

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND
Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6660
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 *
Caressa Bennet *
Dan Chappell *
David Goodfriend *
Kenneth Mack *
Britlan Malek *
Fred Malek *
Georgia Jaitly *
Objectors¹ * OZAH Case No. ADO 25-02
* * * * *
Flavia Favali *
License Applicant *
* * * * *
Before: Kathleen Byrne, Hearing Examiner

HEARING EXAMINER’S REPORT AND DECISION

TABLE OF CONTENTS

I. STATEMENT OF THE CASE 2

II. SUMMARY OF EVIDENCE AND TESTIMONY 3

 A. Testimony and Evidence Supporting the Objections 3

 B. Testimony and Evidence Support the Applicant..... 7

 C. Testimony of DHCA and DPS 9

III. GOVERNING LAW 10

IV. OPINION AND ANALYSIS..... 12

V. CONCLUSION AND ORDER..... 15

¹ OZAH received and accepted written statements of objection from Roger Winston and Alexandre Finkel

I. STATEMENT OF THE CASE

On November 4, 2024, Ms. Caressa D. Bennet 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, specifically alleging that Ms. Favali (Applicant) does not reside at 7709 Oldchester Road (subject property) and that parking is insufficient.² Exhibit 1. On November 2, 2024, OZAH received six more objections from Roger Winston, Dan Chappell, Kenneth Mack, Britlan Malek, Fred Malek, and David Goodfriend, Exhibit 1a.

By letter dated September 10, 2024, DHCA accepted Ms. Favali's application, reference number 151423, and identified the criteria to be met for the license to issue. Exhibit 5. After inspecting the property, DHCA issued a preliminary inspection report finding that proposed ADU satisfied the requirements under the Montgomery County Code and Zoning Ordinance and Ms. Favali could proceed with the required building permits to construct the proposed ADU. Exhibit 2. *See Montgomery County Code, §29-19 and Montgomery County Zoning Ordinance, §59.3.3.3* The Director issued his findings on October 7, 2024. *Id.*

After discussing with the parties possible hearing dates to accommodate all of the parties' schedules, on November 18, 2024, the Hearing Examiner issued a notice for the public hearing to be scheduled on December 9, 2024.³ The public hearing proceeded as scheduled on December 9, 2024. Neither the Applicant nor the Objectors were represented by counsel during the public

² This matter represents the second objection filed to Application No. 151423. Neighbors to the subject property filed objections to the DHCA Director's preliminary findings of July 3, 2023, on the first application submitted by Ms. Favali. A hearing on those objections was held on July 27, 2023. On September 6, 2023, the Hearing Examiner found Ms. Favali did not occupy the property as her primary residence and ordered DHCA to deny the rental license application. See Hearing Examiner's Report, Exhibit 13b.

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

hearing. The seven neighbors listed as objectors in the caption appeared in opposition to the proposed ADU application. Ms. Favali opposed the objections. The Hearing Examiner accepted Roger Winston and Alex Finkel's written statement into the record and admitted all exhibits as identified on the prepared Exhibit List and as shown on the OZAH website. At the conclusion of the testimony, the Hearing Examiner left the record open for 10 days to receive the transcript from the Court Reporter. The transcript arrived via email on December 19, 2024, and the Hearing Examiner closed the record on December 20, 2024.

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 *still not* Ms. Favali's primary residence. Considering the Hearing Examiner's finding regarding Ms. Favali's lack of occupancy as her primary residence, no finding was made regarding the adequacy of parking at the subject property.

II. SUMMARY OF EVIDENCE AND TESTIMONY

A. Testimony and Evidence Supporting the Objections

Mr. Chappell testified first for the opposition describing several conversations and interactions he has had with Ms. Favali over the years and his observations of the resident activity at the subject property. T. 6-17. Mr. Chappell has lived at 7707 Oldchester, a property immediately adjacent to Ms. Favali's, since 2019. T. 6. Mr. Chappell noted he does see Ms. Favali often at the subject property, but when he does see her at the property she is checking on the premises and performing maintenance. T. 8. Specifically, he noted several discussions with tenants regarding the condition of the property and argued that if the property had been Ms. Favali's primary residence, those tenants could have spoken directly to her at the property. T. 8.

Mr. Chappell notes that Ms. Favali received a \$10,000 “design for life” tax credit for the subject property arguing the fact that the structure is currently handicap accessible. T. 9. Further Mr. Chappell referred to Exhibit 13d for an online posting for bedrooms for rent that allow subletting and requires appointments for showing. T. 13 Further Mr. Chappell noted court records, police records and permit records shown on Exhibits 13(g), (h), (i), (j), and (l) and Exhibit 19 identify the address for Ms. Favali and her children as being 4222 Kennedy Street while Exhibit 13(m) identifies her car as being titled in South Carolina. Additionally he notes that many of these exhibits are from 2024 and that a recent address she lists for her emergency contact information is also the Kennedy Street address. Exhibit 19, T. 15-16. When the Hearing Examiner asked Mr. Chappell how often he saw Ms. Favali this year, he stated that she stops by a couple times a week, but her behavior in how she comes and goes does not indicate the same type of occupancy as her tenants, those who do live at the property as their primary residence. T. 24.

Mr. Goodfriend testified that he has resided at 7713 Oldchester, a property immediately adjacent to the subject property, residing in his residence for more than 20 years. T. 25. Mr. Goodfriend testified that he and his wife work from home 3 days a week, rarely travel, and they spend a lot of time at home. T. 26. Additionally, he walks past the subject property every day in the morning and evening and has walked past the property every day for many years. T. 26. Based on his observations of the occupancy of the subject property, Mr. Goodfriend does not believe Ms. Favali resides at the subject property because “we don’t see her in the mornings when we walk the dog... in the evenings when we walked the dog... on the weekends ... on the weekdays.” T. 26-27. When asked by the Hearing Examiner if he noticed any change in

occupancy or seeing more or less of Ms. Favali from when he testified at the last hearing date, Mr. Goodfriend stated “no change.” T. 31.

Mr. Malek testified he has lived on Oldchester Road since 2016 and that he drives or walks past Ms. Favali’s home between 6 and 8 times a day. T. 32. He has never seen Ms. Favali entering or exiting the subject property and further stated he had to google her photo to see what she looked like because he had never seen her at the property. T. 32. Mr. Malek observed many cars, trucks and trailers at the property and on the street, but never met or observed Ms. Favali at the subject property. T. 34-35.

Ken Mack testified that he has lived on Oldchester since 2009 and his property is located directly across the street from the subject property. T. 37. Additional, Mr. Mack testified that he works from home and his office window directly faces the subject property. T. 37. Mr. Mack has observed Ms. Favali’s car at the subject property maybe once or twice a week, “but not enough to say she lives there.” T. 37. When asked by the Hearing Examiner if in the last 12 months to a year if he noticed any changes or differences in how he saw Ms. Favali coming and going from the property, he stated that he noticed her at the subject property maybe once or twice a week, but the occupancy seemed to him to be someone dropping by or an attempt to convey a physical presence at the property, not enough consistency of occupancy to say she actually lives at the property. T. 43-44.

Caressa Bennet testified that she resides at 7750 Oldchester Road and has lived at this property for 27 years. T. 44. Ms. Bennet testified that she spoke with Ms. Favali’s parents on many occasions when they occupied the subject property. T. 45. Additionally, Ms. Bennet testified to the frequency and extent over the years that she sees and interacts with the other neighbors on the street including the Chappells, the Macks, the Goodfriends, the Maleks, and the

Jaitlys. T. 45-46. However, she has not had the same interactions with Ms. Favali and that she rarely sees her observes her at the subject property. T. 45. She first met Ms. Favali after her parents passed away and she began doing work on the subject property. T. 45. Since the last hearing, Ms. Bennet noted that Ms. Favali joined the Bethesda Village in September 2023, but she only recently saw her at an organization event. T. 47. Regarding her observations of Ms. Favali at the property over the last year, she stated she saw Ms. Favali on Thanksgiving through a window, whose curtains were normally kept closed. T. 46. Additionally, Ms. Bennet stated that other than seeing Ms. Favali on Thanksgiving she has seen her work in the front yard on one or two other occasions, but she does not recall seeing her more than that this past year. T. 48. Ms. Bennet did testify she sees the tenants at the subject property on many occasions getting out of their vehicles and coming and going from the property. T. 48.

Ms. Georgia Jaitly testified that she has lived at 7703 Oldchester for 28 years and that her home is 2 houses away from the subject property. T. 51. As a nurse, Ms. Jaitly works staggered shifts meaning she drives by the subject property at all times of day and night, and she has never observed Ms. Favali living the subject property nor any of her children visiting. T. 51.

Mr. Malek, Ms. Bennet and Ms. Jaitly all testified to the number of cars parked in the driveway of the subject property as well as the number of cars, trucks and trailers parked on the street as being associated with the subject property. T. 32, 48, 51. All three noted how difficult it is to get down the street due to the large number of vehicles parked in the street that are associated with the subject property. *Id.*

Mr. Finkel's written testimony noted Ms. Favali's history of misrepresentation regarding the use of the subject property. Exhibit 20. Specifically, Mr. Finkel noted Ms. Favali previously stated her purpose in installing 2 external entrances/handicapped access at the subject property

was for her personal use, but she never moved in herself and instead leased the property as a short-term rental facility. *Id.*

On cross-examination of Ms. Favali, explained that she submitted her tax bill, Exhibit 7, for 7709 Oldchester Road to DHCA as evidence of residency. Ms. Bennet referred the Hearing Examiner to Exhibit 13(s) noting the differences in the 2 tax bills submitted for the property identifying the one submitted by the opposition that shows additional tax credits. T. 74-76.

When asked what address Ms. Favali puts on her person income tax return Ms. Favali stated she uses 4222 Kennedy Street address. T. 76-77. When asked if Ms. Favali had any witnesses to corroborate her testimony, she could produce none. T. 79. When Ms. Favali was asked about her driver's license she stated it was Maryland with the 7709 Oldchester address. T. 80-81. However, Ms. Favali failed produce a copy of her driver's license for the Hearing Examiner. T. 82.

On cross-examination, Mr. Chappell asked her if she realized that to receive the Design for Life tax credit that 7709 Oldchester Road must have been her primary residence at the time and to affirm that based on the testimony during the last hearing and for this hearing, 7709 Oldchester was not her primary residence when she received the tax credit. T. 88-90. Ms. Favali stated that she didn't understand what principal residence meant, but she does now, and she corrected it as soon as she found out. T. 88-90.

B. Testimony and Evidence Support the Applicant

Regarding the parking, Ms. Favali testified to the comings and goings of the trailer and truck with South Caroline plates as being her property and the use related to her business. T. 54, She stated that she owns a Mitsubishi and a Subaru Outback that she parks at the subject property. T. 60-61. She also explained some of the other vehicles with out of state plates belong

to past tenants. 66-67. In discussing the tenants at the subject property she stated, “they all hold jobs... all have been here on a monthly lease... keep to themselves ... I keep to myself...[w]e come and go.” T. 55. Regarding her need for the ADU at the subject property, Ms. Favali testified to suffering several injuries which resulted surgeries requiring wheelchair use. T. 55-61. Because the existing structure cannot accommodate her use when she is in a wheelchair she wishes to build the ADU for her own occupancy. T. 55-60. Ms. Favali stated that she did not know until last year’s hearing what primary residence meant. T.59. Specifically, she stated she now knows that “along with having your license, along with voting, and along with a library card, and along with everything else, you have to live there six months and a day.” T. 59 She referred to Exhibit 12(j) as a log she created to identify the number of nights per month she spent at the subject property from July 28, 2023, through July 31, 2024, arguing that spending a total of 238 nights at the subject property makes it her primary residence. T. 53-54. Additionally, Ms. Favali submitted Exhibit 12(h) for the proposition that she occupies the subject property as her principal residence since her rental license was revoked after she communicated to DHCA staff that the subject property was owner occupied. T. 72-73.

In describing the other locations where she spends time, she is a member of Singles on Sailboats and travels with the group. T. 59, 65. Regarding her address at 4222 Kennedy Street in Hyattsville, Ms. Favali describes it as her business address and the primary address where she receives mail. T. 67. She also stated she has a business in South Carolina. T. 66. Ms. Favali stated in 2005 that 6412 40th Avenue was her primary residence. T. 59. During Ms. Favali’s cross examination of the various witnesses in opposition, she affirmed their testimony of the limited interactions she had with the neighbors over the last 12 months and in prior years. T. 30, 40, 50, 52.

C. Testimony of DHCA and DPS

Mr. David Johnson, an Inspector II with the Department of Housing and Community Affairs (DHCA) testified to his observations during the site visit at the subject property. T. 93. Regarding the interior of the property, Mr. Johnson stated he observed 6 assigned individual bedrooms to tenants and that 2 of the 6 were occupied. T. 94. Additionally, he noted 20 minor violations, and that health and safety violations were corrected shortly after the initial inspection. T. 95, 101. Regarding the parking on site, Mr. Johnson explained, he does not count individual parking spaces, but rather measures the square footage as required by code and the parking square footage at the subject property, that includes the horseshoe driveway far exceeded the minimum amount required for the construction of the proposed ADU. T. 97. When Mr. Johnson was asked by Ms. Bennet to confirm the address for Ms. Favali in his report was 4222 Kennedy Street, Mr. Johnson replied that whatever address is assigned to the property owner in the system is what is generated on the letter noting a different address is not an uncommon occurrence. T. 104

Mr. Clifton Bouma, Program Specialist II with the Licensing and Registration Unit of the Department of Permitting Services answered the Hearing Examiner's questions regarding the impact on the rental options for existing single-family dwelling should Ms. Favali occupy the ADU. T. 107-110. Mr. Bouma testified that it is his understanding that if Ms. Favali moved to the ADU once constructed that the main dwelling could be rented to five unrelated people, but he was unsure if the main dwelling could continue as five individual rooming units as it exists now. T. 109-110.

III. 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).

To answer the question, what constitutes a principal residence the previous Hearing Examiner referred to a Maryland Supreme Court holding that a residence requirement presumptively means “domicile” rather than “abode. *Oglesby v. Williams*, 372 Md. 360, 373-375 (2002). Specifically, she cited the following text from *Oglesby* explaining 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 examine 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).

Id.

The previous Hearing Examiner noted the common language definition of abode as being “the place where one lives.” See HE Report ADO 23-06 pg. 20. Black’s Law Dictionary defines “place of abode” as a “person’s residence or domicile.” *PLACE OF ABODE*, Black’s Law Dictionary (12th ed. 2024). The legal definition of the word domicile is “[t]he place at which a person has been physically present, and that the person regards as home; a person's true,

fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.” *DOMICILE, Black's Law Dictionary* (12th ed. 2024).

IV. OPINION AND ANALYSIS

The Code requires that for an ADU license to issue, the subject property must be the primary residence of the applicant. As stated above, the Code does not specifically define primary residence. Based on the evidence presented, 7709 Oldchester Road is *still not* Ms. Favali’s primary residence, abode, place of abode or domicile.

The Code identifies 3 documents accepted as evidence⁴ of an applicant’s primary residence, Maryland income tax returns, owner’s driver’s license and the owner’s real estate tax bill for the location of the accessory dwelling unit. *Montgomery County Code*, Section 29-19(b)(1)(B). Ms. Favali only provided one form of evidence, the property tax bill for 7709 Oldchester. In the prior decision for the case, ADO 23-06, the Hearing Examiner specifically noted that Ms. Favali failed to produce a copy of her driver’s license. Again, Ms. Favali failed to produce a copy of her driver’s license identifying the subject property as the address on said driver’s license. When asked by Ms. Bennet what address she listed on her tax returns, she stated 4222 Kennedy Drive, not 7709 Oldchester Road. T. 76. The Hearing Examiner finds Ms. Favali’s failure to submit her driver’s license significant considering the language in the prior HE Report in which she found the failure by Ms. Favali to produce a copy of her driver’s license problematic. Additionally, the Hearing Examiner finds significant the fact that Ms. Favali provided no witness to support her claim of occupancy, not even the current tenants at the subject property.

⁴ The Hearing Examiner notes that evidence of residency is not the same thing as proof of principal residency.

When the Hearing Examiner asked various witnesses objecting to Ms. Favali's application, what was different or what had changed about Ms. Favali's occupancy from the date of the last hearing, the responses were either the individual saw no change in her occupancy or a change to seeing her now once or twice a week for the purpose of conveying a "physical presence". T. 43. When asked about the location of personal items at 4222 Kennedy Street vs. personal items in the subject property that identify a sense of "living" in the property, she said yes she had them at the subject property, but not in her bedroom. T. 80. Ms. Favali did not elaborate further to show clothes hanging in the bedroom closet, toiletries and like in her room nor did she identify the location of those personal items or their significance to her elsewhere in the subject property. T. 80. The Hearing Examiner finds persuasive the testimony of several neighbors in opposition that they have never witnessed Ms. Favali unloading groceries or participating in the normal comings and goings as they see the tenants do at the subject property. T. 32, 48.

Ms. Favali stated that "last year, I didn't know what primary residence is. Now that I found out that primary residence is six months and a day, I more than comply with that".⁵ T. 57. Ms. Favali referred to her Exhibits 12(j) a "Principal Residence Tally" and 12(i) "Principal Residence Objection Tally" as evidence in support of her claim that the subject property is her principal residence. Exhibit 12(j) merely lists the months from 7/28/23 to 7/31/24 with a number and the word "nights" next to the number. Presumably, this indicates the number of nights in that month she stayed at the property. However, this list directly contradicts the testimony of the neighbors' observations. The list indicates Ms. Favali spent the 19 or more

⁵ The Hearing Examiner finds problematic from Ms. Favali's own testimony that until late 2023 she had no idea what "principal residence" meant especially given the fact that she owns multiple properties and is a landlord. Additionally, it appears from the documentation submitted for this hearing Ms. Favali still does not seem to understand the concept of principal residency.

“nights” living at the subject property during the months of November and December 2023 and January, February, March, April, May, June and July 2024. If this list were accurate, Mr. Mack from his office directly across the street would see Ms. Favali or her car more than once or twice a week.

The other problem with Ms. Favali’s “Principal Residence Tally” as argument to prove that the property is her principal residence is the presumption that somehow a log identifying a specific number of days that amount to “six months and a day” over a 24-month period satisfies the legal definition of “domicile”. While this tally may or may not work for a person seeking to establish residence for tax purposes, nothing in the legal definition of domicile nor the *Oglesby* case requires a set number of days to determine principal occupancy. Rather it is a person’s *intent* as shown through that person’s actions that identify a property as their “home” or “domicile”.

Ms. Favali through her own submissions and testimony during the hearing continues to rent rooms on a monthly basis and allows those tenants to sublet their rooms in the subject property. The Hearing Examiner finds this rotating “roommate” practice also to be contrary to a finding that the subject property is indeed Ms. Favali’s principal residence.

The Hearing Examiner finds the testimony of witnesses in opposition credible. All of the witnesses in opposition have lived on the street for many years and live either directly adjoining, confronting or are within a few houses of the subject property. Each witness described similar observations of the comings and goings at the subject property including not seeing Ms. Favali or seeing Ms. Favali merely visiting or maintaining the property, but not occupying the property as her principal residence. In contrast, the Hearing Examiner struggled to find Ms. Favali’s direct evidence or testimony supportive of her contention that she occupies 7709 Oldchester as her

principal residence persuasive. Ms. Favali's behavior prior to and including the past 12 months at the subject property indicates the actions of a landlord, not an owner occupant. The creation of number of night "tally" does not amount to proof of principal residency over the past 12 months nor does it prove her intent to occupy the property as her principal residence in the future.

V. CONCLUSION AND ORDER

For the foregoing reasons, it is this 17th day of January 2025, ORDERED, that the objections filed to the Director's Findings in License Application No. 151423, located at 7709 Oldchester Road, Bethesda, Maryland 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.



Kathleen E. Byrne
Hearing Examiner

Copies to:

Ms. Flavia Favali
Ms. Carri Bennet
Mr. Dan Chappell
Mr. David Goodfriend
Ms. Georgia Jaitly
Mr. Fred Malek
Mr. Kenneth Mack
David Johnson, Housing Code Inspector II
Clifton Bouma, Program Specialist II

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](tel:240-777-9401)

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