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# Transcript of Hearing

**Date:** December 18, 2020

**Case:** ADU 21-01 - Pavitra and Richard Bacon, In Re:

**Planet Depos**

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Conducted on December 18, 2020

<p style="text-align: center;">1</p> <p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 -----x</p> <p>4 In Re: :</p> <p>5 ADU LICENSE APPLICATION : Case No. ADO-21-01</p> <p>6 NO. 116646 :</p> <p>7 PAVITRA AND RICHARD BACON. :</p> <p>8 -----x</p> <p>9</p> <p>10 HEARING</p> <p>11 Before Hearing Examiner Lynn A. Robeson Hannan</p> <p>12 Conducted Virtually</p> <p>13 Friday, December 18, 2020</p> <p>14 9:30 a.m.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job: 342880</p> <p>24 Pages: 1 - 86</p> <p>25 Transcribed by: Molly Bugher</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">C O N T E N T S</p> <p>2 PAGE</p> <p>3 ARGUMENT</p> <p>4 Mr. Brown 13</p> <p>5 Ms. Gaul 29</p> <p>6 Ms. Bacon 52</p> <p>7 TESTIMONY</p> <p>8 Clifton Bouma 34</p> <p>9 Ivan Eloisa 42</p> <p>10 Richard Bacon 68</p> <p>11 Ozan Koknar 76</p> <p>12 CLOSING STATEMENTS</p> <p>13 Mr. Brown 79</p> <p>14 Ms. Bacon 83</p> <p>15</p> <p style="text-align: center;">E X H I B I T S</p> <p>17 PAGE</p> <p>18 Exhibit 13-C Land Survey 12</p> <p>19 Exhibit 19-A Science Memo 14</p> <p>20 Exhibit 19-C 2013 Legal Memorandum 50</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>2 ON BEHALF OF MONTGOMERY COUNTY:</p> <p>3 VICKIE GAUL, ESQUIRE</p> <p>4 OFFICE OF THE COUNTY ATTORNEY</p> <p>5 101 Monroe Street</p> <p>6 Third Floor</p> <p>7 Rockville, Maryland 20850</p> <p>8 Phone: (240) 777-6700</p> <p>9</p> <p>10 ON BEHALF OF OBJECTORS, WILLIAM AND BRUNA CHERNICOFF</p> <p>11 AND OZAN AND SERPIL KOKNAR:</p> <p>12 DAVID W. BROWN, ESQUIRE</p> <p>13 KNOPF &amp; BROWN</p> <p>14 401 E. Jefferson Street</p> <p>15 Suite 206</p> <p>16 Rockville, Maryland 20850</p> <p>17 Phone: (301) 545-6100</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>2 HEARING EXAMINER ROBESON HANNAN: I'm calling the case</p> <p>3 of -- OZAH case number 21-01, an objection to the issuance</p> <p>4 of accessory dwelling unit license number 116646. The</p> <p>5 subject property is located at 612 Potomac Avenue, Silver</p> <p>6 Spring, Maryland. And for the record, we are -- I'm going</p> <p>7 to be referring to accessory dwelling units, either this</p> <p>8 one or in general as ADU.</p> <p>9 My name is Lynn Robeson Hannan. I'm the hearing</p> <p>10 examiner assigned to this case. All of the testimony and</p> <p>11 evidence has to be presented at this hearing and I then</p> <p>12 have 30 days after the close of the record to issue a</p> <p>13 decision. If you disagree with my decision, you may appeal</p> <p>14 it to the circuit court in accordance with the Maryland</p> <p>15 rules of civil procedure.</p> <p>16 A word about our --</p> <p>17 Yes, can you hear Ms. Bacon? Okay.</p> <p>18 Will the parties please identify themselves for the</p> <p>19 record?</p> <p>20 MR. BROWN: David Brown here for the Objectors. I</p> <p>21 believe that at least one of my Objectors is on the line,</p> <p>22 Mr. --</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Wait.</p> <p>24 MR. BROWN: Ozan Koknar.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Yes. Okay. I am --</p>

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5	1 I am getting a chat from both Ms. Bacon and Vicki Gaul from 2 DHCA that says they can't hear the conversation. 3 Can -- Ms. Bacon, can you hear? 4 Okay. 5 MR. BROWN: She may be on mute. 6 HEARING EXAMINER ROBESON HANNAN: Yes. Let me see; 7 she is on mute. So she -- 8 Is Nana on this meeting? 9 MS. JOHNSON: Yeah, I'm here. 10 HEARING EXAMINER ROBESON HANNAN: Nana, that's -- for 11 the record, it's Nana Johnson, OZAH's administrative 12 assistant. Is it possible to contact her -- 13 MS. JOHNSON: I don't have a number. That's the 14 thing. I haven't -- she didn't give us the number, but she 15 can type into the chat -- 16 MS. BACON: Yeah, good morning. This is Pavitra and 17 Richard Bacon. We are just using the telephone dial in for 18 audio. 19 HEARING EXAMINER ROBESON HANNAN: Okay. 20 MS. JOHNSON: Very good. Okay. 21 HEARING EXAMINER ROBESON HANNAN: So is -- so Ms. 22 Bacon, you are on and you can hear? 23 MS. BACON: Yes, we can now. 24 HEARING EXAMINER ROBESON HANNAN: All right. Okay. 25 And can you see the video?	7	1 HEARING EXAMINER ROBESON HANNAN: We are going to try 2 this again. Mr. Brown, I don't have your video either. 3 MR. BROWN: I can see myself on my video. 4 MS. BACON: And we can see Mr. Brown too. 5 MS. JOHNSON: Yeah, his video is on. His video is on. 6 HEARING EXAMINER ROBESON HANNAN: Okay. 7 So with that, I am going to start the meeting again 8 and -- let's start again. Let's have the parties identify 9 themselves for the record. I believe Mr. Brown already did 10 that. 11 Ms. Bacon, or would the license Applicants please 12 identify themselves for the record? 13 MS. BACON: Sure. My name is Pavitra Bacon. 14 MR. BACON: My name is Richard Bacon. 15 HEARING EXAMINER ROBESON HANNAN: Okay, thank you. 16 And you need to state your -- well, we all know your 17 address, but please state your name and email addresses, 18 please. 19 MS. BACON: Sure, Pavitra Bacon. Our email address is 20 TheBacon612@gmail.com. 21 MR. BACON: And I'm Richard Bacon, same email address. 22 HEARING EXAMINER ROBESON HANNAN: Okay. A few words 23 about Microsoft -- our remote hearing. We do not use the 24 chat function. So because of the possibility of ex parte 25 communication, while the chat function can be seen by
6	1 MS. BACON: No, we cannot, no. 2 HEARING EXAMINER ROBESON HANNAN: Are you -- okay. So 3 you are participating by phone. 4 MS. BACON: Correct, but we're going to try to just -- 5 if it's okay, just log off and log back in to see if that 6 helps in the Teams meeting. 7 HEARING EXAMINER ROBESON HANNAN: Okay. 8 MS. BACON: And we'll stay on the phone. 9 HEARING EXAMINER ROBESON HANNAN: We are going to go 10 off -- don't close -- nobody go off the meeting, but we are 11 going to recess for five minutes and let them log off and 12 try to get back on. 13 Ms. Gaul, we can see your video. I didn't know if you 14 knew that. 15 MS. GAUL: Yeah, I just (inaudible) my phone. 16 HEARING EXAMINER ROBESON HANNAN: Okay. You're going 17 to get feedback in the Microsoft Teams meeting if you have 18 both the phone and your computer speakers on at the same 19 time. So with that, we're going to take a five minute 20 recess and we will be back at 9 -- or maybe it better be 10 21 minutes depending on how long it takes her to reboot. So 22 it's -- so that will be 9:45. Okay. Thank you. 23 MS. GAUL: Thank you. 24 MS. BACON: Thank you. 25 (A brief recess was taken.)	8	1 everybody, many people don't realize it's there. So do not 2 use the chat function to participate in the hearing. 3 If you wish to say something and you wish me to 4 recognize you, then if you hover over the middle of your 5 screen, there is a raise hand button. I can keep track of 6 the raise hand button. And so if you want to be recognized 7 or object, please use that. If you are on the phone, if 8 you are connecting by phone, you get a free pass, and so 9 you can verbally object. 10 Some other things are the hearing is being recorded 11 via Microsoft Teams, but that is not the official -- that 12 is not an official transcript. You'll see at the top of 13 the screen that it's being recorded. I just dismissed it. 14 But that is only to help the court reporter. And Microsoft 15 Teams meeting, it's important not to interrupt, not to have 16 crosstalk because that really impacts the ability of the 17 court reporter to understand what's going on. So that's 18 why we provide the Microsoft Teams recording to the court 19 reporter, but it is -- we do not disseminate it to the 20 parties because it is not official. The court reporter's 21 is official. 22 I am the only one that can control the presentation of 23 exhibits. So I have -- I will be sharing my screen with 24 the exhibits and I will be, based on your testimony, I will 25 be moving the cursor, but I ask you, and this is the same

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<p style="text-align: center;">9</p> <p>1 in hearings, it's helpful not to say here, the because this 2 goes to the circuit court on a transcript and the 3 transcript doesn't know where here and there is. So try 4 to, if you are talking about a place or a plan, try to 5 identify it. 6 I do have preloaded, and I'm going to share my 7 screen -- I do have preloaded the land survey tech. I 8 think it is called -- stamped parking in the record. And 9 if anyone needs to access that, it is exhibit, I think 13. 10 It's Exhibit 13C. All right. With that, are there any 11 preliminary matters? 12 MS. BACON: I would just ask if folks aren't 13 talking -- 14 HEARING EXAMINER ROBESON HANNAN: Can you identify who 15 is speaking? 16 MS. BACON: Sure, this is Pavitra. 17 HEARING EXAMINER ROBESON HANNAN: Oh, this is Ms. 18 Bacon, okay. 19 MS. BACON: I just wanted to ask, I think there are a 20 few people off mute and I'm hearing an echo. I'm just 21 going to request that if you're not speaking, please just 22 go on mute. Thank you. 23 HEARING EXAMINER ROBESON HANNAN: I hear the echo as 24 well. Okay. With that, let's go to preliminary matters. 25 Does anyone have preliminary matters?</p>	<p style="text-align: center;">11</p> <p>1 MS. BACON: Okay. Yeah, and in terms of the facts, I 2 just want to be clear, I don't believe there is any dispute 3 with regard to the primary residence, parking, the 4 apartment entrance, apartment address, address the same as 5 the house. Those are the findings in the report of 6 findings at issue. I believe the only issue that Objectors 7 have raised is with regard to the zoning review. And with 8 regard to that, I don't think there is any dispute, for 9 example, that this is in R60 zone where ADUs are listed as 10 limited use or anything factual like that. 11 HEARING EXAMINER ROBESON HANNAN: Okay. Well it 12 sounds to me -- I do have just one question so I can orient 13 myself to this. Can you identify which -- well, I have to 14 put you under oath. So please raise your right hand. 15 Do you solemnly affirm under penalties of perjury that 16 the statements you're about to make are the truth, the 17 whole truth and nothing but the truth? 18 MS. BACON: I do. 19 MR. BACON: I do. 20 HEARING EXAMINER ROBESON HANNAN: Well, Mr. -- was 21 that -- oh, that's Mr. Bacon. 22 MR. BACON: It's Mr. Bacon. Sorry, yes. 23 HEARING EXAMINER ROBESON HANNAN: Can you just tell me 24 where the Objectors live vis-à-vis your property? 25 MR. BACON: So the Chernicoffs live, if you're facing</p>
<p style="text-align: center;">10</p> <p>1 (Discussion off the record; technical difficulty). 2 HEARING EXAMINER ROBESON HANNAN: Let's try again. 3 Are there any preliminary matters? 4 Hearing none, the proceedings in this case are 5 informal, but with certain formalities. Testimony is under 6 oath and subject to cross-examination. The order of 7 proceeding is the opening statements, the Objectors case, 8 the license Applicants case, and then rebuttal. 9 I do have a question. Is there any dispute over the 10 facts in this case? 11 MR. BROWN: Chair Hannan, in my view there is not. 12 The might be one or two issues that might need 13 clarification, but we do not intend to present any 14 testimonial facts this morning. 15 HEARING EXAMINER ROBESON HANNAN: All right. 16 Ms. Bacon, is there anything -- do you have any facts 17 you want to present? Which, I will accept, seeing what Mr. 18 Brown said, I will accept all the exhibits as exhibits in 19 the record unless there is an objection. But most of them 20 are official documents. So is there any objection to 21 accepting these exhibits? 22 MS. BACON: No, there is not. I assume these are just 23 the documents that are been shared by email and -- 24 HEARING EXAMINER ROBESON HANNAN: They are off the 25 website.</p>	<p style="text-align: center;">12</p> <p>1 our house from the street, immediately to our left. And 2 the Koknars live behind our house, sort of slightly offset 3 to the left as well. 4 HEARING EXAMINER ROBESON HANNAN: Does it -- okay. 5 MR. BACON: So they're on the other street but about 6 directly behind our house. 7 HEARING EXAMINER ROBESON HANNAN: Okay. Let me just 8 show you -- this is Exhibit 13C. Let me see if I can make 9 it bigger. Well, I -- there. Is lot 45 -- 10 MS. BACON: Lot 45 is not an Objector in this case. 11 They have also not participated in the Board proceedings or 12 the -- and they are not a party to the circuit court case. 13 So the Objectors are a lot -- is that 83? It's -- 14 MR. BACON: Where your cursor is. 15 MS. BACON: Yeah, where your cursor -- oh, sorry, it 16 looks like it went (inaudible). 17 HEARING EXAMINER ROBESON HANNAN: Well I -- but I 18 understand it's to the southeast of the site. 19 MR. BACON: Yes, that looks correct. 20 MS. BACON: Correct. And then it's also -- the other 21 neighbors are behind what's the garage here. 22 MR. BACON: So if you -- 23 HEARING EXAMINER ROBESON HANNAN: Where it says out 24 lot A? 25 MS. BACON: No.</p>

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<p style="text-align: right;">13</p> <p>1 MR. BACON: So out lot A is -- they are not 2 participating. It's also more or less a vacant lot. 3 HEARING EXAMINER ROBESON HANNAN: Okay. 4 MR. BACON: There is a -- 5 MS. BACON: There is a shed. 6 MR. BACON: A shed there, but there is no one -- it's 7 not anyone's primary residence. The other people that are 8 objecting are basically where your cursor is now. 9 HEARING EXAMINER ROBESON HANNAN: Which is -- which is 10 southwest of the property? 11 MR. BACON: Yes. 12 MS. BACON: Yes. 13 HEARING EXAMINER ROBESON HANNAN: Thank you. All 14 right. 15 Mr. -- seeing that there is agreement on the facts, 16 Mr. Brown, do you want to present your argument? 17 MR. BROWN: That's exactly what I would like to do. 18 I -- this is not going to be a long case. I -- it's going 19 to take me about 10 to 15 minutes to go through and 20 summarize an update what we've already presented. So with 21 that, I will start now. 22 HEARING EXAMINER ROBESON HANNAN: Okay. 23 MR. BROWN: I have reviewed the materials that you 24 intended to take judicial notice of. I have no objection 25 to them. I find the material helpful in trying to sort out</p>	<p style="text-align: right;">15</p> <p>1 which requires a finding by the DHCA designee that the ADU 2 satisfies the standards in 59-3.3.3. That's in section 3 29-19 B 1 d i. 4 An agreed person, and this would surely include 5 abutting property owners, may file an objection to issuance 6 of a license with OZAH, quote "objecting to any finding of 7 fact by the director." I'm quoting from 29-26 B 2 A. An 8 OZAH decision is appealable to circuit court under B 12 and 9 that appeal does not stay issuance of the license. Now the 10 phrase, finding of fact by the director, seems somewhat 11 anomalous and that if there is to be a meaningful appeal 12 right to circuit court from an OZAH decision, the phrase 13 must include OZAH's ability to judge the correctness of the 14 DHCA finding that the ADU satisfies the standards of 15 59-3.3.3. 16 I think the proper way to look at those words in this 17 case is to conclude that one of the, quote, facts, unquote, 18 OZAH can sit in review of is to whether the director can 19 even make a finding of zoning compliance at this time and 20 if you find that such a finding is possible now, OZAH 21 should be able to review its correctness. Otherwise the 22 zoning violation could go on uncorrected because there is 23 no other avenue of zoning compliance review in the ADU 24 licensing statute. Now, that's how I see the overall 25 relationship of these provisions in the ADU licensing</p>
<p style="text-align: right;">14</p> <p>1 the not so simple relationship between DHCA, OZAH, the 2 board of appeals, and DPS, all of which can be implicate in 3 one way or another in the process of adding an ADU to a 4 property and then licensing it. 5 I want to speak generally first. According to Exhibit 6 19-A, the Science memo from January of 2013 at page 8, the 7 DHCA license is not to issue until all required 8 improvements have been completed and inspected by DHCA. I 9 think this expectation is consistent with the review and 10 approval process set forth in 29-19 B 2. Whether it is 11 being followed or not in this case or in any other case is 12 another question. And I am not making a claim on that. 13 Moving on, if a building permit is needed for the ADU 14 and that is not always necessarily so, its issuance by DPS 15 would be subject to appeal to the board of appeals. By the 16 same token, the building permit were denied by DPS subject 17 to approval of variances, the Board would be involved in 18 whether to issue them. And of course any board decision up 19 or down on a permit or a variance is subject to appeal to 20 the circuit court. 21 In any of these situations, whether the ADU was in 22 compliance with the zoning ordinance centers and 59-3.3.3 23 could be an issue entirely outside the purview of the ADU 24 licensing process. But such compliance is also an issue in 25 the ADU licensing process as we see in section 29-19 B</p>	<p style="text-align: right;">16</p> <p>1 process. 2 I just want to now turn to the specifics of this 3 particular case. My clients filed an appeal for two main 4 reasons, neither of which is a quote, thinly veiled 5 attempt, to quote the Bacons, to manufacture a stay of 6 anything. First, they are of the view that zoning 7 compliance cannot or should not be found for the ADU 8 license at this time. The main reason for this is that the 9 validity of the variances that would supposedly allow the 10 structure to become an ADU is not a final decision. 11 This rationale is grounded in the principle of orderly 12 administrative review. Just as a license should not be 13 issued for an ADU that exists only on paper, a license it 14 should not issue while the legality of the ADU structure 15 itself is still up in the air. In this case, I believe the 16 ADU -- the ADU is inchoate from both perspectives. Its 17 validity is at issue and the work to convert the garage to 18 an ADU, so far as my clients can tell, has not even 19 started. Maybe the Bacons can provide some additional 20 information on that point because we just don't have the 21 information. 22 HEARING EXAMINER ROBESON HANNAN: Wait, what have -- 23 pardon me. What information do you not have? I was 24 writing. 25 MR. BROWN: I don't have information as to what extent</p>

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<p style="text-align: right;">17</p> <p>1 they have actually begun or completed the process, 2 conversion of their garage, into an actual living unit. 3 HEARING EXAMINER ROBESON HANNAN: And why does that 4 matter? 5 MR. BROWN: Well, I'm just -- I believe that if I 6 understand correctly, the licensing process, you're not 7 supposed to license something until it is reviewed and 8 inspected, not something that is still in the middle of 9 construction. But I guess you will have to hear from DHCA 10 on that. I mean, that's how I read the statute. That's 11 how Jeff Science read the statute back in 2013. 12 Now the Bacons have seized on the question that you 13 raised, whether the license appeal is being improperly used 14 to obtain a stay at the building permit issued by DPS. On 15 this point, I need to first correct something in my 16 prehearing statement. When Delvin Daniels told me he was 17 unaware of the variance appeal when he gave the project 18 zoning approval in November -- 19 HEARING EXAMINER ROBESON HANNAN: Wait, I remember 20 that name, but can you -- for my -- 21 MR. BROWN: Delvin Daniels is the person who did the 22 zoning review on the permit for the -- for the AD -- for 23 the conversion of the garage to the ADU. 24 HEARING EXAMINER ROBESON HANNAN: Now are -- is he 25 with -- is he with DHCA or DPS?</p>	<p style="text-align: right;">19</p> <p>1 Brown. I apologize. I do see a hand raised by Vicki Gaul. 2 MR. BROWN: Okay. 3 HEARING EXAMINER ROBESON HANNAN: But I'm going to let 4 you finish so we can have an orderly proceeding. 5 MR. BROWN: Okay. 6 HEARING EXAMINER ROBESON HANNAN: So I would like you 7 to finish and then I will address Ms. Gaul's -- 8 MR. BROWN: All right. 9 HEARING EXAMINER ROBESON HANNAN: Go ahead. I 10 apologize. 11 MR. BROWN: It's all right. 12 The other reason why 59-3.3.3 compliance cannot be 13 found now is that the record in this case shows that the 14 structure to be converted into an ADU is a lawful 15 nonconforming use. There is no dispute about that. 16 Everybody that has looked at this has agreed that that is 17 the situation. Both generally in section 59-7.7.1.8.1 and 18 specifically as to ADU conversion and 59-3.3.3.C.2.B, B as 19 in bravo, the height of a lawful nonconforming structure 20 may not be increased, period, full stop. There could be no 21 dispute about that either. 22 It is true that a lawful nonconforming use can be 23 cured of its nonconformity, in this case a too small side 24 yard setback, by eliminating the encroachment. But that's 25 it. Getting a variance to excuse the encroachment is</p>
<p style="text-align: right;">18</p> <p>1 MR. BROWN: He is with DPS. He does zoning review or 2 DPS. He's been doing it there for years. So he told me he 3 was unaware of the variance appeal when he gave the project 4 zoning approval in November. And I figured that he would 5 have known about it if the Bacons had notified DPS of the 6 appeal. But it turns out I was mistaken. The Bacons had 7 already notified Mark Beall in DPS, but apparently Mark did 8 not mention it to Delvin. I assumed they would be talking 9 to each other and I was wrong. I apologize for that error. 10 In any case, the license appeal here is not some 11 disguised effort to achieve a stay. Since the board issues 12 at the variances, my clients have done nothing to prevent 13 the Bacons from going forward with completing their ADU 14 conversion. They have sought no stays. It is up to the 15 Bacons whether they want to take the risk that the 16 conversion will be later invalidated in court. The license 17 appeal cannot possibly change that status quo unless and 18 until the ADU is complete, inspected, and ready for use and 19 the license appeal remains undecided. 20 And if my information is correct, readiness for 21 license issuance is still quite some time off, but the 22 appeal is being decided now, promptly as intended. The 23 other reason why 59-3.3.3 compliance cannot be found is 24 the -- 25 HEARING EXAMINER ROBESON HANNAN: Just one second, Mr.</p>	<p style="text-align: right;">20</p> <p>1 unnecessary. It's already a lawful structure that may be 2 used. By law however, it just can't be increased in 3 height, floor area, or footprint. A variance cannot change 4 the fact of nonconformity anyway. 5 It is absurd to think that the board of appeals can, 6 by issuing a variance, somehow transform a lawful, 7 nonconforming building into a conforming building not 8 subject to the lawful nonconforming structure height limit. 9 The Board has no authority to rewrite the legislative 10 remnants on use of lawful nonconforming buildings. Now, I 11 do not know the precise reason why the county attorney 12 elected not to defend the Board's decision in the variance 13 case now on appeal that did validate a height increase in 14 the Bacons lawn -- lawful nonconforming garage. But the 15 Bacons nevertheless expressed confidence that they were 16 going to prevail in that appeal. In my opinion, that 17 confidence is not justified. 18 Perhaps you might conclude that it is not your role to 19 opine on that question in this license appeal. As I said 20 in my appeal papers, I do not think it is necessary for you 21 to get into the merits of the court case. So I would not 22 quarrel with that decision if you make it, if that is your 23 inclination. 24 But even then I would ask you to consider injecting a 25 note of common sense into this case. Is this an excellent</p>

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<p style="text-align: right;">21</p> <p>1 opportunity for you to suggest to the Bacons that that 2 might want to consider their own self-imposed stay? You 3 could achieve this in much the same way a mediator might 4 whether you grant or deny the appeal by letting them know 5 that if they go forward with the conversion while the court 6 case is pending, they are at substantial risk of wasting a 7 lot of money on the doomed project that will have to come 8 down. That's it on the first reason for this appeal. 9 The second reason for the appeal is to make very clear 10 on the record that my clients are not consenting to any 11 aspect of the regulatory process leading to approval of the 12 ADU. So this appeal is secondarily designed to preserve 13 their objection to license issuing to the extent they have 14 a right to object. So if you deny the appeal for any 15 reason, the record will be clear that my clients did not 16 waive their objection to license issuance. 17 HEARING EXAMINER ROBESON HANNAN: You mean they 18 haven't exhausted their administrative remedies? 19 MR. BROWN: That's another way to put it, thank you. 20 I'm through, thank you. 21 HEARING EXAMINER ROBESON HANNAN: Okay. Let me just 22 before I recognize anyone else, I have questions. One is, 23 the case law is clear. First of all, this is a final 24 decision. Or the board of appeals decision is a final 25 decision or you wouldn't be able to appeal it to the</p>	<p style="text-align: right;">23</p> <p>1 purposes of being allowed to go forward with their 2 construction and we are not contesting that. 3 There is also a concept of finality with a regard to 4 whether or not a controversy is finally concluded with a 5 final decision of the -- the concept that is used in the 6 res judicata concepts, which we're nowhere near reaching 7 that level of finality yet. And in my view, the licensing 8 process should take into account the fact that it would 9 make orderly sense for the final decision, or the final 10 determination on licensing to await the completion of the 11 project and if possible a determination as to whether or 12 not the administratively final decision is also judicially 13 final. 14 I'm not making the case that you necessarily have to 15 rule that way, but it just seems to me to be the common 16 sense way to do it, the same way one ought not to be 17 issuing licenses for ADUs that exist only on paper before 18 they are actually constructed and inspected. 19 With regard to what the board of appeals did, the 20 board of appeals made absolutely no rulings on zoning 21 compliance with respect to an ADU. They were simply asked 22 to approve variances for the -- for a structure that's on 23 their property, and they did, without regard to even 24 looking at the prohibition on an increase in the height 25 limit, they allowed an increase in the height limit. It</p>
<p style="text-align: right;">22</p> <p>1 circuit court. 2 MR. BROWN: That's correct, but -- 3 HEARING EXAMINER ROBESON HANNAN: Just a second. 4 The question is, they have a right under case law to 5 proceed at their own risk. And I -- I don't have the cite, 6 but there is a case, City of Bowie that dealt with a lot of 7 these issues. And basically the court, Judge Cappel said 8 they have the right to proceed. So in the juxtaposition of 9 the various approvals, because you're right, we've got 10 three agencies involved. In the juxtaposition of the 11 various approvals, there is a final decision under case law 12 on -- isn't there -- I guess I will say, isn't there a 13 final decision under case law. That's one. Two -- 14 MR. BROWN: Well -- 15 HEARING EXAMINER ROBESON HANNAN: My review is to -- I 16 can only -- my review is limited under 2926 to an appeal or 17 to the director's findings. Now the director's finding is 18 based on a final decision by the board of appeals. And the 19 board of appeals decision, I believe, is final. So why can 20 I get into attacking the board of appeals decision? I 21 don't see the way to attack the board of appeals decision 22 because that's essentially what you are wanting to do. Now 23 I have more questions, but can you address those? 24 MR. BROWN: Well first of all, there are at least two 25 concepts of finality. There is finality I guess for</p>	<p style="text-align: right;">24</p> <p>1 seems to me to be such a flagrant violation of what the -- 2 of the jurisdiction of the board of appeals, that I don't 3 see why you couldn't take that into account in actually 4 determining whether or not there is compliance with the 5 standards for an ADU. 6 HEARING EXAMINER ROBESON HANNAN: Well, you know, I 7 don't want to get too much into the variance. But the 8 zoning ordinance, if I recall the variance section, says 9 that you can get a variance from any requirement of this 10 chapter. Whether that makes sense or not, I'm not sure 11 that that's before me. That's kind of looking at what the 12 board of appeals did. 13 MR. BROWN: Well, I can tell you this, I had reported 14 in my prehearing statement that the last of the briefs on 15 this matter would be filed in circuit court by December 15. 16 That issue is directly addressed in those briefs and those 17 briefs are all filed and we are waiting to hear from the 18 court as to an oral argument date and I haven't heard of 19 one yet. But presumably there will be one in the next 20 month or so. 21 HEARING EXAMINER ROBESON HANNAN: Well, my second -- 22 you know, I'm moving on to another topic. I said the 23 legislative history because it's pretty clear to me from 24 the legislative history of the ADU ordinance that they 25 want -- the Council wanted to remove barriers to getting</p>

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<p style="text-align: right;">25</p> <p>1 the ADU. The director's findings are preliminary subject 2 to the objection. And the streamlining process was part 3 of -- you know, that was part of the streamlining process. 4 If you can stay the license according to your -- not stay 5 the license. I know you're saying that you don't want a 6 stay, but if you can delay issuance of the license, then 7 you are essentially saying, I mean, anybody could delay 8 issuance of the license, even frivolous claims -- all you 9 would have to do is file suit. And under your argument, it 10 would have to go up to the court of appeals before the 11 person could build their house or their ADU. 12 MR. BROWN: Well, let me pose the following 13 hypothetical question. And I don't think it's very 14 hypothetical actually. I believe that it is possible that 15 some ADUs could be -- could apply for licenses without ever 16 having had to go through any kind of board of appeals 17 approval or process other than getting a building permit. 18 Or maybe even they wouldn't need a building permit. I'm 19 not sure. But my question is this; where in this mechanism 20 is there an opportunity for an abutting property owner to 21 say that someone has made a mistake in concluding that this 22 project complies with 59-3.3.3? There has to be a -- 23 HEARING EXAMINER ROBESON HANNAN: (Inaudible). 24 MR. BROWN: There has to be a mechanism for that. 25 HEARING EXAMINER ROBESON HANNAN: There is. You're</p>	<p style="text-align: right;">27</p> <p>1 the case law that says they can proceed with subsequent 2 approval? 3 MR. BROWN: If you make that decision, it's one that I 4 think I would not be prepared to say was legally erroneous. 5 I do believe however, that you could also find that it 6 would be reasonable for DHCA to conclude that zoning 7 compliance is not -- cannot be found while this matter is 8 still in litigation. But that's that also I think would be 9 a legally defensible outcome because I don't think the 10 statute is terribly clear either way. 11 But your hypothetical does not address the question of 12 what is -- where is the mechanism for judicial review of 13 the determination that an ADU that does not go through the 14 Board is zoning compliant. I guess I'm looking for 15 clarification that the OZAH jurisdiction over facts found 16 by the directors also includes the correctness of his 17 finding that the ADU meets the standards of 59-3.3.3. 18 Maybe it's not necessary to make that ruling in this case, 19 but I'm confused the way it's worded. 20 HEARING EXAMINER ROBESON HANNAN: I apologize for 21 laughing, but it is, yes, it's complicated. I'm just at -- 22 give me a moment. I'm writing down that point. Thank you. 23 Okay. Anything else Mr. Brown? 24 MR. BROWN: No, that's covered it. Even as I said, 25 even if you rule against me, we have made our record that</p>
<p style="text-align: right;">26</p> <p>1 doing it in circuit court. 2 MR. BROWN: That's only because this case went through 3 the board of appeals. There may be other cases that don't 4 go through the board of appeals. 5 HEARING EXAMINER ROBESON HANNAN: Well, if it doesn't 6 go through, I think we're dealing with the juxtaposition of 7 cases. 8 Ms. Bacon, I see your hand. You can leave it up, but 9 I'm going to get through my questions and then I will give 10 you a chance to respond. 11 So what you are saying is -- then what I'm hearing you 12 say, and correct me please if I'm wrong. What you are 13 saying is any time a variance is required, then the license 14 can't issue if you -- is someone disagrees with the board 15 of appeals decision on the variance. 16 MR. BROWN: I think that's a logical and orderly way 17 to interpret the relationship of these statutes, yes. 18 HEARING EXAMINER ROBESON HANNAN: But doesn't it go 19 against -- doesn't that go against the case law saying we 20 can proceed? I mean, you are arguing a practical argument, 21 which I understand completely. But doesn't that go against 22 the case law that says you can proceed? You have the right 23 to pursue subsequent approvals and it is that the property 24 that's there is no question that it's at the property 25 owner's risk, expensive risk. But doesn't it go against</p>	<p style="text-align: right;">28</p> <p>1 we are not consenting to this license. And I -- this is 2 just a -- even if it's not an opportunity to get a -- any 3 kind of a stay, I just wanted to make sure that the Bacons, 4 who I've, at this point have not really had an opportunity 5 to discuss this matter since very early in this case, to 6 know that their confidence that they're going to prevail in 7 this case is not widely shared and that if in fact -- 8 HEARING EXAMINER ROBESON HANNAN: Well that, I don't 9 have any record of widely shared. 10 MR. BROWN: All right. I understand. I'm just saying 11 that I think it would be better for all concerned if they 12 did a -- if they exercised a little bit of self-restraint 13 with regard to the conversion until the matter is resolved 14 in court. 15 HEARING EXAMINER ROBESON HANNAN: Very well. Thank 16 you. 17 Now Ms. Gaul had a hand up and I don't see it anymore. 18 And then I have a hand up from the Bacons. Ms. Gaul, let 19 me find out what your role is here and I would like to 20 recognize you before we go to the Bacons. So please go 21 ahead. 22 MS. GAUL: Thank you. This is Vickie Gaul. I wanted 23 to say that Mr. Brown's description of what the interaction 24 is between the zoning ordinance and -- 25 HEARING EXAMINER ROBESON HANNAN: First of all, just a</p>



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1 second. Can you identify who you are and who -- I know who  
2 you work for, but can you, for the record, identify who you  
3 are and who your client is?  
4 MS. GAUL: Yes. Good morning. This is Vickie Gaul on  
5 behalf of the Department of Housing and Community Affairs.  
6 I work for the office of county attorney.  
7 I merely wanted to provide some background about what  
8 DHCA's role is vis-à-vis chapter 29 in the zoning  
9 ordinance. As you can see in the license and registration  
10 document that they completed, it was a preliminary review  
11 about whether or not this property is capable of  
12 accommodating an ADU. And that's exactly what this is.  
13 DHCA is charged with administering chapter 29, chapter 26  
14 which is the building code, and a little bit of chapter  
15 28 -- excuse me, 8, which is the fire code. They are not  
16 in charge of zoning. So they have a very, mere basic  
17 finding about whether or not this property is in a zone  
18 that can accommodate an ADU, period, end of story.  
19 They do not get to either second-guess the board of  
20 appeals decision or even make any sort of underlying zoning  
21 determination on their own. That sort of gateway is in the  
22 building code. It -- excuse me -- in the DPS. When they  
23 issue a building permit, they determine whether or not the  
24 property is in compliance with zoning and they are the  
25 gatekeepers about whether or not this can go on.

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1 As you can see, this is just a very preliminary  
2 finding about whether or not this property can accommodate  
3 an ADU. It has absolutely no role in determining whether  
4 or not -- or undertaking its own determination and looking  
5 into the zoning of the property.  
6 And that's all I wanted to do is just since the issue  
7 was wherewith the second appeal be or where one might  
8 appeal this case if DHCA makes a determination and you find  
9 that there is no factual issue here, which I don't think  
10 there is, there is another bite of the apple at the point  
11 in which a building permit would be issued. If the  
12 building permit were issued and the abutting property  
13 owners didn't agree, they would have another opportunity to  
14 object.  
15 And that's all I want to say. Thank you for your time  
16 today and thank you for accommodating my computer issues.  
17 HEARING EXAMINER ROBESON HANNAN: Well, I have to  
18 disagree with you because -- having sat through so many  
19 work sessions. The director is charged with making a  
20 quote, preliminary finding. In other words, when he -- if  
21 you look at the preliminary findings, they don't just leave  
22 it up to DPS. They have to check off boxes. So there are  
23 preliminary findings they have to make. And to say that  
24 they leave it all up to DPS, in my opinion, is not accurate  
25 because they do go through the preliminary findings and

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1 then -- forget the juxtaposition with the board of appeals  
2 right now. But they do go through the preliminary  
3 findings. And then if it's appealed, OZAH makes the final  
4 findings.  
5 MS. GAUL: I agree with that. My statement was really  
6 in respect to Mr. Brown's query about it if we -- if  
7 they -- if we can't look at the underlying zoning in this  
8 proceeding despite the fact that there is no question of  
9 fact that this zone can accommodate an ADU, where might his  
10 clients have an opportunity to appeal. And what I was  
11 suggesting is that if a preliminary finding was made --  
12 HEARING EXAMINER ROBESON HANNAN: Let me interrupt  
13 you. It is not -- your question is not whether it can  
14 accommodate an ADU. That's not your question. That's not  
15 DHCA's question. DHCA's question is to look at these; they  
16 go out, they measure the driveway to see if there is two  
17 cars. They can fit the cars -- so it's not view this --  
18 look at the zone and say can accommodate an ADU. They look  
19 at the site plan and says -- say -- or whatever is in the  
20 record. They look at that and they say, does it meet this?  
21 Does it meet this? Doesn't meet this?  
22 MS. GAUL: Rights, of course. Of course. Of course.  
23 I merely speaking about this zoning question in this case.  
24 There's been no other dispute with respect to whether or  
25 not it's a house that can accommodate it because there is

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1 sufficient parking, because it is owner occupied, because  
2 the entrance to the proposed ADU is on the side of the  
3 property. All of those are included in Chapter 29 and all  
4 of those are part of the DHCA's consideration.  
5 I'm really speaking to the portion about what they do  
6 vis-à-vis the zoning determination. And that is really  
7 not -- they do not have the authority to go and object  
8 about whether or not something meets zoning. In other  
9 words, they don't do the kind of investigation Mr. Brown is  
10 suggesting in terms of whether or not these variances  
11 would, in fact, allow them to build the ADU. That's not  
12 their role here. Mr. Brown is attempting to --  
13 HEARING EXAMINER ROBESON HANNAN: Well, they do. They  
14 go out and they look at whether it complies with -- and Mr.  
15 Brown had all the citations. But whether it complies with  
16 the zoning, with --  
17 MS. GAUL: Right, that's it.  
18 HEARING EXAMINER ROBESON HANNAN: -- with the limited  
19 use standards.  
20 MS. GAUL: Right. I agree.  
21 HEARING EXAMINER ROBESON HANNAN: So you are saying if  
22 it has to get a variance, DHCA does -- can't do anything?  
23 MS. GAUL: Right. That's not its role. It's not a  
24 zoning entity. I mean, they don't enforce or administer  
25 zoning. They merely make a finding.

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1 HEARING EXAMINER ROBESON HANNAN: Well, okay. You  
2 need to -- they do, because they look at the limited use  
3 standards in the zoning ordinance. So if there is another  
4 way to say that, I would appreciate it.  
5 MS. GAUL: Well, they are not looking at whether or  
6 not the 5 foot setback is sufficient for the ADU. What  
7 they are looking at is whether or not the zone is a zone in  
8 which an ADU can be either constructed or rehabilitated or  
9 located in addition to --  
10 HEARING EXAMINER ROBESON HANNAN: I disagree with  
11 that.  
12 MS. GAUL: Well, you will hear from my client --  
13 please excuse me. You will hear from my client later. I  
14 think that there -- there is a suggestion that they must do  
15 more than in fact that they do. My suggestion is that at  
16 the end of the day the gatekeeper --  
17 HEARING EXAMINER ROBESON HANNAN: Well, they look at  
18 the limited use standard.  
19 MS. GAUL: That's right.  
20 HEARING EXAMINER ROBESON HANNAN: So you are saying  
21 all they -- all DH -- and I'm not -- if we can rephrase  
22 this. What they do is listen to the limited use standard.  
23 I mean, they --  
24 MS. GAUL: That's correct.  
25 HEARING EXAMINER ROBESON HANNAN: They apply the

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1 limited use standard.  
2 MS. GAUL: They ascertain, yes.  
3 HEARING EXAMINER ROBESON HANNAN: But they don't get  
4 into grandfathering and things like that. Is that what you  
5 are saying?  
6 MS. GAUL: Whether -- that's exactly what I'm saying.  
7 They are not making any determinations about --  
8 HEARING EXAMINER ROBESON HANNAN: I get that. I get  
9 that. Okay.  
10 MS. GAUL: Okay. Thank you for your time.  
11 HEARING EXAMINER ROBESON HANNAN: Thank you. Okay.  
12 Do we have anyone from DHCA that would like to testify? I  
13 see Mr. -- a hand raised by Mr. Bouma and Mr. Ivan Eloisa.  
14 Okay. Mr. Bouma, do you wish to go first?  
15 MR. BOUMA: Hi. Yes, this is Mr. Bouma.  
16 HEARING EXAMINER ROBESON HANNAN: Oh, Bouma. Okay. I  
17 apologize.  
18 MR. BOUMA: Yes, I work for the licensing and  
19 registration unit for the Department of Housing and  
20 Community Affairs.  
21 HEARING EXAMINER ROBESON HANNAN: And what's your  
22 street address -- business?  
23 MR. BOUMA: My office address is 1401, Rockville Pike.  
24 HEARING EXAMINER ROBESON HANNAN: Rockville, Maryland.  
25 MR. BOUMA: Correct.

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1 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead Mr.  
2 Bouma.  
3 MR. BOUMA: Bouma.  
4 HEARING EXAMINER ROBESON HANNAN: I'm sorry.  
5 MR. BOUMA: That's okay.  
6 HEARING EXAMINER ROBESON HANNAN: I did it again. All  
7 Mr. Brown's numbers are clouding my head.  
8 MR. BOUMA: That's okay.  
9 HEARING EXAMINER ROBESON HANNAN: Go ahead.  
10 MR. BOUMA: I just wanted to briefly describe my role  
11 in the process. When application is submitted, I --  
12 HEARING EXAMINER ROBESON HANNAN: Okay, wait. Before  
13 you do that I have to --  
14 MR. BOUMA: Okay.  
15 HEARING EXAMINER ROBESON HANNAN: So what I'm going to  
16 do is swear you in.  
17 MR. BOUMA: Okay, sure.  
18 HEARING EXAMINER ROBESON HANNAN: Please raise your  
19 right hand.  
20 Do you solemnly swear under penalties of perjury that  
21 the statements you're about to make are the truth, the  
22 whole truth, and nothing but the truth?  
23 MR. BOUMA: I do.  
24 HEARING EXAMINER ROBESON HANNAN: All right. Go ahead  
25 please.

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1 MR. BOUMA: Okay. Like I said, I just wanted to  
2 briefly describe what I do when I review an application.  
3 So as far as the zoning, which I believe is the issue here,  
4 as was stated by the attorney I researched the address and  
5 I checked the zone. In this case it's R60. I look at the  
6 zoning use table and I look and see if an attached or  
7 detached ADU is allowed in the zone. That is the extent of  
8 the zone review. Again, it is a preliminary report. So  
9 that is again, the extent of the --  
10 HEARING EXAMINER ROBESON HANNAN: But how can you  
11 check off the boxes that are in your preliminary findings?  
12 MR. BOUMA: Those aren't -- I go through --  
13 HEARING EXAMINER ROBESON HANNAN: You have side  
14 entrance in your preliminary findings.  
15 MR. BOUMA: So --  
16 HEARING EXAMINER ROBESON HANNAN: You have --  
17 MR. BOUMA: Okay. The owners submit an application  
18 and we input that information. That is all sent --  
19 HEARING EXAMINER ROBESON HANNAN: So you do review  
20 that?  
21 MR. BOUMA: Correct, but I thought the issue was the  
22 zoning review, which is what I was describing.  
23 HEARING EXAMINER ROBESON HANNAN: Well, the zoning  
24 review includes the side entrance. You know, those are all  
25 the limited standards in the zoning ordinance. That's in

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1 the -- of those requirements are in the zoning ordinance.  
2 MR. BOUMA: So for us, I don't --  
3 HEARING EXAMINER ROBESON HANNAN: Maybe that's where  
4 we are getting confused.  
5 MR. BOUMA: I only check if the -- the restrictions  
6 for ADUs are that the door may not be on the -- the  
7 entrance to the ADU may not be on the front of the house.  
8 So that is what I check for the entrance.  
9 HEARING EXAMINER ROBESON HANNAN: Right. But I guess  
10 the point is, those are the limited use zoning standards.  
11 That's the zoning ordinance that you are applying.  
12 MR. BOUMA: Okay. I mean, I have a checklist and  
13 those are the things I go through.  
14 HEARING EXAMINER ROBESON HANNAN: I understand. I  
15 understand. But it is a -- let me just see if I can -- Mr.  
16 Brown, can you give me the code section?  
17 MR. BROWN: Yes. The code sections 59-3.3.3 and the  
18 subsection is -- subparagraph C deals with detached  
19 accessory dwelling units. And inside of that section,  
20 subparagraph 2 includes several requirements and  
21 limitations on the detached ADU.  
22 HEARING EXAMINER ROBESON HANNAN: Well, there is also  
23 an A, 3.3.3 A, which should be on your screen.  
24 MR. BROWN: Those are general requirements as  
25 opposed --

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1 HEARING EXAMINER ROBESON HANNAN: Those are -- but  
2 that -- but it's -- I guess my point is, it is part of the  
3 zoning ordinance.  
4 MR. BROWN: Yes.  
5 HEARING EXAMINER ROBESON HANNAN: Now I have a  
6 question. Well, I noticed -- Mr. Bouma, I notice in C  
7 there is a specific section that says any structure  
8 constructed legally before May 31, 2012 -- but you are  
9 saying DHCA does not look at that because that is part of  
10 the zoning ordinance.  
11 MR. BOUMA: Okay. So the report that I do, I want to  
12 emphasize this; it's a preliminary report. It's not a  
13 final report, it's not approving anything, it's a  
14 preliminary report. So I just wanted to emphasize that.  
15 So after I do the preliminary report, Code Enforcement does  
16 go out to look at the property and look at other  
17 requirements and make sure that everything is done  
18 properly. And, you know, that they have proper permits and  
19 things like that. So I just want to emphasize --  
20 HEARING EXAMINER ROBESON HANNAN: You know, but --  
21 MR. BOUMA: -- again, it's a preliminary report.  
22 HEARING EXAMINER ROBESON HANNAN: You do look at the  
23 maximum gross floor area, correct?  
24 MR. BOUMA: Code Enforcement double checks that when  
25 they go out. They are the ones that will go out and look

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1 at the facts and ensure that what was on the application is  
2 correct.  
3 HEARING EXAMINER ROBESON HANNAN: So do you issue your  
4 preliminary findings before you do the inspection?  
5 MR. BOUMA: What I do is, after the inspection is done  
6 I take that and I combine it and I do a preliminary report.  
7 HEARING EXAMINER ROBESON HANNAN: Okay. So then that  
8 B, with the window, you should be looking at that, correct?  
9 MR. BOUMA: I don't work for zoning so I -- you know  
10 I -- I -- you know can't speak to that.  
11 HEARING EXAMINER ROBESON HANNAN: No, but you're the  
12 one -- okay. Under the statutory scheme, you're the ones  
13 that are charged with making the preliminary finding that  
14 it requires -- that it meets the requirements of the zoning  
15 ordinance.  
16 MR. BOUMA: So again, all I look for in zoning --  
17 HEARING EXAMINER ROBESON HANNAN: But you're saying, I  
18 see, is that you do some of them. You do the footprint,  
19 and I'm giving -- you know, I'm not attacking you, I  
20 just -- I really question why you would look at the  
21 footprint but not the other things in the zoning ordinance?  
22 MR. BOUMA: I can't speak to that.  
23 HEARING EXAMINER ROBESON HANNAN: That's fine. I  
24 appreciate it. Okay. Is there anything else?  
25 Mr. Brown, do you have --

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1 And Ms. Bacon, you have the right on the factual  
2 matters he's attested to, to ask questions of Mr. Bouma.  
3 Do you have any questions, Mr. Brown?  
4 MR. BROWN: No.  
5 HEARING EXAMINER ROBESON HANNAN: Ms. Bacon? Mr. or  
6 Ms. Bacon?  
7 MS. BACON: Sure. I mean I would just like to  
8 clarify, you know, my understanding of kind of how these  
9 agencies work together. So you know --  
10 HEARING EXAMINER ROBESON HANNAN: You're testifying.  
11 This is the time to ask questions. Okay, so do you have  
12 any questions of Mr. Bouma?  
13 MS. BACON: Yes. I mean I would like to clarify with  
14 a question, you know, if Mr. Bouma, you know --  
15 HEARING EXAMINER ROBESON HANNAN: Oh, I said it wrong.  
16 Mr. Bouma, I truly apologize.  
17 Okay. Go ahead, Ms. Bacon.  
18 MS. BACON: So I mean, what I would like to know, Mr.  
19 Bouma, is, you know, for example DPS had denied a building  
20 permit based on their review would someone still be able to  
21 detain an ADU license for the property?  
22 MR. BOUMA: So when Code Enforcement does an  
23 inspection they require that all work be permitted. And I  
24 believe that's something that would come up when the owner  
25 would, you know, not be able to get the permits. But

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<p style="text-align: right;">41</p> <p>1 that's something that Code Enforcement verifies when they 2 go through the inspection process. 3 MS. BACON: Thank you. And just to also ask, could 4 you talk a little bit about -- because my understanding 5 was, you know, we will -- we have this preliminary report 6 and findings and then I see that we will have a final 7 inspection. So if you can just talk a little bit about 8 what's the difference between, you know, a preliminary and 9 conditional, and just what you can share about that would 10 be helpful. 11 MR. BOUMA: Are you talking about the reports or the 12 inspections because if you're talking about the inspections 13 Mr. Eloisa can attest to that. He is the -- he oversees 14 the inspections. That's Code Enforcement. 15 MS. BACON: I would be fine -- 16 HEARING EXAMINER ROBESON HANNAN: DHCA -- that's DHCA 17 Code Enforcement, correct? 18 MR. BOUMA: Right, which I am not. 19 HEARING EXAMINER ROBESON HANNAN: Right. 20 MS. BACON: I would be fine hearing from Mr. Eloisa if 21 he's the appropriate person to speak to those. 22 MR. BOUMA: Yes. 23 HEARING EXAMINER ROBESON HANNAN: Anything else? 24 Hearing none, thank you, Mr. Bouma. I appreciate it. 25 And thank you for your time and coming to appear. DHCA has</p>	<p style="text-align: right;">43</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Thank you so much. 2 Go ahead. 3 MR. ELOISA: All right. So let me just clarify a 4 couple of things. When people go through the application 5 process they work with Clifton Bouma to make sure that they 6 submit all the paperwork that's required, the fee that's 7 required, that all documentation is in place. Once license 8 and registration accepts the application and everything is 9 completed he does a review. The review is to make sure 10 that all the application is fully completed and that the -- 11 wherever the property is located is within an area that 12 will allow a limited use, so R60, R90. 13 If it's not in there, then there told oh yeah, you 14 just cannot go through a Class III accessory dwelling unit 15 license and that they will be referred to possibly the 16 board of appeals to try to get it in a different way, as a 17 special exception. 18 But if it is within the limited use zoning, after he 19 does that preliminary review he sends me the information, 20 and then what I do is I create a case for an inspection and 21 I assign one of my inspectors. In this case, I assigned 22 Inspector Roberto Mejia. Mejia is off today so he couldn't 23 be here so I am here for him. 24 I review all the reports that are made. I talk to my 25 inspectors about the inspections, every single inspection,</p>
<p style="text-align: right;">42</p> <p>1 appeared at many of our hearings and we do appreciate your 2 work in this regard. 3 Okay. What I'd like to do, I have Ms. Gaul's hand and 4 Mr. Eloisa's hand up, and Ms. Bacon. 5 Ms. Bacon, what I'd like to do, if possible, is hear 6 from the DHCA representatives and then you can follow up 7 with your testimony; is that fine? So you have all the 8 stuff before you make your case. 9 MS. BACON: Sure. Thank you. 10 HEARING EXAMINER ROBESON HANNAN: Okay. So Mr. 11 Eloisa, are you -- I have you up. 12 MR. ELOISA: Yes, thank you. 13 HEARING EXAMINER ROBESON HANNAN: Please raise your 14 right hand. 15 Do you solemnly affirm under penalties of perjury that 16 the statements you're about to make are the truth, the 17 whole truth, and nothing but the truth? 18 MR. ELOISA: I do. 19 HEARING EXAMINER ROBESON HANNAN: Okay. Please state 20 your affiliation -- your business affiliation and address 21 for the record. 22 MR. ELOISA: Yes, I'm Ivan Eloisa. I'm a program 23 manager. I oversee the inspections of -- multiple types of 24 inspections including all the ADU inspections. I am at 25 1401 Rockville Pike, Rockville, Maryland, fourth floor.</p>	<p style="text-align: right;">44</p> <p>1 I am aware of every single case that is going through for 2 an ADU license. At the inspection, my inspectors are the 3 ones that go in and check if the -- check if the property 4 is already existing or if it's going to be built. Either 5 way we make sure that they meet the requirements. We 6 checked in the parking, make sure they have on-site 7 parking, we check the ceiling height. We check the 8 entrance. We checked that there's no -- there's a list of 9 requirements; it's kind of long to go through, but 10 basically -- 11 HEARING EXAMINER ROBESON HANNAN: Yes, it is. 12 MR. ELOISA: But basically make sure that they go 13 through the -- right. The housing, habitable space and 14 egress, smoke alarms. In this case, again we do all kinds 15 of inspections. It can be already something existing. And 16 to clarify something for Mr. Brown, for every case we make 17 sure that the permit were obtained. So if it's already 18 existing we make sure that they already got permits for 19 that building. Or if they didn't, we guide them to go 20 through DPS to obtain any applicable permits; electrical, 21 mechanical, whatever they need to bring it into compliance 22 and make sure it was done safely whenever it was done. 23 In some cases if the structure is there they need to 24 make it habitable because the case right now, the structure 25 is there, it's a two car garage that needs to be converted</p>

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1 into habitable space. And there are times when there is  
2 nothing there, it's just a yard and they're going to build  
3 the structure, there's nothing except the site. And so we  
4 make sure that at any -- for any of those that they go and  
5 get the applicable permits, whatever permits are needed for  
6 that.  
7 So we do write up the preliminary special report. I  
8 think you have that in the --  
9 HEARING EXAMINER ROBESON HANNAN: Yes.  
10 MR. ELOISA: -- as one of the exhibits. That is done  
11 by my inspector and I review that. And then after my  
12 review and conversation with the inspector we send it over  
13 to the Applicant to say, in order for you to obtain the  
14 Class III accessory dwelling unit license these are the  
15 requirements you need to meet at your property. And they  
16 have to go and get whatever permits are needed to build  
17 that ADU. And then, we do the final inspection once  
18 everything is built. That's why we give a -- we gave six  
19 months in this case. We did the inspection on November 3,  
20 2020.  
21 HEARING EXAMINER ROBESON HANNAN: Right.  
22 MR. ELOISA: And our inspection -- reinspection is  
23 going to be on May 4th, 2021. So they have all this time  
24 to go through the process of obtaining permits, whatever  
25 they need to build that ADU so that on May 4th, we expect

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1 it to be completed. Now, if it is not and the homeowner  
2 needs more time, they can request an extension through  
3 licensing for whatever reason; they're still working with  
4 permits, or they're still working with the contractor,  
5 whatever they need we can work with the time. But we give  
6 six months to begin with to get it completed.  
7 HEARING EXAMINER ROBESON HANNAN: Okay. Maybe you're  
8 not the person to ask Mr. Eloisa, but I guess my question  
9 is; when does the -- does the direct -- say there is an  
10 appeal to the board of appeals to legalize some things that  
11 are -- okay. Do the preliminary findings issue -- do you  
12 wait for the board of appeals to act or do you go ahead and  
13 issue your preliminary findings?  
14 MR. ELOISA: We issue the preliminary inspection  
15 report as soon as the inspection is done. We normally try  
16 to do it within 30 days of the application. So if they  
17 apply it goes through licensing for the full application  
18 process. Then, it goes to me and I get a finding and we  
19 try to do the inspection as soon as we can so that we can  
20 tell the homeowners, the applicants, these are the  
21 requirements that you need to meet to get that ADU license.  
22 We don't wait for the board of appeals because there's  
23 really nothing to go to the board of appeals at this point  
24 for. This was -- this changed back in --  
25 HEARING EXAMINER ROBESON HANNAN: Well --

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1 MR. ELOISA: -- 2013.  
2 HEARING EXAMINER ROBESON HANNAN: I kept getting in  
3 the timeline of this case and maybe you aren't the person  
4 to ask, when did the -- I probably could view the exhibits,  
5 when did the preliminary findings issue? Did the board of  
6 appeals case not happen until they went to get a building  
7 permit?  
8 MR. ELOISA: Yeah. So you're talking about the  
9 hearing that took place back in July for --  
10 HEARING EXAMINER ROBESON HANNAN: Well --  
11 MR. ELOISA: -- for the variance?  
12 HEARING EXAMINER ROBESON HANNAN: Maybe Ms. -- one of  
13 the Bacons can address that. So -- but -- because you may  
14 not know the details in this case. But I guess my question  
15 is, so your review -- what I'm hearing in this case is your  
16 review did not include -- your preliminary findings did not  
17 include setbacks -- did not include the matters that the  
18 variances were about?  
19 MR. ELOISA: Well, it included -- if you look at the  
20 preliminary inspection report that we brought up, it  
21 included the detached ADU maximum growth area and he talked  
22 about that exception that if the structure was built before  
23 May 31, 2012 and is not increasing in size or building  
24 height it does -- and it does not have any new windows it  
25 may be used for a detached ADU without --

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1 HEARING EXAMINER ROBESON HANNAN: Well --  
2 MR. ELOISA: -- regards of setback or floor area.  
3 HEARING EXAMINER ROBESON HANNAN: But --  
4 MR. ELOISA: But that's per the zoning text amendment.  
5 HEARING EXAMINER ROBESON HANNAN: Okay. But I'm  
6 trying to get a timeline here of when things happened. I'm  
7 looking for the director's report on the exhibit list. I  
8 know we have it, and I'm just not finding it.  
9 Does anyone have the -- oh here it -- no, that's the  
10 preliminary inspection. Well anyway. I guess what I'm  
11 trying to get at in this case is when did the preliminary  
12 findings come out vis-à-vis the variances?  
13 If you can't answer, the Bacons will know. So if you  
14 can't answer that's fine.  
15 MR. ELOISA: Good idea.  
16 MS. BACON: Sure. You know, I'd be happy to walk  
17 through it.  
18 HEARING EXAMINER ROBESON HANNAN: Not yet.  
19 MS. BACON: Okay.  
20 HEARING EXAMINER ROBESON HANNAN: We are getting to  
21 you. Okay.  
22 Mr. Eloisa, that was very helpful. Is there anything  
23 else? Do you look at whether there's -- but you do look at  
24 whether there is a second story window, correct?  
25 MR. ELOISA: We look at the -- they provide a floor

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<p style="text-align: right;">49</p> <p>1 plan, right. Whenever they apply they provide a floor 2 plan. 3 HEARING EXAMINER ROBESON HANNAN: Right. 4 MR. ELOISA: And then we look to see that whatever is 5 in the floor plan is -- like I said, it could be already 6 there or it could be something they're going to build. 7 Either way we say okay, if it's already there we make sure 8 that it was done with proper permits. If it's going to be 9 built we tell them it has to go through the permitting 10 process. You need to get permits, a building permit, a 11 duration permit, a mechanical a permit, and electrical, 12 whatever applies to -- 13 HEARING EXAMINER ROBESON HANNAN: Yes. 14 MR. ELOISA: -- be sure that this is done properly. 15 So if there's going to be a window and it's not there yet 16 we say okay, to put in that window you need to get a 17 permit. To put in that door, to put in the mechanical -- 18 HEARING EXAMINER ROBESON HANNAN: I see. But that's 19 a -- I'm not sure that was in your preliminary findings. 20 Oh, but it may be in the inspection report. 21 MR. ELOISA: It is in the inspection report and it 22 says -- 23 HEARING EXAMINER ROBESON HANNAN: I've got it. 24 MR. ELOISA: -- the Applicant shall provide copies of 25 final -- a final permits, building and electrical,</p>	<p style="text-align: right;">51</p> <p>1 Any such improvements would be inspected before the license 2 was issued. The director has indicated that regulations 3 will address the issue of time limits on needed 4 improvements. This current thinking is that all work 5 should be completed within 180 days." 6 So my question to you is whether or not -- 7 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, what page 8 are you on? 9 MR. BROWN: I'm sorry. It was page 8. 10 HEARING EXAMINER ROBESON HANNAN: Mr. Eloisa, take 11 your time if you need to read -- I'm getting to the 12 passage. 13 MR. BROWN: There it is -- you just -- toward the top. 14 Yeah, there it is. 15 HEARING EXAMINER ROBESON HANNAN: Right. How would 16 DHCA license an apartment that was not yet built. Okay. 17 MR. BROWN: Yes. So my question, Mr. Eloisa, is does 18 this statement reflect current practice at DHCA or not? 19 MR. ELOISA: Yes. So it is not licensed yet. The ADU 20 is not licensed until after the final inspection. In this 21 case, the final inspection is scheduled for May 4th, 2021. 22 So right now, we have a preliminary inspection report 23 saying this is what you need to do in order to obtain a 24 Class III accessory dwelling unit license. 25 And that's something that Clifton Bouma can verify</p>
<p style="text-align: right;">50</p> <p>1 plumbing, mechanical. 2 HEARING EXAMINER ROBESON HANNAN: Got you. 3 MR. ELOISA: We give them a -- even a resource. We 4 give them a link to go to DPS and see whatever they need to 5 apply for. 6 HEARING EXAMINER ROBESON HANNAN: Okay. I got you. I 7 got you. Okay. Thank you, that was very helpful. 8 And Mr. Bouma, your testimony was very helpful to. 9 Are there questions of Mr. Eloisa? 10 MR. BROWN: Yes, I have a question. 11 HEARING EXAMINER ROBESON HANNAN: Mr. Brown. 12 MR. BROWN: Mr. Eloisa, I'm going to read you a 13 passage from a memorandum prepared by counsel. Legal 14 counsel for the county council back in 19 -- in 2013, which 15 is in the record as Exhibit 19-C, and I'm referring to page 16 8. And this is a description of the DHCA licensing process 17 for what used to be called an accessory apartment, now 18 called an ADU. And the format is a question and answer 19 format. Here's the question. 20 "Question: How would DHCA license an assessor 21 apartment that was not yet built? Should there be a time 22 limit for needed improvements? 23 "Answer: An accessory apartment license would not be 24 issued until any required improvements are completed. The 25 directors report would describe the needed improvements.</p>	<p style="text-align: right;">52</p> <p>1 because he is the one that issued the license after we 2 provide -- after we do a final inspection we provide a 3 final inspection letter stating that all the work has been 4 completed, the dwelling unit is built -- built with the 5 proper permits and we send that over to licensing. To Dana 6 Burke who is the manager for the licensing unit and to 7 Clifton Bouma who oversees the ADU program. 8 MR. BROWN: Thank you very much. 9 HEARING EXAMINER ROBESON HANNAN: Ms. Bacon, do you 10 have any questions? 11 MS. BACON: No, I do not. Thank you. 12 HEARING EXAMINER ROBESON HANNAN: All right. Thank 13 you Mr. Eloisa. 14 Is there anyone else from DHCA? I see two hands up. 15 Hold on one second. Okay. Ms. -- okay. Is there anyone 16 else from DHCA that would like to speak? 17 I'm going to give everybody an opportunity to 18 summarize their arguments at the end, if they wish. Okay. 19 With that, we're going to move to the Bacons. I believe 20 you were previously sworn so whoever wishes to speak go 21 ahead. 22 MS. BACON: Sure. I will start and then I'll give my 23 husband, Richard, an opportunity to jump in if there's 24 anything he wants to add. 25 HEARING EXAMINER ROBESON HANNAN: Before you start so</p>

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1 I don't forget it, can you give me the timeline of what  
2 happened when in this, as far as the preliminary report, et  
3 cetera, et cetera?  
4 MS. BACON: Sure. I thought I'd be happy to do that.  
5 What I thought I would do is kind of walk through our  
6 timeline.  
7 HEARING EXAMINER ROBESON HANNAN: Okay.  
8 MS. BACON: And then, you know, provide my preliminary  
9 prepared statement, and then raise a few additional points.  
10 But I think the timeline will also be helpful to kind of  
11 refocus on, you know, our particular circumstances. I  
12 understand that, you know, this is sort of a new process  
13 and there might be open questions as to how, you know,  
14 agencies interact where there is no, for example, variance  
15 that's been sought. But I just really want to, you know,  
16 refocus on our particular circumstances.  
17 The ADU law that passed in January enabled people in  
18 our zone, which is R60 to --  
19 HEARING EXAMINER ROBESON HANNAN: Wait. Wait. Which  
20 January?  
21 MS. BACON: January of 2020.  
22 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.  
23 MS. BACON: So that law permitted people in our zone  
24 to build a detached ADU.  
25 HEARING EXAMINER ROBESON HANNAN: Right.

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1 MS. BACON: Previously it was, you know, conditional  
2 use only, very onerous, and ultimately not a lot of people  
3 did it. We, you know, watched everything very carefully.  
4 We actually submitted testimony. You know, we sat through  
5 a public hearing. You know, there was a lot of controversy  
6 surrounding this. We heard a lot of interesting speech is  
7 and the like. So we've been very closely watching this and  
8 invested in this because my parents are ultimately going to  
9 live in this ADU. My dad is on the line.  
10 So anyway. These laws passed in January. We applied  
11 for a building permit in February, so pretty soon  
12 thereafter. We understood from our architect that we would  
13 need to bump up the roof in order to include HVAC and  
14 insulation. We -- a lot of people when they build ADUs,  
15 they just add the apartment to the top of the garage. We  
16 did not want to do that because of my parents mobility  
17 issues, so we are building the ADU on the bottom floor so  
18 that there are no stairs.  
19 As a result, we're also losing a lot of storage. So  
20 when we found out we would have to bump up the roof anyway  
21 we said, you know, let's -- since we're going through that  
22 enormous expense, let's do it so that we can actually put  
23 the stuff that's in our garage currently into that attic  
24 storage. So we applied for the permit in February knowing  
25 it would be denied.

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1 HEARING EXAMINER ROBESON HANNAN: The building  
2 permit -- the building permit?  
3 MS. BACON: Correct. And we knew it would be denied  
4 because we are essentially, you know, seeking to bump up  
5 the roof. And that denial ultimately took months to  
6 receive. I don't think we received it until June. And  
7 part of that was, you know, delays caused by the pandemic  
8 and obviously there staff resource issues there. But also,  
9 there was just a lot of back-and-forth between our  
10 architect and Mr. Beale who is the person really familiar  
11 with the zoning standards and is the one who very closely  
12 reviewed our application, lots of back and forth. Our  
13 architect made some changes to the plan, and then finally  
14 in June a denial was issued.  
15 And obviously, there's nothing you can do with the  
16 denial. But what the plan was then was to then seek those  
17 variances. But we needed that denial before we could even  
18 seek the variances.  
19 We then sought these variances from the board of  
20 appeals. The Objectors in this case sent in, you know,  
21 sent in, you know, letters and emails. Then there was a  
22 2-1/2 hour hearing. And we walked through -- we really got  
23 into the nitty gritty of these use standards. And then,  
24 ultimately the Board granted -- unanimously granted  
25 variances for the setback and for the size requirements.

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1 Because essentially, by bumping up the roof we were losing  
2 the benefit of that grandfathered status so we then, now,  
3 triggered the setback and size requirements.  
4 So anyway, they unanimously granted those variances.  
5 They did deny a variance to put in a window in that second  
6 attic storage space, which we have never, you know,  
7 objected to. We wanted it for basically ventilation, but  
8 we totally understand our neighbor's concerns. This is a  
9 neighbor who's not party to the case, she's the one who's  
10 actually closest to the ADU. We understood her concerns  
11 with privacy so we never sought reconsideration or anything  
12 like that.  
13 HEARING EXAMINER ROBESON HANNAN: Of the window?  
14 MS. BACON: Correct. And ultimately really what we  
15 wanted was to make sure we could fit in insulation, HVAC  
16 and a little bit of storage and by unanimously getting  
17 those variances we had what we needed. The Objectors  
18 then -- so that opinion, I'm sorry was issued in July. The  
19 end of July, I believe July 29th was when it was issued, it  
20 was decided on the 15th. Soon thereafter, the Objectors  
21 filed for reconsideration from the Board of that decision,  
22 you know, with Mr. Brown's assistance.  
23 Before the -- that decision was to be held -- or I'm  
24 sorry, the work session to hear the arguments was to be --  
25 the Objectors filed an appeal with the circuit court, which

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1 rendered the reconsideration request moot.  
2 HEARING EXAMINER ROBESON HANNAN: Tell me a little  
3 bit -- okay, that was the building permit and board of  
4 appeals process. Tell me the time line of the licensing  
5 process.  
6 MS. BACON: Sure. So that didn't start until much  
7 later. Basically, once the variances were granted we had  
8 to go back to DPS and apply for a permit again. And this  
9 time it was even more involved.  
10 HEARING EXAMINER ROBESON HANNAN: Do you know when that  
11 was?  
12 MS. BACON: So we applied in October, I believe  
13 October 22nd, so -- and you know, by this time the circuit  
14 court proceedings had already sort of started, we had a  
15 sense of what the arguments were, so we knew -- so again  
16 that this would take a long time. So we applied in  
17 October, this time we had to provide, you know, final  
18 drawings which are a lot more detailed, and DPS reviewed  
19 both the drawings, but then also DPS will not approve a  
20 permit without a preliminary approval from DHCA. So in  
21 order for a building permit to be approved they need to  
22 have at least some assurance from DHCA that, in terms of,  
23 and again, this is my understanding and I am --  
24 HEARING EXAMINER ROBESON HANNAN: We are just looking  
25 to you for the factual --

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1 MS. BACON: Sure --  
2 HEARING EXAMINER ROBESON HANNAN: I'm really trying to  
3 get a timeline.  
4 MS. BACON: Yes.  
5 HEARING EXAMINER ROBESON HANNAN: So when did you  
6 apply for the license?  
7 MS. BACON: So the license, we applied for in early  
8 November or very late October, it was soon after we  
9 submitted our permit application, because it, you submit  
10 the permit application, everything goes on pause, until you  
11 get a preliminary approval from DHCA.  
12 HEARING EXAMINER ROBESON HANNAN: So you approved  
13 after you applied for the license, after the variances were  
14 granted, and after you reapplied for the DPS approval,  
15 correct?  
16 MR. BACON: Yes.  
17 MS. BACON: Correct, and the opinion of the Board  
18 regarding the variance issues was part of our application  
19 packet. So we put in that application then we applied for  
20 this rental license, and --  
21 HEARING EXAMINER ROBESON HANNAN: Do you know what  
22 time -- oh wait, I have your application I think in the  
23 record, so go ahead.  
24 MS. BACON: Yeah, so we applied for it in either late  
25 October or early November, and a preliminary inspection was

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1 conducted, I believe on November -- at some point in  
2 November, and that inspection, I mean, it's basically Mr.  
3 Mejia came out, he looked at the site,  
4 HEARING EXAMINER ROBESON HANNAN: He is from DHCA,  
5 correct?  
6 MS. BACON: Correct, he measured the driveway, my  
7 understanding is that's, you know, often a cause of  
8 concern, but we have a very long driveway so, you know, he  
9 measured that, he performed a preliminary inspection of the  
10 site, you know, made clear to us, that, you know, there  
11 would be a final inspection at which point there would be a  
12 very close review of, you know, whether or not the ADU met  
13 housing code standards.  
14 We understood that obviously, since our parents are  
15 living there, you know, we also have, you know, other  
16 interests in making sure that it's up to code. So the  
17 preliminary report was issued in November, our  
18 understanding is the final inspection will take place in  
19 May.  
20 Meanwhile, you know, the circuit court case is kind of  
21 proceeding along. My hope is that, you know, oral  
22 arguments will be scheduled soon, and so my expectation is  
23 that, you know, well before May we will at least have  
24 resolution on that, of course, as you know, Mr. Brown has  
25 already indicated that he plans to continue to pursue this

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1 matter, and you know, so we fully understand that, and  
2 Objectors have made very clear to us that they intend to  
3 pursue this for years if possible. So, you know, we again,  
4 we understand that. But as of right now where we stand, is  
5 the board of appeals has granted us the variances we need.  
6 DPS has reviewed both the board of appeals' opinion, and as  
7 well as the preliminary approval from DHCA and has granted  
8 us the building permit.  
9 What will happen is, you know, once the ADU is built  
10 we will then need to go back to DHCA and they will perform,  
11 you know, that inspection. So in terms of, you know our  
12 parents being able to move in, we understand we are still,  
13 you know, very far from that reality, but of course, you  
14 know, we are trying to move this along as, my parents are  
15 elderly. You know, we're very motivated to make this  
16 happen as soon as we can. So, you know, that's kind of  
17 where we are right now.  
18 I understand there might be people who -- and  
19 Montgomery County has provided us, there are people who  
20 will decide to apply for building permit without going  
21 through the variance process. That, I just want to make  
22 clear, that is not our experience, and so I want to make  
23 clear that the zoning issues that Mr. Brown has raised have  
24 been examined, and will be examined by the circuit court.  
25 So I just don't want to confuse, you know, what could



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1 happen with other people with what has been happening in  
2 our case, because we have, you know, gone through extensive  
3 reviews with both DPS, the court of appeals, you know, the  
4 circuit court, and now not only DHCA, but of course, OZAH  
5 as well. So I think we can be very confident that  
6 Objectors are leaving no stone unturned here. So I am  
7 certainly, you know, mindful of that.  
8 But so anyway, you know, Objectors have had, you know,  
9 the opportunity to testify at the board hearing, filing  
10 their request for reconsideration, the circuit court of  
11 appeals, they're now requesting OZAH to determine and this  
12 is a quote; Determine that no ADU license should issue  
13 before the final resolution of the variance matter in  
14 court."  
15 In our view, granting this request would contravene  
16 both the plain language of the applicable statutes and  
17 regulations, and also the intent of the Montgomery County  
18 Council, which recognized the importance of increasing  
19 supplies of ADUs in the County, and in order to do so, they  
20 provide streamlined procedures to achieve that result.  
21 As detailed in our pre-hearing statement, the Board  
22 was delegated the authority by Montgomery County to decide  
23 the issue of variances, and they did so. The Board was  
24 also granted the authority to stay their decision, but did  
25 not do so. Objectors are now seeking to reverse the

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1 Board's decision before the circuit court, but have not  
2 sought a stay from the circuit court.  
3 It is thus improper for Objectors to now turn to OZAH  
4 to stay the board's standing order until the circuit court  
5 matter is resolved. Objectors have made it very clear to  
6 us that they intend to drag this on for years, and will use  
7 any means available to them to delay and burden us in this  
8 process. This is exactly what the Montgomery County  
9 Council seeks to avoid in its ZTA18-07 action memo dated  
10 October 5, 2018, the council deleted the possibility of a  
11 conditional use for ADUs, and allowed for the possibility  
12 of a waiver within the licensing approval process stating  
13 that quote, "The current conditional process allows for  
14 more resident input, but the burdens of that process  
15 outweigh its benefits."  
16 Moreover, in deciding that the OZAH hearing examiner  
17 would make a final administrative decision that would be  
18 appealable to the circuit and not the board of appeals, the  
19 committee expressly recommended limiting the number of  
20 appeals that could be made from accessory apartment  
21 licensing decision, and stated that quote, "The committee  
22 believes that accessory apartments that qualify for a  
23 license do not warrant multiple bites at the apple for  
24 objecting parties.  
25 The purpose of not permitting these multiple bites is

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1 to increase affordable housing in a county where housing  
2 prices are skyrocketing. Streamlining processes reduces  
3 the time frame and the burden for homeowners seeking to  
4 make better use of their land by building ADUs. As stated  
5 in the ZTA19-06 Memo supporters saw reduced standards for  
6 permitting ADUs as an essential part of the answer for  
7 providing moderate cost housing. A failure to approve  
8 ZTA1901, which is what allowed us to build, pursue this,  
9 "would in their opinion deprive aging homeowners of their  
10 only means of being able to afford to stay in their homes.  
11 Families wishing to provide some privacy to their aging  
12 relatives would be deprived of the opportunity for  
13 proximity to intergenerational relationships."  
14 And this is exactly what we are trying to do here by  
15 building an ADU for my parents. You know, Objectors have  
16 raised numerous times that they don't understand why we're  
17 doing this, they're recommending that we impose, pursue a  
18 self-imposed stay. You know, I just want to be clear, you  
19 know, I am an immigrant to this country, as are my parents,  
20 and in our neighborhood, which lies within one mile of not  
21 one, but two, metro stations, I see a lot of other  
22 immigrant families who would love to continue the same  
23 traditions of caring for aging parents in this way, but  
24 they cannot afford to do so.  
25 The streamlined ADU process aims to make it easier,

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1 and cheaper to do so, but also makes it less intimidating,  
2 because, let's be frank, this is a very intimidating  
3 process. Not only are we responding to multiple objections  
4 in different forums, Mr. Brown's clients takes a picture of  
5 our yard sign every time it blows down, and they have the  
6 disposable income to continue this for years. So I am  
7 honestly just thankful that I am one of the first  
8 homeowners to test this new process, because I have the  
9 education, the English proficiency, means, and motivation  
10 to withstand this intimidation and abusive process.  
11 I respectfully ask the hearing examiner, consider both  
12 the applicable statutes and the regulations regarding how  
13 disputes related to variances should be granted and also  
14 the intent of the Montgomery County Council and dismiss  
15 this objection.  
16 And I really want to address the point that Mr. Brown  
17 mentioned about how he believed his approach would be,  
18 would constitute quote, "orderly administrative review." I  
19 can tell you from, the perspective of the home owner, his  
20 approach presents anything but orderly administrative  
21 review. You know, what we seek is finality, right? We  
22 already know, there's multiple agencies involved in this  
23 process, Objectors have put in multiple objections.  
24 We have the right to rely on agencies' determinations,  
25 and I think inviting agencies to look at the same issues

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1 only invites chaos. Right? You might have one agency come  
2 out with one thing, another agency comes out with a  
3 different point of view; it would completely contravene the  
4 whole point of all of this. You know, and in terms of  
5 finality, I mean, yes I understand Mr. Brown has kind of  
6 philosophical, you know, approaches to what is final. And  
7 I can only tell you, yes, there might be different ways to  
8 viewing this, I mean, I ultimately I guess, death is the  
9 only real finality.  
10 But, for our purposes, based on the statutes and regs,  
11 the Board issued a final decision. We are entitled to rely  
12 on that, other agencies are entitled to rely on that. If  
13 Objectors don't like the Board's decision, there are  
14 multiple ways they can fight that. They've already filed a  
15 repress for reconsideration, they could apply for stay and  
16 have not done so.  
17 So, you know, all we can do, we cannot control the  
18 actions of other people, all we can do is make our  
19 decision, based on what is before us, and what is before us  
20 is a conditional finding. We understand, you know, we're  
21 still going to have to go through, you know, final  
22 inspection, we still understand Objectors are going to  
23 continue, I'm sure, you know, whatever decision you make in  
24 this, Hearing Examiner, I am sure we will be seeing another  
25 circuit court appeal, which will be interesting, because it

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1 would be an appeal of a decision to allow a circuit court  
2 stay without going -- I don't know, it kind of boggles my  
3 mind, what that will look like.  
4 But ultimately what we have here is not really a  
5 dispute of facts, you know, they've made it very clear,  
6 they are not seeking a stay, and that they understand we  
7 can continue. They do and are trying to intimidate us by  
8 saying we should impose a self-imposed stay, I mean, there  
9 have been some condescending things about how we should  
10 exercise restraint, you know. I can tell you, we have  
11 obviously considered all of this, this is not cheap, we've  
12 expended, we've spent thousands, actually tens of thousands  
13 at this point, on, you know, the drawings, on this process,  
14 so we fully understand that.  
15 But where we are right now is, we are highly motivated  
16 to have a place for our parents to stay, that is not an  
17 apartment building where there are higher risks, especially  
18 during a pandemic. So we're continuing to pursue this and  
19 we are entitled to do so by law. I don't want to get into  
20 the merits of their zoning arguments because, again we are,  
21 litigating those issues in detail at the circuit court  
22 level.  
23 But I will just say that my understanding, and why I  
24 do feel so confident, is because at the end of the day,  
25 Objectors don't like the ADU law, they don't like the

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1 criteria, they don't like the variance criteria, which  
2 allowed the Board to consider the fact that we have this  
3 existing structure that was there when we moved in, and,  
4 you know, we want to use it. So, you know -- and honestly  
5 given all the controversy surrounding the ADU bill, we  
6 understand Objectors issues with the ADU bill, we  
7 understand there are issues with the variance criteria, but  
8 ultimately that is something that needs to be raised with  
9 Montgomery County.  
10 We have the right to pursue this based on the statutes  
11 and regs before us, and we have done so. An agency that  
12 has been delegated authority to make those decisions, has  
13 found in our favor, and so we are proceeding at our own  
14 risk. You know, if in other cases where homeowners do not  
15 seek variances, we understand the process may be different,  
16 but I can tell you, my understanding is that everyone needs  
17 a building permit to build an ADU. And that was a very  
18 involved process in terms of DPS asking questions, making  
19 sure the standards were met.  
20 And so, you know, I have no doubt that the agencies  
21 have kind of decided for themselves who's doing what, you  
22 know, our understanding is DPS takes the first stab. But  
23 then DHCA wants to make sure that it is really habitable  
24 and, I'm sorry, my husband always makes fun of how I say  
25 that word, but you know, they just want to make sure that

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1 all the code standards are met. And all we can do is try  
2 to follow the requirements set forth By agencies, and once  
3 those requirements are met, we believe we are entitled to  
4 rely on those determinations.  
5 Allowing Objectors to kind of walk in the door in this  
6 way, would basically upend the ability for homeowners to  
7 rely on those final agency determinations, and would  
8 completely go against the Montgomery County Council's  
9 intent here, which is to again, streamline the process,  
10 give neighbors the opportunity to object, but not give them  
11 an opportunity to completely prevent homeowners from  
12 pursuing this under the law, especially after they have  
13 been heard out multiple times.  
14 So I will pause there, and I'm really happy to answer  
15 any questions, I did want to give my husband a chance to  
16 add anything if he would like to.  
17 MR. BACON: Yeah, I mean, I think she's covered pretty  
18 much all the points. I would just like to kind of really  
19 underscore how much an abuse of process I believe this is.  
20 Again, once they've retained Mr. Brown. Sorry I should  
21 start actually before this.  
22 Before our administrative hearing from the board of  
23 appeals, our neighbors actively sought our other neighbors  
24 to get them to sign on to an appeal in order to, I guess,  
25 bolster their case against this, some of who balked,

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1 throughout this whole entire process. We went through the  
2 board of appeals, they ruled unanimously in our favor, then  
3 another neighbor, who was in that, and honestly had the  
4 most right to object given that we were the closest to her  
5 property, is not part of this.  
6 The two neighbors that are a part of this, who have  
7 continued by hiring Mr. Brown, who in his first statement  
8 to the board of appeals made a false statement about not  
9 being able to be sure when our garage was created, he then  
10 withdrew that complaint, subsequently when he did the bare  
11 minimum of research to find out that it was an existing  
12 dwelling before 2012, he then submitted paperwork to you  
13 guys that said that we didn't disclose to the proper  
14 authorities that there was an appeal in process, which we  
15 did.  
16 HEARING EXAMINER ROBESON HANNAN: Stop. When you  
17 refer to you guys—  
18 MR. BACON: Just to be clear, to DPS and DHCA, there  
19 wasn't a --  
20 MS. BACON: OZAH  
21 MR. BACON: OZAH, excuse me, that there wasn't an  
22 appeal process, which he started off apologizing here for  
23 misrepresenting the facts. I also spoke to Mr. Daniels,  
24 who was not too happy about the misrepresentation that Mr.  
25 Brown relayed in his memo, because of the fact that he

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1 hasn't done the bare minimum of research. He's really  
2 trying to make this as long and drawn out as possible.  
3 Secondly, he then presented a letter to us regarding  
4 whether or not we should be represented by an attorney,  
5 because we may not be getting good advice.  
6 He didn't even do the bare minimum of research to  
7 recognize that my wife is an attorney barred in Maryland,  
8 and she has more than enough expertise to address the  
9 issues that we've had. So my thing is, this is a very  
10 clear act of intimidation, you could say he started off, by  
11 saying he didn't want a stay, but then he said we should  
12 exercise restraint and have a self-imposed stay.  
13 It's all pretty obvious that a lot of other people  
14 would have bent to this pressure, but I think it's  
15 embarrassing as an officer of the court that he's  
16 represented facts that, excuse me, facts that are not true.  
17 HEARING EXAMINER ROBESON HANNAN: Okay Mr. Bacon.  
18 MR. BACON: Sure.  
19 HEARING EXAMINER ROBESON HANNAH: Can we do this? I  
20 understand, I hear your frustration, but I am trying to get  
21 to the legal standard.  
22 MR. BACON: Sure.  
23 HEARING EXAMINER ROBESON HANNAH: of what governs my  
24 decision.  
25 MR. BACON: No, understood, and I think my wife has

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1 covered all that pretty well, so I'll just leave that part  
2 where it is.  
3 MS. BACON: I'd like to add that, you know, I will  
4 remind you that we were not served in this case, and you  
5 know, I understand that this is not relevant to this  
6 particular issue, but I do think it's important when you're  
7 considering whether or not your decision meets the both the  
8 applicable statutory and regulatory standards and the  
9 intent of the Montgomery County Council. I think it's  
10 important to consider how this process can be abused quite  
11 easily, when there is a willingness to do so.  
12 So I understand, you know, that there obviously -- I  
13 think my husband is right to be frustrated, but you know,  
14 given the numerous issues we've had here both with regard  
15 to misrepresentation invasion of requirement, I think it  
16 should be considered when you think about, you know, what  
17 is the process intending to do?  
18 And it is intending to streamline the ability of  
19 homeowners to build ADUs in zones where there is a shortage  
20 of affordable housing. Again, we are within one mile of  
21 both the Tacoma Metro Station and the Silver Spring Metro  
22 Station. There's a bill right now introduced by Council  
23 Member Jawondo, which would allow, not just ADUs to be  
24 built in our particular neighborhood, but multi-family  
25 units.

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1 HEARING EXAMINER ROBESON HANNAH: Well, okay. I --  
2 again, I'd like to just, I understand, I'm aware of that  
3 legislation. I would like to bring it back to the  
4 standards the govern my, you know, the council says what it  
5 says in its legislative history so that's how it makes its  
6 intent known. So I'd like to bring it back to the law that  
7 governs, or the facts and the law that govern this case.  
8 MS. BACON: and I would like to bring it back by  
9 noting that Mr. Jawondo's bill is relevant because it's  
10 from the legislative history, you can see the County has  
11 opted to become more --  
12 HEARING EXAMINER ROBESON HANNAH: That is not in the  
13 record. I don't have that in the record. Well, you can  
14 testify to it, if you wish, but it isn't in the record. So  
15 go ahead.  
16 MS. BACON: Even just based on the legislative history  
17 that you have taken judicial notice of, the County has  
18 become more and more progressive, when it comes to ADUs.  
19 And in doing so, they have made it very clear that they  
20 intend to streamline procedures in order to accomplish  
21 their goal of increasing the number of ADUs in the county.  
22 So my point is, you know, the council is being very  
23 progressive on this issues, they've amended the laws, you  
24 know, several times to reflect that, that progressive  
25 policy desires, there continue to be neighbors who do not

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<p style="text-align: right;">73</p> <p>1 feel the same way, and we understand that, and they're 2 entitled to pursue both, you know, their rights within the 3 process that is provided for, and they're also completely 4 able to lobby council to -- 5 HEARING EXAMINER ROBESON HANNAH: Okay, Ms. Bacon, 6 we're going too far afield as far as what the council wants 7 and I'd prefer to stick to this case. I recognize what 8 you're saying in general, that the County is becoming less 9 restrictive, but I think you've made your point multiple 10 times on that issue. 11 MS. BACON: Okay. 12 HEARING EXAMINER ROBESON HANNAH: Anything else 13 related to this -- specifically to this case? 14 MS. BACON: No, I mean, just, I just, you know, really 15 do think that if we are to have a orderly administrative 16 process here, we need to be able to rely on that board of 17 appeals standing order, and given the fact that Objectors 18 have not sought a stay, I just do not see how OZAH can then 19 step in and kind of make us essentially hit pause, right? 20 And so, based on that, I just -- 21 HEARING EXAMINER ROBESON HANNAH: So I guess my 22 question is, DHCA isn't going to issue the license until 23 May, correct? 24 MS. BACON: Correct, so and that's another thing— 25 HEARING EXAMINER ROBESON HANNAH: So I guess --</p>	<p style="text-align: right;">75</p> <p>1 lawn for the building process, it's been I guess what, 2 six -- no, since July-ish, so several months. And then the 3 ADU notice we got, I believe on, Mr. Bouma would be able to 4 give you an exact date, but probably around November and 5 it's been posted in our front yard. 6 The only exceptions have been if we've been cutting 7 the lawn, they take the signs down to cut the lawn, or if 8 it's blown down or blown over for any reason. But it's 9 been continuous and I guess if your objection is that 10 people wouldn't have had notice to do that, I would say 11 that your client has gone on record as going to all of our 12 neighbors to make sure they're aware of it, so there 13 shouldn't be any issue here. 14 MS. BACON: Yes, my understanding of the signage 15 requirement is to provide notice and opportunity to comment 16 and I guess I'm just not really clear, I mean, we see your 17 clients taking pictures of our house and the sign every 18 time it blows down, so, but we're still not clear on 19 exactly what the harm is here? And, you know, my 20 understanding is that, once you are on notice and you are 21 participating fully the way you have been, you are barred 22 from raising any signage issues at that point, so I'm not 23 really clear on what the point of this inquiry -- 24 HEARING EXAMINER ROBESON HANNAH: Okay, okay, all 25 right.</p>
<p style="text-align: right;">74</p> <p>1 MS. BACON: A conditional finding. 2 HEARING EXAMINER ROBESON HANNAH: Okay. 3 MS. BACON: I have no doubt that we'll be speaking 4 over the summer, because I'm sure Objectors will, you know, 5 even after this, circuit court case is exhausted, I'm sure 6 they will be coming back after the final report is issued. 7 So, you know, again, I think the only reason we're here 8 because there is no dispute of facts, there has been no 9 stay sought. The only reason we're here is to add to the 10 delay and burden that Objectors have made very clear 11 they're seeking to impose upon us. 12 HEARING EXAMINER ROBESON HANNAH: and, I understand 13 your position, I'm not saying whether I agree with it, but 14 I understand what you're saying. 15 Okay, Ms. Gaul or Mr. Brown do you have any questions 16 of the Bacons? 17 MR. BROWN: I do have one question of the Bacons. 18 When they, when a building permit is issued in a 19 residential zone that allows for alteration of the height 20 or the footprint of an existing structure, a notice of the 21 existence of the approval of the building permit, has to be 22 posted on the property. My clients have been unable to 23 find that posted notice. Can you tell us when you posted 24 it, and where you posted it? 25 MR. BACON: So, both notices have been posted on our</p>	<p style="text-align: right;">76</p> <p>1 MR. BROWN: I won't dwell on it, but -- 2 HEARING EXAMINER ROBESON HANNAH: I don't recall 3 posting, this is your cross, I don't recall posting being 4 part of their testimony in chief, but I could be wrong. 5 MR. BROWN: I'm going to leave it at that, and that's 6 all I have. 7 HEARING EXAMINER ROBESON HANNAH: Ms. Gaul did you 8 have any questions? 9 MS. GAUL: I do not. 10 HEARING EXAMINER ROBESON HANNAH: Okay, I see a hand 11 raised for Ozan Koknar? 12 MR. KOKNAR: yes. 13 HEARING EXAMINER ROBESON HANNAH: Mr. Koknar please 14 state your name and address for the record. 15 MR. KOKNAR: My name is Ozan Koknar and my address is 16 611 Gist Avenue, Silver Spring, Maryland. 17 HEARING EXAMINER ROBESON HANNAH: Can you raise your 18 right hand, not just your microphone hand, your real hand? 19 Do you solemnly swear under penalties of perjury that 20 the statements you are about to make are the truth, the 21 whole truth, and nothing but the truth. 22 MR. KOKNAR: I do. 23 HEARING EXAMINER ROBESON HANNAH: Okay, go ahead Mr. 24 Koknar. 25 MR. KOKNAR: So I -- and it's not going to be long, I</p>

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1 just wanted to again, get on the record that they can make  
2 some accusations about what our intent are, what has  
3 happened in the past, and it's not true, under the legal  
4 statutes of the case. I just want to say that I am not  
5 objecting to them one by one simply because it's the other  
6 ones, there's lots of inaccuracies on what's intent or what  
7 happened in the past. Again not about the legal statutes  
8 or anything so I don't want to get into the details, on  
9 this (unintelligible).  
10 HEARING EXAMINER ROBESON HANNAH: Thank you. Any  
11 questions for Mr. Koknar? Hearing none, or seeing none.  
12 Mr. Bouma or Mr. Eloisa, I don't know which of you can  
13 answer this question, but OZAH's done a number these  
14 different versions of these accessory apartment cases over  
15 the years, and I have never seen someone, is it typical to  
16 go to DPS before they get the preliminary findings? If you  
17 know; if you don't know it's fine.  
18 MR. ELOISA: I can answer to that, so homeowners can  
19 try to go either way based on the knowledge they have.  
20 Now, if they go to DPS first, we have an agreement, we had  
21 meetings with DPS, and they say I want to build a unit, I  
22 want to be able to finish my basement, put a kitchen and a  
23 bathroom and everything, they'll say okay, that looks like  
24 an accessory dwelling unit. You need to go and apply for  
25 an ADU license with the DHCA, that's the agreement.

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1 Whenever a homeowner goes to DPS and tries to build a  
2 second unit, they are told, okay we cannot give you permits  
3 until you get a preliminary report from DHCA saying that  
4 you have applied to the license through them.  
5 This is since 2013, whenever it came to DHCA for the  
6 accessory apartment.  
7 HEARING EXAMINER ROBESON HANNAN: Right.  
8 MR. ELOISA: Now we've changed; the law was updated  
9 was effective December 31, 2019 essentially generally by  
10 December 31st. Now, if they come to us first then they  
11 come to us first, we do the process that I explained  
12 earlier, license and registration mainly Clifton Bouma will  
13 review that they submit the application completely, and  
14 does a preliminary review. Once he does that then it goes  
15 to me, to get a case for an inspector to go in and inspect  
16 the property. And then we tell them, okay, this what you  
17 need to do to bring it into compliance, and we tell them go  
18 to the DPS for the permits.  
19 So either way, we insure that DHCA is aware that there  
20 is a unit being built, and that DPS -- they go through the  
21 DPS to get the permits. You have to have to go through  
22 both agencies. The order in which they go, we cannot  
23 control. A homeowner will go to wherever they think they  
24 need to go first, but then we guide them through the  
25 process.

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1 HEARING EXAMINER ROBESON HANNAH: Thank you. That  
2 answered my question, thank you. Does anyone have  
3 questions for Mr. Eloisa? Okay, hearing none.  
4 Mr. Brown, do you have a closing statement?  
5 MR. BROWN: Yes, I'll be brief.  
6 I listened quietly to all of the aspersions and  
7 calumnies that have been cast on both my clients and me  
8 personally, and I respectfully request that you disregard  
9 all of them. They really have no bearing on the merits of  
10 this case apart from the fact that I dispute all of them.  
11 I did make a mistake of fact, which I clarified on  
12 this record, at the outset, in my testimony that it wasn't  
13 an intentional mistake, it was a misunderstanding on my  
14 part about what happened at DPS, and an unjustified  
15 inference, but hardly terribly material.  
16 With respect to the complaints about notice, left out  
17 of your -- of the harangue from the Applicant here, is the  
18 fact that, when they failed to timely participate in this  
19 case, in the court, in the circuit court, I sent them,  
20 without any obligation to do so, a copy of my memorandum in  
21 support of the appeal, and I did not object to their late  
22 filing of a request to participate in the case, if I had  
23 any effort to intimidate and exclude them from the case, I  
24 wouldn't have done those things.  
25 Secondly, when it came to the issue of notice of this

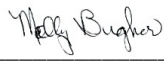

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1 particular appeal, the rules are very unclear at OZAH as to  
2 whether I am supposed to provide the Applicant notice of  
3 the appeal, or OZAH would do so.  
4 HEARING EXAMINER ROBESON HANNAH: I reviewed those,  
5 you are not required; OZAH is required, and that's what the  
6 notice of hearing does, so I guess --  
7 MR. BROWN: Hearing Examiner Robeson Hannan, it's just  
8 one in a long list of mischaracterizations of my clients'  
9 actions, as acts of intimidation, when they are simply  
10 trying to protect their legal rights.  
11 HEARING EXAMINER ROBESON HANNAH: I understand that,  
12 and I'm, you know, I understand that people are emotional,  
13 but it does, as you said, the motivations of the party do  
14 not govern my decision; the law governs my decision, and  
15 that's where we're going to try to get, try to resolve  
16 today, or not today, but --  
17 MR. BROWN: I want to say about the motivations  
18 underlying this appeal, it was not to complicate matters  
19 for the Bacons, it was to, protective of my clients rights,  
20 I do not want them to be confronted by this very able  
21 member of the Maryland Bar on the other side to challenge  
22 my clients on any kind of a waiver ground, for having  
23 failed to object to a license. Now, I find today, based  
24 upon the testimony, that maybe what I appealed is a  
25 preliminary report prior to licensure and that the time for

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<p style="text-align: right;">81</p> <p>1 appealing the final determination of licensure would not be 2 until next May. 3 Yet, I don't see where the way the statute is written 4 that that's when I should have applied, if at all. 5 HEARING EXAMINER ROBESON HANNAH: If you -- okay -- 6 MR. BROWN: I would appreciate clarification from you 7 in your decision as to whether or not this appeal is 8 premature, and should in fact, come at a later time. 9 HEARING EXAMINER ROBESON HANNAH: First of all, it's 10 not an appeal, it's an objection. 11 MR. BROWN: Okay. 12 HEARING EXAMINER ROBESON HANNAN: And it's an 13 objection to preliminary findings. Okay. The license -- 14 and so this is directly, your objection here is directly 15 appealable to circuit court. 16 If you have other problems, unrelated to the objection 17 with the license, then the appeal runs from the issuance of 18 the license as Mr. Eloisa, I think, said, DHCA enforces the 19 house, building, the housing codes, you know, a number of 20 things and so anything related, unrelated to the 21 preliminary findings of fact are appealed at the issuance 22 of the license. 23 MR. BROWN: Hearing Examiner Hannan, I hear you. I 24 hear you use the word preliminary, but before you issue 25 your decision, I urge you in the strongest terms to read</p>	<p style="text-align: right;">83</p> <p>1 I'm happy if necessary to renew the application or 2 renew the objection at the time the license is final, if 3 it's only a preliminary finding right now. But the way I 4 read the statute, it's not a preliminary finding. But if 5 I'm mistaken about that I would appreciate clarification in 6 your report to that effect. 7 HEARING EXAMINER ROBESON HANNAH: All right. Anything 8 else? 9 MR. BROWN: Nothing further. 10 HEARING EXAMINER ROBESON HANNAH: Ms. Gaul did you 11 have anything you want to say on behalf of DHCA? 12 MS. GAUL: No, I think that I've given you the 13 information I wanted to give you. 14 HEARING EXAMINER ROBESON HANNAH: Okay, thank you. 15 And Ms. Bacon, you have a chance to make a final 16 statement, I'm going to ask you not to get into motivations 17 of the parties, I need you to limit it to the facts of this 18 case please. 19 MS. BACON: Sure, I mean, I would just like to ask you 20 Hearing Examiner, to provide some clarification, because it 21 sounds like what Mr. Brown is saying is that once a -- 22 once -- so you know, the hearing -- the circuit court 23 appeal will be resolved, we will have a final inspection on 24 the license, and it sounds like he's saying that at that 25 point he will renew his objection to the finding of zoning</p>
<p style="text-align: right;">82</p> <p>1 the language that you're referring to. Section 29-26 B 2 says, "Waivers and objections concerning any new accessory 3 dwelling unit license," it doesn't say anything about 4 preliminary. That's why I filed the appeal, if I had known 5 that this was -- 6 HEARING EXAMINER ROBESON HANNAH: No, Mr. -- 7 MR. BROWN: --simply preliminary, I wouldn't have 8 filed. 9 HEARING EXAMINER ROBESON HANNAH: Okay, I understand 10 your argument, there's other places in the law, but if you 11 object to one of the preliminary findings that the DHCA 12 makes, the director's findings, they issue a director's 13 report, which is in our record, that has checkboxes for the 14 standards that have to be met under 2916 and 359323.3 so, 15 so if you object to those findings, the law gives before 16 issuance of the license, the law gives you an opportunity 17 to object. 18 MR. BROWN: Well what I said in my statement of 19 objections, was and I'll just quickly read to you, "The 20 license objection is grounded in a finding of fact by the 21 DHC director as stated in the filing of the objection is 22 that the structure that will house the ADU was checked off 23 on the license cover sheet as quote 'Zoning review 24 passed". I found that finding to be incorrect, because 25 it violates the use standards in 593.3.3.</p>	<p style="text-align: right;">84</p> <p>1 review passed, and I just want to be clear on what in fact 2 if any the circuit court's decision will have on that. 3 Because it sounds like he's saying that DHCA has an 4 independent obligation to perform zoning review and should 5 not you know consider the board of appeals decision and 6 that's, you know, a separate path. 7 HEARING EXAMINER ROBESON HANNAH: That -- yes. 8 MS. BACON: I just want to be clear on what OZAH's 9 position is on that. 10 HEARING EXAMINER ROBESON HANNAH: Okay, that's fine, 11 anything else? 12 MS. BACON: No, at this point, I mean, I just want to 13 reiterate that, I do think that we are going through this 14 process the way Montgomery County Council intended, and I 15 believe that based on my understanding of what DHC is 16 supposed to do, the findings at issue here do not need to 17 go into the merits of the variance issue. And so at this 18 preliminary stage I just really don't think any decision 19 that the hearing examiner would make would -- should say, 20 you know, the board of appeals standing order and I just 21 don't think that those two should be connected. 22 Thank you. 23 HEARING EXAMINER ROBESON HANNAH: Thank you. 24 And I really appreciate everyone's participation in 25 this case, particularly DHCA, that was very helpful.</p>

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<p style="text-align: right;">85</p> <p>1 I have to leave the record open to receive the 2 transcript. I am not going to leave it open for anything 3 else, because we have gone through a lot of the issues at 4 length. So, I need the court reporter, has ten calendar 5 days to submit the transcript, which puts the closing the 6 record at 12/28/20, I will not be accepting additional 7 exhibits or information from anyone during that time. So 8 with that, and again if you disagree with my decision in 9 the case, you have the right to appeal it within 30 days to 10 the circuit courts. In accordance, I think the 7200 rules 11 say 30 days, I haven't checked it, but in accordance -- in 12 accordance with the Maryland Rules of Civil Procedure. 13 So with that, thanks again for your participation, the 14 record will be open until 12/28 solely to receive the 15 transcript and after that I have 30 days to write my 16 decision in the case. Thank you very much for 17 participating. 18 MS. BACON: Thank you very much. 19 MR. BACON: Thank you. 20 (The recording was concluded.) 21 22 23 24 25</p>	<p style="text-align: right;">87</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Molly Bugher, do hereby certify that the foregoing 3 transcript is a true and correct record of the recorded 4 proceedings; that said proceedings were transcribed to the 5 best of my ability from the audio recording as provided; 6 and that I am neither counsel for, related to, nor employed 7 by and of the parties to this case and have no interest, 8 financial or otherwise, in its outcome. 9 10 11  12 _____ 13 Molly Bugher 14 December 30, 2020 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">86</p> <p>1 CERTIFICATE OF COURT REPORTER 2 3 I, Lee Utterback, the officer 4 before whom the foregoing proceedings were taken, 5 do hereby certify that said proceedings were 6 electronically recorded by me; and that I am 7 neither counsel for, related to, nor employed by 8 any of the parties to this case and have no 9 interest, financial or otherwise, in its outcome. 10 11 12 13 14  15 _____ 16 Lee Utterback, Court Reporter 17 18 19 20 21 22 23 24 25</p>	

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