

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY, MARYLAND

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

APPLICANT'S MEMORANDUM REGARDING QUESTION OF RESIDENCY

In accordance with the Hearing Examiner's request for the Parties' construction of "principal residence" as used in connection with Montgomery County Code Section 29-21(b)(1)(B), Applicant Flavia M. Favali, by counsel, hereby submits as follows:

As noted by the Hearing Examiner, Montgomery Council Bill 31-12 modified the statutory language deleting the occupancy requirement 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.

Ms. Favali has testified under oath that she, in fact, has occupied 7709 Oldchester Road, and has introduced corroborating testimony by multiple friends, relatives and roommates. She also has provided copies of official government checks demonstrating that Montgomery County, the Comptroller of Maryland and the U.S. Treasury identify this property as her address. Moreover the persons challenging Ms. Favali's application have complained that her car is regularly parked at the Oldchester premises. HOWEVER, even if this were not the case, 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.

Perhaps most relevant to this case 26-03, the statutory language does not clearly require that the Applicant be the primary resident at this time. In the instant case, the ADU has yet to be constructed. As Ms. Favali repeatedly has testified, she intends to build an ADA compliant accessory dwelling unit which she they will occupy as her permanent residence. She has

described the health issues which mandate her that she have an ADA compliant living space in order to age in place

Although beyond the scope of the Hearing Examiner's question regarding primary residency, she also has noted that 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 requirements. 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 ADU will far exceed County parking requirements, and as the Objectors have testified that they, their children, guests and presumably also their children's guests, routinely park on Oldchester Road, it is evident that there is no negative impact on the neighbors' parking.

The only other existing licensed ADU on Oldchester Road is three blocks away on the other 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.

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.

Respectfully submitted,

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