

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY, MARYLAND

CARESSA BENNET, et al.,)	
Objectors,)	
v.)	Case ADO 26-03
FLAVIA M. FAVALI,)	Objection to Accessory Dwelling
Applicant.)	
_____)	

APPLICANT’S POST-HEARING MEMORANDUM

COMES NOW Flavia M. Favali, Applicant, and submits this Memorandum in support of her application for construction of an Accessory Dwelling Unit (“ADU”) in accordance with applicable provisions of the Montgomery County Code and the regulations of the Montgomery County Department of Housing and Community Affairs (“DHCA”).

THE ISSUES

As noted at the hearing by the Honorable Hearing Examiner (Transcript p. 22), the Objectors have raised two (2) issues to be adjudicated in this proceeding:

1. Is the property at 7709 Oldchester Road, Bethesda, Maryland, the primary residence of the Applicant?
2. Will the proposed ADU have a significant negative impact upon the neighborhood and should the owner of this particular home be the sole neighborhood property owner to bear responsibility for these parking issues and therefore the sole person required to tailor vehicular parking to address such issues?

RESIDENCY

Montgomery County Code Section 29-21(b)(1)(B) requires that the property which will include the ADU must be the “principal residence” of the applicant. As the Hearing Examiner has noted, Montgomery Council Bill 31-12 relaxed the residency requirement by modifying the

statutory language deleting the previous requirement of absolute occupancy and replacing such language with “primary residence”. In doing so, the Council recognized that one may not always occupy the property which he/she identifies as the primary residence; i.e., even if there was validity to the Objectors’ claim that Ms. Favali does not always sleep at Oldchester Road – ***and Applicant denies the Objectors’ allegation*** – the property could still be her primary residence in compliance with the County Code.

However, Ms. Favali repeatedly has testified under oath that she, in fact, has occupied and continues to occupy 7709 Oldchester Road. In connection with her application, she has filed a sworn Affidavit of residency, maintained a log of time in the home, receives mail at the property, and produced her Maryland motor vehicle operator’s permit, voter registration, Maryland and Federal tax returns and refund checks, County and property tax bills, thereby demonstrating that Montgomery County, the Comptroller of Maryland and the U.S. Treasury identify this property as her address. Although Counsel for Mr. Mack repeatedly has stated that the 2024 hearing examiner determined that Oldchester was not Ms. Favali’s primary residence, DHCA and each of the foregoing governmental agencies clearly have determined otherwise. Moreover, whether or not this was her residence in 2024 is clearly not definitive evidence as to her residence in 2025 and 2026. Moreover, Ms. Favali has presented corroborating testimony by multiple friends, roommates and her daughter Veronica Moskaitis, all of whom have uniformly testified that she eats, sleeps and entertains at the Property. Veronica, one of her six (6) adopted children, testified that Oldchester has been her mother’s residence “going on three (3) years” (Transcript p. 199), that she has attended family Christmas and Thanksgiving celebrations throughout those years (p. 204), and that her children routinely stay overnight.

Moreover, the Objectors consistently have testified that Ms. Favali’s primary vehicle, a silver Mitsubishi, is virtually always at the property and have inquired of Ms. Favali’s witnesses corroborating the presence of the Mitsubishi at the Oldchester property. Objectors have testified that they have seen her bring the trash toter out at night, bring groceries into the house and work in the garden. She also has provided copies of official government checks. HOWEVER, even if these facts were not in evidence, the 2012 definition as stated in the January 11, 2013 memorandum of Jeffrey Zyontz, Legislative Attorney, requires only one of the following:

- Maryland income tax return;
- Maryland driver’s license; ***or***
- Real estate tax bill.

Ms. Favali has provided all three of these alternate proofs and much more.

Most ADU applications are situations in which a homeowner is proposing to construct a separate rental unit attached to, or behind, the applicant's home. However, Case 26-03 presents the reverse situation in which the property owner will occupy the ADU. In this situation, the statutory language appears to be subject to an alternate interpretation. As Ms. Favali cannot occupy the unit until it has been constructed, then even if one were to reject her assertion that this is her primary residence today, it is self-evident that it will be her residence as soon as the Americans with Disabilities Act ("ADA") compliant structure has been permitted and constructed. She has provided a detailed description of the health issues which justify her need for an ADA compliant living space in order to age in place, and has provided corroborating testimony confirming her osteo-arthritic issues.

Applicant notes that Ms. Bennet (at Transcript p. 208) and other Objectors all have admitted that they have not been inside Ms. Favali's property. They do not know whether she has the normal indications of home ownership and occupancy such as cooking utensils, clothing and toiletries, family photographs and nicknacks. They have heard numerous witnesses testify to Ms. Favali's occupancy of the Oldchester property but they, none of whom have ever been in the house or made any effort to investigate the incidences of residency, somehow conflate their impressions as fact. They state that they regularly see each other socially, see each other's children playing, walk their dogs together. Nearly every neighbor testified that he/she own dogs and regularly walk them down the block, presumably several times daily, and therefore perhaps twenty (20) times per week, conceivably 1,000 times each year. It is clear that they see each other many, many times as often as they see Ms. Favali, with whom they do not socialize and who has no children or dog. Therefore they make the speculative assumption that she is not a permanent occupant, ***even though actual fulltime occupancy no longer is required by the County Code.*** While it may be understandable that one would draw such an assumption, especially if the property had not been the Applicant's primary residence in previous years, it is, nevertheless, no more than an assumption and cannot properly be given the weight of fact. Most interesting is the statement of Ms. Bennet, the lead Objector, that "I still have issues with her saying that this is her primary residence," (Transcript, p. 208) despite the fact that Ms. Bennet has limited opportunity to observe Ms. Favali as Mr. and Mrs. Bennet spend four (4) months a year at their own South Carolina property (p. 208) and she often travel for business much of the time when she is in Montgomery County. It is curious that Ms. Bennet is comfortable testifying under oath that Oldchester is not Ms. Favali's primary residence – even after verifying that nobody appeared to be in residence when she visited the Hyattsville property and taking a photograph corroborating Ms. Favali's statement that she parks her Subaru, truck and trailer there (Transcript p. 225).

PARKING AND LICENSING

As noted by the Hearing Examiner, County Council Bill 22-19 removed the requirement for specific zoning approval substituting a simpler licensing procedure. As DHCA inspector Johnson has testified, Ms. Favali's application satisfies all licensing pre-conditions required to proceed to the permitting and construction phases. The primary requirements are sufficient parking, i.e. one space allocable to the ADU, and the lack of a negative impact upon on-street parking within 300 feet of the contemplated ADU. As DHCA has determined that the property will have triple the County parking requirements, and as the Objectors have testified that they, their children, guests and presumably also their children's guests, regularly park on Oldchester Road, and ride their bikes, walk their dogs and play basketball in the street, it is evident that one house cannot reasonably be construed to pose a negative impact on the neighbors' parking. In fact, one might submit that these homeowners, many of whom have testified that they routinely park on the street (including Mr. Mack and Mr. Goodfriend who testified that he previously had multiple teenagers parking on the street, p. 242), create the same negative impact for Ms. Favali that they accuse her of creating for them. However, as Ms. Favali will be the only person residing in the ADU and as the plans call for two (2) new parking spaces at the rear of the house, the proposed ADU actually will effectively eliminate any need for on-street parking.

The only other existing licensed ADU on Oldchester Road is at 5613 Oldchester, more than three blocks away on the far side of Bradley Boulevard. The owners of a new home being constructed greater than 300 feet from Applicant's property – but on the same block of Oldchester – have applied for an ADU which has yet to be approved by DHCA. Although that ADU would be between Applicant's home and Wilson Lane, i.e. on the portion of the street where the Objectors have complained of cut-through traffic (despite their admissions that they also park on the street), none of the Objectors have posed an objection to this second ADU.

The Hearing Examiner noted at Transcript p. 108-110, and one Objector also noted that the Applicant's driveway which will access the new ADU spaces is a single-width driveway which may result in tandem parking causing a vehicle to back onto the street which, in fact, is certainly legal access to the parking spaces. The Applicant notes that several neighbors testified that they also have single-width driveways requiring tandem parking, including Mr. Goodfriend (p. 239), Ms. Bennet (p. 211) and Mr. Chappell (p. 237). These homeowners sometimes must "juggle" their cars in order for one driver to permit the other driver to back into the street to exit the neighborhood. Double-width driveways also typically are used by pulling forward to one's garage and then backing out into the street. This is a brief process which requires responsibly looking both ways and then backing into the street. It requires no more than a few, if any, seconds longer than driving forward into the street. It clearly would be unreasonable to impose upon any single homeowner sole responsibility for the impact that all neighbors have in exiting their respective

driveways. The inspector has testified that the County parking requirement is not only met but significantly exceeded. If any neighbors are uncomfortable with the the parking requirement or which to impose a limit on the number of parked cars at a property, it is their absolute right as citizens to petition the County Counsel to change the existing law.

Applicant also wishes to point out that Ms. Bennet has provided photographic evidence demonstrating that at some times there are zero cars parked in the circular driveway (Transcript. P. 222).

“CHOKEPOINT”

Several Objectors have referred to the area in front of the Applicant’s home as a “chokepoint”. Counsel for the Applicant submits that such allegations are misleading. The Applicant has submitted an emailed County statement regarding the width of Old Chester Road., as follows:

From: TrafficOps <TrafficOps@montgomerycountymd.gov>
Date: Fri, Jan 2, 2026, 7:31 AM
Subject: 95789_Oldchester Road

This is in response to your phone conversation with our TrafficOps dated December 29, 2025, regarding information on roadway width along Oldchester Road at two locations.

Montgomery County Department of Transportation (MCDOT) review of the two requested locations determined:

1. [7709 Oldchester Road, Bethesda, 20817](#) – 26 feet wide.
2. [7512 Oldchester Road, Bethesda, 20817](#) – 18 feet wide.

MCDOT appreciates your partnership in our mutual goal of enhancing traffic and pedestrian safety. If you have questions or require further assistance, please contact our office at TrafficOps@montgomerycountymd.gov or (240) 777-2190.

Regards,

Kutty Menon, Area Engineer

**Division of Traffic Engineering and Operations
Montgomery County Department of Transportation**

The three-block long stretch of Oldchester Road from Bradley Boulevard to Wilson Lane is 18' wide for the first two (2) blocks from Bradley Boulevard, past Radnor Road to Maiden Lane, at which point the road becomes 44.4% wider to 26' for the third block on which the Applicant and Objectors have their homes. The Objectors have testified under oath that this width is sufficient for them to park their cars, walk their dogs, set up basketball backboards for the Chappell and Finkel children to play in the street, etc. While a 26' street without a sidewalk may not constitute a wide street, it is evident that the chokepoint, if any, must be on the much narrower two blocks rather than the 26' block on which the Objectors have chosen to make their homes.

DHCA PRESUMPTIVE APPROVAL

Montgomery County Department of Housing & Community Affairs is the County agency charged with evaluating applications for Accessory Dwelling Units. Inspector David Johnson testified at the hearing (Transcript pp. 83-111). He noted that DHCA's primary responsibility is verifying parking and square footage requirements. He stated that the proposed construction appears to be in conformity with all regulatory requirements, subject to review by the Department of Permitting Services which subsequently will review construction specifications and ADA requirements. Mr. Johnson testified that the plans submitted by Ms. Favali provide 1,500 square feet for vehicular parking which is more than three (3) times the 480 square feet required to comply with regulatory and statutory requirements (p. 85). Inspector Johnson further stated that the proposed plans provide for a one-bedroom unit within the size limitations for an ADU (p. 86). He opined that the ADU will not be visible from the street and that the proposed parking will not impact the location of the ADU. In response to questioning by Ms. Bennet, Inspector Johnson stated, "No information has been provided to me that that (*long term rentals in the primary house*) is not permitted. And, in fact, everything I see indicates it is permitted." (p. 107). Counsel for Applicant respectfully submits that DHCA's preliminary decision approving Ms. Favali's application constitutes a rebuttable presumption in favor of DHCA's determinations as to residency and parking.

RELATED CONCERNS:

TENANTS AND RENTAL LICENSING

Although not one of the two (2) specified matters at issue in this hearing, Montgomery County Code is clear that an owner occupant can have up to four (4) unrelated roommates using

a shared kitchen and common areas (DHCA Booklet: **ROOM RENTALS**). No license is required at this time. If an ADU is approved and constructed at 7709 Oldchester Road, Ms. Favali acknowledges that she will be required to obtain the appropriate ADU license.

Objectors complained of tenant turnover but offered no evidence contradicting the testimony of Ms. Favali and her tenants that three (3) of them had been in the property for 3+ years and the fourth was placed by a County agency in the property on a 6-month lease. At p. 219, Ms. Bennet alleges “four or five people” and then admits, “Well I don’t know how many she has.”

Two (2) neighbors commented upon a recent police activity at the property. Both alleged that there had been multiple incidents; but, in fact, only identified one incident which was a “welfare check” on a tenant who had expressed depression to a co-worker. He was immediately returned to the home.

No Objector indicated that he/she had made any effort to become acquainted with any of the Applicant’s tenants except Kenneth Mack who admitted that he only had spoken with “Jeff” and one other “gentleman who used to hang out, sit on the porch for a while,” (Transcript, p. 279), both of whom vacated several years ago. Mr. Mack also mentioned a concern for child safety, but then admitted that neither of his children had ever had any negative interaction with any of Applicant’s tenants (p. 280). The only other incident mentioned was hearsay testimony by Ms. Georgia Jaitley regarding another neighbor’s request for a vehicle to be moved from in front of her house (p. 204). That neighbor, Ms. Aileen Kantor, has opted not to participate in this proceeding.

APPLICANT’S HEALTH CONSIDERATIONS

During the course of multiple applications for ADU approval, the Applicant has provided ample evidence of her osteoarthritic issues justifying her need for a home providing ADA accommodations. A statement by her orthopaedic surgeon has been provided in previous proceedings and corroborating oral testimony has been given under oath by James Cyr, a former tenant (Transcript pp. 53-63), numerous friends, and her daughter. The Applicant has testified that although the existing home has an entry ramp, the interior of the property is not ADA compliant. Counsel frankly is surprised that neighbors who have indicated that they have such a tightknit community have banded together to oppose construction of a non-intrusive home which would enable a fellow neighbor to age in place.

CONCLUSION

As (1) Applicant Favali intends to occupy the proposed ADU as her full-time residence; (2) there is no existing ADU within 300 feet of 7709 Oldchester Road; (3) Inspector Johnson has testified that her proposed parking is **three times the County requirement**; (4) the proposed ADU is compliant with the size requirements for an ADU in the R-90 zone; and (5) DHCA has approved Ms. Favali's applications in 2023, 2024 and 2025, it would appear that the Objectors actually may lack a cognizable objection in view of the 2019 legislation.

Applicant has introduced sworn testimony of multiple friends, relatives, present and former tenants, and a contractor, constituting a preponderance of the evidence that 7709 Oldchester Road is her primary residence.

APPLICANT'S PROPOSAL

In the interests of being a good neighbor and addressing the concerns expressed by nearby homeowners, the Applicant suggests that the Hearing Examiner may consider conditioning ADU approval upon some or all of the following:

1. Reducing the number of unrelated adult roommates to a maximum of three (3), thereby reducing the total occupants from the present five (5) persons to a total of four (4) persons, including the Applicant;
2. Confirming that the paver area near the street shall be used solely as a patio and not for parking in accordance with Applicant's testimony;
3. Vehicles parked on the "horseshoe" circular driveway shall be backed onto the driveway so they will not need to drive in reverse onto the street.
4. Going forward, all roommates will have a minimum 6-month lease. Applicant and each tenant will be limited to one automobile.

Ms. Favali is hopeful that these accommodations will resolve her neighbors' concerns.

Respectfully submitted,

February 16, 2026

Greg S. Friedman

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