

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND

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www.montgomerycountymd.gov/content/council/zah/index.asp

IN THE MATTER OF AN OBJECTION TO
ACCESSORY DWELLING UNIT LICENSE
NO. 151423

7709 Oldchester Road
Bethesda, MD 20817

Alexandre Finkel
Dan Chappell
Carri Bennet
Ari Elkin¹
Kenneth Mack

Objectors

* * * * *

David Goodfriend
Georgia Jaitly

Supporting the Objections

* * * * *

Flavia Favali
License Applicant

* * * * *

Before: Lynn Robeson Hannan, Hearing Examiner

OZAH Case No. ADO 23-06

HEARING EXAMINER'S REPORT AND DECISION

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¹ Mr. Elkin filed an objection but did not appear at the public hearing.

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I. STATEMENT OF THE CASE

On June 27, 2023, Mr. Alexandre Finkel filed an objection to the Director of the Department of Housing and Community Affairs' (DHCA) preliminary determination that Ms. Flavia Favali's application for a Class 3 Accessory Dwelling Unit (ADU) license met all Code and Zoning Ordinance requirements. Exhibit 1. The subject property is located at 7709 Oldchester Road. Mr. Finkel objected to the Director's finding that the property was Ms. Favali's primary residence, a requirement for issuance of a Class 3 license. Exhibit 1. The next day, Mr. Dan Chappell also filed an objection to the Director's Findings for the same reason. Exhibit 1(b). Both also alleged that Ms. Favali was renting out individual rooms in the dwelling. *Id.* Both Mr. Finkel and Mr. Chappell filed their objections before the Director formally issued his preliminary findings.²

The DHCA Director issued his Report of Findings (Director's Findings) on Ms. Favali's license application on July 3, 2023. Exhibit 2. The Director found that the proposed ADU complied with all requirements under the Montgomery County Code and Zoning Ordinance, including the residency requirement. *See, Montgomery County Code, §29-19, Montgomery County Zoning Ordinance, §59.3.3.3.*

On July 5, 2023, the Office of Zoning and Administrative Hearings (OZAH) issued a Notice of Public Hearing, which set a hearing date of July 27, 2023.³ After issuing that notice, OZAH received additional objections from Ms. Carri Bennet, Mr. Ari Elkin, and Mr. Kenneth Mack. Exhibits 5(a)-(c). All of these objected for the reasons listed by Mr. Finkel and Mr. Chappell. *Id.*

² Others timely filed objections after DHCA issued its Report of findings, clarifying OZAH's jurisdiction. Exhibit 5(a) – (c).

³ The Montgomery County Code requires OZAH to hold a public hearing on an objection within 30 days of receiving it. *Montgomery County Code, §29-26(b)(2)(4).*

The July 27, 2023 hearing proceeded as scheduled. Six neighbors of Ms. Favali appeared in support of the objections. Ms. Favali opposed the objections. The Hearing Examiner kept the record open to receive a copy of Ms. Favali's current rental license. Ms. Favali also initially agreed to provide the objectors with a copy of a survey she submitted to DHCA listing her tenants. T. 65. She later changed her testimony to state that she would "try" to provide the survey, but her computer had been hacked and shut down. T. 70. Ms. Favali ultimately provided invoices from DHCA for rental license fees from 2019 and 2020. Exhibit 9(a). On August 3, 2023, Ms. Bennet queried whether she could have more time to investigate DHCA records on tenants residing at the subject property. The Hearing Examiner asked Ms. Favali whether she objected on August 7, 2023, but Ms. Favali did not respond. The record closed on August 7, 2023.

Based on the evidence presented, the Hearing Examiner finds that the objections should be *granted* and the license application should be *denied* because the subject property is *not* Ms. Favali's primary residence.

II. SUMMARY OF EVIDENCE AND TESTIMONY

A. Testimony and Evidence Supporting the Objections

Mr. Dan Chappell submitted a written statement advising that Ms. Favali submitted her driver's license to DHCA as proof that the property is her primary residence.⁴ He states that Ms. Favali told him several years ago that she listed that as her primary residence so her grandchildren could attend the public schools.⁵ Exhibit 7(a). His statement reports that he has spoken with several tenants over the years, who indicate that Ms. Favali does not live at the property. *Id.* Mr. Chappell's statement also advises that in January of 2021, one of Ms. Favali's tenants abandoned

⁴ A copy of Ms. Favali's driver's license is not in this record.

⁵ The Hearing Examiner describes Mr. Chappell's written statement because he was present at the public hearing and subject to cross-examination.

a white moving truck on Oldchester Road. Ms. Favali stated to him that the truck had belonged to one of her tenants that she had evicted. He also states that Ms. Favali has installed exterior doors on the sides of the house so tenants can access their individual rooms and that multiple tenants have complained to him about rental problems over the years. Exhibit 6.

Mr. Chappell submitted rental listings (undated) for the property from 2015 and June of 2023. Exhibits 7(a)-(d). One listing shows the entire house for rent.⁶ Exhibit 7(b). It states, “Owner needs to be called to make arrangements to see property...This is a rental. Owner is open to a non-profit group for assisted living.” One rental listing, titled “\$1100 room for rent,” lists the home as having 6 bedrooms and five full baths. Exhibit 7(a). The listing goes on to state that, “[m]onth to month leases, nightly or weekly can be negotiated. Shared housing with all the amenities of a hotel room in a house.” *Id.* Another listing submitted by Mr. Chappell advertises, “[f]ully furnished monthly bedroom and bath...Bedroom, has bed, dresser, desk, flat screen, desk [sic], handicapped accessible bathroom and more. Monthly rent set at 1100 a month + 600 + 1/5 total utilities.” Exhibit 7(c). Finally, Mr. Chappell submitted a Zillow rental listing, again stating (*Id.*):

...Owner needs to be called to make arrangement to see property...This is a rental. Owner is open to non-profit group for assisted living...Fully furnished 6 bedroom 5 bath home...House has large living room/dining/porch areas, internet, cable, washer/dryer, fully equipped kitchen, private drive and more. Bedrooms all have beds, dressers, large closets, airy windows, 2 bedroom [sic] have handicapped accessible entrances and bathrooms, 4 bedrooms have private bathers, all are nice appointed and able to sublet.

Mr. Chappell and five other neighbors near the property submitted “Declarations,” sworn under penalties of perjury, that they have not observed Ms. Favali living at the property. Exhibits

⁶ Mr. Chappell’s statement indicates that this listing is from 2015. Exhibit 6.

8(a)-(g). According to the Declarations, the various neighbors have lived there between 4 and 27 years. *Id.* Typical of these Declarations is Mr. Finkel's, who states (Exhibit 8(b)):⁷

There are also numerous vehicles often with out of state license plates that are not registered to her parked in the driveway and a constant change of tenants that appear to be temporarily living at the house. It is my belief based on my observations that Ms. Favali is using the home for short term rentals to multiple tenants and that she does not reside there. Over the years, there has also been issues with street parking by vehicles not registered in the state of Maryland.

Mr. Chappell testified that he's lived next door to subject property for almost four years. During that time, he has not observed the Applicant living at the property as her primary residence. He has spoken with multiple tenants living at this property. According to Mr. Chappell, tenants come and go, sometimes after 30 days, sometimes after six months. The residents there are not a stable group of tenants. He estimates that, right now, there are at least five different residents living there. T. 11. He doesn't have access to be able to trace car license plates, but he's submitted a photograph of five different vehicles at the property. Some are out of state Florida tags that have been at the property for more than 60 days. T. 11. Mr. Chappell's photographs of cars parked in the property's driveway are shown on the next page (Exhibit 7(e)).

Mr. Chappell testified that there are four vehicles in the picture including one behind the trees in the top left corner. Among the vehicles, the pictures show a white van is parked against the side of the house, a white car is parked near the trees, and a vehicle parked in the street. T. 12-13. According to Mr. Chappell, this is an average day for this house, since Ms. Flavia rents out each room and there are five residents living there. If an ADU is granted and up to two more vehicles are permitted, the already congested parking on the property and on the street will get worse. T. 13. There is no space for additional vehicles in the driveway. He believes that the

⁷ All those who submitted sworn statements, except Ms. Karen Winston, appeared at the public hearing.



**Photographs of Parking at
7709 Oldchester Road
Exhibit 7(e)**

picture demonstrates that multiple tenants occupy the property. The property is a rental property. There are side doors in the house that provide separate access to the various residences inside. T. 13.

Mr. Chappell has had conversations with Ms. Favali about the property. At one time, she told him it was an Airbnb, but the neighborhood objected. To get around that, she said she signed up these monthly leases to avoid any penalty as an Airbnb for long term rentals. T. 14-15.

He believes that the pictures in the rental listings bear out that the rooms are rented like hotel rooms. All of them have beds, dressers, desk, and flat screens. T. 15. Zillow lists this as a rental property. T. 15. All are nicely appointed and able to sublet. While he's never been inside the home, the online postings note that tenants pay one-fifth of the utilities, implying that you're renting one bedroom. This indicates that it is not the Applicant's primary residence, despite what

her real estate tax bill and her driver's license state. T. 16. When looking through the exhibits, you can see that multiple bedrooms have beds, dressers, desk, and flat screen provided. T. 18.

Mr. Chappell testified that the Applicant has three other properties throughout Prince George's and other counties. He believes that one of those is her primary residence, but he is not a private investigator. As a neighbor, however, it's a rare occurrence that one of her vehicles is left overnight at the property. T. 16.

The neighbors are upset by this ADU application because there have been issues affecting residents on the street, including abandoned vehicles and "rough" individuals. T. 17. At times, it has caused parking problems on the street because some tenants have been employed by moving companies and park the moving truck there, one had a "refrigerant-looking" large vehicle parked on the street for a month at a time, and other instances where parking on the street is very congested. When residents park on the street opposite from the property, it leaves a very narrow drive aisle and blocks visibility. They have small children that play in the street there. They also have had incidents where residents have parked vans for their employment with the tires slit. They stay on the street for a month. One of Ms. Flavia's tenants moved back to Africa and left a vehicle abandoned on the street for an extended period. Even though her driveway is circular, it cannot accommodate five vehicles. They squeeze in so there is always one parked on the street. T. 18.

Ms. Bennet lives next to the property on the other side from Mr. Chappell. She's lived at that location for 26 years and it is her primary residence. She moved in when Ms. Favali's parents were still alive and living in the house. She has had two dogs consistently during that time and walks past Ms. Favali's house about twice a week when she's not traveling. T. 22. In the last seven or eight years, she has never seen Ms. Favali at the house. She sees people going in and out of the house carrying groceries and bringing things in, indicating that they live there. T. 21.

They have had a lot of issues with parking. One thing that really scared her was that around the time of the insurrection at the capitol, there were a lot of out-of-state vehicles, a lot of pickup trucks parked there with out-of-state license plates. Knowing what was going on at that time, she noticed that she hadn't seen all the vehicles before. It really bothered her, and she began communicating with Mr. Chappell, who had moved in more recently. She began speaking with other neighbors and her guard went up. Now she avoids walking past the house except during daylight. T. 22.

Mr. Finkel has lived on the street for the last 13 years. He testified that Ms. Favali has not used the subject property for her primary residence since he's lived there. It has been used entirely as a rental property. She has compartmentalized the house into various little rooms and rented rooms through AirBnb or through apartments.com. He is very worried about the intended use of the ADU.

Mr. Finkel stated that Ms. Favali does not reside at the residence. He has had several instances where short-term renters came to his front door at night asking for keys to the house because the Ms. Favali wasn't present. He's had people show up at 9:00 p.m. and 9:30 p.m. T. 34.

Mr. Finkel testified that he knows what car Ms. Favali drives and she has never spent the night at the property. She periodically visits to do some gardening and clears some leaves and trees, but she hasn't stayed overnight in the 13 years he's been her next-door neighbor. T. 34.

Mr. Chappell echoed Mr. Finkel's testimony that renters from the subject property have shown up periodically at his property. During the COVID pandemic, some out-of-state medical workers renting from Ms. Favali showed up at his house in tears asking for cleaning supplies. They stated that the home was in poor condition and the bathrooms were unlivable and unsanitary.

Mr. Chappell believes they would not have come to him if Ms. Favali lived at the home. They would simply have knocked on her bedroom door.

Mr. Chappell has had personal conversations with the Applicant in which she admitted that property wasn't her primary residence. She said she needs it for the rental income. T. 36. He does not take issue with long-term renters in the neighborhood. He does have problems with vehicles and posting to rent out short-term. T. 36.

Mr. Kenneth Mack testified that he has lived directly across the street from the property for over eight years. T. 34. His home office looks directly at the front of the property, and he has a good view of activity there. He has had the opportunity to speak with Ms. Favali and various tenants as they've come and gone. It's clear to him that Ms. Favali does not live at the residence and that it is rented to multiple tenants with significant turnover. T. 25.

There have been significant issues with parking. As an example, there was an over-sized truck parked there. He researched the regulations and discovered that it was over the size permitted to park on a residential street and was parked on Mr. Mack's side of the street, blocking his view. When he raised this with Ms. Favali, she stated that the tenant had stopped paying his rent and that she had moved to evict them. After several weeks, the truck was finally moved. T. 25. This type of situation occurs constantly. There was a pick-up truck in front of her house at one point and the tires were either slashed or flat. T. 25-26.

Mr. Mack believes that Ms. Favali does not live at the house because he had not seen her in the house or coming by the house. He has not seen her in months. His office has a clear view looking directly at the house. He's also spoken with her tenants over the years. In every conversation, it's clear that she is not one of the many residents who live in the house. As an example, one of the tenants invited him in to have a chat. They discussed the various people that

did live in the home, and she was not one that was discussed. It would have been completely inconsistent with the nature of the conversation if she had lived in the home. T. 27-28.

He's also had discussions with Ms. Favali that were inconsistent with her residing in the home. While she never flatly stated that she didn't live in the house, the whole nature of the discussion was about how many tenants she had and how it's difficult to find tenants. The fact that she did not live there was implicit in the discussion. T. 28.

Mr. David Goodfriend lives next door to Mr. Finkel. He adopted his Declaration as his own testimony. T. 31. He testified that about three years ago, one of the renters at the property spoke with him at the foot of his driveway and said that he was having trouble getting Ms. Favali over to the house to deal with a problem. Ms. Favali was not living there at the time. If she had been living in the house, it would have been very easy for the renter to find her. T. 31.

On rebuttal, Ms. Bennet testified that she found it odd that Ms. Favali cannot support the fact that she lives there, other than saying she has a toothbrush in a room, that somehow she can go in and out of the house, while nobody in the neighborhood has observed her living there as her primary residence, even though the neighbors are living there, outside talking to each other, or doing other business as any neighborhood would do. She also finds it strange that Ms. Favali testified that she's been injured for some time but can still go on a whole bunch of vacations and sailing trips. That seems dangerous to her because she could slip on a boat. T. 72.

B. Testimony and Evidence Opposing the Objections

Ms. Flavia Favali, the property owner and the license applicant, testified in opposition to the objections.⁸ She stated that, when Mr. Finkel built his home, he and his builder visited Ms.

⁸ Ms. Favali's testimony was somewhat disjointed, with several twists and turns. Out of an abundance of caution, the Hearing Examiner sets it out as she testified.

Favali's house. It was not Ms. Favali's principal residence at the time; it was owned by her father who was still living. He was in his 90's and her mother had just passed. Mr. Finkel asked how much is charged for water and electric. She responded that he should take all he wants. She told him that the boy walking down the street will be living in this house long after I'm gone, and that was Caleb John Mskitis, her son. T. 38. During this conversation, she told Mr. Finkel that she was going to try to buy the house. She paid a lot more for a townhouse house than Mr. Finkel and she was a teacher. She knew she would have to rent rooms. Then Mr. Finkel built his house. His builder, Mr. Cafritz, was "awesome" because he came to her house before she was renting rooms. She had a license to rent at the time but hadn't rented anything. She was trying to figure out her strategy for the house because she was a single mom with six kids and was a teacher. T. 39.

When she got her rental license, DHCA gave her a handbook that you're supposed to keep in your house. She does this because people do pay one-fifth of the utilities. She has five people living there. For the first few years, it was not her primary residence. Her primary residence was 412 40th Street. T. 39. The handbook is very explicit that up to five single unrelated people may live together as a housekeeping unit, sharing one kitchen if a landlord does not live on the premises. All her leases are month-to-month because she was very upset when the box truck was on Mr. Mack's property. T. 40.

Ms. Favali reiterated that she obtained a rental license before she purchased the house. At that point, she knew she had bad bones. She didn't know how bad they would become, and she needed some help. So, she asked Mr. Cafritz how she could design it for an ADU in the house. He showed her where to put the elevator in and stops. That was her Plan B. She knew it would look ugly, but that was her goal when she bought the house. T. 41. Everyone in the house has 30-day leases so she can move them out. She hasn't changed her Facebook page since the day she

listed the house that her Dad built. Everyone has a TV if they want one. Everybody has a bed, and a desk, and she often change the beds. She does rent rooms month-to-month.

When Mr. Calhoun informed her that they were going to adopt legislation for Airbnb, she “didn’t do” Airbnb anymore.⁹ She acknowledged that it was an apartment. She never advertised on Apartment.com; she doesn’t know how the listing ended up there. If she rents the whole house on Zillow, Zillow says it’s \$6,000 for a house rental and she’s only getting \$4,000.00. So “putting it on a whole house sounds like a very nice plan.” T. 42.

The Florida tags are on a car belonging to Jeff South. He’s lived there for three years and is the head IT guy at Walter Reed. He has an interesting life story. Two weeks before he broke his collarbones, she broke one of her collarbones. She was volunteering in Camp Springs as a librarian, teaching some at-risk kids, and he was riding his bike. Most of her current tenants have been there longer than six months, at least. She has not been in the house for the past six months. Not only did she break her collarbone, but she also tripped and broke her ankle, tibia, and fibula. T. 43. She was in Holy Cross Hospital and, at that point, was addicted to Dilaudid. Then she went to Potomac Valley Nursing and Rehab. She had external fixators on, so she really couldn’t mobilize and there were roaches there. She had to leave. T. 43. So, she wasn’t at the house for six months. On February 22nd, she was at Camp Springs, Maryland, as a volunteer librarian, and broke her ankle, her tibia, and fibula. T. 43.

When the Hearing Examiner asked Ms. Favali when she was last at the subject property, she repeated that she had been in Holy Cross Hospital in February. When the Hearing Examiner asked where she had been before that, she responded that she had been in Cantania, Sicily for about a month sailing with some friends at this time last year. She’s leaving to go to San Juan at the end

⁹ Ms. Favali did not identify Mr. Calhoun.

of August. She's going to Egypt for the month of October. She's leaving in about two hours to go to South Carolina for a week because she's building manufactured homes there. T. 45. She testified that she has not been at the house for the most recent 6 months. T. 46.

When the Hearing Examiner asked where she was testifying from, Ms. Favali responded that she was in her "office" at 4222 Kennedy Street, Hyattsville, Md 20871. T. 45. When asked where her toothbrush was, she testified that (T. 47-48):

I have a toothbrush in my car. I have a toothbrush everywhere. I have a toothbrush at Oldchester. If you open up the—in my room, if you open up the drawer, I have a toothbrush...

When the Hearing Examiner asked her which bedroom in the subject property was hers, she replied (*Id.*):

I have the one to the far right. You walk up the stairs—so, my house, as you walk up—so, my house, as you walk up the stairs, there's three rooms, the room to the right, the room to the middle, and the room to the left. The room to the right has my clothes, has my toothbrush in that house. Every—every place I have has a toothbrush. I brush my teeth a lot, too. And my son—and why I do so many properties is my son, who I have a toothbrush in his house, he needs to get—at Home Depot—his wisdom teeth out, and he doesn't have enough money for the—dental is so bad, he has to get—anyway, that's a long—I need not elaborate. But, yes, I have a toothbrush a lot of places, and I have a toothbrush at my gym.

According to Ms. Favali, she did have a permanent residence at 6412 40th Avenue in University Park until she moved, several years ago, to Bethesda. The last time she spoke with Mr. Chappell was over four years ago, when she replaced her left ankle. She did everything to make her house accessible with ramps, not understanding that her last accident would greatly impact her. She would not even be able to get into her bedroom. She just got the cast off a month ago. She's going back to tutoring this September and working as a voluntary librarian at a little school. T. 48.

Ms. Favali testified that she needs the ADU even though she has a bedroom because she got her ankle replaced and there is so much arthritis that Dr. Cooper at Georgetown says he can't do any more surgeries. He replaced the ankle with titanium. She sets it off at every airport. She fell on her right ankle this time. T. 49.

Ms. Favali went on to state that Jeff, a tenant that lives at the house, broke two of his collarbones. He's back riding his bicycle. You see him a lot, the guy is riding his bicycle. She can't even get on a bicycle. Her collarbone is not even healed, and that was February 22nd. The ADU was going to be accessible with lower counters and plugs so she can wheel herself in and out. T. 49. She feels that she can live simply and the ADU is only 576 square feet. It's likely that she will have more damage to her bones because she has osteochondrosis, osteopenia, osteoarthritis, and fibromyalgia. One fall breaks an ankle, tibia, and a fibula. She has had external fixators, where extended three feet from her ankle. She has two plates and about six screws in one foot. T. 50.

Proactively, when she bought the house, she knew that she was going to put an elevator in and go up to her bedroom upstairs. T. 50. Now, since Montgomery County is so "into" ADUs, she thought that would be a better option. T. 62.

She did rent the entire house to the Bethesda Cares' Veterans at one point. That didn't work because veterans have a lot of PTSD. Her son and her dad were veterans. She never registered the house on Airbnb when she was apprised she had to. She just got rid of Airbnb. She rents monthly because it is easiest for her as a homeowner. If she doesn't like someone or someone doesn't like her, she can terminate after 30 days. T. 50-51.

Everyone has one-fifth of the utilities because they are a family. If someone wants it 30 degrees and someone wants it 80 degrees, they must agree. No one leaves the water running a

long time. She stated, “A prior owner...Renting one bedroom established a nutshell—three other residents and applicants’ names on our records, and he would have issues with the issues.” T. 51.

When she was on crutches, she visited the County Executive. At the time, he was pontificating the diversity in Montgomery County. Now, she has a “Spanish guy”, an African American, a “white guy,” a Muslim, and herself at the house. She loves the diversity in the house. But she could rent the whole house to a whole family “if you want me to.” T. 52.

When her neighbors were complaining about the vehicles, she went to Montgomery County licensing and paid the \$30,000 and put a handicapped accessible driveway in. There is already a driveway that can fit four cars. There’s also a driveway that goes back to where her ADU should be. She could not access her room for six months. She couldn’t even drive for six months. She thinks the driveway is “fine” to accommodate five cars. T. 52. Her parents lived there. It was their “chateau”. She hopes it’s hers. T. 62.

Ms. Favali stated that she is sorry about the oversized truck. A neighbor, “Eileen” lives in the neighborhood and always apprises her when something is wrong. When she told her of oversized truck, Ms. Favali stated that she called the police immediately. T. 52. Eileen called her on February 15th about the “neighborhood” reaction to her license application in this case. T. 53.

Ms. Favali testified that Mr. Finkel spoke with her only once. She received his email on February 5th at 7:44 a.m. T. 53. Ms. Flavia believes that the intention of the process is being misinterpreted. She and her trust attorney—because when she left Montgomery County with six kids, he said “do this yourself.” He will be with her on appeal. She didn’t have time to reach him for the hearing today because he was traveling. T. 53.

She believes that the Landlord-Tenant handbook states that she is allowed to do this. She’s been paying her rental fee forever. “They” told me not to do the ADU, so she’s more confused.

She was supposed to go to DHCA. T. 54.

What she's hearing from the neighborhood is that no one objects to renting the whole house out, just the fact that she rents out individual rooms. It's completely legal because they share the kitchen, washer, dryer. T 54.

She spoke with Mr. Goodfriend once when she was planting. She was there last Friday. All the cars came over because she had a party and she spent Friday night there. T. 55.

On cross-examination, Ms. Favali was asked when the property became her principal residence. She replied:

Mr. Finkel was here with the property before I ever bought the property, though I was living with my dad, not as my primary residence, until he passed. Then I moved back to 6412 40th Avenue, University Park, then I bought the house, rented rooms, then I declared as my principal residence somewhere when I moved my – and I can go through the state—when I switched my principal residence from 40th Avenue to—because I rented it to a whole family, a family of recovered alcoholics, five years ago. So, maybe five, six years ago was when I took it off my principal—I made it my principal residence. T. 59.

When asked why neighbors have never observed her use it as her principal residence in the last five years, Ms. Favali responded:

...now, I have a bunch of lawyers, and I have not had my lawyer—I'm going to defer that question until I actually know what my primary residence. But I put down the state of Maryland. I said I'm moving from 6412, from my Homestead Act, to Bethesda. I didn't think it was this big of a deal, but I'm going to make sure I do that, and I'll come back to you with my appeal—how would that be—or my—when I find the answer to that question. T. 59-60.

Ms. Favali then reiterated that the Oldchester property was her principal residence, and she would tell the neighbors later the exact date that she changed her principal residence from University Park to Oldchester. T. 60. She also testified that she stayed at the property on January 6th (the date of the Capitol insurrection) for the whole night. T. 63.

Ms. Favali testified that in April or May of this year, she filled out a survey for DHCA listing the tenants in the property. She advised the Hearing Examiner that, “I can go pick that up for you and send it to you by the —by the close of business tomorrow. DCHA [sic], they have my license for every year.” T. 66. Later in the hearing, Ms. Favali stated that she didn’t know whether she could provide that item or her rental license because her computer had been hacked and “they shut everything down.” T. 70.

In response to a comment from Ms. Bennet that it seemed that sailing would be dangerous with her bone disease, Ms. Favali testified that she is a member of Singles on Sailboats, and you can just go onto the website, and see her picture in Sicily this time last year and France the year before. It all “collaborates” because she broke “it” a week after she got off the Cortez boat and she’s going back to San Juan at the end of August, when her doctor will hopefully clear her from the injury. She wants to sail while she can. T. 74. Ms. Favali agreed with Ms. Bennet’s comment that sailing trips were dangerous. T. 72.

After the public hearing concluded, Ms. Favali provided copies of two invoices for rental license fees for 2019 and 2020. Exhibit 9(a). Her email to Ms. Nana Johnson, OZAH Administrative Specialist, states (Exhibit 9):

Thanks for all the hard work you have done setting and doing all this, and i [sic] hope this will answer the question as to whether my “room rental license” that is found on page 46#16: “how many single people may occupy one rental property? Up to five single unrelated people may live together as a housekeeping unit, sharing one kitchen if a landlord does not live on the property. Up to four unrelated people may live together as a housekeeping unit, sharing one kitchen. If a landlord does live there, provided sufficient square footage is available in both instances.” From the Landlord Tenant Handbook published by the Department of Housing and Community Affairs November of 2021.

As I mentioned in the hearing this morning, I have ALWAYS had a rental license since BEFORE I even purchased the property. I had to make sure I could pay off the debt. That license #76210 was consistently held and maintained for years. As I also mentioned in today’s hearing, my bank account was frauded, my computer

was infected with a virus, and DHcA [sic] went paperless, however for years 2022 and 2021 my account was debited \$114.00 on both 7/15/2022 and 7/20/2021 from checking account ending in 8205 by “web pmt Montgomery county dhca”. When talking to Mr. Simms in procuring my license for the ADU I was told that I no longer needed a “room rental license “because I have ownership interest in the property, occupies it and rents out rooms” (pg 10 same book).

In procuring a suitable place so that I can age in place there are many options that the “house that ray built” offers. and I enumerated this morning either extending the height of the house to 35 feet, or building a separate adu [sic], handicapped accessible out in the back where one can see, except from the backyard of 7707. I can also pay for a room rental license this year while we wait for the decision of the ADU license #151423...

II. GOVERNING LAW

The procedures and criteria for licensing accessory dwelling units are governed by Section 29-19 of the Montgomery County Code. Prior to issuing a license, the Code requires the Director of DHCA to:

(D) issue a report on all required findings within 30 days after the date the application was accepted by the Director;

(E) post a copy of the Director’s report on findings on the internet web site identified on the applicant’s sign; and

“Aggrieved persons” who disagree with one of the Director’s preliminary findings may file an “objection” to the any of the Director’s “finding of fact” with the Hearing Examiner. *Code*, §29-26(b)(2)(A). OZAH must schedule a public hearing on the objection within 30 days and the scope of review is limited to “issues raised by the waiver or objection.” *Id.*, §29-26(b)(5). Once the Hearing Examiner issues her decision, DHCA must issue or deny the license in accordance with the decision without further administrative process. The Code permits an appeal of the license issuance or denial to the Circuit Court. *Id.*, §29-26(b)(12).

DHCA’s preliminary finding of fact challenged through the multiple objections in this case is the requirement that the property must be the owner’s “primary residence”:

(b) *Accessory dwelling unit rental license.*

- (1) An owner of a lot or parcel in a zone that permits accessory dwelling units must obtain a license to operate an accessory dwelling unit to live in or to rent if:

* * *

- (B) the principal dwelling or accessory dwelling unit is the primary residence of the applicant for an accessory dwelling unit rental license. Evidence of primary residence includes:

- (i) the owner's most recent Maryland income tax return;
- (ii) the owner's current Maryland driver's license;
- (iii) the owner's real estate tax bill for the address of the proposed accessory dwelling unit;

Montgomery County Code, Section 29-19(b)(1)(B).

Courts have interpreted residency requirements differently in several contexts. Principal among them is the distinction between “abode” and “domicile.” “Abode” means the “the place where one lives.” “Abode.”Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/abode>. Accessed 31 Aug. 2023. The Maryland Supreme Court has held that a residency requirement presumptively means “domicile” rather than “abode” unless a contrary intent is shown. *Oglesby v. Williams*, 372 Md. 360, 373-375 (2002). The Court explained the difference in a case interpreting a residency requirement to run for election:

The words reside or resident mean domicile unless a contrary intent is shown. A person may have several places of abode or dwelling, but he can have only one domicile at a time. Domicile has been defined as the place with which an individual has a settled connection for legal purposes and the place where a person has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning. The controlling factor in determining domicile is his intent. The determination of his intent, however, is not dependent upon what he says at a particular time, since his intent may be more satisfactorily shown by what is done than by what is said. Once a domicile is determined or established a person retains his domicile at such place unless the evidence affirmatively shows an abandonment of that domicile. In deciding whether a person has abandoned a

previously established domicile and acquired a new one, courts will examiner and weigh the factors relating to each place. This Court has never deemed any single circumstance conclusive. *However, it has viewed certain factors as more important than others, the two most important being where a person actually lives and where he votes. Where a person lives and votes at the same place such place probably will be determined to constitute his domicile...* (Emphasis in original).

Oglesby v. Williams, 372 Md. 360, 373-375 (2002). Courts *may* consider other factors if these two factors are not clear. *Id.*

III. OPINION AND ANALYSIS

The Code does not explicitly state whether the “primary residence” requirement means “abode” (requiring someone to continuously occupy the premises) or “domicile,” which permits temporary absences if the property owner has an intent to return. Even applying the more liberal presumption that it means “domicile,” it is clear to the Hearing Examiner that 7709 Oldchester Road is *not* Ms. Favali’s primary residence.

There are only two factors presented to support Ms. Favali’s contention that she intends this to be her domicile. While her driver’s license is *not* in the record, the Hearing Examiner presumes that it lists the subject property as her address based on Mr. Chappell’s testimony. She also mentions that the tax records may show this as her principal residence, but these are not in the record. The only other item is Ms. Favali’s own testimony.

The Hearing Examiner found none of Ms. Favali’s testimony credible. Her demeanor was evasive, branching off into other topics when asked direct questions about her residency. Her testimony was also contradictory and, as Ms. Bennet noted at one point, it didn’t “add up.” T. 72.

Examples of this are numerous. When the Hearing Examiner questioned her repeatedly about where she lived prior to entering the hospital in February, Ms. Favali mentioned a sailing trip that was coming up in August and was completely non-responsive to the question. T. 46. The Hearing Examiner received a similar evasive response when asked where her toothbrush was. Ms.

Favali testified that, this September, she would be tutoring and working as a volunteer librarian at a little school in Camp Springs, far from the subject property. T. 48. Prior to that, she testified that she would be leaving to go to San Juan in September and Egypt in October. T. 46. At one point, Ms. Favali stated that she had to check with her lawyer to know whether the property was her primary residence. The rental license invoice she submitted (Exhibit 9) is addressed to her “office” at 4222 Kennedy Street in Prince George’s County. She initially stated that she would submit for the record the rental survey she completed for DHCA that listed the number of tenants she had. Shortly after, she stated that her computer had been hacked and that she wouldn’t be able to provide it. Ms. Favali testified that she spent the night of January 6, 2021 (the Capitol insurrection), at the premises. Ms. Bennet, who has lived next to the property for 26 years, testified that she walked past the house on that date and saw out-of-town vehicles there, but did not mention seeing Ms. Favali’s vehicle.

The only objective evidence of Ms. Favali’s intent for the premises in the record is the rental listings submitted by Mr. Chappell. Even if Ms. Favali occupied the premises before 2015, the rental listing for the entire house indicates that she did *not* intend to inhabit it at that time. The later listings for single rooms are equivocal as to intent—Ms. Favali testified that she found it easier to rent rooms on a monthly basis so she could evict undesirable tenants. This could easily support the contention that she does not live there. It doesn’t determine that one of the rooms was hers.

Ms. Favali’s own testimony again undermines her contention that she lives at the property. She testified that she relies on a neighbor, “Eileen” to inform her of complaints in the neighborhood. Eileen had to inform her of the abandoned truck that, according to Mr. Chappell, was abandoned in 2021. More recently, Eileen informed her of the neighborhood’s reaction to her

ADU license application. If Ms. Favali lived at the residence, she would not need another neighbor to inform her of problems at the premises.

Compared to this testimony, the Hearing Examiner found the testimony and evidence submitted by those objecting much more compelling, credible, and consistent. The neighbors either adjacent to, directly opposite, or very near the property, have lived there a long time, and regularly and consistently view the property. Several testified that they knew Ms. Favali's car and had not seen it at the property, except for occasional landscaping. Mr. Mack has lived directly across the street from the property for eight years and has a clear view of the property from his office window. He has never observed Ms. Favali spend the night there. Several neighbors reported that tenants came to their houses in the evening because they could not reach Ms. Favali. Mr. Chappell testified that he estimates that there are five tenants living there.

Weighing the probative value of the testimony and evidence, the Hearing Examiner finds that Ms. Favali does not and has not occupied the property since 2015.

Nor is the Hearing Examiner convinced by Ms. Favali's testimony that she intends to live in the ADU in the future because it is handicapped accessible. The stark difference between her description of her ailments and her contradictory plans to go sailing for months at a time does not reassure the Hearing Examiner that this is her intent. Nor is the Hearing Examiner reassured by the contradictory and evasive testimony demeanor Ms. Favali displayed at the public hearing.

The County Code states that a driver's license is only "evidence" of primary residence but not "proof" of primary residence. The Hearing Examiner finds from this record that the subject property is *not* Ms. Favali's primary residence under Section 29-19 of the County Code.

IV. CONCLUSION AND ORDER

For the foregoing reasons, it is this 6thth day of September, 2023, ORDERED, that the

objections filed to the Director's Findings in License Application No. 151423, located at 7709 Oldchester Road, Bethesda, MD, is hereby *granted*, and it is further

ORDERED, that the Department of Housing and Community Affairs must *deny* the rental license application consistent with this decision and the Montgomery County Code.



Lynn Robeson Hannan
Hearing Examiner

COPIES TO:

Ms. Flavia Favali
Mr. Alexandre Finkel
Mr. Dan Chappell
Ms. Carri Bennet
Mr. David Goodfriend
Ms. Georgia Jaitly
Michelle Hadrack, Housing Code Inspector II
Tamala Robinson, Manager, DHCA

NOTICE OF RIGHT TO APPEAL

Any party aggrieved by the Hearing Examiner's decision on an objection may request the Montgomery County Circuit Court to review the Hearing Examiner's final decision under the Maryland Rules of Civil Procedure within 30 days of the date of the decision. An appeal to the Circuit Court does not automatically stay the Director's authority to deny a license. Contact information for the Circuit Court is:

Clerk of the Court, Civil Division
North Tower, 1st Floor, Rm 1200
Rockville, MD 20850
HOURS: Monday-Friday, 8:30am - 4:30pm
PHONE: 240-777-9401

<https://www.montgomerycountymd.gov/cct/departments/civil-department.html>