, all the extraneous stuff we really  
9     don't need.

10                  MR. DOUMAR:     I understand.

11                  CHAIRMAN JORDAN:     So let's do  
12     this. Let's give you on this -- I mean I think  
13     this case boils down to some very simple things  
14     in my opinion. Let's do this, let's set it for  
15     half an hour. See how you are after half an hour.  
16     If you're still rocking and rolling and we're  
17     still doing it then -- and that's your  
18     presentation and the clock kind of stops during  
19     cross-examination and other things anyway. So  
20     if you were talking about that it may end up  
21     being an hour. But for your presentation  
22     purposes.

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1                   MR.     DOUMAR:     Understood,     Mr.  
2     Chairman.

3                   CHAIRMAN   JORDAN:            Okay.     But  
4     we'll see how we go and if you need some more  
5     time we'll work it out.

6                   MR.     DOUMAR:            Thank you, Mr.  
7     Chairman.     Just briefly the issue, that Mr.  
8     Chairman has homed in on, is whether Senior  
9     Dwelling is running a rooming house that is  
10    under the D.C. Municipal Regulations, they are  
11    at 223 and 225 56th Street, N.E.

12                           Are they running a building that  
13    accommodates more than three persons not  
14    related to manager and provide such  
15    accommodation on a monthly or longer basis.  
16    And that's how Senior Dwelling was licensed,  
17    their Certificate of Occupancy, and that's what  
18    they've been doing, your Honor.     And Ms.  
19    Obgenna was previously -- previously -- and this  
20    has clouded the issue, running houses as a  
21    community residence facility where she was  
22    coordinating care and providing care for

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1 persons.

2 Now a community residence facility  
3 or a community-based residence facility, which  
4 is the allegation here by the DCRA, is that  
5 that's a facility for persons who have a common  
6 need for treatment, rehabilitation, assistance  
7 or supervision in their daily living.

8 The issues with Senior Dwelling, and  
9 I think Ms. Ogbenna will testify to this, is they  
10 have people who live independently. They have  
11 people who work outside who just get simply a  
12 room, and she does look at people who may require  
13 some assistance but she interviews them and  
14 tries to confirm that they can basically be  
15 independent. But, just like elderly people  
16 might have in their own home, some of them have  
17 home health aides that come in, your Honor.

18 And so that's really the issue here.  
19 I think that Ms. Ogbenna has made an effort to  
20 have a rooming house, that's how she's been  
21 licensed since 2008 at 223 and 225, and she does  
22 provide an affordable housing option for people

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1       who are elderly sometimes, oftentimes are  
2       veterans. Because of her prior history as a CRF  
3       she has referral sources from nursing aides or  
4       sometimes nursing homes, but she has made a  
5       conscious effort to avoid the kinds of cases  
6       that would cause her to be considered a  
7       community residence facility.

8               And in our record, your Honor, we  
9       have exhibits to show that DCRA did send  
10      inspectors to the facilities in 2009 and 2010,  
11      confirmed she was a rooming house, running  
12      rooming houses at that time based on what they  
13      saw.

14             Unfortunately, in 2012 there was a  
15      person who was taken to the hospital from one  
16      of the residences. He was a relatively young  
17      man but he was taken to the hospital and  
18      subsequently died. And then in 2012 there was  
19      another death, your Honor, and so I think that's  
20      caused the DCRA to focus on Ms. Ogbenna and  
21      Senior Dwelling.

22             But I think her discussion here

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1       today will show that she is really running a  
2       rooming house and so I'm happy to start with her  
3       testimony right now.

4                   CHAIRMAN JORDAN:    Yes.   It's your  
5       case.

6                   DIRECT EXAMINATION

7                   BY MR. DOUMAR:

8               Q       Ms. Ogbenna, can you state your name  
9       for the record please.

10              A       Rosemary Ogbenna.

11              Q       And just so we're clear and it  
12       doesn't always come out right.   How do you spell  
13       your last name Ms. Ogbenna?

14              A       O-g-b-e-n-n-a.

15              Q       And do you have a college degree, Ms.  
16       Ogbenna?

17              A       Yes.

18              Q       And what's the degree and when did  
19       you get it?

20              A       I    went    to    George    Washington  
21       University. I got my degree in public health,  
22       my bachelor's degree.

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1 Q And when did you graduate?

2 A 1999.

3 Q And what did you do then?

4 A Being mentored I was actually swayed  
5 into considering options in long-term care by  
6 an advisor. She was the Dean of the School of  
7 Public Health at that time, her name is Dean  
8 Pursley.

9 Q And your degree was in public  
10 health?

11 A Yes.

12 Q All right. And then what did you do  
13 with that?

14 A In 1999 when I came out I was being  
15 mentored by her, I considered options of maybe  
16 starting up a group home.

17 Q And did you do that?

18 A Yes, I did.

19 Q And how were you licensed when you  
20 did that in 1999-2000?

21 A You're licensed by the Department of  
22 Health.

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1 Q As what kind of group home?

2 A It's a CRF.

3 Q And CRF meaning a Community  
4 Residence Facility?

5 A Yes. You house individuals in a  
6 sheltered environment that has serious  
7 illnesses.

8 Q How long did you do that?

9 A I did it from 2001 to 2008.

10 Q And why did you stop doing that?

11 A In 2008 I went -- actually in 2008  
12 around October 10, 2008 I had a surveyor from  
13 the Department of Health because it was time for  
14 a renewal of my license. It was expiring, and  
15 that was for the location of 5033 North Capitol  
16 Street. It would expire in February of 2009.  
17 So the Department of Health came out for renewal  
18 and cited very minor deficiencies and these are  
19 there was an observation of a resident that they  
20 felt was in need to be in long-term in a nursing  
21 home and she also cited medication. My  
22 medication was put in a plastic box or drawer,

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1 kind of plastic box, and needed it to be in a  
2 locked cabinet.

3 And also cited, based on -- she  
4 wasn't able to find the medication log of a  
5 particular resident which was filed in a  
6 different folder and she had a staff interview  
7 at that time with one of the staff that worked  
8 there. And she cited that the staff wasn't  
9 properly administering medication.

10 I did all this plan of correction,  
11 I notified her that this particular resident in  
12 question takes his medication regardless of  
13 doctor's orders. It doesn't matter.

14 Q All right. So did you address those  
15 concerns?

16 A I did address them--

17 CHAIRMAN JORDAN: We need to deal  
18 with -- that's not before us.

19 MR. DOURMAR: I understand, your  
20 Honor. I'm just getting back. Now, why did  
21 you stop working as a community residence  
22 facility?

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1                   THE WITNESS:     In 2009 in the month  
2     of February I received a notice because my  
3     license, as I said, was expiring in February of  
4     2009, and I received a notice from the  
5     Department of Health that I need to finalize the  
6     plan of correction.

7                   At that time I was in full term of  
8     my pregnancy, having a little bit  
9     complications, so I went to the Department of  
10    Health. I mean with Mr. Woodard and Mr. Yates  
11    at that time and I told them that I'm in and out  
12    of the hospital because the final conclusion of  
13    this inspection was to come out and observe and  
14    know that the corrections had been done.

15                  But I'd been in and out of the  
16    hospital and explained that my licenses had  
17    expired and I'm operating the facility and I  
18    need to close right now and go through this  
19    process and that was just it. I had to  
20    surrender my license because there was no way  
21    I could conclude or finish it up.

22                  Q     All right. So did you get a new

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1 Certificate of Occupancy as a rooming house  
2 after that?

3 A After that when I closed my license  
4 I had no means of income and I had a mortgage  
5 to pay so I considered for that meantime to open  
6 a rooming house.

7 CHAIRMAN JORDAN: And when was  
8 that?

9 THE WITNESS: That was in 2009.

10 CHAIRMAN JORDAN: And where was  
11 the location?

12 THE WITNESS: And that was at 4910  
13 1st Street and also in North Capitol, 5033 North  
14 Capitol. And at the same time because I also  
15 had two other properties that I put a  
16 pre-construction agreement on at 225 and 223  
17 56th Place and this pre-construction agreement  
18 was in 2005. This builder was supposed to  
19 surrender the building to me in 2006 but due to  
20 financial delays he lingered and surrendered  
21 the building and I closed on that in 2008.

22 So I had buildings that I needed to

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1       utilize because I closed on the building but I  
2       wasn't able to function at that time so I just  
3       went ahead and established that as a rooming  
4       house too.

5               MR. DOUMAR:     And I believe those  
6       addresses are 223 and 225. Are they the subject  
7       of the notice to revoke?

8               THE WITNESS:    Yes, they are.

9               CHAIRMAN JORDAN:   And when did you  
10      get the C of O for the present property that's  
11      before the Board?

12              THE WITNESS:    223 and 225 I got a  
13      CFO in 2008, I mean 2009, sorry.   And now  
14      because of even this proceeding, okay.

15              BY MR. DOUMAR:

16              Q       Have you operated the properties at  
17      223 and 225 as rooming houses since 2009?

18              A       Yes.

19              Q       After you opened in 2009 did people  
20      from the DCRA come and inspect the properties?

21              A       Yes, they did.   It was actually the  
22      Department of Health not DCRA. It was the

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1 Department of Health because, according to the  
2 report, the Department of Health got a complaint  
3 from the Legal Service for the Elderly.

4 One of the things you have to  
5 understand, Mr. Chairman, is that whenever an  
6 individual is being discharged from a nursing  
7 home they notify the ombudsman D.C. long-term  
8 care program of the discharge. So based on the  
9 notification D.C. long-term care saw that there  
10 was residents being placed at my home and  
11 decided to notify the Department of Health that  
12 I'm closed, why am I still operating it as a CRF.

13 CHAIRMAN JORDAN: Go back a  
14 second. When you say the notice of discharge  
15 what do you mean?

16 THE WITNESS: I mean in the nursing  
17 home whenever they discharge a client from a  
18 nursing home they are obligated to notify the  
19 D.C. long-term care program that they're being  
20 placed wherever. It doesn't matter, going  
21 home, going to a CRF, going to an assisted  
22 living, they need to notify them.

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1                   CHAIRMAN JORDAN:     So they notify  
2     them wherever they're--

3                   THE WITNESS:       Wherever they're  
4     going.

5                   CHAIRMAN JORDAN:     Okay. Got it.

6                   THE WITNESS:       And based on that  
7     notification, D.C. long-term care program  
8     became aware that two residents were being  
9     placed at my building and decided to notify the  
10    Department of Health that the Department of  
11    Health indicated that I was already closed, why  
12    am I still operating a CRF? And that brought  
13    about the Department of Health coming to survey  
14    my property.

15                  CHAIRMAN JORDAN:       Were you  
16    operating a CRF at that--

17                  APPELLANT ROWLEY:     No.

18                  CHAIRMAN JORDAN:       When you say  
19    "get placed," what do you mean by getting  
20    placed?

21                  THE WITNESS:       Placed in the sense  
22    where the nursing home will -- whenever the

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1 nursing home calls me that they have a client  
2 that needs a room, I go there and assess them  
3 and once the whole assessment is done where the  
4 resident comes to see the room and accepts it  
5 and is willing to move in, then when they leave  
6 the nursing home and come in into their  
7 dwelling, the nursing home is obligated to  
8 notify D.C. long-term care that this particular  
9 resident is no longer--

10 CHAIRMAN JORDAN: So the nursing  
11 home contacts you and says we have a person  
12 that's going to leave. Has that person chose  
13 your place?

14 THE WITNESS: Yes, I am obligated  
15 to go see the person and talk--

16 CHAIRMAN JORDAN: No, no, no, no.  
17 How do you first know the person's being  
18 discharged?

19 THE WITNESS: How do I know? That's  
20 what I'm saying. The nursing home contacts me.

21 CHAIRMAN JORDAN: Why does the  
22 nursing home contact you?

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1                   THE WITNESS:       Because they're  
2                   looking for a place to stay.

3                   CHAIRMAN JORDAN:   Okay.   Are the  
4                   people that are in the nursing home receiving  
5                   any type of medical treatment or assisted living  
6                   at the nursing home?

7                   THE WITNESS:    A nursing home is not  
8                   an assisted living.

9                   CHAIRMAN JORDAN:   I understand in  
10                  the technical sense.   Are they receiving any  
11                  assistance to their living?   Not assisted  
12                  living, assistance to their living or medical  
13                  care at the nursing home?

14                  THE WITNESS:    I presume so, yes.

15                  CHAIRMAN JORDAN:   And so we have  
16                  the person that's there who's receiving some  
17                  type of assistance for their living.

18                  THE WITNESS:    Uh-mm.

19                  CHAIRMAN JORDAN:   I don't know if  
20                  you know but how do they know?   The person says  
21                  I'm ready to leave.  Is that what happens?

22                  THE WITNESS:    No.   Sometimes in

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1 the nursing home you have people who are there  
2 for short-term rehab. So once they're done  
3 with their treatment they go home. So in the  
4 process of going home you might have a situation  
5 where they don't have a home to go to because  
6 while they've been either in the hospital then  
7 transferred to the nursing home they might have  
8 lost their home.

9 Or in the process they had a home to  
10 go to but changes happened along the way because  
11 there's a scenario of a client who was supposed  
12 to return back to his sister's house but his  
13 sister said I can't take him back because I don't  
14 have that time for him to come into my -- I mean  
15 I can't take him back period.

16 CHAIRMAN JORDAN: Okay.

17 THE WITNESS: So changes do take  
18 place and the nursing home has to find another  
19 living arrangement for this particular  
20 resident.

21 CHAIRMAN JORDAN: Okay.

22 MR. DOUMAR: For example--

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1                   CHAIRMAN JORDAN:     So let me go on  
2     with further questions.    So everybody that's  
3     discharged or left the nursing home comes to you  
4     is no longer in need of medical care?

5                   THE WITNESS:     Yes.

6                   CHAIRMAN JORDAN:     Okay.

7                   THE WITNESS:     I mean that is one  
8     thing I did at the nursing home because I have  
9     noticed even though in the discharge paper,  
10    because I do make them give a discharge paper,  
11    a copy of it, they did indicate the client, they  
12    attach the client with home health care  
13    services.

14                   I did ask that question why do you  
15    do that?   They said you have to understand that  
16    this particular resident has been in the nursing  
17    home and been cared for all this while. It's up  
18    to the resident, you know, when they leave to  
19    decide if they will continue or they can do for  
20    themselves and they don't need, they can decline  
21    and say, you know, they don't need any services,  
22    they can do for themselves.     So it's an option.

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1 But it is on the discharge summary that that is  
2 attached.

3 And I do have someone from the  
4 nursing home who discharge clients to me that  
5 can justify why they do that.

6 CHAIRMAN JORDAN: Mr. Hood?

7 COMMISSIONER HOOD: I have a  
8 question. You said you have someone from the  
9 nursing home. What's the name of the nursing  
10 home, I'm just curious?

11 THE WITNESS: St. Thomas More.

12 COMMISSIONER HOOD: St. Thomas  
13 More. Okay. Most of the time do you work with  
14 the social workers so you kind of know what state  
15 an individual who's being discharged is in,  
16 right?

17 THE WITNESS: Yes, I work with--

18 COMMISSIONER HOOD: You already  
19 know that. You know what the care is. You know  
20 if they need care and all that before they're  
21 discharged?

22 THE WITNESS: Yes. Because when I

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1 go in for an assessment I need to know they're  
2 suitable to be at my rooming house. Suitable in  
3 the sense like you know they don't have severe  
4 issues. They're not severely ill in the sense  
5 where -- I mean they're not wandering, they  
6 don't have dementia. They are not wanderers.  
7 They don't have those illness that would prove  
8 of any harm to them when they come to my rooming  
9 house.

10 COMMISSIONER HOOD: Okay. Thank  
11 you, Mr. Chairman.

12 CHAIRMAN JORDAN: Proceed please.

13 BY MR. DOUMAR:

14 Q All right. And so D.C. inspectors  
15 came to your rooming houses and looked at you  
16 in 2009 and 2010, correct?

17 A Yes.

18 Q And that's covered as Exhibits F, G  
19 and H to our pre-hearing submission, Mr.  
20 Chairman. Actually, G, H and I.

21 CHAIRMAN JORDAN: They came for  
22 zoning purposes to see if they were operating

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1 as a rooming house, is that correct?

2 MR. DOUMAR: Yes, your Honor.

3 CHAIRMAN JORDAN: Or did they come  
4 for code violations?

5 MR. DOUMAR: No, they came to see  
6 if they were operating as a rooming house, your  
7 Honor. I think the reports are quite clear that  
8 they received some indication that Ms. Ogbenna  
9 was taking people in and there was some concern  
10 that she was operating as a CRF at that time.  
11 It's the same issue as today. So you'll see in  
12 these reports there's some interviews with--

13 CHAIRMAN JORDAN: I looked at  
14 that. Give me a second because I think I had a  
15 question about a representation that was made  
16 in that regard versus what I may have seen.

17 MR. POSTULKA: Your Honor, I'm not  
18 sure if it's appropriate for me to interject.

19 CHAIRMAN JORDAN: You know it's  
20 not.

21 MR. POSTULKA: Okay.

22 CHAIRMAN JORDAN: I think there's

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1 a report December, you're talking about  
2 December 28, 2009?

3 MR. DOUMAR: That's one of the --  
4 well December 28, 2009. I see January 7, 2010  
5 is G; January 5, 2010--

6 CHAIRMAN JORDAN: And I think that  
7 raised the question, was that DCRA or was that  
8 the ombudsman's office came in December 28?

9 THE WITNESS: The ombudsman's  
10 office came in December 28th. The Department of  
11 Health that was Mr. Woodard, no Mr. Woodard sent  
12 someone in June 2009. Then November 15, 2009  
13 Mr. Theodore Lomax came.

14 CHAIRMAN JORDAN: Okay. Well  
15 let's proceed because I'm sure you'll pick it  
16 up on cross-examination.

17 MR. DOUMAR: Yes, well these  
18 reports are dated January 5, 2010 from the  
19 Department of Health, another one January 5,  
20 2010. And then there's an additional one  
21 January 7, 2010.

22 CHAIRMAN JORDAN: And what was

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1       that exhibit number again please?

2                   MR. DOUMAR:     Those are G, H and I,  
3       Senior Dwellings pre-hearing statement, your  
4       Honor.

5                   CHAIRMAN JORDAN:     I know I went  
6       through these things and I know I had some  
7       questions about them.   Let me catch up with  
8       them.

9                   BY MR. DOUMAR:

10               Q       So from that time to the present have  
11       you changed the way that you've operated these  
12       rooming houses?

13               A       No.

14               Q       All right.   Did something happen  
15       in--

16                   CHAIRMAN JORDAN:     Let me catch up  
17       with you because I'm not listening to you very--

18                   MR. DOUMAR:     I apologize, Mr.  
19       Chairman.   Thanks for being honest about that.

20                   CHAIRMAN JORDAN:     Just thought I'd  
21       let you know.   Might be helpful.   Let me see  
22       here.

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1                   Okay. So I have G, H and I. I know  
2                   I looked at these. I got a lot of business cards.  
3                   Is that the exhibit where there's tons of  
4                   business cards?

5                   MR. DOUMAR:       That's after the  
6                   business cards, Mr. Chairman.

7                   CHAIRMAN JORDAN:       Okay.       So  
8                   you're talking about January 7, 2010?

9                   MR. DOUMAR:       Yes, Mr. Chairman.

10                  CHAIRMAN JORDAN:       One second.  
11                  Okay. So we're talking about the ones where it  
12                  says nurses are on staff?

13                  THE WITNESS:       That was December  
14                  28, 2009.

15                  CHAIRMAN JORDAN:       But I'm looking  
16                  at the exhibit reference by counsel and it says  
17                  that's January 7, 2010. I'm just trying to say  
18                  with you. It says meals are made for the  
19                  residents. There were locked cabinets for the  
20                  residents. It appears they rely on meals to be  
21                  cooked for them by staff. Is that one of the  
22                  exhibits?

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1 THE WITNESS: Yes, that's one of  
2 the--

3 MR. DOUMAR: Well, your Honor,  
4 this exhibit is referencing allegations--

5 CHAIRMAN JORDAN: Chairman or  
6 whatever. Most people could attest whether I'm  
7 honorable but anyway go ahead.

8 MR. DOUMAR: Mr. Chairman, that's  
9 reciting the complaint and so this is an  
10 investigation of these types of complaints.

11 CHAIRMAN JORDAN: I got you. I  
12 see what you're saying. Okay. Thank you. I  
13 see where they made it -- this is an interesting  
14 document but go ahead I'm sure it's going to get  
15 picked up on cross-examination because it makes  
16 a conclusion then it says incidental findings  
17 which raises some concern on one, that's under  
18 G.

19 Then the other one from January 5th  
20 was on the licensing issue, is that correct?

21 MR. DOUMAR: Well, they're  
22 actually addressing the same issue of whether

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1       this is a rooming house versus community  
2       residence.

3                   CHAIRMAN JORDAN:     But not from a  
4       zoning standpoint. These weren't done by the  
5       Office of Zoning.

6                   MR. DOUMAR:     None of these I don't  
7       believe were done by the Office of Zoning.

8                   CHAIRMAN JORDAN:     Okay.     Thank  
9       you. I just noticed that.     They weren't done by  
10      the Office of Zoning.     Okay. I'm good. You can  
11      proceed I mean Board unless you've got other  
12      questions or any observation.     Please  
13      proceed.

14                   BY MR. DOUMAR:

15               Q       On these Exhibits G, H and I, Ms.  
16       Ogbenna where staff persons came out. Were they  
17       trying to determine whether you were operating  
18       as a rooming house versus CRF?

19               A       Yes.

20               Q       Did Mr. Woodard or other people talk  
21       to actual residents there at the time?

22               A       Yes.

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1           Q       Have you operated your facility the  
2 same way from then to the present?

3           A       Yes, I have.

4           CHAIRMAN JORDAN:    But was this not  
5 an inspection for licensing purposes?   Not  
6 zoning purposes.   Is that correct?   Am I right  
7 or wrong?

8           THE WITNESS:        Yes, it was an  
9 inspection for licensing purposes, yes.

10          CHAIRMAN JORDAN:    Okay.   I just  
11 wanted to make sure.

12          MR. DOUMAR:        Yes, my only -- I'll  
13 save it for closing.

14          CHAIRMAN JORDAN:    Okay.   You can  
15 go ahead with your next question. I'm good.

16          BY MR. DOUMAR:

17          Q       Are you aware that when staff  
18 persons came out to inspect or look at your  
19 premises were they always from the Department  
20 of Health or DCRA as far as you know?

21          A       Mr. Chairman, I have never known  
22 that I was under investigation until this--

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1 CHAIRMAN JORDAN: I didn't ask  
2 that question.

3 THE WITNESS: Yes, I mean I didn't  
4 know what purpose of why they're coming. No one  
5 has ever told me anything.

6 CHAIRMAN JORDAN: Well, they can  
7 just come so let's not drill down on that. They  
8 can do so. Some sort of complaint or they can  
9 come because they're--

10 BY MR. DOUMAR:

11 Q As far as you know were they looking  
12 at whether you were a community residence  
13 facility or a rooming house during these visits?

14

15 A They were looking--

16 Q In early 2010?

17 A Yes, they were.

18 Q And did anything happen, and you've  
19 operated the rooming house the same way from  
20 that time to the present?

21 A Yes.

22 CHAIRMAN JORDAN: Okay. In 2010,

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1 2009 and 201, someone from the Office of Zoning  
2 from the Zoning Administrator's office came in  
3 for an inspection?

4 THE WITNESS: No. It's all from  
5 the Department of Health.

6 MR. DOUMAR: Well, has anyone--

7 CHAIRMAN JORDAN: Or from DCRA's  
8 license department, correct?

9 THE WITNESS: No. No, nobody came  
10 from DCRA.

11 CHAIRMAN JORDAN: Okay.

12 THE WITNESS: In 2010 there was  
13 someone, his name was Mr. Springs from DCRA. If  
14 you look at all the complementary cards when he  
15 came to 223 and 225 he was really confused why  
16 he was there. This is what he was telling me,  
17 he doesn't know why he's here. And he looked  
18 around just to make sure he did what he was told  
19 to do but that was the end of it. I didn't hear  
20 from him anymore.

21 BY MR. DOUMAR:

22 Q Well, as far you know, did someone

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1 from Zoning ever come out and look at your--

2 A No. No.

3 Q Okay. Did anything change at the  
4 house in 2012 or 2013?

5 A 2012 there was a resident who was  
6 getting -- this particular resident was very  
7 active. Yes, he had cancer, pancreatic cancer,  
8 but they discharged him from the nursing home,  
9 I mean determined that he's able to go home.  
10 And leave out whatever base of his situation and  
11 his medical situation.

12 And he was very active. He was in  
13 and out, goes out, comes back in. He would have  
14 a home health aide but rarely used her services.  
15 Due to his pancreatic cancer I believe the  
16 reason why he maintained a home health aide, he  
17 couldn't hold his bowels and the home health  
18 aide was very useful during that time, you know,  
19 cleaning up when that accident happens.

20 But I got a call in the month of June  
21 2012, that was a resident that called me based  
22 on there was some EMS there at the property. So

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1 I came on by. I was told he was taken to the  
2 hospital. I really did not know the outcome of  
3 what was going on.

4 Later on I found out that his room  
5 was hot. I went upstairs to his room and I saw  
6 that he shut the vents, the vents were shut, and  
7 that was why the next day when the Department  
8 of Health with the fire marshal came the room  
9 was cool and like you know it wasn't as hot as  
10 the EMS saw it when they came to pick him up.

11

12 Q And there's another reference to  
13 somebody in 2013 that had a problem at one of  
14 your places?

15 A One of my residents in 2013 he was  
16 discharged the same way. I went and met him in  
17 a nursing home. He was supposed to be going  
18 back home to his sister's house. The sister said  
19 no, I can't take you back because I can't deal  
20 -- because he went through rehab in a nursing  
21 home. He had an issue with alcohol so the sister  
22 said I can't take you back.

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1                   They were finding housing for him.  
2           Called me up, I came and talked with him. He  
3           assured me that his alcohol situation was under  
4           control and he came back. But that was  
5           different. When he came back he was back into  
6           his alcohol habits. I kept on talking with him  
7           because he will be so drunk when he comes back  
8           he couldn't even open the door to get in.

9           Q       Well, was it okay with you that he  
10          did that?

11          A       No. No. I had issues. I mean I  
12          wasn't expecting that kind of situation with him  
13          and he'd go to his sister's house, spend some  
14          time, because he loved to go stay with his mom  
15          and the mom stays with the sister. He goes and  
16          stays with her over the weekend and sometimes  
17          there's a time he's been there for a whole week  
18          at his sister's house.

19          Q       And did something end up happening  
20          to him?

21          A       I usually come and check on my  
22          residents. Then I started asking where is he?

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1       Where is he?   Where is he?   No one could  
2       particularly -- because usually the residents  
3       would say oh I saw him, he got into the car with  
4       his sister. But no one could tell me anything.  
5       So I called his sister and I said is your brother  
6       with you?   And she said no, he's not.

7                       Then I went to his room and I saw that  
8       he'd passed out, I mean he'd passed away in his  
9       room.

10           Q       How many people do you currently  
11       have at 223 and 225?

12           A       Only four.

13           Q       And of the four, do any have outside  
14       jobs for example?

15           A       Two work outside and two are just,  
16       you know, one in his 50s, he likes to just lounge  
17       around and just be.   And the other one   also you  
18       know she's an elderly lady in her 80s, she just  
19       lounges around and just be.

20           Q       Do they have some part-time home  
21       health aides?

22           A       Yes, they have home health aides

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1       that come in at a particular time, you know, a  
2       couple of hours and go.

3               Q       And just the two or all four?

4               A       Just two.     The other two, no.

5               Q       Have you rejected people from going  
6       to Senior Dwelling because they're too sick?

7               A       Yes.    I get a lot -- I mean it's  
8       strange.   They call me for all kinds of cases  
9       to consider.   I said no because it's just a  
10      rooming house and you need a higher level, so  
11      I do reject serious cases that I'm called.

12                      For example, there was a son who the  
13      mother was supposed to be in a nursing home for  
14      short-term care and she was on a stretcher.  
15      Regardless, she was going home to his house but  
16      changes happened and she couldn't go home.

17                      I was called because he would be  
18      indebted to pay the daily rate of \$400 dollars  
19      a day in the nursing home and he was hoping to  
20      get somewhere else to place her. I was called  
21      and I turned it down. I said no.     What happens  
22      are the nurse goes?     I'm not obligated for

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1 anything of that nature.

2 Q Have you told any nursing homes or  
3 other care providers that you're still running  
4 a CRF since 2010?

5 A No. And it was strange because  
6 there was a cite, there was an affidavit well  
7 I say affidavit or letter, whatever, you can  
8 clarify on that, of a social worker from a  
9 nursing home and it was strange because if you  
10 go back in 2009 based on the report that came  
11 in when the Department of Health came and looked  
12 at that place, that nursing home was cited  
13 because they'd been my referral source also.

14 And which they contacted a social  
15 worker at that time and she said she transferred  
16 that person and he's independent, he can do for  
17 himself. He doesn't need any level of care of  
18 the nursing home.

19 So this particular social worker who  
20 now took that position from that same nursing  
21 home was aware of me as a rooming house. But  
22 in this letter she said I misled her being that

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1 I told her I was a CRF. And I beg to differ  
2 because she did email me, which I have a copy  
3 of the email, saying that I should forward her  
4 the CRF forms for her to fill for a particular  
5 resident she was trying to refer to me. I had  
6 to correct her and said I'm not a CRF, I only  
7 take people who can live independently.

8 Q All right. And--

9 A And she responded back and said go  
10 ahead and send me the forms.

11 Q Did you have some referral sources  
12 that knew you when you worked for Blessed Home  
13 with was a CRF and they just assumed you were  
14 still a CRF? Is that possible?

15 A Yes, it's a possibility. But  
16 whenever I go there I make it very clear to them,  
17 these are people who can live independently.  
18 And you have to understand this, in a CRF you  
19 as the provider is responsible for the care of  
20 this particular resident. I mean especially  
21 when you're dealing with a CRF with a small scale  
22 because I was licensed with six bedrooms at that

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1 time when I was a CRF. You as the provider is  
2 responsible for the well being. You care for  
3 that person. You feed that person. I mean their  
4 ADLs, everything. Doctor's appointments,  
5 everything. That's what a CRF does as a  
6 provider.

7 But in this situation I was just  
8 providing rooms.

9 MR. DOUMAR: All right. No  
10 further questions, Mr. Chairman.

11 CHAIRMAN JORDAN: If you need more  
12 time, take it if you need.

13 MR. DOUMAR: No, I'm okay at this  
14 point.

15 CHAIRMAN JORDAN: Okay.  
16 Cross-examination please.

17 CROSS-EXAMINATION

18 BY MR. POSTULKA:

19 Q Good morning. Is it your position  
20 that what separates your facility from a CBRF  
21 is that you do not actually pay the nurses who  
22 come into the facility?

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1           A       What separates me from the CRF is  
2       that No. 1, I don't take severely ill people and  
3       because I have had situations as a CRF where  
4       severely ill people -- I have a scar here from  
5       one that attacked me, you know, stabbed me on  
6       my hand. So these are people that are way --  
7       they really need assistance.

8           Q       But is it your position that you  
9       could have nurses on staff and still not be a  
10      CBRF?

11          A       My position? No. I mean one of the  
12      discharge nurses, I mean a discharge planner  
13      from a nursing home will testify they always put  
14      that in the discharge paper as not something I  
15      coordinate.

16          Q       So if you had nurses you would be a  
17      CBRF?

18          A       If I had nurses?

19          Q       Right.

20          A       I don't understand that question, if  
21      I had nurses I'll be a--

22                   CHAIRMAN JORDAN:       Repeat the

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1 question please.

2 MR. POSTULKA: If you actually  
3 paid the nurses, they were on your staff, would  
4 you be a CBRF?

5 THE WITNESS: If I paid nurses that  
6 were on my staff then it means that I'm providing  
7 care.

8 MR. POSTULKA: So the only  
9 difference between your facility--

10 CHAIRMAN JORDAN: Let me do one  
11 other follow up. So (1) are there nurses that  
12 are at your facility every day?

13 THE WITNESS: There are nurses at  
14 my facility for their residents yes every day.

15 CHAIRMAN JORDAN: So they come in  
16 and go out? Is that right?

17 THE WITNESS: They come in and go  
18 out.

19 CHAIRMAN JORDAN: And that's every  
20 day?

21 THE WITNESS: That's every day.

22 CHAIRMAN JORDAN: Okay. For how

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1 many of the residents?

2 THE WITNESS: Just two.

3 CHAIRMAN JORDAN: And you have two  
4 others that have--

5 THE WITNESS: No nurses.

6 CHAIRMAN JORDAN: No nurses?

7 THE WITNESS: Yes.

8 CHAIRMAN JORDAN: Okay. Right.

9 BY MR. POSTULKA:

10 Q But in the past there have been times  
11 when you have had occasions when most of your  
12 residents have required health aides? Correct?

13 A In the past I've had occasions where  
14 I had only six residents that required, and I  
15 had a census at that time of 11 which is in your  
16 notes.

17 Q Okay. Your attorney had referenced  
18 Exhibit G to your pre-hearing statement which  
19 is Tab 12G.

20 CHAIRMAN JORDAN: Let me -- one  
21 other question. The other two that don't have  
22 these periodic nurses come in, do they have any

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1 kind of chronic illness?

2 THE WITNESS: They have issues but  
3 it's not -- I mean these are people when they  
4 came in and asked me because you have to  
5 understand if they're coming like from a nursing  
6 home I have the accessibility of knowing their  
7 medical issues. I go in detail to make sure  
8 they're suitable for my rooming house.

9 These other individuals came  
10 through referral from just normal referrals,  
11 they're looking for a place to stay. So I didn't  
12 have that accessibility to go into detail of  
13 your medical issues but I know they have issues  
14 because I do see them taking pills here and  
15 there.

16 COMMISSIONER HOOD: Mr. Chairman,  
17 may I ask a question?

18 CHAIRMAN JORDAN: Sure.

19 COMMISSIONER HOOD: So there are  
20 nurses that come in periodically, is this like  
21 if I went home and I needed somebody to follow  
22 up maintaining my care--

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1 THE WITNESS: Yes.

2 COMMISSIONER HOOD: So it's no  
3 different if I go to my own house, it's just that  
4 I don't have any place to go.

5 THE WITNESS: Yes.

6 COMMISSIONER HOOD: So let me ask  
7 you. Is this an ongoing thing continuous and  
8 are you involved with the nurses coming in?

9 THE WITNESS: No.

10 COMMISSIONER HOOD: So they  
11 basically come in and stay what eight hours?

12 THE WITNESS: Yes.

13 COMMISSIONER HOOD: Or some four  
14 hours depending on the insurance?

15 THE WITNESS: Yes.

16 COMMISSIONER HOOD: So once they  
17 leave after those four hours then what happens?

18 THE WITNESS: The resident is--

19 COMMISSIONER HOOD: Is able to  
20 take care of themselves?

21 THE WITNESS: Yes, take care of  
22 themselves till the next day when they need the

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1 assistance. Like I told you, the gentleman  
2 that became ill and left, the one that had the  
3 incident in 2012, he had a nurse but this  
4 gentleman cooks for himself. He does  
5 everything. Clean up, does his laundry,  
6 everything. But he had a nurse and it dawned  
7 on me that he only kept that nurse because of  
8 those accidents he had.

9 COMMISSIONER HOOD: Now I didn't  
10 see in the record and let me ask you. Do you have  
11 a nurse that's around the clock?

12 THE WITNESS: A nurse -- no, I  
13 don't.

14 COMMISSIONER HOOD: Okay.  
15 Because I know some people need care around the  
16 clock. One nurse will leave and another one will  
17 come in.

18 THE WITNESS: No.

19 COMMISSIONER HOOD: Okay. So  
20 when nurses leave they're able to maintain and  
21 take care of themselves?

22 THE WITNESS: Yes.

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1 COMMISSIONER HOOD: Okay.

2 MR. LEGRANT: But to follow up on  
3 that point you do have what you call a night  
4 sitter, correct, someone who's there--

5 THE WITNESS: A night sitter. I  
6 have a night sitter. I have a gentleman who  
7 came to me from a nursing home. He was in a  
8 wheelchair and being in a wheelchair I accepted  
9 him because he felt he's independent and so  
10 what, I'm in a wheelchair. But the reason why  
11 I had a night sitter at that time is just for  
12 precaution, you know, if anything happens I'm  
13 not there. And he's in a wheelchair, how will  
14 he make it out?

15 So I kept the night sitter while he  
16 was there and when he left I don't have any more  
17 night sitters.

18 MR. LEGRANT: When you didn't have  
19 the night sitter though and in the past you have  
20 represented to the nursing homes and assisted  
21 living facilities that you have 24 hour staffing  
22 at your facility right?

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1                   THE WITNESS:    I've never been to an  
2                   assisted living facility or representation but  
3                   the only people I deal with is nursing homes and  
4                   hospitals.

5                   MR. LEGRANT:    Okay.   Well then for  
6                   them you have represented to them that you have  
7                   24-hour staff at your facility?

8                   THE WITNESS:    No, I haven't.

9                   MR. LEGRANT:    Never? You've never-

10                  THE WITNESS:    Never.   Uh-huh.

11                  MR.    LEGRANT:           Are   you   the  
12                  emergency   contact   person   for   any   of   the  
13                  residents?

14                  THE WITNESS:    You know, it's funny  
15                  to say about that because when I went to the  
16                  nursing home and these residents are coming out  
17                  to my rooming house, the nursing home because  
18                  they don't have a means of communication like  
19                  to call their primary doctor to make an  
20                  appointment or, you know, the agency they're  
21                  assigned to contact them, they ask me, Ms.  
22                  Rosemary, do you mind if we just put your number

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1 in so that the agency can reach this resident?

2 And that was it. I felt like because  
3 when they come out they're supposed to give  
4 their own phone and give their means of  
5 communication. But at the initial time coming  
6 out they didn't have no means of communication  
7 at that time.

8 So the nursing home will ask me do  
9 you mind me using your number so that the nursing  
10 agency can reach this person and initiate care.  
11 And that was it. My number was just in there  
12 but out of the blue it became where I was the  
13 emergency contact person.

14 CHAIRMAN JORDAN: Let me ask you  
15 a question.

16 THE WITNESS: Go ahead.

17 CHAIRMAN JORDAN: I think you said  
18 something that's kind of telling for me and I  
19 just want to be right up front with you.

20 THE WITNESS: Okay.

21 CHAIRMAN JORDAN: You said you do  
22 your recruiting from nursing homes and

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1 hospitals. Do you recruit outside of nursing  
2 homes and hospitals?

3 THE WITNESS: Yes. Like the two  
4 residents I told you about I had no idea of their  
5 medical because you asked me, the other two that  
6 I have do I know of their medical issues, they're  
7 from outside. And I don't know because those  
8 that I know I can tell you because a nursing home  
9 provided to me, but the other two I don't know  
10 because they came from outside and they're  
11 living in there.

12 CHAIRMAN JORDAN: Okay. So you  
13 don't know how they came to you? Do you  
14 advertise?

15 THE WITNESS: No, they came to me  
16 through a referral.

17 CHAIRMAN JORDAN: What kind of  
18 referral?

19 THE WITNESS: I mean  
20 word-of-mouth. People know me. I've been in  
21 this for a while and people know that I provide  
22 such services.

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1 CHAIRMAN JORDAN: Okay. What's  
2 their ages?

3 THE WITNESS: This particular one  
4 is in her 40s and the other one, they're both  
5 in their 40s.

6 CHAIRMAN JORDAN: All right.

7 MR. LEGRANT: And did you indicate  
8 whether those two had health conditions in their  
9 40s?

10 THE WITNESS: That's what I'm  
11 saying, I don't know, because they're not coming  
12 from the nursing home. Those are the things  
13 you don't ask when you're a provide the rent.  
14 You just -- if they're coming from a nursing home  
15 I can vividly tell you their records but because  
16 I'm just giving them rent that wasn't necessary  
17 for me to ask.

18 MR. LEGRANT: And do some of your  
19 tenants pay rent by having their Social Security  
20 checks sent directly to you?

21 THE WITNESS: Yes. I initiated  
22 the fact that -- yes, some of my tenants yes they

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1 pay me, I mean their Social Security comes, they  
2 pay their rent and the difference is forwarded  
3 to them. It doesn't come to Rosemary, it comes  
4 to Senior Dwelling from Social Security.

5 MR. LEGRANT: And how many of the  
6 tenants pay the rent like that?

7 THE WITNESS: Right now, just two.

8 MR. LEGRANT: And in the past?

9 THE WITNESS: In the past thinking  
10 about six of them.

11 CHAIRMAN JORDAN: Wait. Wait.  
12 Wait. So two of the residents their SSI comes  
13 directly to you?

14 THE WITNESS: Yes, it's permitted  
15 because I went to Social Security--

16 CHAIRMAN JORDAN: Permitted how?

17 THE WITNESS: I went to Social  
18 Security and gave them my license that I'm the  
19 landlord. Then they said it's permitted, yes.

20 CHAIRMAN JORDAN: And what type  
21 of Social Security was sent to you? Was this  
22 Social Security retirement or disability Social

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1 Security?

2 THE WITNESS: I never thought I  
3 need to investigate what type of Social  
4 Security. I mean some of them are SSI, some of  
5 them are retirement.

6 COMMISSIONER HOOD: Let me ask  
7 this. Any time you start getting that aren't  
8 you considered, I'm not going to say a nursing  
9 home, but aren't you considered something  
10 similar?

11 THE WITNESS: No.

12 COMMISSIONER HOOD: Any time you  
13 start getting personal funds, most of the time  
14 when people go into nursing homes, I know a  
15 little bit about nursing homes. And when  
16 people go into nursing homes they start looking  
17 at their houses, they start looking at their  
18 Social Security, they start looking at income.  
19 And for you to start getting that, doesn't that  
20 put you in a different status?

21 THE WITNESS: You have to bear in  
22 mind it's like when your coming to rent for those

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1       who rent, your income is always going to be  
2       verified. They want to know your pay stubs,  
3       your checks, are you able to afford the rent?

4               So I went to Social Security in this  
5       situation that I'm a landlord and do you guys  
6       permit this? And they said yes and to me it's  
7       just an easier way for making sure their rents  
8       are paid and whatever we agreed--

9               COMMISSIONER HOOD: And they send  
10       it to you?

11              THE WITNESS: Yes, they send it to  
12       Senior Dwelling.

13              COMMISSIONER HOOD: I can say I'm  
14       totally baffled, totally baffled by that  
15       because if you're able to do on your own, you  
16       know, they don't send mine to anybody but that  
17       might help me. But to totally send it to you  
18       reminds me of a home, a facility, that's what  
19       it reminds me of because that's what's done  
20       there.

21              THE WITNESS: But you see when you  
22       go to Social Security you'll have to show them

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1 your license. They cannot initiate anything  
2 without verification. So they verified my  
3 license, they saw I was a landlord and they said  
4 that's permitted by law. So they send it to  
5 Senior Dwelling.

6 COMMISSIONER HOOD: Okay. I'm not  
7 doubting you. I'm just going to go with what's  
8 in the record.

9 THE WITNESS: I have a copy of the  
10 check of the resident. I have a copy.

11 COMMISSIONER HOOD: Thank you, Mr.  
12 Chairman.

13 REDIRECT EXAMINATION

14 BY MR. DOUMAR:

15 Q You'd indicated that you didn't  
16 think any DCRA inspectors had actually been to  
17 your facility but are you familiar with  
18 Inspector Meredith?

19 A Meredith came in 2013, yes because  
20 the Chairman was asking me about 2009 and 2010.

21 Q And have you seen Inspector  
22 Meredith's report regarding his visit to your

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1 facility?

2 A Yes.

3 Q And he took some photographs while  
4 he was there and the photographs appear to be  
5 a weekly schedule of nurses, cleaning  
6 instructions for the nursing aides, these types  
7 of things. Why did you put those pictures up in  
8 your facility?

9 A I have the instructions here. The  
10 nurses when they finish cooking they were  
11 leaving the food and not even removing the  
12 trash. And I started having those tiny  
13 insects, they were all over the kitchen. I said  
14 no, that is unacceptable. When you're finished  
15 cooking, whatever substance you have, take the  
16 trash out. And I put a note there to make it  
17 mandatory.

18 Q Okay. But as a landlord--

19 A Here is the cleaning instructions.  
20 Oh you want to--

21 Q You can go ahead I'm sorry.

22 A Here's the cleaning instructions.

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1       They were not cleaning up and I was having  
2       situations where the nurses were bickering with  
3       each other. It was just to make order, to make  
4       it very clear, when you take the residents' food  
5       from the fridge and it spills, clean it up.

6               When you fry or do whatever and it  
7       spills all over, clean it up, because I had a  
8       resident who was -- he would say I want to come  
9       here and cook and the stove is filthy. I had  
10      to say clean it up because it is becoming a  
11      situation where if that's the way you live in  
12      your home that's fine. I'm not here to dispute  
13      it but when you come over here we've got a group  
14      of people who are using a common area, the  
15      kitchen, just make sure you take care of it when  
16      you're done.

17             Q       Okay. What about the weekly  
18      schedule? As a landlord, why would you create  
19      a weekly schedule for nurses?

20             A       It wasn't a weekly schedule. I mean  
21      the nurses being there they were not able to even  
22      pick up after themselves. I said here if you

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1 need me to even indicate this to you, because  
2 it's just simple, take care of this matter of  
3 just cleaning. The weekly schedule was just  
4 cleaning.

5 If you need to even do a weekly  
6 schedule do it but just clean up after yourself.

7 CHAIRMAN JORDAN: What weekly  
8 cleaning schedule are we talking about? What  
9 exhibit?

10 MR. DOUMAR: This is Exhibit 15B.  
11 It's a report of Inspector Meredith and there  
12 are some photographs that he took upon his  
13 visit.

14 CHAIRMAN JORDAN: 15 what now?

15 MR. DOUMAR: B.

16 CHAIRMAN JORDAN: Okay. Proceed.

17 BY MR. DOUMAR:

18 Q So besides the cleaning  
19 instructions that you've talked about there is  
20 also a nursing aide grouping category. Why as  
21 a landlord would you have to create that type  
22 of forum?

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1           A       It wasn't a nursing aide grouping  
2 category. It's all based on cleaning.

3           Q       That's what it's titled, "Nursing  
4 Aide Group Category."

5           A       Yes, because in the sense where the  
6 nursing aides were bickering that this  
7 particular aide doesn't clean up after  
8 themselves. This particular aide -- it was  
9 ridiculous, they even had a meeting with the  
10 residents. It was just a chaotic environment  
11 where I just needed to create an order.

12          Q       Over the nursing aides that came  
13 into your facility every day, you decided that  
14 you had to oversee what they were doing while  
15 in your facility?

16          A       I was not overseeing because it  
17 became an issue to the other residents. There  
18 are residents there that don't have nursing  
19 aides so the bickering was quite outstanding.  
20 They were very loud.

21          Q       So you had to resolve it among--

22          A       Yes, I had to resolve it. And that

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1 was what I situated, that this is what it is.  
2 Just clean up after yourself and everybody, you  
3 know, peace be.

4 Q And was it also common during this  
5 period, 2012/2013, for the meals to be prepared  
6 for the residents of the facilities?

7 A I don't oversee meal preparation,  
8 the aides do.

9 Q But it was common for them to prepare  
10 the meals for the--

11 A I presume so because that's part of  
12 their job description I presume.

13 Q And was it also common for the aides  
14 to assist the residents with other activities  
15 of daily living, like grooming, shopping, those  
16 types of things?

17 A I'm just the landlord. You're  
18 asking me stuff that you would ask a home help  
19 recipient. I presume so if you wanted me to  
20 you know talk about that.

21 Q Have you seen the Exhibit that was  
22 filed, it appears by a neighbor named Joy

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1 Cottman?

2 A No, I haven't.

3 CHAIRMAN JORDAN: Exhibit number?

4 MR. LEGRANT: It would be 16. It  
5 looks like it was just filed yesterday.

6 MR. DOUMAR: It got added to my  
7 package but I haven't read it. I think Ms.  
8 Vasseghi saw it.

9 CHAIRMAN JORDAN: If you could  
10 allow your client just to review it.

11 [EXHIBIT REVIEWED]

12 THE WITNESS: Yes, I've seen it.

13 BY MR. DOUMAR:

14 Q I've got a few questions about it.  
15 First of all, in the fourth paragraph the  
16 neighbor indicates that four to five health  
17 aides arrive every day. Is that accurate?

18 A I presume so, yes.

19 Q But didn't you indicate earlier that  
20 only two of the current residents have health  
21 aides?

22 A Two of the current residents have

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1 aides in the sense like there's two, they have  
2 to slice their time. Two come at a certain  
3 time, two come at a certain time. So it's just  
4 two residents within the time frame because you  
5 have home health aides that even though they  
6 have eight hours in a day there's some that  
7 prefer to take just four hours because they go  
8 to school or whatever and another four hours is  
9 given to someone else I presume. But it's just  
10 two.

11 Q All right. Do you know which client  
12 this Joy Cottman is referring to about her  
13 complaints?

14 A Joy's my neighbor. I've been an  
15 owner of 223 and 225 for five years. With my  
16 experience with Joy is that she calls the police  
17 for basically everybody in that neighborhood.

18 I have a wall at the corner of my  
19 house right now because of Joy. How did that come  
20 about? I was taking out weeds beside my house,  
21 at her corner--

22 CHAIRMAN JORDAN: Excuse me a

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1 second, what was your question?

2 MR. DOUMAR: She's familiar with  
3 the actual client that's referred to.

4 CHAIRMAN JORDAN: That's what I  
5 thought it was a client. We're talking--

6 THE WITNESS: Okay. The question  
7 here, his question was I guess I'm familiar with  
8 this particular resident.

9 MR. DOUMAR: And does this resident  
10 have mental health issues?

11 THE WITNESS: This particular  
12 resident she does have mental health issues.

13 MR. DOUMAR: She's one of the ones  
14 that's a 40-year-old?

15 THE WITNESS: She's one of the ones  
16 that are -- she's actually 80-something years  
17 old, yes.

18 MR. DOUMAR: I don't have any  
19 further questions.

20 CHAIRMAN JORDAN: Okay. Any  
21 additional -- well Board, any other questions  
22 before we move off of this witness. Okay.

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1 MR. DOUMAR: Ms. Ogbenna, if  
2 someone needed 24-hour care would you take them?

3  
4 THE WITNESS: No. No.

5 MR. DOUMAR: No further  
6 questions, your Honor.

7 CHAIRMAN JORDAN: Okay. Any  
8 other witness?

9 MR. DOUMAR: Just one witness  
10 briefly, your Honor.

11 MS. VASSEGHI: We have one  
12 additional witness, Mr. Chairman. Ms. April  
13 Brent who formerly worked at St. Thomas More,  
14 one of the nursing homes, B-r-e-n-t, that  
15 referred to Ms. Ogbenna.

16 CHAIRMAN JORDAN: Okay.

17 DIRECT EXAMINATION

18 BY MS. VASSEGHI:

19 Q Can you please state your name for  
20 the record?

21 A April Brent.

22 Q And where are you currently

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1 employed?

2 A I'm not employed right now. I'm a  
3 full-time student.

4 Q And what are you studying?

5 A Nursing.

6 Q Okay. And where did you work prior  
7 to going to school?

8 A St. Thomas More Medical Complex.

9 Q And when did you start working  
10 there?

11 A January 3, 2010.

12 Q And when did you stop your  
13 employment with St. Thomas More?

14 A March 13, 2014.

15 Q Okay. And your title again?

16 A I'm an LPN at St. Thomas More. I was  
17 the discharge planner/manager.

18 Q Okay. And can you explain what a  
19 discharge planner/manager does?

20 A When residents are admitted to the  
21 nursing home, depending on their payer source  
22 they're in the nursing home for a certain amount

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1 of period and my job is to discharge them back  
2 to the community in a safe manner.

3 Q And do you know Ms. Rosemary  
4 Ogbenna?

5 A Yes, I do.

6 Q And when did you first meet Ms.  
7 Ogbenna?

8 A Shortly after I started working at  
9 St. Thomas More.

10 Q Okay. And how did you come to meet  
11 Ms. Ogbenna?

12 A She came into the facility,  
13 introduced herself to myself and my staff at the  
14 time and said that she had some group homes,  
15 rooming homes, and she gave us some pamphlets  
16 on her homes and if we were interested or had  
17 any clients that would be suitable for her  
18 facility to give her a call.

19 Q Okay. And did you ever discharge  
20 patients to 223 or 225 56th Place, N.E.?

21 A Yes.

22 Q And what type of homes did you think

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1 223 and 225 were?

2 A I went to visit. They were rooming  
3 houses. I have to go visit.

4 Q And what is your understanding of  
5 what a rooming house is?

6 A I portrayed it as a room for rent.

7 Q So you said that you'd placed  
8 patients at 223 and 225?

9 A Yes.

10 Q Okay. And how often would you place  
11 your patients that were being discharged at 223  
12 and 225?

13 A If she had a room available  
14 frequently.

15 Q How many patients do you think over  
16 time you discharged to either home?

17 A Oh, more than 10. More than 10.

18 Q Okay. And did you know anything  
19 about what was included in each room for rent?

20 A When I went to visit the rooms they  
21 were basic room set up. They were furnished, TV,  
22 bed, dresser, maybe a night-stand. That was it.

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1 Q Okay. And can you explain what type  
2 of patients you would discharge to 223 and 225?

3 A For me it was high functioning  
4 patients. We called them walkie-talkies. They  
5 walked, talked, do everything on their own.  
6 They really didn't need any assistance.

7 Q Okay. And when they were discharged  
8 did they have any kind of home health care  
9 assistance?

10 A Yes. All my patients were  
11 discharged with home health aides.

12 Q Okay. And what is that?

13 A That's more so to cover ourselves  
14 just to make sure in the discharge summary we  
15 were saying that this person can walk and talk,  
16 this person can do all of those things. When a  
17 home health agency goes out they're basically  
18 seeing everything in our discharge is correct.  
19 If they see anything that's unsafe or not  
20 according to that discharge summary then they  
21 are to call APS.

22 Q And can you generally state what

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1 type of things your patients that you discharged  
2 needed help with that required home health care?

3 A Some of them none. Some of them  
4 declined the home health services but we still  
5 sent it out like I said before just to caution  
6 our discharge. Others may have needed a  
7 physical therapist just to come out to assure  
8 if they had to climb 14 steps that they could  
9 get in and out of the tub without harm. It's just  
10 more so transitioning from a nursing home always  
11 having someone there, to being dependent and by  
12 themselves to make sure that was a safe discharge.

13 Q Okay. And are you familiar with CRFs  
14 or assisted living facilities?

15 A Yes.

16 Q Did you sometimes refer patients to  
17 CRFs or assisted living facilities?

18 A Yes.

19 Q And what types of patients would you  
20 usually refer to those types of facilities?

21 A If someone had a G-tube, if they had  
22 wound care, if they were incontinent, needed to

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1 someone to feed them and things of that nature.

2 Q Okay. Did you ever refer any  
3 patients that needed 24-hour care to Senior  
4 Dwelling at 223 or 225?

5 A No. Absolutely not.

6 Q And just a few more questions. Were  
7 you interviewed by a Mr. Fallot or Mr. Walker  
8 on March 15, 2013?

9 A Yes.

10 Q Okay. And do you remember that  
11 interview?

12 A Yes.

13 Q Was that over the phone?

14 A Yes.

15 Q Okay. Did you say anything to them  
16 about how Ms. Ogbenna solicited business for 223  
17 and 225?

18 A I cannot recall. It was a  
19 conference call and they asked me numerous  
20 questions about--

21 CHAIRMAN JORDAN: What was the  
22 date of that?

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1 MR. VASSEGHI: March 5, 2013.

2 CHAIRMAN JORDAN: March 5, 2013.

3 And who were the people again?

4 MS. VASSEGHI: Mr. F-a-l-l-o-t or  
5 Mr. Walker. The report was prepared by both and  
6 I think they're both with the Department of  
7 Health. And that's an Exhibit that DCRA  
8 provided.

9 CHAIRMAN JORDAN: Okay.

10 MS. VASSEGHI: It's I believe  
11 Exhibit C.

12 CHAIRMAN JORDAN: Exhibit C of 15?  
13 Should be Exhibit C of DCRA, is that what you're  
14 saying?

15 MS. VASSEGHI: Yes, I apologize.

16 CHAIRMAN JORDAN: Got it. Thank  
17 you.

18 MS. VASSEGHI: Actually, Exhibit  
19 C2 is where I'm referring to where the interview  
20 is documents and that would be on page 14.

21 And did you state to, and I'm sorry,  
22 I can't tell who actually took the interview

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1 based on the report, but did you state that Ms.  
2 Ogbenna stated that she could provide  
3 medication management for residents at 223 and  
4 225?

5 THE WITNESS: No, she didn't do  
6 that. Home health aides did that.

7 BY MS. VASSEGHI:

8 Q Okay. Did she advertise -- did you  
9 state that she advertised any other services at  
10 223 and 225 besides the room?

11 A Everything she did for me was  
12 outside of that so no. I mean for me she helped  
13 with benefits. Like we would take patients to  
14 the Department of Social Services for food  
15 stamps and things of that nature but not in a  
16 sense of medication and stuff like that no.

17 Q But when Ms. Ogbenna advertised her  
18 223 and 225 to you did she say that those rooms  
19 came with any additional services besides the  
20 room for rent?

21 A No.

22 MS. VASSEGHI: No further

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1 questions.

2 MR. POSTULKA: How long have you  
3 known Ms. Ogbenna?

4 CHAIRMAN JORDAN: We need you on  
5 the microphone.

6 THE WITNESS: Since 2010.

7 CROSS-EXAMINATION

8 BY MR. POSTULKA:

9 Q Would you consider her a friend?

10 A Yes.

11 Q So Ms. Ogbenna just said I have a  
12 room and you can put someone in it and that's  
13 all she said the facility did?

14 A She explained her locations. She  
15 explained her locations. It's a rooming house,  
16 she doesn't have nurses and things of that  
17 nature in the house. When she came in initially  
18 I was busy. It's an open door policy at our  
19 facility for any assisted living or anyone  
20 seeking business to come in and walk in so the  
21 day she came I was busy. I took the information  
22 and I told her I will call her if I needed her.

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1           Q     After that day did she ever go into  
2 more detail about what was provided at the  
3 facility?

4           A     I asked when I was ready to place  
5 someone, considering, I asked if I could come  
6 see the facility for myself. When we went to  
7 see the facility I asked questions, she gave me  
8 information and it was back and forth.

9           Q     The day you visited were there  
10 health aides present at the facility?

11          A     Yes.

12          Q     And do you know if the facility had  
13 a night sitter at that time?

14          A     No, I did not.

15          Q     You don't know?

16          A     I don't know.

17          Q     Is it true that every single patient  
18 that you were involved in discharging to Senior  
19 Dwelling was prescribed healthy at that time?

20          A     Yes. For me, yes.

21               MR. POSTULKA:           No further  
22 questions.

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1 CHAIRMAN JORDAN: Say that again?  
2 Go back. What was the question?

3 MR. POSTULKA: That every single  
4 patient that was discharged to Senior Dwelling  
5 had a health aide.

6 THE WITNESS: They were prescribed  
7 one. It doesn't necessarily mean that they  
8 took it because when the home health aides come  
9 out they have to call. If they don't get a call  
10 they don't go. So I arranged for a home health  
11 aide to be there. If services were rendered,  
12 I wouldn't know.

13 CHAIRMAN JORDAN: Okay. Thank you.  
14 Any further direct?

15 MS. VASSEGHI: Just a few more  
16 questions.

17 CHAIRMAN JORDAN: It's redirect.

18 REDIRECT EXAMINATION

19 BY MS. VASSEGHI:

20 Q Did Ms. Ogbenna ever represent to  
21 you that she had staff at 223 or 225?

22 A No.

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1           Q       Okay. And just going back to the  
2 home health aides being prescribed by you for  
3 every patient, did you sometimes or isn't it  
4 true that if a patient was going home from your  
5 facility they would sometimes get a home health  
6 care aide as well?

7           A       Yes. Everybody. All patients  
8 were given home health aides as a precaution for  
9 discharge--

10                   CHAIRMAN JORDAN:       You mean by  
11 given, you're saying simply provide for  
12 referral you made the network contact, they  
13 would have to follow up if they really wanted  
14 it?

15                   THE WITNESS:       Yes sir.

16                   CHAIRMAN JORDAN:       Okay. Got you.

17                   MS. VASSEGHI:           No further  
18 questions.

19                   CHAIRMAN JORDAN:       Re-cross?

20                   COMMISSIONER HOOD:       Let me just  
21 ask. Everybody doesn't get that home health  
22 aide right? Everybody doesn't get it?

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1 THE WITNESS: Say that--

2 COMMISSIONER HOOD: It depends on  
3 your analysis. Everybody doesn't go home with  
4 an aide.

5 THE WITNESS: Under your Medicare  
6 and Medicaid guidelines, you are allowed one.

7 COMMISSIONER HOOD: You're  
8 allowed one but isn't there an assessment done?

9 THE WITNESS: Yes.

10 COMMISSIONER HOOD: So that means  
11 everybody doesn't necessarily get a health care  
12 aide, right? It depends on your assessment.

13 THE WITNESS: Right.

14 CHAIRMAN JORDAN: Let me try to  
15 help because I think I'm clear and maybe this  
16 will help you, Mr. Hood, and let me know.

17 COMMISSIONER HOOD: Well, I'm  
18 actually clear. I'm just going on ahead in  
19 this case. I'm very clear on the process.

20 CHAIRMAN JORDAN: Got it. Okay.

21 COMMISSIONER HOOD: But let me ask  
22 again, the person that you had coming in, and

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1 I forgot what you called the person, that was  
2 there for 24 hours. The overnight person.

3 MS. OGBENNA: The night sitter.

4 COMMISSIONER HOOD: You had that  
5 person come in for one particular resident?

6 MS. OGBENNA: One particular  
7 resident that like I said I accepted, oh sorry.

8 COMMISSIONER HOOD: For me that's  
9 a gray area when you move out of what you're  
10 supposed to be doing but I just want to know  
11 why--

12 MS. OGBENNA: I looked at it as this  
13 way. I have a resident with a wheelchair and  
14 I looked at it just in case okay if he called,  
15 because he communicates, he's just in a  
16 wheelchair, I looked at it in the sense like if  
17 something happens to him and he calls the  
18 ambulance, he couldn't come down. Who will  
19 open the door? It could be late at night. So  
20 how will the ambulance get in.

21 COMMISSIONER HOOD: I don't know  
22 all the rules on that but shouldn't it be ADA

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1 compliant?

2 MS. OGBENNA: ADA compliant? In  
3 that particular case when I went to interview  
4 him in the sense where--

5 COMMISSIONER HOOD: That's  
6 actually a yes or no question. I'm going to cut  
7 it because the chairman's going to cut me off.  
8 He runs this, I don't run this. But yes, that's  
9 a yes or no question.

10 MS. OGBENNA: I don't know. I don't  
11 know. It could be -- explain ADA compliant for  
12 me. Maybe I'm having a different--

13 COMMISSIONER HOOD: There is an  
14 act called the Americans With Disabilities Act  
15 where people with disabilities it should be  
16 easily accessible to ingress and egress at any  
17 facility and that's what I'm saying. You have  
18 somebody in a wheelchair and I know this is a  
19 tough situation because I've had people and it's  
20 hard.

21 So I'm just trying to figure out how  
22 did that work? You had somebody come in and

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1 provide 24-hour care just in case something  
2 happened to bring them--

3 MS. OGBENNA: It's not 24-hour.

4 He was the person--

5 COMMISSIONER HOOD: Oh evening  
6 care, night care?

7 MS. OGBENNA: Yes, he was there at  
8 night and it was just a sitter to make sure in  
9 case this gentleman ever if a situation arises  
10 where he calls the ambulance and the ambulance  
11 needs to get it.

12 COMMISSIONER HOOD: So what  
13 happened during the daytime?

14 MS. OGBENNA: He has his own aide.  
15 He does his own thing. He was in and out, do  
16 his own, you know, usual stuff.

17 COMMISSIONER HOOD: Just follow me  
18 and let me try and make this easier. He can go  
19 in and out in the daytime but couldn't go in and  
20 out at night.

21 MS. OGBENNA: He can go in and out  
22 at night but I was looking at this. He can fall

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1 seriously sick or there could be a fire. I don't  
2 know.

3 COMMISSIONER HOOD: Statistics  
4 show that most of the time when you have an  
5 illness it happens at night. I understand. I  
6 understand that but I'm just trying to make  
7 sense of your argument.

8 CHAIRMAN JORDAN: What was your  
9 responsibility for taking care of this person  
10 if those things happen?

11 MS. OGBENNA: My own -- I did this  
12 out of the concept of it that he's in a  
13 wheelchair and I just need to assure myself in  
14 case he falls ill at night, he calls the  
15 ambulance. The EMS needs to get in and he's  
16 unable to go open the door for them. Someone  
17 is able to open that door.

18 CHAIRMAN JORDAN: I know you've  
19 said that several times and I understand that.  
20 My question was what was your sense of  
21 responsibility why you did it? And you're  
22 telling us that you did it out of the kindness

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1 of your heart.

2 MS. OGBENNA: Hmm-mm.

3 CHAIRMAN JORDAN: I'm sorry, Mr.  
4 Hood.

5 COMMISSIONER HOOD: I'm really not  
6 following it but thank you.

7 CHAIRMAN JORDAN: How much are  
8 rents?

9 MS. OGBENNA: My rents at 223 and  
10 225 are \$1,000 dollars a month.

11 CHAIRMAN JORDAN: What is the  
12 square footage?

13 MS. OGBENNA: Square footage for  
14 each room? It's different.

15 CHAIRMAN JORDAN: Give me a range  
16 please of the square footage. I've got \$1,000  
17 rent from you, what's the square foot of that  
18 room?

19 MS. OGBENNA: Oh the square foot of  
20 the whole property?

21 CHAIRMAN JORDAN: No, no. Of my  
22 room. I'm paying \$1,000 dollars, what's the

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1 square footage of my room?

2 MS. OGBENNA: It's within -- I've  
3 measured it. It's within 16 x -- it's a range  
4 of like 320-400 square footage for the room.  
5 With a bathroom included in it.

6 CHAIRMAN JORDAN: 400 square foot?

7 MS. OGBENNA: Yes. Excluding the  
8 bathroom, I didn't measure the bathroom. I had  
9 a carpet change so I'm quite--

10 CHAIRMAN JORDAN: Okay. And where  
11 is this location again?

12 MS. OGBENNA: This is in 223 and  
13 225. And that is the only location because this  
14 is a new building, it was built in 2005.

15 CHAIRMAN JORDAN: And I'm paying  
16 \$1,000 dollars a month rent?

17 MS. OGBENNA: For the room, yes  
18 because it's all new. And in some cases some  
19 residents they ask me for additional amenities  
20 in their room. Some of them they want a flatter  
21 screen TV, they want a table, they want a 'fridge  
22 and those amenities are added into their rent.

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1 CHAIRMAN JORDAN: Any other  
2 questions anyone?

3 MS. OGBENNA: And the location at  
4 5033--

5 CHAIRMAN JORDAN: That's not  
6 before us is it?

7 MS. OGBENNA: No, but I just --  
8 it's a different--

9 CHAIRMAN JORDAN: Any more direct?

10 MR. DOUMAR: No, your Honor.

11 CHAIRMAN JORDAN: I think you  
12 waived on -- you didn't have any other cross did  
13 you? Okay. So any other evidence you want to  
14 present to the Board?

15 MR. POSTULKA: No, Mr. Chairman.  
16 None other than what we've already submitted.

17 CHAIRMAN JORDAN: Got you. And  
18 we're taking ten minutes and we'll come back.  
19 How long do you think you're going to be?

20 MR. POSTULKA: Well, that depends.  
21 I'm prepared to call some Department of Health  
22 witnesses but only if the Board thinks that it's

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1 necessary.

2 CHAIRMAN JORDAN: It's your case  
3 now. I mean I can't tell you how to try your  
4 case but we're going to take five minutes.

5 MR. POSTULKA: A half hour.

6 CHAIRMAN JORDAN: Five minutes and  
7 then we'll come back and we'll kick through. I  
8 think we should be through by 1 p.m. so we don't  
9 have to take a lunch break.

10 (A BRIEF RECESS WAS TAKEN)

11 CHAIRMAN JORDAN: All right. So  
12 you have what? 45 minutes? It's like 30 plus  
13 16.

14 MR. POSTULKA: I want to add  
15 another ten.

16 CHAIRMAN JORDAN: No, I was just  
17 trying to be fair here. Okay. Ready?

18 MR. POSTULKA: Yes please. The  
19 first witness I call is Sharon Mebane.

20 CHAIRMAN JORDAN: Spell that last  
21 name please.

22 THE WITNESS: It's M-e-b-a-n-e.

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DIRECT EXAMINATION

BY MR. POSTULKA:

Q And though I just said your name could you state your name for the record?

A Sharon Mebane.

Q And what is your position with the District?

A I am a program manager for the Intermediate Care Facilities Division under the Health Regulation License Administration which is under the Department of Health.

Q And what are you job duties in that position?

A I provide regulatory oversight of six programs. One to be the Community Residential Facilities for people with intellectual disabilities, as well as the elderly and physically disabled; Assisted Living residencies; home care agencies; child placing agencies and nurse staffing agencies.

Q Does anybody else at DOH do anything? You've got every department, Jeez.

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1 And you're familiar with Ms. Ogbenna?

2 A Yes, I am.

3 Q Do you know when you first met her?

4 A Yes.

5 Q When was that?

6 A I met Mrs. Ogbenna in 2012.

7 Q Are you sure that was the first time  
8 you met her?

9 A First time I personally met her was  
10 in 2012.

11 Q Okay. But were you familiar with  
12 her before then?

13 A Yes.

14 Q And do you know if she ever operated  
15 CBRFs in the District?

16 A Yes.

17 Q Okay. And do you know when that was?

18 A She operated several community  
19 residential facilities from I believe -- this  
20 pre-dates me -- in 2008 or even maybe earlier.

21 Q And what happened with those  
22 facilities?

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1           A       She voluntarily closed and  
2 surrendered her license to operate those  
3 facilities.

4           Q       And was that after she was given a  
5 notice to correct that she was not able to comply  
6 with?

7           A       That's correct.

8           Q       And are you aware of the facility  
9 that's operated at 223-225 56th Place?

10          A       Yes, I am.

11          Q       And have you received any complaints  
12 about the way that facility's operated?

13          A       Yes, I have.

14          Q       Okay. Could you describe those  
15 complaints?

16          A       The complaints were that the  
17 provider was soliciting patients' Social  
18 Security benefits as well as operating outside  
19 of the rooming house license operating  
20 certificate, I'm sorry, residential facility.

21                   CHAIRMAN JORDAN: Say that again.  
22 So the complaint was soliciting Social

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1 Security?

2 THE WITNESS: Soliciting Social  
3 Security benefits and operating a community  
4 residential facility or assisted living  
5 facility outside beyond the scope of the rooming  
6 house license.

7 BY MR. POSTULKA:

8 Q Are you familiar with the ability to  
9 receive Social Security benefits directly to  
10 some type of provider. Are you familiar with  
11 those?

12 A I'm not totally familiar with it,  
13 no.

14 Q Did the complaints that you received  
15 lead to investigations of the facility?

16 A Yes, they did.

17 Q And what I want to specifically  
18 focus on are the investigations that occurred  
19 in 2013 and later. So are you familiar with the  
20 investigation that was a joint DCRA Department  
21 of Health investigation involving Inspectors  
22 Follot, Walker and Meredith?

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1           A       Yes, I am.

2           Q       And do you know what they discovered  
3 when they visited the premises?

4           A       Yes. They discovered that the  
5 location was being operated similar to a  
6 community residential facility where they had  
7 communal areas. There was staff there or aides  
8 there providing meals. The interview also with  
9 patients revealed that many of the patients  
10 needed more care, 24-hour supervision. Also  
11 they had some complaints from the patients that  
12 their money, their Social Security money was  
13 being taken without their knowledge.

14                   CHAIRMAN JORDAN:    What Exhibit are  
15 you referring to?

16                   MR. POSTULKA:       That would be Tab  
17 15A. It's an affidavit.

18                   CHAIRMAN JORDAN:       Oh it's an  
19 affidavit--

20                   MR. POSTULKA:       Filed by Ms.  
21 Mebane.

22                   CHAIRMAN JORDAN:       But not the

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1 report?

2 MR. POSTULKA: No, I think she's  
3 looking at her own affidavit.

4 CHAIRMAN JORDAN: Okay. What was  
5 the report?

6 MR. POSTULKA: The report would be  
7 15B and C. There are two reports, one by  
8 Inspector Meredith and one by Inspectors Walker  
9 and Follot.

10 CHAIRMAN JORDAN: Okay. Thank  
11 you.

12 BY MR. POSTULKA:

13 Q So I think you had indicated that  
14 some of the patients of the facility actually  
15 had home health care plans requiring 24-hour  
16 treatment. Is that correct?

17 A That's correct.

18 Q And do you know if any  
19 investigations took place after the one that we  
20 had just referred to?

21 A Yes. I'm also, as I said,  
22 responsible for the home care agencies so there

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1 were three home care agencies involved in the  
2 services at 223-225 56th Place so we did an  
3 investigation of all three home care agencies.

4 And as part of that investigation we  
5 review plans of care and within those plans of  
6 care it indicated on mainly all of them that Mrs.  
7 Ogbenna was the responsible person for all the  
8 residents -- I think six of the 11 that were  
9 there.

10 Also, in the plan of care it says  
11 that they needed 24-hour supervision and that  
12 the home that they were being serviced were  
13 group homes and [inaudible] assisted living.

14 Q As of December 2013, when the later  
15 investigation that you're talking about took  
16 place, do you know if that facility had a night  
17 sitter?

18 A Yes. There was a night sitter.

19 Q And do you know what that person's  
20 duties were?

21 A Well, it changed. Initially, she  
22 indicated that she provided assistance to one

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1 of the individuals that lived there, it was an  
2 individual who was 90 years old, I think she's  
3 94 or 95, and she was providing care to her  
4 because that particular person did not have a  
5 home health aide because she didn't qualify for  
6 benefits.

7                   However, in subsequent interviews  
8 with her she indicated that she did not provide  
9 any care. That person provided care for  
10 herself. But doing our nursing assessment of  
11 her we found that she could not live by herself.  
12 She needed 24-hour supervision as well as the  
13 five other individuals living there.

14               Q       So your assessment was that six of  
15 the residents required 24-hour care?

16               A       Yes.

17               Q       Do you know if the Veterans  
18 Administration has had any involvement with  
19 223-225?

20                   CHAIRMAN JORDAN:   Let me go back a  
21 second. So you said 6 of the 11 needed?

22                   THE WITNESS:   Yes.

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1                   CHAIRMAN JORDAN:     What about the  
2     other five?

3                   THE WITNESS:     The other five there  
4     was no evidence that they needed 24-hour  
5     supervision meaning that although the home  
6     health aides that were there taking care of some  
7     of the residents they were providing meals for  
8     everyone there, all the 11.

9                   But doing the interviews, the  
10    interviews that we conducted most of the 11, we  
11    could not interview all of the 11 because they  
12    were in and out. The ones that we did interview  
13    indicated that they could prepare their own  
14    meals but we had no evidence of that.

15                  Q     So the other five though they might  
16    not need a 24-hour care but they needed some  
17    care? Would that be what your testimony is?

18                  A     Yes.

19                  COMMISSIONER     HEATH:                 An  
20    additional question. You said you interviewed  
21    the night sitter and she indicated that she was  
22    taking care of the 94-year-old woman. Was this

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1 woman in a wheelchair?

2 THE WITNESS: No.

3 COMMISSIONER HEATH: Okay.

4 THE WITNESS: She'd had some  
5 ambulatory issues but she was not in the  
6 wheelchair. There was an individual that lived  
7 on the third floor that could not walk  
8 independently. I didn't see a wheelchair but  
9 he needed assistance coming down the stairs.

10 COMMISSIONER HEATH: And so the  
11 night sitter was there for that person as well?

12 THE WITNESS: She did not indicate  
13 such.

14 COMMISSIONER HEATH: Okay. Thank  
15 you.

16 THE WITNESS: In fact, in  
17 interviewing the home health aide for that  
18 particular person she indicated that she would  
19 bring the individual upstairs to his room and  
20 he will remain there until she comes back on  
21 duty. And that was a concern of ours due to the  
22 fire issues.

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1 BY MR. POSTULKA:

2 Q So are you aware of whether the  
3 Veterans Administration has had any contact  
4 with 223-225 56th place?

5 A Yes. Due to our concerns that there  
6 were some individuals that was placed by  
7 Veterans Administration and we felt that they  
8 were not receiving proper care. We contacted  
9 the Veterans Administration. They indicated  
10 to us that they were unaware that it was just  
11 a rooming house. They were under the  
12 impression that that was a community  
13 residential facility. And because of the care  
14 that was needed they relocated their  
15 individuals they had placed there due to the  
16 health risks.

17 Q You'd indicated that you have spoken  
18 directly to Ms. Ogbenna?

19 A Yes. I did--

20 Q Go ahead.

21 Q I interviewed her during one of my  
22 visits there. She indicated to me that she was

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1 a social worker so I was surprised when she  
2 didn't say she was a social worker today. But  
3 she said she was a social worker and that her  
4 job that she did admit to soliciting her  
5 facility.

6 And I asked her the question what  
7 made this facility different from her Blessed  
8 Home facilities that were licensed as a CRF and  
9 she said that it gave her more freedom, that she  
10 didn't have to do any work, that she left all  
11 the work to the home health aides.

12 MR. POSTULKA: No further  
13 questions.

14 CHAIRMAN JORDAN:  
15 Cross-examination?

16 MR. DOUMAR: Yes, a few questions,  
17 Mr. Chairman.

18 CROSS-EXAMINATION

19 BY MR. DOUMAR:

20 Q I'm looking at your affidavit which  
21 you have in front of you, Ms. Mebane. How many  
22 times did you visit 223 or 225?

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1           A       I visited twice.

2           Q       Twice. How long were you there each  
3 time?

4           A       Probably the first visit was with  
5 the D.C. Fire Department. I was there probably  
6 about an hour. The second visit probably I  
7 would estimate an hour or an hour and a half.

8           Q       Okay. Did you personally talk to  
9 all the residents?

10          A       No, I did not personally talk to all  
11 the residents.

12          Q       Did you talk to any of the residents?

13          A       Yes.

14          Q       On your chart on page 3 of your  
15 affidavit, was that put together from your  
16 interviews with people or just interviews HRLA  
17 surveyors and others?

18          A       HRLA surveyors.

19          Q       Okay. And so this chart shows that  
20 six people have it says 24 hours in home  
21 management care and four people have no  
22 identified home health care agency/records not

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1 available. Is that correct?

2 A That's correct.

3 Q Okay. And it shows for the home  
4 health aide, we talked about the multiple home  
5 health aides, but it appears there's six people  
6 identified with home health aides but for three  
7 of them they have the same person. Do you see  
8 that?

9 A Yes.

10 Q So it could be that there was one  
11 health care aide there for more than one person  
12 at a time, is that correct?

13 A And that's illegal, yes. But that  
14 was the case. One home health aide was  
15 providing care to more than one and she  
16 indicated to me that Mrs. Ogbenna paid her  
17 separately to provide care for that particular  
18 person.

19 Q Now it's true that in a rooming house  
20 somebody can get some home health care in a  
21 rooming house just like they could in their own  
22 house, correct?

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1           A       That's correct.

2           Q       And you had not been involved in any  
3 prior inspection or investigation of 223 or 225  
4 or Senior Dwelling before 2012? Is that  
5 correct?

6           A       Not personally involved, no.

7           Q       Were you aware of these inspections  
8 that had taken place in 2010 some of which are  
9 referenced in page 2 of your affidavit?

10          A       Yes.

11          Q       Okay. And at that time DCRA didn't  
12 find a reason to revoke any rooming house  
13 license at that time?

14                   CHAIRMAN                               JORDAN:  
15 Mischaracterize. Those early inspections were  
16 the Department of Health. Am I not correct?

17                   MR. DOUMAR:     Let me look at them  
18 specifically, your Honor.

19                   CHAIRMAN JORDAN:     Don't confuse me  
20 because my records got my notes here.

21                   MR. DOUMAR:     I'm not trying to  
22 confuse you. Sometimes I'm just trying to keep

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1       it straight myself.

2                   CHAIRMAN JORDAN:       I know you're  
3       not trying to throw us a curve ball, you wouldn't  
4       do that.

5                   MR. DOUMAR:       No, no Mr. Chairman,  
6       I would not do that.

7                   CHAIRMAN JORDAN:       Slider.   Curve  
8       no.

9                   MR. DOUMAR:       All right. Those were  
10       from the Department of Health at that time.   And  
11       is your position with the Department of Health?  
12       Again, just for my clarification, who are you  
13       employed with?

14                   THE   WITNESS:           Department   of  
15       Health.

16                   MR.   DOUMAR:           Okay.   So these  
17       inspections in late 2009 and 2010 were with  
18       Department of Health people?   Correct?

19                   THE   WITNESS:           Yes.   Based on  
20       complaints we went out to verify that the  
21       property wasn't being used as a community  
22       residential facility.

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1 BY MR. DOUMAR:

2 Q And based on those reports there was  
3 no indication at the time, or there was no  
4 conclusion at the time, that it was a community  
5 residence facility correct?

6 A It was inconclusive as we didn't  
7 have the authority to go in without permission  
8 and we didn't get permission to go in to do the  
9 inspection.

10 CHAIRMAN JORDAN: The report from  
11 2010, no one went inside?

12 THE WITNESS: In 2010--

13 CHAIRMAN JORDAN: It makes  
14 reference to an investigation of December  
15 something 2009.

16 THE WITNESS: Right. The  
17 surveyor based on the DCRA records and based on  
18 the interview with Mrs. Ogbenna concluded that  
19 it appeared to be a rooming house. However,  
20 from the doorway where he stood--

21 CHAIRMAN JORDAN: Let me stop you  
22 there. You're calling the surveyors

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1 inspectors?

2 THE WITNESS: Inspector.

3 CHAIRMAN JORDAN: The inspector  
4 did not go in the facility at that date?

5 THE WITNESS: Did not do an  
6 inspection.

7 CHAIRMAN JORDAN: Got it. Did  
8 not. Okay. I got it. Thanks.

9 MR. DOUMAR: Well, just to clarify  
10 that I have a document--

11 CHAIRMAN JORDAN: Are you asking a  
12 question or are you testifying?

13 MR. DOUMAR: No, your Honor, I'm  
14 asking Ms. Mebane. Well, didn't Mr. Woodard go  
15 in there and actually do a report dated January  
16 5th where he discusses what he found inside the  
17 residence?

18 THE WITNESS: I was talking about  
19 the 223-225 56th Street home conducted by Jude  
20 Jewel.

21 CHAIRMAN JORDAN: So during that  
22 time period one inspector got in and one did not

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1 get in? Is that correct?

2 THE WITNESS: Well, when they say  
3 got in, an inspection is going to each room and  
4 looking. None of that happened on any of the  
5 investigations because we didn't have  
6 permission to do so.

7 CHAIRMAN JORDAN: Got it. Okay.

8 MR. DOUMAR: And just to clarify  
9 there were three separate facilities. I think  
10 an inspector might have got in at a different  
11 facility not 223 or 225.

12 CHAIRMAN JORDAN: Okay.

13 MR. DOUMAR: No further questions,  
14 Mr. Chairman.

15 MR. POSTULKA: I have no redirect.

16 CHAIRMAN JORDAN: Really?  
17 Neither one of you. I got about 50 of them but  
18 that's okay, it's not my case. All right.  
19 Your next witness.

20 MR. DOUMAR: Can I take that back,  
21 your Honor?

22 CHAIRMAN JORDAN: Yes, I'll let

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1       you go ahead. I would.

2                       MR. DOUMAR:     Thank you.

3                               CROSS-EXAMINATION (cont'd)

4                       BY MR. DOUMAR:

5               Q       You're not aware that Ms. Ogbenna  
6       prepared any plans of care for any of the  
7       residents are you?

8               A       Did she sign plans of care? Or  
9       admission documents.     But the preparation of  
10      a plan of care is done by the nurse and signed  
11      by the physician.

12              Q       All right.   Well if the physician  
13      signed it why would Ms. Ogbenna be involved at  
14      all?

15              A       Not the plan of care. I'm sorry. I  
16      take that back.   Not the plan of care but the  
17      admission records.

18              Q       Ms. Ogbenna never told anyone that  
19      she was running a 24-hour facility or had  
20      24-hour staff that you're aware of are you?

21              A       I do not know.   I'm not aware of  
22      that. I just know what's in the record that's

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1 in the patient's files.

2 Q Now you don't have any of those  
3 records here before the Board today do you?

4 A I do not have them.

5 CHAIRMAN JORDAN: Let me ask you.  
6 When you said you saw Ms. Ogbenna's name in the  
7 plan of care. What was that?

8 THE WITNESS: Each resident has a  
9 package that includes admissions forms where--

10 CHAIRMAN JORDAN: Okay. Where is  
11 that document maintained?

12 THE WITNESS: It's maintained in  
13 the home care agency records.

14 CHAIRMAN JORDAN: Your office?

15 THE WITNESS: No. Where the home  
16 health aides are coming from, the home health  
17 agencies.

18 CHAIRMAN JORDAN: So you visited  
19 the home care agencies?

20 THE WITNESS: Yes.

21 CHAIRMAN JORDAN: And you looked  
22 in their particular file which has their care

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1 and in there was a record that said Ms. Ogbenna  
2 was the person responsible for their daily care?

3 THE WITNESS: That's correct.

4 CHAIRMAN JORDAN: Got you. Okay.

5 THE WITNESS: And just to clarify.  
6 In interviewing the administrator of the home  
7 care agency they indicated that they could only  
8 sign the contract with Ms. Ogbenna if she  
9 provided care after the home health aides left  
10 the facility. So if they do eight hours, the  
11 remaining 32 hours someone needed to be there  
12 to provide the care and that would be Mrs.  
13 Ogbenna because she signed the document as the  
14 admission person.

15 CHAIRMAN JORDAN: One second.  
16 I've got to catch up with my notes. Now did the  
17 home health care agency pay any money to Ms.  
18 Ogbenna?

19 THE WITNESS: Not that I know of.

20 CHAIRMAN JORDAN: Okay. Got it.  
21 All right.

22 BY MR. DOUMAR:

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1           Q       And the home health care agencies  
2       would have potential violations that have -- I  
3       mean they may have violated some rule or  
4       regulation but that's completely separate or  
5       should be separate from Ms. Ogbenna or Blessed  
6       Home, correct? Or Senior Dwelling?

7           A       Well, they were cited for not  
8       ensuring that the patient was provided care  
9       after the home health aide left because the  
10      doctor had ordered 24-hour care, management  
11      care, meaning that if the home health aide is  
12      there only for eight hours then the 32 hours must  
13      be covered by a family member or someone  
14      responsible for that patient, whoever signed  
15      the admission records.

16               CHAIRMAN JORDAN:    Okay. So whose  
17      responsibility is that?

18               THE WITNESS:        That would be Mrs.  
19      Ogbenna because she said she was the responsible  
20      person.

21               CHAIRMAN JORDAN:    So the hospital  
22      records because the doctor required 24-hour

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1 care said I need to know how the 24 hours is going  
2 to be provided?

3 THE WITNESS: That's correct.

4 CHAIRMAN JORDAN: Part of the 24  
5 hours is being provided by a home health care  
6 agency and then outside of that time period if  
7 indicates that Ms. Ogbenna is the person  
8 responsible. So that if the home health care  
9 agency is only going to be there three hours of  
10 the day then Ms. Ogbenna would have to be either  
11 herself doing it or she would have to find  
12 somebody else to step in?

13 THE WITNESS: That's correct.

14 CHAIRMAN JORDAN: Is that what  
15 you're testifying?

16 THE WITNESS: Yes, I am.

17 CHAIRMAN JORDAN: Okay. Got you.  
18 All right.

19 MR. DOUMAR: And Ms. Ogbenna  
20 never said she was providing any care  
21 personally, correct?

22 THE WITNESS: She signed--

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1                   CHAIRMAN JORDAN:       I think the  
2       witness's testimony is that she said it's in the  
3       documentation indicated that she's responsible  
4       for the person's care.   And I think earlier Ms.  
5       Ogbenna said she testified that those records  
6       indicate that because they weren't going to  
7       release the person unless they had somebody  
8       there and the hospital wanted to know who they  
9       could call.   Am I correct about that?

10                  MR. DOUMAR:     That's correct, your  
11       Honor.   That is correct.

12                  CHAIRMAN JORDAN:   I just want to  
13       let you know I'm on top of this.   I got it.  
14       Whether or not we believe one way or the other  
15       but I understand what you're saying.   Right?

16                  MR. DOUMAR:     No further questions,  
17       your Honor.

18                  MR. POSTULKA:    I actually do have  
19       some redirect now.

20                  CHAIRMAN JORDAN:   Okay. Go ahead.

21                               REDIRECT EXAMINATION

22                  BY MR. POSTULKA:

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1           Q     Are you aware of a Department of  
2     Health investigation of TNN Reliable Nursing  
3     care regarding the treatment it provided at  
4     Senior Dwelling?

5           A     Yes.

6           Q     And do you know if a report was  
7     prepared regarding the investigation of TNN?

8           A     Yes.

9           Q     And I'm handing you a document which  
10    is Tab 15D and is the report that I just handed  
11    you the report that was prepared after that  
12    investigation?

13          A     Yes.

14          Q     And what was the purpose of the  
15    investigation?

16          A     Well, based on our survey and based  
17    on the two deaths that occurred there, we wanted  
18    to look to make sure that individuals there that  
19    are receiving home health services were safe.

20                 So we did an inspection of every  
21    resident that had a home health aide. And the  
22    report revealed that the aides failed to provide

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1       adequate car.

2                   CHAIRMAN JORDAN:       Go back a  
3       second. What did you just say? You said you  
4       did an inspection of everyone who had a home  
5       health care aide?

6                   THE WITNESS:    That's correct.

7                   CHAIRMAN JORDAN:       That's not  
8       everybody in the building, correct?

9                   THE WITNESS:    That's correct.

10                  CHAIRMAN JORDAN:    Okay.

11                  THE WITNESS:       But during that  
12       course because like I said before two of the  
13       home health aides shared their services to  
14       others that did not have home health aides, so  
15       in interviewing the aides we drew the conclusion  
16       that those who were not receiving home health  
17       services, health and safety were at risk.

18                  BY MR. POSTULKA:

19                  Q       And do you know if during the course  
20       of the investigation TNN indicated to you that  
21       Senior Dwelling had provided some false  
22       statements, either to the Department of Health

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1 or TNN, regarding the level of care that was  
2 provided in the facility?

3 A Yes, TNN concluded that they--

4 MR. DOUMAR: Objection. Hearsay,  
5 your Honor. I mean we don't have anyone from  
6 TNN here and I haven't seen this report either.

7 CHAIRMAN JORDAN: Do we have this  
8 report in the record?

9 MR. POSTULKA: It's in the record  
10 and I think that goes to weight.

11 CHAIRMAN JORDAN: You can answer.

12 THE WITNESS: Can repeat the  
13 question for me?

14 MR. POSTULKA: The question was  
15 whether or not there was any indication that  
16 Senior Dwelling had either provided false  
17 information to TNN or the Department of Health  
18 regarding the level of care that was provided  
19 in the facilities?

20 THE WITNESS: In interviewing the  
21 administrative TNN they were very surprised to  
22 know that the home--

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1 CHAIRMAN JORDAN: Is that in the  
2 report?

3 MR. POSTULKA: Yes.

4 THE WITNESS: That the home was a  
5 rooming house.

6 CHAIRMAN JORDAN: Exhibit number?

7 MR. POSTULKA: 15D.

8 CHAIRMAN JORDAN: You can go  
9 ahead.

10 THE WITNESS: And that the  
11 services -- that there was no one in the home  
12 after the home health aides left the facility.  
13 They were concerned. And based on that concern  
14 they submitted discharge notices to Mrs.  
15 Ogbenna and that they were going to discharge  
16 her services due to the false statements that  
17 they would be at risk.

18 MR. POSTULKA: So TNN actually  
19 decided that when they were informed that Senior  
20 Dwelling was not providing 24-hour care that  
21 they were pulling out of providing services in  
22 that facility?

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1 THE WITNESS: That's correct.

2 MR. POSTULKA: No further  
3 questions.

4 MR. DOUMAR: No further questions,  
5 your Honor.

6 CHAIRMAN JORDAN: Okay. Next  
7 witness please.

8 MR. POSTULKA: Next witness is  
9 Inspector Follot from the Department of Health.

10 CHAIRMAN JORDAN: You know, if  
11 you're going to testify give your cards to the  
12 court reporter now. I'm not going to wait. If  
13 you're going to testify and you haven't given  
14 your card to the court reporter go ahead and put  
15 them over on the table and identify yourselves  
16 later. Go ahead and identify yourself please.

17 THE WITNESS: Roland Follot.

18 DIRECT EXAMINATION

19 BY MR. POSTULKA:

20 Q Are you employed by the District?

21 A Yes, with the Department of Health.

22 Q And what are your job duties with the

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1 Department of Health?

2 A Inspect facilities that are  
3 licensed. Typically it's group homes but we're  
4 also doing assisted living and home care  
5 agencies, some of it child placing agencies  
6 which is very different.

7 Q And are you familiar with Senior  
8 Dwelling at 223-225 56th Place?

9 A Yes.

10 Q Did you actually go and do an  
11 inspection of the facility?

12 A Hmm-hmm. DCRA invited us to join  
13 them.

14 Q And do you have an independent  
15 recollection of that inspection or do you need  
16 to review your report to refresh your  
17 recollection?

18 A I remember the inspection pretty  
19 well but I hope I can refer to my report too.

20 Q Okay. If there's any times when  
21 your memory fails I assume that it's appropriate  
22 to--

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1 CHAIRMAN JORDAN: Normally, we ask  
2 the witness a question and then we find out the  
3 witness has knowledge or the ability to answer,  
4 then we get into whether or not so it's that kind  
5 of--

6 MR. POSTULKA: I got you. Do you  
7 remember who you spoke to when you visited the  
8 premises at Senior Dwelling?

9 THE WITNESS: Well, we started  
10 with interviewing Mercy who indicated she was  
11 a resident director. And then--

12 MR. POSTULKA: Did you interview  
13 Marcy?

14 THE WITNESS: Forgive me. Mercy.

15 MR. POSTULKA: Mercy.

16 THE WITNESS: I forget her last  
17 name. Ouday.

18 CHAIRMAN JORDAN: Is that the one  
19 who said I work for Rosemary?

20 THE WITNESS: Yes, since the  
21 summer of -- she had been there for six or seven  
22 months maybe.

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1 CHAIRMAN JORDAN: And she called  
2 herself a resident director?

3 THE WITNESS: Yes sir.

4 BY MR. POSTULKA:

5 Q Did she explain what she meant by  
6 resident director?

7 A No.

8 Q And did you ever ask her what that  
9 consisted of, what her job was?

10 A No, we didn't. We saw that she was  
11 preparing lunch at the time that we arrived.

12 Q After speaking to Mercy, who did you  
13 talk to next?

14 A We split up. My partner, Mr.  
15 Walker, went and began interviewing some of the  
16 residents. I also went and began interviewing  
17 some of the residents and their home health  
18 aides in their respective bedrooms.

19 Q And without referring to the  
20 patients by names, do you remember how many  
21 patients you actually interviewed in the  
22 facility?

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1           A       I have four that come to mind  
2 clearly.

3           Q       Okay. And do you remember if these  
4 patients had health conditions?

5           A       I would say two of the four did.

6           Q       Okay. And what about the other  
7 two?

8           A       There was one man who said he was  
9 largely independent but Mercy would prepare his  
10 meals for him.

11          Q       Let's talk about the two that you  
12 considered to have health conditions. What  
13 were those health conditions?

14          A       It seemed primarily mental faculty,  
15 disorientation. Just confusion. Oh and  
16 taking medications.

17                   CHAIRMAN JORDAN:           How many  
18 residents were there?

19                   THE WITNESS:       I believe at the  
20 time, if I can look at our report, yes there were  
21 five residents present, four of whom had health  
22 aides. Home health aides at the time.

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1 CHAIRMAN JORDAN: Okay. So there  
2 were five present so do you know what the total  
3 number of people that stayed there at that time?  
4 There were like six that are out maybe?

5 THE WITNESS: I believe we were  
6 told there were 11 but that was one of those  
7 questions that we couldn't get a firm answer to,  
8 whoever we would ask.

9 BY MR. POSTULKA:

10 Q Of the individuals who you spoke to,  
11 how many knew how their finances were handled?

12 A How many knew? There were some who  
13 did not know. I don't know what the number of  
14 those were. I will say that others would say  
15 Miss Rosemary gets the check or whatever, and  
16 they didn't know the specifics.

17 Q Did Miss Rosemary get everyone's  
18 check?

19 A That was what we were told.

20 CHAIRMAN JORDAN: Did you verify  
21 that?

22 THE WITNESS: We didn't have

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1 access to like Social Security records. The  
2 home health aides would vouch or verify  
3 statements that some of the residents made.

4 CHAIRMAN JORDAN: Did you check  
5 with the property owner?

6 THE WITNESS: I did not.

7 CHAIRMAN JORDAN: Okay.

8 BY MR. POSTULKA:

9 Q Did you speak to any residents who  
10 did not know how their groceries were bought?

11 A Yes. You said don't mention a name,  
12 there was one elderly lady who was confused  
13 about just about everything and she was telling  
14 me that she wasn't allowed out of the house.  
15 And that Mercy prepared all her food.

16 Q Was the food prepared for every  
17 resident that you spoke to?

18 A That's what we were told. Well,  
19 there were inconsistencies. Some home health  
20 aides would say that the aide fixes the meal;  
21 other aides would say that Mercy was fixing the  
22 meals. But the people who didn't have an aide

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1 would tell us that Mercy fixed their meals.

2 Q And Mercy was an actual employee of  
3 the facility?

4 A That's what she told us at the time.

5 Q Were you also told by some residents  
6 that Mercy was involved in giving out  
7 medication?

8 A Yes.

9 Q Did you speak to any residents who  
10 had trouble remembering things, such as their  
11 date of birth or who the president of the United  
12 States was?

13 A Indeed.

14 Q Okay. Are there any other  
15 conditions about the residents that stood out  
16 to you upon your visit?

17 A They did not strike me -- in general  
18 they did not strike me as people who were  
19 independent, able to care for themselves after  
20 their home health aide left.

21 You asked a moment ago, if I may,  
22 about the medications. And one of the

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1 residents whose aide was with her at the time  
2 was confused about names and it sounded as if  
3 she was referring to Mercy as resident director  
4 but it turned out it was the home health aide.  
5 But then as I interviewed the aide, the aide also  
6 verified, I asked her about the medications which  
7 she described was that a pharmacist delivery  
8 person would bring the individuals medications  
9 to the home and it was Mercy, the resident  
10 director, who would receive them.

11 And the resident had a seven-day  
12 pillbox and the resident director, Mercy, would  
13 divvy up her medications for the week and bring  
14 the pillbox to the bedroom. So then it was up  
15 to the resident to take her meds, perhaps with  
16 reminders from the home health aide.

17 And that spoke to us -- when we  
18 reviewed that with the regulations we were  
19 thinking that's not something that someone who  
20 is not licensed to do, there was no evidence that  
21 she had like a trained medication employee kind  
22 of credentials to distribute prescribed

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1 medications.

2 Q As part of the investigation did you  
3 also review clinical records of the residents?

4 A The plans of care, yes.

5 Q And do you know if any of those plans  
6 of care provided for a 24-hour care?

7 A Yes. Several of them indicated  
8 that the individual resides in a group home that  
9 provided staffing 24/7.

10 CHAIRMAN JORDAN: Where did you  
11 see the plan of care?

12 THE WITNESS: The home care  
13 agencies forwarded their documents so we had  
14 copies of their plans of care. And it's towards  
15 the bottom. It's in a description on the form.

16 CHAIRMAN JORDAN: Okay. So this  
17 is the same process that we've already had  
18 testimony on. Okay. Go ahead.

19 BY MR. POSTULKA:

20 Q Did you speak to home health aides  
21 while you present in the facility?

22 A Yes, we did.

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1           Q     And did they indicate what type of  
2 services they provided to the residents?

3           A     Typically it was the activities of  
4 daily living, the meal preparation. Some said  
5 they helped with bathing. Others said they  
6 thought people were bathing independently. It  
7 varied. It varied.

8                     If there was one thing that was  
9 pretty consistent it was the kitchen, the meal  
10 preparation and the clean-up. It didn't seem  
11 as if anybody was involved in dish washing.

12          Q     After you left the facility that  
13 day, did you also do further investigations by  
14 speaking to outside sources such as social  
15 workers?

16          A     Yes, we did.

17          Q     And did you speak to Vera Olberg, the  
18 director of nursing for TNN Reliable?

19          A     Hmm-mm.

20          Q     And during that conversation were  
21 you asked or was she asked whether or not the  
22 residents can function independently without

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1 the home health aides present?

2 A Yes, we did. We asked her that and  
3 her reply was oh no, that's why they need to be  
4 in a place like that. I mean that's not a direct  
5 quote. Something to the effect of well that's  
6 why they're there. They need somebody there.

7 MR. POSTULKA: Nothing further.

8 CHAIRMAN JORDAN: Mr. Doumar?

9 CROSS-EXAMINATION

10 BY MR. DOUMAR:

11 Q Now you actually talked to five  
12 residents yourself, was that your testimony?

13 A Off the top of my head. I didn't go  
14 back and count them up. Mr. Walker  
15 interviewed some and we collectively  
16 interviewed one other gentleman.

17 Q All right. But a total -- it  
18 sounded like there was five from your--

19 A I believe so, yes.

20 Q So there could have been five or six  
21 potentially who weren't there that day?

22 A Correct.

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1           Q       And they could have presumably just  
2       been out when you came by?   Correct?

3           A       Hmm-mm.

4           Q       All right. And the medications, you  
5       actually list some of the folks medications  
6       there.       Medications like hypertension  
7       medication or diabetes medication. I mean is  
8       it true that a lot of people take hypertension  
9       as a matter of course? Isn't that correct?

10           MR.    POSTULKA:           Objection.  
11       Speculation. He's not familiar as a layman  
12       with people -- you're not familiar that a lot  
13       of people over 50, for example, might take  
14       hypertension medicine? You're not familiar  
15       with that just generally as a matter of common  
16       knowledge.

17           CHAIRMAN JORDAN:       What's your  
18       point? Move on.

19           THE WITNESS:    If I may, the aide  
20       who told me that the resident director--

21           CHAIRMAN JORDAN:    You've already  
22       responded. We're waiting for the next question

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1 please.

2 BY MR. DOUMAR:

3 Q Now if somebody goes home, if  
4 somebody's living at home they could  
5 potentially have someone else in their house  
6 helping them with their weekly pill boxes  
7 correct?

8 A Perhaps family members.

9 Q That doesn't necessarily make  
10 someone--

11 CHAIRMAN JORDAN: Counsel, do you  
12 really want to go down that line of questioning?  
13 I'm trying to help you here. You really want to  
14 ask that question?

15 MR. DOUMAR: It's too late now, Mr.  
16 Chairman. No further questions.

17 MR. POSTULKA: No redirect.

18 CHAIRMAN JORDAN: No redirect?  
19 This is interesting. Your insurance policies,  
20 what kind of insurance do you have?

21 MS. OGBENNA: I have the regular  
22 rental insurance.

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1 CHAIRMAN JORDAN: Just rental  
2 insurance is all you have?

3 MS. OGBENNA: Yes.

4 CHAIRMAN JORDAN: No commercial  
5 insurance?

6 MS. OGBENNA: No.

7 CHAIRMAN JORDAN: No general  
8 liability policy insurance?

9 MS. OGBENNA: No.

10 CHAIRMAN JORDAN: Really?

11 MS. OGBENNA: Yes.

12 CHAIRMAN JORDAN: Okay.

13 MR. POSTULKA: Our final witness  
14 is Matthew Le Grant.

15 CHAIRMAN JORDAN: Got you. Would  
16 you identify yourself for the record?

17 THE WITNESS: Yes. Matthew Le  
18 Grant, I'm Zoning Administrator at DCRA.

19 CHAIRMAN JORDAN: And what are  
20 your job duties as a zoning administrator?

21 THE WITNESS: I interpret,  
22 administer zoning regulations for the District

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1 of Columbia.

2 MR. POSTULKA: I'm going to move to  
3 have Mr. LeGrant recognized as an expert in  
4 zoning matters.

5 CHAIRMAN JORDAN: Certainly.

6 MR. POSTULKA: Thank you.

7 DIRECT EXAMINATION

8 BY MR. POSTULKA:

9 Q Are you familiar with Senior  
10 Dwelling at 223-225 56th Place?

11 A I am.

12 Q And you're aware that the Department  
13 of Health and DCRA investigated that facility?

14 A I am.

15 Q And have you reviewed the reports  
16 that were prepared after those investigations?

17 A I have, yes.

18 Q And have you also reviewed the  
19 Certificate of Occupancy for Senior Dwelling?

20 A Yes, I have.

21 Q And what is provided in that  
22 Certificate of Occupancy?

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1           A       There's   two   Certificates   of  
2   Occupancy, one for 223 and one for 225 56th  
3   Place, N.E.   They both prescribe a rooming  
4   house with an occupancy load of nine roomers.

5           Q       Not 11?

6           A       Nine roomers for each facility.

7           Q       So each one separately? Or combined  
8   nine?

9           A       Each one separately.

10          Q       Got it.   All right.   In your expert  
11   opinion is that facility, are those facilities  
12   a rooming house?

13          A       They are not being operated as such,  
14   no.

15          Q       If it's not a rooming house then  
16   what--

17                   CHAIRMAN JORDAN:   And the basis of  
18   why they're not a rooming house and the facts  
19   that led them to that conclusion are?

20                   MR. POSTULKA:   I was going to get  
21   there another way but go ahead and answer that  
22   question.

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1                   CHAIRMAN JORDAN:   We're trying to  
2                   get the facts that would lead to the conclusion  
3                   of the expert.

4                   THE WITNESS:     Right. Based on my  
5                   review of the reports that you mentioned earlier  
6                   that are provided in the record, the facilities  
7                   were not being operated as rooming houses but  
8                   in fact operated as community-based residential  
9                   facilities.

10                  CHAIRMAN JORDAN:   And you conclude  
11                  that based upon the various facts that got you  
12                  there?

13                  THE WITNESS:     Right. So the two  
14                  main reports by the Department of Health, they  
15                  did March 8, 2013 and I believe that's Exhibit  
16                  C, and then the DCRA report by Kevin Meredith  
17                  of January 29, 2013 which I believe is Exhibit  
18                  B, both describe facilities in which  
19                  individuals were not living independently, that  
20                  they had a need for common care. Those reports  
21                  identified activities such as individuals  
22                  providing bathing, meal preparation,

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1 medications, so that information to me  
2 indicated that they were not living as  
3 independently but in fact they were being  
4 provided services and care that's consistent  
5 with a community-based residential facility.

6 MR. POSTULKA: Nothing further.

7 MR. DOUMAR: You never visited the  
8 223 and 225 yourself did you?

9 THE WITNESS: I have not.

10 MR. DOUMAR: No further questions.

11 CHAIRMAN JORDAN: Let me ask this  
12 question. So far what I'm understanding that  
13 there may have been 11 tenants or roomers or  
14 whatever at the facility. And right now all  
15 the reports that we've seen of inspections are  
16 generally centered around those who had care  
17 plans and maybe one or two others. So out of  
18 the 11 let's say 5 have really been examined.  
19 Would that be consistent with what you say in  
20 the reports?

21 THE WITNESS: Yes.

22 CHAIRMAN JORDAN: So then it may be

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1        somewhere between five and six who might not fit  
2        into any of the other kind of care, need for  
3        care, or assistance? Is that possible?

4                THE WITNESS:        I believe some  
5        individuals based on those reports that I  
6        reviewed would not need the level of care  
7        consistent with a community-based residential  
8        facility.

9                CHAIRMAN JORDAN:        Okay. Any  
10       other questions? Board any questions? Okay.

11               MR. POSTULKA:        We rest.

12               CHAIRMAN JORDAN:        So we rest.  
13       Rebuttal? Rebuttal testimony? You've got a  
14       look on your face like-- No?

15               MR. DOUMAR:        I'm thinking not, Mr.  
16       Chairman. Unless my colleague? No. I think  
17       the record is--

18               CHAIRMAN JORDAN:        Let me ask  
19       something that's not clear in the exhibits. Is  
20       it 15B or C the one that has the schedule? Those  
21       documents in that report are kind of hard to  
22       read.

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1                   MR. DOUMAR:            You need the  
2 photographs?

3                   CHAIRMAN JORDAN:    Yes.

4                   MR. DOUMAR:    We can provide--

5                   CHAIRMAN JORDAN:    Or blow them up  
6 or make better clearer ones and file them or  
7 something.

8                   MR. DOUMAR:    Yes, we can do that.

9                   CHAIRMAN JORDAN:    So concludes  
10 this hearing based upon the testimony that was  
11 presented. You can close if you think you need  
12 to close. I'm going to give you two minutes to  
13 close but I think we quite understand what the  
14 evidence shows. Excuse me a second. You want  
15 to close? Go ahead.

16                   MR. DOUMAR:    One paragraph, Mr.  
17 Chairman. I mean community-based residential  
18 facilities are facilities for persons who hve  
19 a common need for treatment, rehabilitation,  
20 assistance or supervision. I think the  
21 testimony is some people may have needed some  
22 assistance but some people at the houses didn't.

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1                   And so we have Ms. Brent who doesn't  
2                   have a dog in the fight who's testified she  
3                   placed what she called "walkie-talkies," people  
4                   at a high functioning level there.    I think the  
5                   evidence is mixed as to some had care and some  
6                   had not, no care.

7                   And based on that there's no common  
8                   need for treatment or rehabilitation.

9                   And the definition of rooming house  
10                  is otherwise very broad under the District of  
11                  Columbia municipal regulations. It's a building  
12                  that accommodates more than three persons not  
13                  related on a monthly or longer basis and I think  
14                  that Senior Home qualifies on that basis.

15                  CHAIRMAN JORDAN:    Let me go back,  
16                  I forgot one thing I want to ask Mr. LeGrant.  
17                  Under 199 the definition of a community-based  
18                  residential facility what throws me for a loop,  
19                  and I don't know where it came from, zoning  
20                  commission, under B--

21                  COMMISSIONER HOOD:    Be careful, I  
22                  was around when that was done.    I was around.

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1 CHAIRMAN JORDAN: Okay. Is that a  
2 question because I don't know how you handle it  
3 or how you look at it. But under Section B the  
4 definition of a community-residence facility it  
5 makes reference to the 22 DCMR 3099.1 1886  
6 superceded. What the heck does that mean? I  
7 know what superceded means. I know typically but  
8 how is that in the zoning regulation and how is  
9 it supposed to apply?

10 MR. LEGRANT: Well, my  
11 interpretation of this has been that the list  
12 of community-based residential facilities do  
13 refer to other laws of the District of Columbia.

14 CHAIRMAN JORDAN: Does it exclude  
15 that one? Is that -- you just kind of threw it  
16 out, is that what you're doing? I'm with you  
17 because I think under D.C. Code under 44.501  
18 they have another set of definitions which is  
19 also within a definition under 199. Is that  
20 where you are?

21 MR. LEGRANT: Yes.

22 CHAIRMAN JORDAN: Got you. So

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1 we'll be correct if we just do a drive by and  
2 throw out that part under 199 that references  
3 3099.1 superceded because superceded means that  
4 it's been replaced and it's actually been  
5 replaced by something completely different.  
6 So we're on the same page. I just wanted to make  
7 sure -- that's my thought and I just wanted to  
8 make sure that was your thought so I could make  
9 sure I was clear. Okay.

10 Board, any other questions? Do you  
11 want to close then?

12 MR. POSTULKA: I'll do less than  
13 a paragraph then. Our position is the evidence  
14 indicates that almost all these residents have  
15 had health aides and that is what makes this a  
16 community-based residential facility is that  
17 residents have a common need for treatment, care  
18 and rehabilitation.

19 CHAIRMAN JORDAN: Got you. Well,  
20 we really appreciate everybody taking the time  
21 and coming forward, inspectors and other,  
22 everybody who testified and Mr. LeGrant I should

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1 have asked early on and I thought about this  
2 halfway through that you didn't need to really  
3 be here wasting -- not wasting your time I know  
4 but you've got others who would testify on your  
5 behalf and I'll be conscious of that in the  
6 future.

7 I think this is something for the  
8 Board to really kind of have to put their heads  
9 to. We're not rendering any decision today.  
10 I'm telling you because there's other things  
11 we're going to need. We need to supplement the  
12 report as we requested.

13 We need to have findings of fact,  
14 proposed findings of facts and conclusions of  
15 law submitted by the respective parties. And  
16 Board, anything else that you may need to see  
17 or want to see?

18 COMMISSIONER HOOD: A better shot  
19 of one of those 15B or whatever it was.  
20 Especially I was interested in the schedule of  
21 the aides so we can see it.

22 CHAIRMAN JORDAN: Yes, that's kind

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1 of where I was too.

2 Do you have leases? Do they have  
3 leases? You want to submit the leases on these  
4 properties. It's the law. We'll give you the  
5 data on that. Can you think of anything else?

6 All right. So then Mr. Moy, we'll  
7 put this on for decision and not hearing.

8 MR. MOY: I'm assuming, Mr.  
9 Chairman, that the draft findings of fact,  
10 conclusions of law are one time by all parties  
11 on the same day?

12 CHAIRMAN JORDAN: Yes, correct.

13 MR. MOY: So there's no hearing on  
14 October 14th so we're looking at October 21st  
15 and maybe if the parties can file by Monday,  
16 October 13th.

17 CHAIRMAN JORDAN: Okay.

18 MS. OGBENNA: Mr. Chairman?

19 CHAIRMAN JORDAN: You'd better  
20 talk to your lawyer.

21 MS. OGBENNA: No, I want to ask you  
22 for you to request a document that I don't know

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1 about. The Plan of Care.

2 CHAIRMAN JORDAN: You know, I was  
3 thinking about that. Oh you just came in  
4 because you're really kind of out of bounds but  
5 I was thinking about asking for those Plans of  
6 Care so can we have the plans of care please.  
7 Good save. Good save. Okay. Oh did I have  
8 you cut off? I sure did. I hit it. I hit it with  
9 my handy-dandy computer here. I'm sorry, I  
10 apologize to you.

11 Okay. So that will be our order.  
12 Board, is that good with you? Okay. Again,  
13 thank you. I know it's not easy and I  
14 appreciate it. Is there any other things  
15 coming before the Board today?

16 MR. MOY: Not from the staff, sir.

17 CHAIRMAN JORDAN: Okay. Anyone  
18 on the Board, anything we need?

19 COMMISSIONER HOOD: Mr. Chairman,  
20 if you don't mind I just wanted to announce and  
21 this is for those who are watching and  
22 streaming, that Mr. Richard Nero retired and he

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1 served the Board of Zoning Adjustment and this  
2 office with distinction.

3 On the many occasions when I've had  
4 the pleasure, along with my colleagues, of  
5 hiring the Director of the Office of Zoning, Mr.  
6 Nero has stepped in and really been the driving  
7 force of keeping this agency where it is and also  
8 providing new heights for the residents of the  
9 District of Columbia.

10 So he's going to be missed but we  
11 wish him well in his next endeavor.

12 CHAIRMAN JORDAN: Very good.  
13 And I'll certainly join that and this Board will  
14 join that and wish him well. And with that then  
15 we're adjourned.

16 (Whereupon, the above-entitled  
17 Public Hearing/Meeting of the Board of Zoning  
18 Adjustment for the District of Columbia having  
19 been concluded, went off the record at 12:46  
20 p.m.)

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