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Transcript of Hearing

Date: September 19, 2024

Case: Karen Roberts Franklin et al. Objection to ADU License (ADO 25-01)

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Transcript of Hearing
Conducted on September 19, 2024

<p style="text-align: center;">1</p> <p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS FOR</p> <p>2 MONTGOMERY COUNTY, MARYLAND</p> <p>3 -----x</p> <p>4 In RE: :</p> <p>5 KAREN ROBERTS FRANKLIN, et al.: Case No. ADO 25-01</p> <p>6 Objectors. :</p> <p>7 :</p> <p>8 -----x</p> <p>9</p> <p>10</p> <p>11 HEARING</p> <p>12 BEFORE HEARING EXAMINER KATHLEEN BYRNE</p> <p>13 Rockville, Maryland</p> <p>14 Thursday, September 19, 2024</p> <p>15 9:37 AM</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Job No.: 552245</p> <p>23 Pages: 1 - 91</p> <p>24 Recorded By: Jordan Ogihara, CER</p> <p>25</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 KATHLEEN 'KATIE' BYRNE - HEARING EXAMINER</p> <p>2</p> <p>3 ELMARA RAMOS - PORTUGUESE INTERPRETER</p> <p>4 ARILTON SANTOS - LICENSE APPLICANT</p> <p>5 ESTEFAN SANTOS - DAUGHTER OF LICENSE APPLICANT</p> <p>6 DAVID JOHNSON - DHCA INSPECTOR</p> <p>7 KAREN ROBERTS FRANKLIN - OBJECTOR</p> <p>8 LYLE ISAACS - OBJECTOR</p> <p>9 MAYER SCHOFER - OBJECTOR</p> <p>10 CHRISTOPHER SANTOS - HOMEOWNER</p> <p>11 LISA O'CONNOR - OBJECTOR</p> <p>12 TOM HOWLEY - DHCA INSPECTOR</p> <p>13 CLIFTON BOUMA - DHCA LICENSING & REGISTRATION</p> <p>14</p> <p>15 ALSO PRESENT:</p> <p>16 JOHN FRANKLIN - OBJECTOR</p> <p>17 PATRICIA BRENNAN - OBJECTOR</p> <p>18 SHELLEY LEMMOND - NEIGHBOR</p> <p>19 WILLIAM ROWLES - NEIGHBOR</p> <p>20 ELIZABETH KELLY - OBJECTOR</p> <p>21 ROBYN SCHOFER - OBJECTOR</p> <p>22 SUZANNE ISAACS - OBJECTOR</p> <p>23</p> <p>24</p> <p>25</p>																												
<p style="text-align: center;">2</p> <p>1 Hearing, held at the location of:</p> <p>2</p> <p>3</p> <p>4 MONTGOMERY COUNTY OFFICE OF ZONING AND</p> <p>5 ADMINISTRATIVE HEARINGS</p> <p>6 100 Maryland Avenue, Room 200</p> <p>7 Rockville, Maryland 20850</p> <p>8</p> <p>9</p> <p>10</p> <p>11 Pursuant to agreement, before</p> <p>12 Jordan Ogihara, CER, Court Reporter.</p> <p>13</p> <p>14</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</p> <p>24</p> <p>25</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">C O N T E N T S</p> <p>1</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">EXAMINATION BY HEARING EXAMINER BYRNE</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>Mr. Santos</td> <td style="text-align: right;">14</td> </tr> <tr> <td>Ms. Santos</td> <td style="text-align: right;">20</td> </tr> <tr> <td>Ms. Franklin</td> <td style="text-align: right;">40</td> </tr> <tr> <td>Mr. Isaacs</td> <td style="text-align: right;">43</td> </tr> <tr> <td>Mr. Shofer</td> <td style="text-align: right;">45</td> </tr> <tr> <td>Mr. Johnson</td> <td style="text-align: right;">46</td> </tr> <tr> <td>Mr. Bouma</td> <td style="text-align: right;">72</td> </tr> </table> <p>10</p> <p style="text-align: center;">E X H I B I T S</p> <p>11 (Retained by the Court.)f</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">HEARING EXHIBIT</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>Exhibit 13 717 Tanley Road Property Search</td> <td style="text-align: right;">30</td> </tr> <tr> <td>Exhibit 19 Case History of 907 Nora Drive</td> <td style="text-align: right;">34</td> </tr> <tr> <td>Exhibit 20 April 2024 statement of license applicant</td> <td style="text-align: right;">17</td> </tr> <tr> <td>Exhibit 35 Statement of Evidence for ADU</td> <td style="text-align: right;">33</td> </tr> <tr> <td>Exhibit 38 Decision in OZAH Case No. ADO 23-06</td> <td style="text-align: right;">37</td> </tr> </table> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	EXAMINATION BY HEARING EXAMINER BYRNE	PAGE	Mr. Santos	14	Ms. Santos	20	Ms. Franklin	40	Mr. Isaacs	43	Mr. Shofer	45	Mr. Johnson	46	Mr. Bouma	72	HEARING EXHIBIT	PAGE	Exhibit 13 717 Tanley Road Property Search	30	Exhibit 19 Case History of 907 Nora Drive	34	Exhibit 20 April 2024 statement of license applicant	17	Exhibit 35 Statement of Evidence for ADU	33	Exhibit 38 Decision in OZAH Case No. ADO 23-06	37
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<p>5</p> <p>1 PROCEEDINGS 2 HEARING EXAMINER: Good morning, 3 everyone. Welcome to our hearing this morning. 4 The hearing in question is based on an objection 5 filed by a number of people, primary objector 6 being Ms. Roberts Franklin. The case number 7 assigned is ADO25-01, regarding the license 8 application number 95924. My name is Katie Byrne. 9 I am the hearing examiner that's been assigned to 10 hear this case today. We have a court reporter 11 present. He will be recording everything, and 12 there will be an official transcript of this 13 hearing that's produced at the end. So 14 housekeeping-wise, when we talk, please try not to 15 crosstalk because it's difficult for the court 16 reporter to hear when multiple people talk at the 17 same time. 18 This is a public hearing regarding 19 the objection filed pursuant to Article 29, 20 Section 26B2, of the Department of Housing 21 Community Association's finding that the owner 22 resides at the property at 907 Nora Drive pursuant 23 to requirements set forth in Article 29, Section 24 19B. The objection was received by OZAH and is 25 related to an accessory dwelling unit license</p>	<p>7</p> <p>1 more math than that. 2 All right. So, these proceedings 3 are formal, but they're also informal. So it's 4 pretty structured, but the rules of evidence are 5 not the same as the rules of evidence in court. 6 The applicant will go first. 7 So you, Mr. Santos, tell me about 8 your application, and specifically focus on the 9 residency issue that's been raised by the 10 opposition. Then opposing parties will be able to 11 testify. So we will go one at a time, right? 12 And I'm going to skip back. So 13 those who are testifying in support, are you 14 related to Mr. Santos? Are you part of -- all 15 right. So then, if you want to come up while he's 16 giving his testimony, and we'll take all of your 17 testimony to start, and then we'll switch to the 18 opposition. You'll have the ability to have the 19 last word, okay? 20 After the opposition, then we'll 21 have the inspector testify to his observations. 22 There will be the last word from the applicant, 23 and then -- well, actually, there's applicant 24 rebuttal and then opposition rebuttal. So this is 25 how -- I know I just probably confused everybody.</p>
<p>6</p> <p>1 application at 907 Nora Drive, Silver Spring, 2 Maryland. As the hearing examiner, I will hear 3 testimony and review evidence and render an 4 opinion, per that criteria under Article 26, 5 Section 26B, that the owner does not reside at 907 6 Nora Drive. If you disagree with my decision, you 7 may appeal it to the Board of Appeals within 10 8 days after my decision is issued. 9 So at this point, I'd like to 10 identify the parties. We'll see who here plans on 11 speaking. We'll talk about exhibits and evidence. 12 Okay. So first, we'll start here with Mr. Santos. 13 If you could state your full name, 14 sir. 15 MR. A. SANTOS: Arilton Santos. 16 HEARING EXAMINER: Okay. Thank you. 17 And I'm going to ask for a show of 18 hands. Who here intends to testify? So one, two, 19 three, four, five, six people who plan to testify. 20 Show of hands, who plans to testify in support of 21 the application -- of -- of the applicant? Yes. 22 Okay. So two in support. And then again, show of 23 hands, who wishes to testify in opposition? So 24 one, two, three, four. Okay. Well, yeah, four in 25 opposition, two in support. Don't make me do any</p>	<p>8</p> <p>1 Applicant, opposition, inspector, applicant -- 2 applicant rebuttal, opposition rebuttal. The 3 opposition has the burden because you're the one 4 questioning the issue, so the opposition actually 5 gets the last word. Okay? Does that make sense? 6 All right. 7 Based on the opposition that was 8 received, it -- it appears that the objection to 9 the issuance of the statement from the county is 10 that the applicant does not live -- does not 11 reside as principal address at where the 12 application for the accessory dwelling unit is, 13 which is 907 Nora Drive. I'm going to identify 14 what that code section says right now. I'm going 15 to read it into the record so everybody 16 understands it. 17 Section 29-19B1B says, The 18 principal dwelling or accessory dwelling unit is 19 the primary resident of the applicant for an 20 accessory dwelling unit rental license. Evidence 21 of primary residence includes the owner's most 22 recent income tax return, the owner's current 23 driver's license, or the owner's real estate tax 24 bill for the address of the proposed dwelling unit. 25 As evidence comes in, it's under</p>

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<p style="text-align: right;">9</p> <p>1 my discretion if I want to exclude irrelevant, 2 repetitive, or unreliable testimony or evidence. 3 I have up on the screen all of the exhibits that 4 we've received so far, and if anybody wishes to 5 refer to a particular exhibit, let me know, and 6 I'll put it up so that everyone can see it. Are 7 there any -- did anyone bring any additional 8 evidence today that they wish to share with me? 9 Okay. We're going to start with -- 10 Ms. Santos? 11 MS. SANTOS: So we didn't bring ours 12 out because it is a personal e-mail between Mr. 13 Clifton and us, so we didn't want to print it out, 14 though. But we do have e-mail from Mr. Clifton 15 and Mr. Santos, and the reason why it wasn't 16 included is because Nana Johnson, she stated in 17 her e-mail that all evidence needs to be submitted 18 by noon on September 13th, and we noticed that 19 there is evidence that was submitted past that 20 deadline. 21 HEARING EXAMINER: So the only reason 22 that -- that -- and I went back and I read her 23 e-mail, and it says we need that in order to give 24 her time to upload it. Anyone can bring evidence 25 to the hearing that they wish me to consider. So</p>	<p style="text-align: right;">11</p> <p>1 accept that and add that. 2 And someone else had a document 3 that they wanted to submit? 4 MS. O'CONNOR: Yeah, it -- it could be 5 buried in there, but I couldn't find it readily. 6 And it's the original application from 3-21-24, 7 the original Class 3 accessory (indiscernible) 8 license application. 9 HEARING EXAMINER: Okay. I'll go ahead 10 and accept it, but I think I have it. 11 MS. O'CONNOR: I -- I couldn't find it 12 in there. I thought it was in the electronic 13 exhibits. 14 HEARING EXAMINER: Yeah. It's part of 15 -- it's part of the -- 16 MS. O'CONNOR: It was part of that? 17 HEARING EXAMINER: -- report. So this 18 third page, I have the printout. 19 MS. O'CONNOR: That's the actual 20 application. 21 HEARING EXAMINER: Okay. All right. 22 I'm -- I'm going to make -- I'm going to make 23 copies of both of these, so I'm going to give them 24 -- the originals back to you. So if everybody 25 just takes two seconds, I'll be right back.</p>
<p style="text-align: right;">10</p> <p>1 upload -- the -- the only reason there's a 2 deadline is for uploading. That's why. So like I 3 said, the -- there are no -- we don't follow the 4 same court rules of evidence. 5 MS. SANTOS: There -- there is personal 6 emails, which -- 7 HEARING EXAMINER: Okay. 8 MS. SANTOS: -- if you want screenshots 9 of it, I'll be glad to get that for you. 10 HEARING EXAMINER: Okay. There's 11 something -- 12 MS. SANTOS: This -- this was one 13 approved on April -- on the 4th of April -- 14 HEARING EXAMINER: Okay. All right. 15 MS. SANTOS: -- on the e-mail between 16 Mr. -- I think it's Clifton. I could be 17 pronouncing -- 18 HEARING EXAMINER: Oh, Clifton. Yeah, 19 Mr. Bouma. Okay. 20 MS. SANTOS: -- is also in the same 21 train of emails. 22 HEARING EXAMINER: Okay. All right. 23 Thank you. All right. So correspondence between 24 Mr. Santos and Department of Housing and Community 25 Affairs, Mr. Bouma. All right. So I'm going to</p>	<p style="text-align: right;">12</p> <p>1 (OFF THE RECORD) 2 HEARING EXAMINER: I'm going to accept 3 every document that's up on the screen. I'm going 4 to accept these two documents as well. So when 5 the time comes, if there are those screenshots 6 that you want to send me of emails back and forth, 7 and I believe it's relevant, I'll keep the record 8 open, and you can transmit those to me. But you 9 can testify to those now. Okay? 10 What I will say is that we have a 11 number -- hold on one sec. We have a number of 12 people who are wishing to speak. I don't want 13 everyone to say the same thing, so if I hear the 14 exact same testimony from people in a row, I'm 15 going to say, I've heard that; do you have 16 anything different that you want to add? Okay? 17 So I don't -- I don't want you to be shocked if I 18 say, heard that; give me something else. Okay? 19 So we're going to try to keep this tight, in line, 20 and focused on the issues. Okay? 21 So I see a hand raised, and I'm 22 going to ask, do you have -- is there evidence, or 23 do you have a specific question? 24 MR. SCHOFER: It's a questioning with 25 (indiscernible). Specifically, I have some</p>

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<p style="text-align: right;">13</p> <p>1 information that may be pertinent, but -- 2 HEARING EXAMINER: Let's wait. 3 MR. SCHOFER: -- for the rebuttal. So 4 -- 5 HEARING EXAMINER: Let's wait. 6 MR. SCHOFER: Okay. 7 HEARING EXAMINER: Okay? 8 MR. SCHOFER: That's fine. 9 HEARING EXAMINER: So the way that this 10 is going to -- to work, based on the evidence 11 received, the primary objection is to whether or 12 not Mr. Santos lives at 907 based on the criteria. 13 I can only make a decision on the criteria on the 14 code. Whether there are one family, two family, 15 five families living at 907, not relevant. Okay? 16 Whether there are one, two, three, four, or five 17 families living at 904, not relevant. The only 18 thing relevant is does 907, the accessory dwelling 19 unit, meet the criteria in the code. Right? Can 20 the application move forward based on the criteria 21 as I identified it in -- what is it? 2916B. 22 Okay? All right. That's our focus. 23 So we're going to go ahead and 24 start. So if you guys want to come up, if you 25 wish to testify, or if you want -- if you want Mr.</p>	<p style="text-align: right;">15</p> <p>1 it out to begin with. I had it right here. 2 Approval based on 2919B1G. The principal dwelling 3 or accessory dwelling unit is the primary 4 residence of the applicant, and the applicant can 5 either live in the accessory dwelling unit or the 6 primary, right? But you have to be in it now. 7 And so, what you're telling me is that you live at 8 904. That's not 907. 9 A Yes. So 907 is rented. 10 My daughter married, and I have to have a place of 11 my own to live. 12 Q I understand it. 13 Appreciate it. I have married daughters of my own. 14 And I see -- I think this is -- is 15 this your dad? Okay. Do you want to come up and 16 -- and tell me what you want to tell me? 17 MS. SANTOS: Yeah. So if we look at -- 18 HEARING EXAMINER: Which one you want 19 to look at? 20 MS. SANTOS: There is a cover letter 21 for the ADU. 22 HEARING EXAMINER: There we go. This 23 -- no, let's -- let's go to another -- scroll down 24 a little more. Tell me when you see it. 25 UNIDENTIFIED SPEAKER: You're asking</p>
<p style="text-align: right;">14</p> <p>1 Santos to go first, and then you guys come up 2 after to support, is that -- would that be better? 3 MR. C. SANTOS: Yeah. 4 HEARING EXAMINER: Okay. All right. 5 Let's do that. Okay. 6 Whereupon, 7 ARILTON SANTOS, 8 being first duly sworn or affirmed to testify to 9 the truth, the whole truth, and nothing but the 10 truth, was examined and testified as follows: 11 EXAMINATION BY THE HEARING EXAMINER 12 Q Okay. All right. 13 Please tell me about your application for 14 accessory dwelling unit at 907 Nora Drive. 15 A So the intention is for 16 me to do a garage so I can move into the garage, 17 so my daughter can live at 904. 18 Q Is the -- is the 19 garage attached to the structure at 907? 20 A Yes. 21 Q Where do you live 22 today? 23 A On 904. 24 Q Okay. Here's my 25 problem. The code says -- and this is why I read</p>	<p style="text-align: right;">16</p> <p>1 the person with glasses. 2 HEARING EXAMINER: Well -- 3 Cover letter from building plans? 4 Is that -- 5 MS. SANTOS: Yeah. 6 HEARING EXAMINER: -- this one? 7 MS. SANTOS: I believe so. Oh, no. 8 HEARING EXAMINER: All right. Let's go 9 back. 10 MS. SANTOS: That's the building plans. 11 There's an actual cover letter for when we applied 12 for -- there. 13 HEARING EXAMINER: Maybe it's at the 14 very beginning. 15 MS. SANTOS: And in that -- in that 16 cover letter, it states that he did not reside 17 there and he was planning on living in the ADU -- 18 HEARING EXAMINER: Understood. 19 MS. SANTOS: -- when it was built. So 20 it's in the cover letter. 21 HEARING EXAMINER: Right. Right, but 22 -- but he doesn't live there now. 23 MS. SANTOS: Correct, but it's in the 24 cover letter, so -- 25 HEARING EXAMINER: Yeah, I have that.</p>

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<p>17</p> <p>1 That's actually --</p> <p>2 MS. SANTOS: I don't remember where</p> <p>3 it's gone.</p> <p>4 HEARING EXAMINER: Here. And then</p> <p>5 there -- there might be an attachment to this,</p> <p>6 because it's addressed to him at 904 Nora.</p> <p>7 MS. SANTOS: Yes.</p> <p>8 HEARING EXAMINER: There is -- I think</p> <p>9 it's printed -- that your exhibit (indiscernible).</p> <p>10 I know exactly which one you're talking about,</p> <p>11 where -- what he's testified to is that is his</p> <p>12 intention to live there.</p> <p>13 MS. SANTOS: Correct.</p> <p>14 HEARING EXAMINER: But my --</p> <p>15 MS. SANTOS: Since the beginning.</p> <p>16 HEARING EXAMINER: But my problem is he</p> <p>17 doesn't live there now.</p> <p>18 MS. SANTOS: Yeah.</p> <p>19 HEARING EXAMINER: Yeah, that's Exhibit</p> <p>20 20. This one, this is the one you're talking</p> <p>21 about?</p> <p>22 (EXHIBIT 20 MARKED FOR IDENTIFICATION)</p> <p>23 MS. SANTOS: Yes.</p> <p>24 HEARING EXAMINER: Yeah. Okay.</p> <p>25 MS. SANTOS: It has been mentioned</p>	<p>19</p> <p>1 A It's already approved.</p> <p>2 Q Okay. So the</p> <p>3 building permits have been approved. Has</p> <p>4 construction started?</p> <p>5 A No.</p> <p>6 Q No. But your</p> <p>7 permits are approved?</p> <p>8 A Yes.</p> <p>9 Q Okay. What else</p> <p>10 would you like to tell me?</p> <p>11 A So I want to be able to</p> <p>12 give a better future to my daughter and son, and I</p> <p>13 want to be able to have this place so I can live</p> <p>14 for a couple of months before I retire.</p> <p>15 Q Okay. All right.</p> <p>16 Thank you. Anything else you'd like to say?</p> <p>17 A And I want to be able</p> <p>18 to get to know the United States, to get to know</p> <p>19 better this country that gave me an opportunity to</p> <p>20 be here, because I never received any opportunity</p> <p>21 before, and this country gave it. And I do not</p> <p>22 know how to write or to read in Portuguese, nor</p> <p>23 English, and I am happy that this country gave me</p> <p>24 this opportunity. I can say that my first brand</p> <p>25 new shoe I earned when I was 23 years old, and it</p>
<p>18</p> <p>1 since he put in the application that he did not</p> <p>2 live there, but he intended on living at 907 once</p> <p>3 the ADU was approved and built.</p> <p>4 HEARING EXAMINER: Okay.</p> <p>5 MS. SANTOS: The county has had all the</p> <p>6 information before.</p> <p>7 HEARING EXAMINER: Does -- could you</p> <p>8 hear all of that, and were you able to get that</p> <p>9 entire exchange? Okay. It's all -- no, it's</p> <p>10 okay. I have microphone issues, so a lot of times</p> <p>11 I don't have my microphone on. But it's -- it's</p> <p>12 good because it's just the court reporter, and he</p> <p>13 has his microphones everywhere, so it's -- it's</p> <p>14 better than when it's Zoom. It's a hot mess.</p> <p>15 BY MS. BYRNE:</p> <p>16 Q Okay. All right. Let's talk a</p> <p>17 little bit about the ADU. Is it -- what does it</p> <p>18 look like now?</p> <p>19 A Very hard.</p> <p>20 Q Okay. So just a</p> <p>21 regular garage?</p> <p>22 A A garage with a unit</p> <p>23 above, apartment.</p> <p>24 Q Okay. Have you</p> <p>25 pulled building permits for this yet?</p>	<p>20</p> <p>1 was thanks to this country and to the opportunity</p> <p>2 that this country gave to me.</p> <p>3 Q So now, if -- if</p> <p>4 that -- does that conclude your testimony?</p> <p>5 A As for me, I believe</p> <p>6 so. It's good.</p> <p>7 HEARING EXAMINER: Okay. All right.</p> <p>8 So now I'll ask Ms. -- your daughter to come up.</p> <p>9 And I should have asked you to</p> <p>10 identify yourself.</p> <p>11 MS. SANTOS: Estefan Santos.</p> <p>12 HEARING EXAMINER: And could you spell</p> <p>13 your first and last name?</p> <p>14 MS. SANTOS: Yes. E as in echo, S as in</p> <p>15 Sam, T as in Tom, E as in echo, F as in Franklin,</p> <p>16 A as in Alpha, N as in Nancy. Last name, same</p> <p>17 thing, S as in Sam, A as in Alpha, N as in Nancy,</p> <p>18 T as in Tom, O as in Octopus, S as in Sam.</p> <p>19 HEARING EXAMINER: Tell me what -- tell</p> <p>20 me what you'd like to tell me about this</p> <p>21 application and the process.</p> <p>22 MS. SANTOS: Yes. So we have worked</p> <p>23 with Doug, the architect, and when it came -- and</p> <p>24 I want to say it's from Mr. Clifton -- it stated,</p> <p>25 you know, you have to live there. Then that cover</p>

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6 (21 to 24)

<p>21</p> <p>1 letter, as you've seen, stated exactly what was 2 the plan, as well as various times -- for example, 3 there is -- I don't remember what -- what exhibit 4 there is, but there's an ADU affidavit that wasn't 5 signed. And I know that the objectors are saying, 6 oh, they can't approve it without it being signed. 7 They don't -- they don't know that we physically, 8 the three of us, went into the building, printed 9 out the plans for Mr. Clifton, and signed it in 10 front of the receptionist and gave that document 11 to the receptionist, and it was her duty to do 12 what her duty is. And that exchange happened on 13 the 1st of April, and we have the personal emails 14 that I told you that I can send to you after 15 between Clifton and us. 16 HEARING EXAMINER: Okay. So if you 17 would -- so what I'm going to do is I'm going to 18 leave the record open. I'm going to leave the 19 record open anyway for 10 days to allow for the 20 transcript to be generated, so if you could either 21 screenshot or print or provide a PDF -- 22 MS. SANTOS: Yeah, we -- we -- we have 23 the screenshots. I just haven't put it in the PDF 24 because, you know, time. 25 HEARING EXAMINER: Understood. So if</p>	<p>23</p> <p>1 montgomerycountymd.gov 2 MS. SANTOS: Dot gov. And not to Nana? 3 HEARING EXAMINER: Well, you know, you 4 can send it to Nana. 5 MS. SANTOS: Okay. 6 HEARING EXAMINER: You have Nana's 7 e-mail? 8 MS. SANTOS: Yes. 9 HEARING EXAMINER: Yeah. That's her -- 10 that's another e-mail box that she looks at. 11 MS. SANTOS: The other thing I wanted 12 to say is -- that he forgot to say is that we did 13 remove the tree from 907 because the driveway 14 approved for the ADA was approved, and so to help 15 each other out, he removed the -- the tree. 16 HEARING EXAMINER: Okay. And the 17 purpose of that was for access and more -- and 18 parking accommodations? 19 MS. SANTOS: So eventually, when the 20 ADU was built, that -- exactly where that tree is 21 is where the ADU is and the driveway. 22 HEARING EXAMINER: Okay. Okay. 23 Anything else you'd like to tell me? 24 MS. SANTOS: Well, I'm not -- I'm not 25 sure if I'm allowed to say it, but some of the</p>
<p>22</p> <p>1 you could put that in the PDF -- 2 MS. SANTOS: That's fine. 3 HEARING EXAMINER: -- and you can get 4 that to me within five -- let's see. What's today? 5 MS. SANTOS: We can -- we can make it 6 happen. 7 HEARING EXAMINER: Okay. Oh, shoot, I 8 can't do that, but I'll look -- let's look at a 9 calendar together, everyone. So yeah, if you 10 could get it to me by the 26th -- 11 MS. SANTOS: Yes, ma'am. 12 HEARING EXAMINER: -- because then I'll 13 have that before I get the transcript. 14 MS. SANTOS: And -- yes. And do you 15 want the whole exchange just between my father and 16 Mr. Clifton? Or do you want the exchange that 17 also includes the architect and the back and forth 18 of what is needed? 19 HEARING EXAMINER: The whole thing. 20 MS. SANTOS: Okay. So is it possible 21 for me to print -- not print it, but, like, PDF 22 the whole exchange -- that way it's, like, in 23 order -- and then put it there as well. 24 HEARING EXAMINER: Uh-huh. Yep. And 25 you can send it by e-mail to the OZAH, O-Z-A-H, at</p>	<p>24</p> <p>1 applicants, I believe, are biased. Not the 2 applicants, the objectors, because they have 3 physically been into 904 Nora Drive and they say 4 things between them, thinking we don't listen, and 5 -- I'm choosing my words carefully. So a lot of 6 the evidence that they present, in my opinion, are 7 not valid. 8 For example, yes, his primary 9 address is 904, as you've heard, as you've heard 10 from me, as you've heard from him. It's written 11 in the ADU. When he purchased the home at 907, 12 the county put that as a primary, but it's leased 13 out. Not leased, rented out. We do have a 14 renting license for that. We applied for the ADU 15 renting license as well. So that way, the -- the 16 license number is there. So that's there. 17 And then they brought up 717, and 18 that has -- not my father's primary. That is my 19 brother's primary. So they're bringing in invalid 20 information that they believe is valid. 21 HEARING EXAMINER: Let me ask you a 22 question. So you have a lease for the main 23 dwelling at -- 24 MS. SANTOS: A rental lease. 25 HEARING EXAMINER: -- 907? A rental</p>

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<p style="text-align: right;">25</p> <p>1 lease. 2 MS. SANTOS: It's not a dwelling. It's 3 -- it's the -- the main home, and 907 -- 4 HEARING EXAMINER: The main home at 907 5 -- 6 MS. SANTOS: -- is leased out. 7 HEARING EXAMINER: -- is leased out? 8 MS. SANTOS: Yes, ma'am. 9 HEARING EXAMINER: And how long is that 10 lease for? 11 MS. SANTOS: I believe it's for a year, 12 but he can confirm. 13 HEARING EXAMINER: I guess when does 14 that lease expire, Mr. Santos, at 907? 15 MR. A. SANTOS: It started this June. 16 HEARING EXAMINER: Okay. And it'll 17 expire June 2025? 18 MR. A. SANTOS: I did it for a year, 19 but if the person wants to reside there for 10 20 years, he is able to. 21 And -- and the first time I rented 22 that place was around, if I'm not mistaken, 2016. 23 I rented it for seven years. And the reason why 24 the tenant moved away is because there were too 25 many complaints from neighbors and other residents</p>	<p style="text-align: right;">27</p> <p>1 in the garage and rent the house, which I prefer -- 2 HEARING EXAMINER: Okay. 3 MR. A. SANTOS: -- because I never had 4 the opportunity in my life to live in a brand new 5 place. This would be the first time. So that's 6 why my intention is to live in the garage -- 7 HEARING EXAMINER: Okay. 8 MR. A. SANTOS: -- above. 9 HEARING EXAMINER: Okay. All right. 10 That's helpful. Thank you. 11 INTERPRETER: Okay. 12 HEARING EXAMINER: Anything else you 13 guys would like to say? 14 MS. SANTOS: Yeah. So part of the 15 evidence as well, not by us, by objectors, are 16 saying that cars are parked on the street. Per my 17 knowledge, streets are public parking. I don't 18 know. We -- there's -- there's a church not close 19 to us, but it's across New Hampshire Avenue, and 20 those people park on Nora Drive, on Renick, on 21 Tanley, wherever they can, but yet it seems to be 22 that only us parking is an issue. 23 HEARING EXAMINER: Okay. 24 MS. SANTOS: But per my knowledge, it's 25 public parking. One of our neighbors who is not</p>
<p style="text-align: right;">26</p> <p>1 surrounding, and even having to involve fire 2 workers, which said that we could get a fine up to 3 \$500. Getting to a point that if I put fire on 4 the fire pit, there would be consequences up to 5 500 to them that were complaining. 6 HEARING EXAMINER: Okay. 7 MR. A. SANTOS: And anything that was 8 done over at that property, even cutting the 9 grass, a complaint would be made to the county to 10 a point that there are today at the county, 19 11 complaints regarding my property. So I have 12 complaints for anything. Even if I park the car 13 in the grass, there will be a complaint. But a 14 complaint to the dead tree that could fall and 15 injure or damage things, there was never a 16 complaint about that. 17 HEARING EXAMINER: Okay. Another 18 question about what your plans for 907. So you 19 say your plan is to move into the ADU at 907. 20 Would the primary dwelling 21 continue to be rented, or would family members be 22 living in 907? 23 MR. A. SANTOS: So I was informed that 24 I can rent either the house or the garage once the 25 permission was given. That I could choose or live</p>	<p style="text-align: right;">28</p> <p>1 here, and I don't know if she's an objector or 2 not. That's in -- that's -- you know -- 3 HEARING EXAMINER: No, understood. So 4 I hear what you're saying and I'm sure I'll hear 5 from them, but what I'd like to do is just limit 6 the testimony -- 7 MS. SANTOS: Yeah. 8 HEARING EXAMINER: -- to the basis of 9 the objection -- 10 MS. SANTOS: Yes. 11 HEARING EXAMINER: -- that it's not his 12 primary residence. 13 MS. SANTOS: Yes. And then the other 14 thing is as well as when the county was called for 15 the ADU inspection at 907, they showed up at 904, 16 inspecting an already approved garage from, like, 17 2004, 2003. 18 HEARING EXAMINER: So the county showed 19 up at 904, not 907? 20 MS. SANTOS: They inspected both of 21 them -- 22 HEARING EXAMINER: Both of them. 23 MS. SANTOS: -- instead of only 907. 24 HEARING EXAMINER: Okay. All right. 25 Well, I'll -- I'll hear from them on that.</p>

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<p style="text-align: right;">29</p> <p>1 MS. SANTOS: Yes. And then recently, 2 the inspector went to do a, quote, voluntary 3 inspection, unquote. He -- the first time he 4 inspected, I was -- I was there because I'm the 5 translator for my father. I don't have a 6 translator on phone like -- like you guys. And 7 because it's a legal issue, there needs to be a 8 translator for him that's not me, right? But 9 since it's our home, AKA his home, I want to be 10 present, right? 11 And the multiple phone calls, my 12 father did not answer because he is not the 13 caregiver, but he is the nanny of my child while I 14 go to work. And he is with her sometimes from 15 6:30 up until 4:00. It really depends on my 16 teaching schedule. So I'm supposed to be there at 17 7:15. With a child, you never know. And that 18 inspector still went, even though he told him no. 19 HEARING EXAMINER: Okay. Okay. Okay. 20 I think at this point now, we'll go ahead and 21 move. I guess we have one more person that wants 22 to speak on behalf of the applicant. 23 MS. SANTOS: Am I okay to go back to -- 24 HEARING EXAMINER: You are. 25 MS. SANTOS: Thank you.</p>	<p style="text-align: right;">31</p> <p>1 MS. O'CONNOR: Lisa O'Connor. 2 HEARING EXAMINER: Okay. And if you 3 could spell your last name, just so that he has it? 4 MS. O'CONNOR: O, apostrophe, 5 C-O-N-N-O-R. 6 HEARING EXAMINER: Okay. And -- 7 MS. O'CONNOR: And I -- I'm 8 representing both myself and my mother, Harriet 9 O'Connor, who lives at 11805 Renick. 10 HEARING EXAMINER: Okay. And what 11 would you like to tell me? 12 MS. O'CONNOR: So there -- there are 13 two things. And one you jumped on and -- and you 14 properly identified the part of the county code 15 that has requirements for residency now. But 16 there's also a pattern of behavior here, which 17 goes to intent. And that becomes relevant when we 18 start talking about the precedent in another case 19 that is very similar that the county heard last 20 year. In fact, in September of last year. And -- 21 and ruled on, and that was OZAH. 22 So just I want to introduce 23 myself. I work in cybersecurity. I'm a 2022 24 graduate of Leadership Maryland. I'm a volunteer 25 election worker, and I hope to work in the next</p>
<p style="text-align: right;">30</p> <p>1 HEARING EXAMINER: Thank you. 2 And could you please state your 3 name and spell it for the court reporter? 4 MR. C. SANTOS: Yes. My name is 5 Christopher Santos. C-H-R-I-S-T-O-P-H-E-R Santos, 6 S-A-N-T-O-S. 7 HEARING EXAMINER: Okay. 8 MR. C. SANTOS: And I want to show you 9 Exhibit 13. 10 (EXHIBIT 13 MARKED FOR IDENTIFICATION) 11 MR. C. SANTOS: As you can see on 12 Exhibit 13, I'm the owner of 717 Tanley Road, 13 Silver Spring, Maryland 20904. That is my primary 14 residence, as stated in Exhibit 13. I also 15 received the homestead credit, which I applied for 16 last year with the county. 17 HEARING EXAMINER: Okay. 18 MR. C. SANTOS: That's it. 19 HEARING EXAMINER: Sounds good. Thank 20 you very much. 21 Okay. So now we're going to move 22 to the objectors. So who would like to go first? 23 Okay. Come on up. 24 And if you could please state your 25 name?</p>	<p style="text-align: right;">32</p> <p>1 election if that works out. I'm at Renick Lane 2 most days because I am actively caring for my 3 mother. 4 We live across the street from 5 907, so we -- we see the whole backyard of 907. 6 And, you know, there -- there is a long history 7 here and there is a pattern here, and you will see 8 that in the records in the exhibits. 9 I did submit Exhibit 34. We don't 10 have to pull it up. It is a laundry list of 11 photos. And the purpose of that is to show the 12 residents that -- that there were different units. 13 There were distinct units from -- I think it is 14 2018 are my first photos on the bottom, all the 15 way through 2024, when people departed on May 2nd. 16 And it was, you know, again, the timing of 17 inspections and both units, both rental unit 18 renters departing at the same time. And so that 19 period of time, it was the same group of renters 20 at the bottom. 21 And so while we're hearing all of 22 the -- all of the testimony and we're considering 23 this, we have to consider the records. And there 24 -- there is case records in there, but you're 25 going to hear -- and -- and again, I'm -- I'm</p>

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<p>33</p> <p>1 trying to be as concise as possible. We have all 2 tried to pick different parts of the testimony so 3 we're not hopefully passing over and doing things, 4 but you have to understand, this is sort of a 5 10-year journey for us, and this is the next piece 6 of it that we're seeing and a little bit of 7 disbelief because we know the county code. 8 And throughout this effort, I -- I 9 would also say that we appreciate the interactions 10 and the insights of the many county people in DPS 11 and DHCA, and we have three members of D -- DHCA, 12 who are with us today, who have been a part of 13 this process. And we also have reached out -- and 14 again, Council Member Mink and Chris Wilhelm, 15 because we found a number of things that are kind 16 of broken in -- in communicating with homeowners 17 and with residents between the processes of DPS 18 and the processes of DHCA. 19 And -- and we'll try -- try not to 20 be frustrated in this, but I want to go to Exhibit 21 35. 22 (EXHIBIT 35 MARKED FOR IDENTIFICATION) 23 MS. O'CONNOR: And that was kind of -- 24 that's sort of my summary of -- of points. And -- 25 and the main point is the first point you landed</p>	<p>35</p> <p>1 re-rented. He has open investigations. And this 2 -- you have to understand. Some of this evidence 3 we submitted was point time in August, and -- and 4 more things have progressed since August. Like, 5 there's more activity, inspections and other 6 things that you hear about. 7 He has -- he has never been a 8 registered landlord in the DHCA database. He's 9 rented 907 Nora since he acquired it, as he 10 shared. And he's had the second unit, the lower 11 levels of 904, rented from 2018 to 2024. The 12 other part of that -- 13 HEARING EXAMINER: So 904 I don't care 14 about. 15 MS. O'CONNOR: I'm sorry, did I say 9 16 -- 907. 17 HEARING EXAMINER: Okay. 18 MS. O'CONNOR: Sorry. I -- I meant 19 907. It's not a registered rental property in the 20 DHCA database. And so all these things that are, 21 like, public notice, where you could look and 22 trace and try to find things, he's not showing up 23 anywhere as a landlord. He has applied for an ADU 24 license while having all these unresolved issues 25 with DHCA and code issues.</p>
<p>34</p> <p>1 on, which is he's not a resident of the property 2 at which he is applying for an ADU. And he -- he 3 admits in -- in record and here today that he is a 4 resident of Nora Drive, 904. 5 I submitted the -- the cover 6 letter, and I -- I appreciate his daughter has 7 shared that there's another one where he signed 8 it. But it's strange for me to see something 9 being processed by the county with no signature, 10 because that signature is an attestation, and 11 there are -- there are things in that paper that 12 are not attached versus detached. We'll get to 13 that later. But there are things that didn't sort 14 of sync up right in that application, and yet 15 we're still processing it. There was some issues 16 with notice that -- again, that it's not the 17 bigger deal. 18 Point 4, since the removal, 19 eviction, I'm not sure exactly what happened on 20 May 2nd of the two rental parties at 907 Nora, 21 he's already re-rented the house, as he shared, in 22 June, at 907 Nora. And that's Exhibit 19, Page 23 36, and that's DHCA sharing that with us. 24 (EXHIBIT 19 MARKED FOR IDENTIFICATION) 25 MS. O'CONNOR: So that's already</p>	<p>36</p> <p>1 As of, I said, point in time, he's 2 said 10 prior code enforcement cases where six of 3 these were reporting the illegal rental unit. 4 HEARING EXAMINER: I -- I do understand 5 that. 6 MS. O'CONNOR: Okay. 7 HEARING EXAMINER: I understand that 8 you're trying to establish what you lived through, 9 what you feel the history is, and that you -- 10 based on this, you don't believe that he's going 11 to move in there. 12 MS. O'CONNOR: Intent. Yes. 13 HEARING EXAMINER: His intent, 14 essentially. 15 MS. O'CONNOR: Yeah. So let me -- 16 HEARING EXAMINER: And we rely on his 17 intent. 18 MS. O'CONNOR: Yeah. But then -- 19 HEARING EXAMINER: So -- 20 MS. O'CONNOR: I will skip through the 21 rest of the record. Let me get to the case. 22 HEARING EXAMINER: Okay. 23 MS. O'CONNOR: All right. So if we go 24 to -- actually, there is an error in the index. 25 36 and 38 are flipped.</p>

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<p style="text-align: right;">37</p> <p>1 HEARING EXAMINER: Okay. 2 MS. O'CONNOR: So if you go to Exhibit 3 38. 4 (EXHIBIT 38 MARKED FOR IDENTIFICATION) 5 HEARING EXAMINER: Okay. 6 MS. O'CONNOR: That's the case ADU 2306. 7 HEARING EXAMINER: Okay. So -- 8 MS. O'CONNOR: Exhibit 38. 9 HEARING EXAMINER: -- exhibit 38? 10 MS. O'CONNOR: Yep. 11 HEARING EXAMINER: I see that. 12 MS. O'CONNOR: Oh, no. It's going to 13 be the other one, because they're -- they're 14 flipped. The -- the titles are (crosstalk). 15 HEARING EXAMINER: So 30 -- so which 16 one do you -- 17 MS. O'CONNOR: Go to 38. 18 HEARING EXAMINER: Go to 38? 19 MS. O'CONNOR: Yeah. That's it. Okay. 20 HEARING EXAMINER: This is the case. 21 Yeah. 22 MS. O'CONNOR: Right. And what's 23 important about this case, there -- there are many 24 similarities in this case. So similar to -- to 25 Mr. Santos, Ms. Faval [sic] did not have a current</p>	<p style="text-align: right;">39</p> <p>1 Maryland supreme court judgment on intent, because 2 what she said in that judgment was also that it's 3 not -- sort of what you said. It's -- it's what 4 you do. And that is really important here because 5 we have a track record of non-doing and not 6 following up. Even as DHCA has chased and done 7 things, there's a pattern here. And -- and he is 8 considered by HCA, and it's DHCA, and it's in the 9 record as repeat offender. So intent matters 10 here, no matter what is said or what's on paper, 11 and the pattern -- the pattern here is not -- it's 12 the same as this case. 13 And -- and so again, I mean, I 14 would ask that you treat this in the same way that 15 that was treated, that we have non-residency and 16 we have an intent that is very different 17 potentially. And at least there is no track 18 record of following through on what is written and 19 what has been asked for and what has been ordered 20 by the Court hearings before, that I -- I have no 21 belief that -- that this is going to be occupancy 22 the way we hear it today. 23 HEARING EXAMINER: Thank you. 24 MS. O'CONNOR: Thanks. 25 HEARING EXAMINER: All right. Next?</p>
<p style="text-align: right;">38</p> <p>1 rental licenses for her rental property. She 2 claimed to have them twice. Again, Mr. Santos 3 doesn't have those yet. 4 Similarities in the case involving 5 having multiple parties renting and involving 6 multiple properties. But we -- we won't talk 7 about that. 8 Based on the evidence presented at 9 the hearing, the hearing examiner found that the 10 objection should be granted and the license 11 application should be denied because the subject 12 property is not Ms. Faval's primary residence. 13 HEARING EXAMINER: I am familiar with 14 that, and I do know what the code section is, and 15 I can -- I can look at that. 16 MS. O'CONNOR: Okay. 17 HEARING EXAMINER: So I understood. 18 Understood. 19 MS. O'CONNOR: Okay. And then -- 20 HEARING EXAMINER: There's only two of 21 us in the office, so I know the person that wrote 22 this. 23 MS. O'CONNOR: Okay. All right. So -- 24 but what was interesting in that case was intent. 25 And she went back to the -- the Supreme --</p>	<p style="text-align: right;">40</p> <p>1 MS. FRANKLIN: Good morning. 2 HEARING EXAMINER: Oh, you know what? 3 I don't think I swore you in, did I? Please raise 4 your right hand. Both of you will do it. 5 Whereupon, 6 ESTEFAN SANTOS, KAREN FRANKLIN, LISA O'CONNOR 7 being first duly sworn or affirmed to testify to 8 the truth, the whole truth, and nothing but the 9 truth, was examined and testified as follows: 10 HEARING EXAMINER: Okay. So this is 11 retroactive for you three if I didn't do it, and 12 current for you, because everybody -- everybody 13 has already -- that has already spoken has told me 14 the truth. Okay. All right. 15 EXAMINATION BY THE HEARING EXAMINER 16 BY MS. BYRNE: 17 A Good morning. 18 Q Good morning. 19 A My name is Karen Roberts 20 Franklin. I've lived at 1000 Tanley Road since my 21 family moved here in 1959. 1000 Tanley Road is 22 one block from 907 Nora Drive. 23 You've already heard that Mr. 24 Santos at 907 is not his primary residence. And 25 according to DHCA's affidavit, DH -- DCH -- HCA</p>

<p style="text-align: right;">41</p> <p>1 has several requirements, which was sent to me by 2 Mr. Howley, for accessory dwelling units, such as, 3 number one, the ADU must be, must be the owner's 4 primary residence. Number two, the ADU may not be 5 on a lot that has any of the following any other 6 residential use that it currently already has, as 7 you've heard, been -- at least. 8 Mr. Santos has lived at 904 Nora 9 Drive for 20 years. Tax -- Montgomery County tax 10 records, which I submitted, which I think other 11 people have submitted as well, shows that 904 as 12 his principal residence. The tax records also 13 shows that 907 is his principal residence. You 14 cannot have -- you know, in the county, you cannot 15 have two principal residences, and he's had listed 16 as two principal residences on his tax records for 17 10 years. And I don't -- I guess I don't 18 understand even how the county even entertains his 19 application, knowing that he had two principal 20 residences, knowing that the requirement for an 21 ADU, the number one requirement, is it must be -- 22 it doesn't say maybe, but it said must be the 23 owner's primary residence. 24 I do not live on Nora Drive, but 25 as I said, I've been a resident of the community</p>	<p style="text-align: right;">43</p> <p>1 I'll read that. 2 A Okay. He's not here to 3 -- to read his -- if you read Exhibit number 9. 4 Q Okay. 5 A Thank you. 6 HEARING EXAMINER: All right. Thank 7 you very much. 8 And the next person who'd like to 9 speak? I think we have two more coming. Anybody? 10 All right. We'll go back row and then we'll go 11 front row -- or middle row. 12 Gentleman in the blue shirt and 13 the jacket, you're next. Please state your name 14 and spell it for the court reporter. 15 MR. ISAACS: My name is Lyle Isaacs, 16 L-Y-L-E, I-S-A-A-C-S. 17 Whereupon, 18 LYLE ISAACS, 19 being first duly sworn or affirmed to testify to 20 the truth, the whole truth, and nothing but the 21 truth, was examined and testified as follows: 22 EXAMINATION BY THE HEARING EXAMINER 23 BY MS. BYRNE: 24 Q Okay. What would 25 you like to tell me?</p>
<p style="text-align: right;">42</p> <p>1 for most of my life, and I support -- my husband, 2 John Franklin, and I support our neighbors' 3 objections. Pat -- Patricia Brennan, my neighbor, 4 and I were the ones that collected the objections. 5 I do not believe that -- I just -- I don't 6 understand how the county is entertaining this at 7 all. 8 I'd like to also read Mr. Wides' 9 statement, if I may. 10 Q Okay. Do I have 11 that in the record? I don't think -- 12 A You do. Exhibit -- you 13 don't need it then. 14 Q Okay. Yeah. It's 15 just -- tell me which exhibit number it is. 16 A Lisa, do -- 17 Q Here, I can go back. 18 I can look at it. 19 MS. O'CONNOR: It's -- it's down to the 20 bottom. 21 HEARING EXAMINER: Yeah, it should be 22 on the bottom. 23 MS. FRANKLIN: Exhibit number 9. 24 (EXHIBIT 9 MARKED FOR IDENTIFICATION) 25 HEARING EXAMINER: All right. I'll --</p>	<p style="text-align: right;">44</p> <p>1 A Well, I would like to read 2 from the statement that I've submitted. 3 Q I don't want you to 4 do that, because I can read it. So I want you to 5 tell me something that's different, all right, 6 than what's in the statement, or give me a 7 synopsis. 8 A Okay. The synopsis is 9 that as we've heard earlier in testimony from Mr. 10 Santos, his -- he currently lives at 904 Nora 11 Drive, the primary residence of -- Montgomery 12 County regulations say that an ADU can only be 13 built at the primary residence of the applicant, 14 and clearly, Mr. Santos does not have a primary 15 residence at 907 Nora Drive. 16 Q Okay. All right. 17 Anything else you'd like to tell me? 18 A No. 19 Q Okay. I appreciate 20 that. Thank you. 21 A Thank you. 22 Q And I have your -- I 23 have your full written testimony and I'll be sure 24 to read the whole thing. 25 Okay. Next one? Anyone? Okay.</p>

<p style="text-align: right;">45</p> <p>1 And if you could state your full 2 name. 3 MR. SCHOFER: Mayer Schofer. 4 HEARING EXAMINER: And could you spell 5 both first and last for the court reporter? 6 MR. SCHOFER: Mayer, M-A-Y-E-R, last 7 name is Schofer, S-C-H-O-F-E-R. 8 HEARING EXAMINER: All right. 9 MR. SCHOFER: And I guess I'm the one 10 who's at the top and my wife Robin is behind me. 11 Whereupon, 12 MAYER SCHOFER, 13 being first duly sworn or affirmed to testify to 14 the truth, the whole truth, and nothing but the 15 truth, was examined and testified as follows: 16 EXAMINATION BY THE HEARING EXAMINER 17 BY MS. BYRNE: 18 Q All right. Thank you. Go ahead. 19 A Honestly, I prepared this, you know, a 20 -- a -- an opening statement that I was going to 21 read, but, you know, I'm -- not being familiar 22 with the process. I'm not really sure I have 23 anything really to say. 24 Q Okay. 25 A He's -- you know, just -- applicant has</p>	<p style="text-align: right;">47</p> <p>1 EXAMINATION BY THE HEARING EXAMINER 2 BY MS. BYRNE: 3 Q Thank you. All right. Tell me 4 everything you know about this application, soup 5 to nuts. 6 A Okay. 7 Q Now, I don't mean to -- I don't mean to 8 sort of throw you under the bus. 9 A Yeah. It's quite all right. 10 Q So let's -- let's start with the 11 preliminary inspection report. 12 A Okay. May I refer to my notes or 13 should we just -- 14 Q Absolutely. 15 A Okay, great. 16 Q Take out anything you need to. 17 A Thank you. So initially, my 18 recollection is that we received this as a 19 complaint. The complaint was initially routed to 20 us -- 21 Q Okay. 22 A -- through the Department of Permitting 23 Services and it involved, essentially, 24 construction that may be underway without a permit. 25 Q Okay.</p>
<p style="text-align: right;">46</p> <p>1 confessed that he doesn't live there. End of 2 story, at least in my opinion. 3 Q Okay. 4 A And, you know, he -- he -- you know, he 5 -- he's not supposed to be -- as I understand, 6 he's not allowed to use this residence, you know, 7 or -- for excuse me, for any rental purposes. 8 He's confessed that too, so I don't think there's 9 any point in me wasting any time. 10 Q All right, I appreciate you coming. 11 Thank you. 12 A All right. Thank you. 13 Q Is there anyone else that would like to 14 testify in opposition of the application? Okay. 15 We're going to now move to Mr. Johnson. 16 Mr. Johnson, could you state your 17 full name for the record? 18 MR. JOHNSON: David Johnson. I'm an 19 inspector with Montgomery County's Department of 20 Housing and Community Affairs. 21 Whereupon, 22 DAVID JOHNSON, 23 being first duly sworn or affirmed to testify to 24 the truth, the whole truth, and nothing but the 25 truth, was examined and testified as follows:</p>	<p style="text-align: right;">48</p> <p>1 A They investigated it and found that 2 there was no construction in that area. However, 3 there was heavy equipment. So without a building 4 permit in place and heavy equipment in the yard of 5 907, it was routed to us, our leadership, and 6 assigned to me to go out in the field and make a 7 determination as to is this a housing violation, 8 this heavy equipment in the backyard of 907. 9 Q Okay. 10 A It quickly shifted into an 11 investigation for potential illegal accessory 12 dwelling units. 13 Q Okay. 14 A And I say units because that would be 15 -- the allegation was that it would be for both 16 Unit 907 and 904. So within days of opening a 17 case for 907, we opened a case for 904. 18 Q Okay. 19 A For the allegation that there was an -- 20 an illegal, without a license, dwelling unit, 21 accessory dwelling unit, above a detached garage 22 behind the primary dwelling at 904 North Drive. 23 Q And -- and 907. 24 A And, in addition to that, yes, the -- 25 the report was -- we received service reports, a</p>

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1 number of service requests, for both 904 and
2 turning our attention now to 907 is that there was
3 also a unlicensed or illegal accessory dwelling
4 unit. However, in 907, the report was that it was
5 in the basement of this rented property of 907.
6 Q Okay.
7 A So that -- that -- after initially
8 responding for the construction equipment in the
9 rear of 907, we received reports for both illegal
10 ADUs at 904 and 907.
11 Q So 904, the allegation was illegal
12 garage?
13 A Yes. There's a --
14 Q And then --
15 A -- garage to the -- a detached garage.
16 Q Okay.
17 A In the space above that detached
18 garage, the allegation was that there was an
19 illegal accessory dwelling unit --
20 Q And then --
21 A -- above that garage.
22 Q -- in 907, it was a basement ADU.
23 A Exactly. Yes.
24 Q Illegal -- okay, perfect. Right.
25 A It's a rancher and the basement area --

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1 the -- the reports we were receiving is that it
2 was an unlicensed ADU in the basement of 907.
3 Q Okay.
4 A Yes.
5 Q And then what happened?
6 A Okay. So I responded to the -- here,
7 let me get my dates right for this.
8 Q Sure.
9 A So on March 6th of '24, the case at 907
10 was assigned to me. March 8th, a case was open
11 and assigned to me for 904, and that was based on
12 those additional reports. On March 7th, 2024, I
13 sent the inspection letter out and that would've
14 sent to Mr. Santos at 904 --
15 Q Okay.
16 A -- requesting an inspection of the
17 property --
18 Q Okay.
19 A -- based on the information we were
20 receiving. On March 20th, 2024, I responded and
21 met with Mr. Santos. I met with him at 904. My
22 goal there was to make a determination as to
23 whether there were illegal accessory dwelling
24 units at 904 and 907.
25 Q Okay.

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1 A We initially turned our attention to
2 904.
3 Q Okay.
4 A And I asked Mr. Santos if I may have
5 access to the space above the detached garage at
6 904. He agreed. However, it was found to have
7 been locked, and he stated he didn't have a key to
8 enter that area, although he readily admitted that
9 he believed that there was cooking equipment in
10 there, when asked, and that we would schedule a
11 re-inspection when he had a key to that area.
12 Q Okay.
13 A That same day, on the 20th, we turned
14 our attention to 907. We responded to 907, and my
15 intention was to not only conduct an exterior
16 inspection, but also an interior as well. When we
17 arrived at the entrance door for 907, I made
18 contact with the tenants or occupants that
19 identified themselves as tenants.
20 And when asked if they had 72
21 hours notice of our inspection, which is a
22 requirement at the Department of Housing and
23 Community Affairs, conducts an inspection on site,
24 in the interior, and we're entering a property,
25 the tenant is to have 72 hours notice. In this

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1 case, they did not have 72 hours notice. However,
2 evidence was they were moving out at the time.
3 Q Okay.
4 A They were packing up or preparing to
5 depart. At least that was my sense at the time is
6 that there was some indication that they would be
7 leaving the property shortly. Based on that, I
8 conducted an exterior inspection of 907. I did
9 not go in, because we didn't have -- the -- the
10 tenants were not given proper notice.
11 Q Okay.
12 A At the time, I had no evidence that
13 there's an illegal ADU in the basement and we -- I
14 discussed with Mr. Santos my findings. He
15 expressed an interest and an intention to apply
16 for an accessory dwelling unit license for 907 --
17 Q Okay.
18 A -- because he was in the process of
19 working with his architect to develop site and
20 floor plans for the structure that would be built
21 to the back. Its -- I think it -- first, it was
22 described as a detached structure, but ultimately
23 an attached structure to the rear of 907.
24 Understanding that, I provided him information how
25 to apply for an accessory dwelling unit. I

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1 informed him that these -- in these cases, he will
2 not be able to acquire permits, generally, unless
3 he applies to the Department of Housing first to
4 conduct a preliminary inspection, and based on
5 that preliminary inspection report, along with the
6 stamped floor and site plans, the applicant can
7 take those documents to the Department of
8 Permitting Services to acquire the proper permits
9 to construct the ADU. But it's necessary in most
10 cases for us to conduct a preliminary inspection.
11 Having discussed that with him, he
12 was interested in pursuing that. In fact, it
13 appeared at the time, based on the information he
14 shared with me, he was already in that process.
15 Q Okay.
16 A He just hadn't applied to us at that
17 point.
18 Q Okay.
19 A He expressed an interest in doing that
20 and I told him if he did and it came in with a
21 reasonable period of time, we would just
22 transition this case from just a -- an inspection
23 for a potential illegal ADU to a preliminary
24 inspection. During that preliminary inspection,
25 we would also check to see if there was an illegal

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1 ADU. However, we would go through a much broader
2 set of guidelines in order to identify any issues
3 with the property. He agreed to that.
4 Based on that, he applied for a --
5 an accessory dwelling unit license through our
6 licensing section with the Department of Housing
7 and Community Affairs. When that was received and
8 processed by our licensing section, it was
9 assigned to me for follow-up, based on my previous
10 interaction with the property. And I'm one of
11 several inspectors that conducts inspections for
12 accessory dwelling units.
13 So when assigned to me, I reached
14 out to Mr. Santos. We agreed on a day of May 1st
15 for a preliminary inspection of the property and
16 the -- the next and -- and I confirmed that with
17 him by phone, that we're good for May 1st, 2024.
18 Upon responding this time for a preliminary
19 inspection report, one of the requirements, and
20 based on our previous reports and unfinished
21 business at 904 is first I needed to determine,
22 does he already have an accessory dwelling unit?
23 We can only grant one accessory dwelling unit.
24 So based on the reports we
25 received, I needed to clear that 904 did not have

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1 an accessory dwelling unit, because one may only
2 have one accessory dwelling unit. If he wanted to
3 pursue having it at 904, I would've assisted him
4 with that. His intention was to have one at 907.
5 Q Okay.
6 A He was able to make 904, that space
7 above the garage, available for my inspection.
8 During that inspection, I found that there was
9 cooking equipment in that area, along with a bed
10 and bedding and sanitation, as well as an eating
11 area. Based on those four criteria, and it being
12 separated from the primary dwelling, it's -- but
13 -- I identified that as a -- an accessory dwelling
14 unit. And it wasn't licensed, so it's an illegal
15 accessory dwelling unit.
16 Q Okay.
17 A I provided him a notice and instruction
18 on how to eliminate that accessory dwelling.
19 There's many ways to eliminate.
20 Q Is that notice still open?
21 A Is that notice still open? That
22 particular notice is not open because most
23 recently we issued a citation on that.
24 Q Okay.
25 A So the notice essentially may remain

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1 open, but it was the -- the notice, you know, the
2 notice's intent to allow the property owner time
3 to correct the violation in this case.
4 Ultimately, we believe there's evidence that
5 there's an accessory dwelling unit over on 904 --
6 Q Okay.
7 A -- above that garage. So at the time
8 he -- he understood. He said he'd get the cooking
9 equipment out of there, that that space was really
10 his office, his business office. But at that
11 time, his daughter was going to live over there
12 and that is what I saw, cooking, equipment, bed,
13 and that sort of thing. But he said he would take
14 that out.
15 Q Okay.
16 A And he'd convert that to an office. He
17 understood the requirements and was going to work
18 in that direction.
19 Q Okay.
20 A We then turned our attention over to
21 907. At this point, the tenants were actively
22 moving out of 907. They had 72 hours notice and
23 we were able to conduct that interior inspection.
24 We went through the criteria that's required for
25 the accessory dwelling unit. I covered the items

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1 that would need to be in compliance and identified
2 approximately five housing violations. Anything
3 from the smoke detectors expired -- I don't recall
4 expired or not properly installed smoke detectors
5 to breakers that weren't properly labeled to
6 handrails, that sort of thing. I could go through
7 the list of violations.
8 Q That's fine. I do have a question,
9 though.
10 A Sure.
11 Q Does it matter when you're inspecting
12 for an accessory drilling unit -- say, the owner
13 lives in the -- the primary or the other. Like,
14 do you inspect, ever, the primary residence or
15 only the piece -- the ADU that's going to be
16 licensed?
17 A For the preliminary inspection, we
18 inspect both.
19 Q Okay.
20 A And the reasoning behind that is
21 because once the accessory dwelling unit license
22 is granted, the property owner has the ability to
23 either reside in the primary dwelling and rent out
24 the ADU, or vice versa.
25 Q Right.

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1 A Or put a family member in the primary
2 and they live in the ADU So we just want to make
3 sure, number one --
4 Q Both are -- both are up to snuff?
5 A Exactly.
6 Q Okay.
7 A Could -- could conditions in the
8 primary affect the health and welfare of someone
9 in the accessory dwelling unit? Possibly. Do we,
10 you know, want to make sure that if there -- one's
11 going to be rented out that that's in good shape?
12 And, you know, we also conduct an exterior
13 inspection to make sure this isn't going to be a
14 problem property moving forward and that sort of
15 thing.
16 Q Okay.
17 A So at that time it was -- they were
18 moving out. I issued a notice that day or the
19 following day for those items that were
20 identified. And then I think -- let's see. We --
21 we inspected that -- that was May 1st. I returned
22 on May 8th. We did -- gave a seven-day notice on
23 those items. So we came back on May 8th, met with
24 Mr. Santos. He made the space above the garage at
25 904 available. The cooking equipment had been

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1 removed.
2 Q Okay.
3 A When that occurs, we're able to close
4 that violation out, so that violation was
5 essentially closed.
6 Q At 904?
7 A At 904.
8 Q Okay.
9 A Exactly, because the cooking equipment
10 had been removed. He expressed an understanding
11 of the situation, that he was in the process of
12 converting that back to office space.
13 Q Okay.
14 A We then went over to 907. The
15 violations were corrected, save for -- the breaker
16 panel was not relabeled. And the reason for that
17 is that there was no power, so he wasn't able to
18 trace the circuit to make a determination as to
19 what breakers went to what particular circuit.
20 And that was understandable. The tenants moved
21 out.
22 Q Right.
23 A They closed out their account.
24 Q Right.
25 A There was no power and the -- the

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1 structure was vacant at the time, so --
2 Q Were you able to determine that there's
3 only one dwelling unit in the principal structure?
4 A Yes. Yes. We -- I -- the first time I
5 stepped foot in the structure, 907, I made a
6 determination that there was not an accessory
7 dwelling unit. Now, to be clear, we do have a
8 history of there being an accessory dwelling unit
9 in the basement. It's gone before the District
10 Court in the past. I was not involved in that.
11 Q Okay.
12 A However, I can clearly see that in the
13 case history. However, upon my inspection on May
14 1st, there was no separation between that basement
15 area and the first floor. And that is a
16 requirement for us to enforce an illegal or
17 unlicensed ADU is one of the requirements is that
18 it must be separated sometimes, however slight.
19 It may even be a curtain, may be a door. However,
20 there was nothing separating the first floor from
21 the basement area.
22 Q So based on your observations at that
23 last inspection, it's one unit.
24 A It's one unit.
25 Q The house?

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1 A It is. As far as we define accessory
2 dwelling units and primary dwelling units, I only
3 observed a primary dwelling unit. However, there
4 was cooking equipment in the basement, but there
5 was no separation.

6 Q Okay.

7 A And that's not uncommon.

8 Q Right.

9 A We do have occasions in the county, as
10 you are well aware, where there's two kitchens in
11 a property. However, there's no separations and
12 people do that for a variety of reasons and that's
13 well within the the requirements.

14 Q In Baltimore, they used to call those
15 summer kitchens.

16 A Yes. Yes. Yes.

17 Q Just a little tidbit.

18 A Summer kitchens, Sabbath kitchens. We
19 have all sorts of reasons people --

20 Q Right.

21 A Recreation areas. I mean, it's very
22 big now to put in a -- a wet bar with some cooking
23 in a basement. There just can't be separation.

24 Q Got it. Okay. All right. Now, well,
25 keep going.

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1 A Okay. Okay. Now, the last time I was
2 at the property was on September 10th and was in
3 preparation for this hearing. My goal was to
4 ensure that and document that there was not an
5 accessory dwelling unit at 904, because that would
6 be -- the applicant has -- can only have one ADU.
7 So -- so if we're working on constructing one ADU,
8 we can't have a second ADU at 904. So my goal was
9 to go to 904, simply confirm that there's no
10 accessory dwelling unit above 9,04 because we were
11 receiving continued reports that in fact there was
12 a --

13 Q Well, let me -- let me ask you a
14 question. So Mr. Santos owns 904 and he owns 907.
15 When an applicant comes in and you go through that
16 list of criteria, and even in, like, your notice,
17 it's like the -- in the in the preliminary
18 inspection report, it says, the property must be
19 occupied by the homeowner who may reside in the
20 principal dwelling or in the ADU. The ADU must
21 have the same address as the main house.

22 How do you determine principal
23 occupancy if he's got two principal addresses?

24 A Okay. The -- when it's reflected --
25 when the principal address is reflected on the

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1 state tax records. Licensing may have a different
2 answer for you, but in code enforcement, we use it
3 as an investigative tool, right? I don't do any
4 enforcement off of that because we find many
5 people have addresses in -- in the state tax
6 records that -- it points to being their principal
7 address or they -- that's more likely. Sometimes
8 they live there and it's not listed, but most of
9 the time it's -- say, for instance, an individual
10 buys a property. When they move in, they're going
11 to list it as their principal residence. And then
12 they buy an upgraded property. They go to rent
13 out the previous property they lived in.

14 Q And they never change primary
15 (crosstalk) --

16 A They never change it.

17 Q Yeah.

18 A And this happens over and over again.
19 So I don't enforce off of it, but I do use it as
20 an investigative tool.

21 Q But I guess -- I guess my issue is --
22 is that if you wanted to make sure there wasn't an
23 ADU at 904, because he can only have one, can he
24 only have one principal address?

25 A He can only have one. As far as my

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1 investigation and inspection for an accessory
2 dwelling unit, I have to have one principal
3 address.

4 Q Right, I see.

5 A I don't have -- I don't -- you know,
6 you get this or you get that, however --

7 Q Oh, I -- all right, now I think I
8 understand where you're coming from. So if -- if
9 there's -- if there's an assumption made that,
10 say, 907 is his principal address, that means that
11 904 is rented. And you can only have one rental
12 address at 904. Is that what you're saying?

13 A I don't understand the question. I'm
14 sorry.

15 Q Okay. So I guess what I'm trying to
16 get at is you have one principal address.

17 A Yes.

18 Q And you can have an accessory dwelling
19 unit on that principal address.

20 A Yes.

21 Q So if he's living at 904, he could have
22 an ADU at 904.

23 A He could if it's like --

24 Q But he can't have two at 907, and then
25 the reverse would be true?

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1 A Right. You can only have one because
2 you can only have one primary resident, so that's
3 --
4 Q Right. Okay.
5 A That is exactly right.
6 Q And so you -- what do you use to make a
7 determination?
8 A Yes.
9 Q Like, we just talked about that
10 printout?
11 A Yes.
12 Q You can't rely on that for code
13 enforcement?
14 A I cannot. No, I cannot.
15 Q What do you rely on for code
16 enforcement --
17 A Okay.
18 Q -- to determine someone's principal
19 residence?
20 A That's a good question. And I rely on
21 the input from our licensing section, because when
22 we receive an application for an accessory
23 dwelling unit, it goes to our licensing section.
24 The first phase of that application review is done
25 at the licensing section. They make a

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1 determination on a series of issues, but -- one of
2 which is --
3 Q Where do you live?
4 A -- does the applicant live at that
5 property at that time? And if they don't, they
6 request an affidavit from the applicant stating
7 that it is their -- that they are -- that it is
8 their intention to move into and declare the same
9 property that's on that application for the
10 accessory dwelling unit as their primary
11 residence. And this is done for a variety of
12 reasons. We have people that are living overseas
13 or out of state. They acquire property here.
14 It's in a state of disrepair. They need to rehab
15 the unit. They can't live there at the time.
16 They live somewhere else, and in order for them to
17 -- or new construction. People have new
18 construction where they're constructing a new
19 home, and as part of that is going to be an
20 accessory dwelling unit. Well, they can't live
21 there.
22 Q So it's not unusual, is what you're
23 telling me, for people to say, this is my primary
24 residence and not occupy it?
25 A It's not unusual at all. I mean, that

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1 would be something that the licensing division
2 would have more visibility on, because they're
3 processing all of the applications where I receive
4 approximately a third of for -- as an inspector.
5 Q Okay. And who at licensing would have
6 --
7 A Mr. Clifton Bouma should be able to --
8 Q Mister -- Mr. Bouma?
9 A -- testify to that. Yes, but it is not
10 at all unusual, in my experience on these cases,
11 that an individual has one residence, even out of
12 state or out of the country. They're applying for
13 a accessory dwelling unit license in Montgomery
14 County, but they can't declare it as their primary
15 because it's not livable. It's newly constructed.
16 So they are in a -- in a sense, they're providing
17 that affidavit just saying, yeah, we're going to
18 live in it and -- you know, the -- what I do --
19 Q So the affidavit is enough, in your
20 understanding -- from -- for licensing?
21 A In my understanding, and -- and this is
22 something that licensing reviews, so they may have
23 more they look into, but when I --
24 EXAMINATION
25 BY THE COURT:

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1 Q Okay.
2 A -- open the file, that's typically what
3 I see. There's an affidavit saying, hey, look,
4 I'm going to move into this property. And before
5 the license is ever issued, it's my understanding
6 that they go back and confirm you have to have a
7 driver's license with your name on it. You have
8 to have bills with that name on.
9 Q All right. So before an ADU License is
10 issued, the confirmation --
11 A Exactly.
12 Q -- is that it is their principal
13 residence --
14 A Correct.
15 Q -- that their stock is --
16 A Correct.
17 Q -- ready to be moved in --
18 A Correct.
19 Q -- or moved in --
20 A Correct.
21 Q -- and --
22 A Correct. I -- I -- I'd like to say
23 this.
24 Q Yeah.
25 A Is that --

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1 Q What's the timeline?
2 A **Yeah, exactly. This inspection**
3 **process, the way I look at it is that the first**
4 **step is they're going to apply for it. But,**
5 **really, my first major act in these inspections is**
6 **conducting the preliminary inspection. When we**
7 **conduct that preliminary inspection and I meet**
8 **with the applicant, I make it clear we're not**
9 **there yet. They can't get the ADU License.**
10 **There's hurdles and things we're going to have to**
11 **go through --**
12 Q Well, let me ask you --
13 A -- **to be able to --**
14 Q -- another question.
15 A **Sure.**
16 Q So if this went all the way through, an
17 ADU License was issued. Is that ADU License --
18 the issuance of that ADU License appealable?
19 A **I don't know that.**
20 Q Okay.
21 A **I don't know. I-- I don't know that.**
22 Q Okay.
23 A **I-- I haven't seen that. However -- I**
24 **-- I don't know that.**
25 Q Well, basically -- I guess I just

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1 wanted to -- to know if you had experience with
2 that, because --
3 A **I don't --**
4 Q -- essentially any final action of an
5 administrative agency can be appealed.
6 A **Okay.**
7 Q But --
8 A **Yeah. I haven't --**
9 Q -- the processes are different for
10 every single thing.
11 A **-- I-- I haven't experienced that.**
12 Q For the most part, like final decisions.
13 A **Right. But this isn't. This is the**
14 **preliminary inspection and basically we meet with**
15 **them, we go over the property, we show, hey,**
16 **here's housing violations we see --**
17 Q Right.
18 A **-- don't need to be corrected. Here's**
19 **our criteria. Here's how you're kind of really**
20 **not compliant with that at this point. There's**
21 **very few, if any, that when we conduct a**
22 **preliminary inspection that they're ready to go.**
23 **There's requirements, there's things they need to**
24 **do. They're not in compliance with it at the**
25 **preliminary inspection. That's just the on-ramp.**

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1 Q Okay.
2 A **Then we have to work with them, the**
3 **Department of Permitting Services. And typically,**
4 **I'd say it's an average of a year later we go back**
5 **for the final inspection.**
6 Q Okay.
7 A **And we make sure are those violations**
8 **corrected? Is everything in order? Is -- are the**
9 **permits --**
10 Q Do you verify --
11 A -- **final?**
12 Q -- do you verify occupancy at that
13 point?
14 A **I-- I--**
15 Q Like, who does?
16 A **Licensing section.**
17 Q So licensing will verify --
18 A **Yes.**
19 Q -- occupancy?
20 A **So after I've done that final**
21 **inspection, I submit the report saying it's**
22 **passed. It goes back to the licensing section and**
23 **then they're going to check for things -- my**
24 **understanding is they'll check for things like**
25 **lead certificate. They'll see the -- is the**

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1 **occupancy been verified. Did they provide updated**
2 **documentation that they've changed their address**
3 **with the MVA? Do they have tax records? Do they**
4 **have -- I-- I suspect that they can -- they can**
5 **work with a variety of records, but they need to**
6 **see official government records showing that**
7 **they've --**
8 Q Okay.
9 A **-- they now reside at that property.**
10 HEARING EXAMINER: Okay. So at this
11 point, just so everybody knows, I'm going to leave
12 the record open because I have a series of
13 questions I want to ask Mr. Bouma that I want to
14 get back in writing, as to exactly what that
15 process is. Yes?
16 MR. BOUMA: (Indiscernible).
17 HEARING EXAMINER: Mr. Bouma, that
18 would be fantastic. All right. Okay. I don't
19 think I have any more questions for you.
20 MR. JOHNSON: Great.
21 HEARING EXAMINER: All right. Mr.
22 Bouma, can you come up?
23 MR. JOHNSON: Thank you.
24 MR. BOUMA: Bouma.
25 HEARING EXAMINER: Bouma? I'm sorry.

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1 Nice to meet you. I've seen your name on a lot of
2 things.
3 MR. BOUMA: Yeah.
4 HEARING EXAMINER: All right. Mr.
5 Bouma?
6 MR. BOUMA: Yes.
7 Whereupon,
8 CLIFTON BOUMA,
9 being first duly sworn or affirmed to testify to
10 the truth, the whole truth, and nothing but the
11 truth, was examined and testified as follows:
12 EXAMINATION BY THE HEARING EXAMINER
13 BY THE COURT:
14 Q And could you spell your first and last
15 name for the court reporter?
16 A **C-L-I-F-T-O-N. And last name is**
17 **B-O-U-M-A.**
18 Q All right. So when an applicant comes
19 in for an Accessory Dwelling License, what do you
20 tell them as far as -- what do you require for
21 proof of residency?
22 A **So it's a driver's license, property**
23 **tax bill, or most recent Maryland tax bill, tax**
24 **return with their address on it.**
25 Q Okay. Do you recall this application?

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1 A **I do.**
2 Q All right. Tell me about what you know
3 about this application?
4 A **So he does not live in the property,**
5 **but as Inspector Johnson mentioned, for various**
6 **reasons, there are cases where the owner does not**
7 **live in the property. So in this case, the unit's**
8 **not -- hasn't been constructed yet. There are**
9 **cases where the whole property is under**
10 **construction or it's being renovated.**
11 **In those cases I have been**
12 **instructed to -- to -- you know, we want to -- to**
13 **try to assist people. We're not trying to be a**
14 **barrier. We accept an affidavit, a written**
15 **statement that, yes, I don't live here now, but I**
16 **will when this is done. And before the final**
17 **approval is given, we make it clear that they must**
18 **submit one of the official proofs of residence, or**
19 **we will deny the application.**
20 Q So they could go through the whole
21 process --
22 A **Right. They -- they --**
23 Q They don't --
24 A **-- they -- they -- the --**
25 Q -- provide --

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1 A **-- it has to be built before they can**
2 **move in, right? So -- but we -- we -- we do**
3 **require that they must provide the official -- the**
4 **proofs that I -- that I've -- that I've mentioned**
5 **or we will not approve the application.**
6 Q So -- so -- and this is -- this is the
7 current policy?
8 A **Yes.**
9 Q And this is not uncommon?
10 A **It's -- it's -- it's -- it doesn't**
11 **happen a lot, but it does happen occasionally.**
12 **Again, for various reasons, the property is -- is**
13 **under construction, under renovation, it can't be**
14 **occupied, it hasn't -- it doesn't exist yet.**
15 Q And it doesn't matter that the primary
16 dwelling is rented?
17 A **So in this case, he had a -- he had a**
18 **license for the Single-Family License. We**
19 **conferred with the -- the county attorney and they**
20 **said, as long as the ADU License is not enforced**
21 **yet, he can have a Single-Family Rental License.**
22 **He has been informed of this. He had a -- he had**
23 **a Single-Family License. We didn't know that he**
24 **was renting it out again. When we -- we were**
25 **informed that he was renting it again, he was**

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1 **informed that he needed to pay the -- the license**
2 **fee for this year and submit a new license**
3 **certificate. So he is aware that he needs to**
4 **renew his rental license, his Single-Family**
5 **License, for the rest of the property.**
6 Q Because it's a chicken and an egg
7 issue, a little bit, right?
8 A **I'm not --**
9 Q So --
10 A **-- sure I understand.**
11 Q -- so we have an active rental in the
12 primary residence --
13 A **Correct.**
14 Q -- and then there will be active
15 construction for the ADU. At what point does that
16 change?
17 A **I assume when -- when the construction**
18 **is done and -- and he -- and he's able to move in**
19 **and get his proof of residence, then we would**
20 **discontinue the Single-Family License. And if**
21 **he's able to show proof of residence, the ones**
22 **that we mentioned earlier, then we would issue the**
23 **Accessory Dwelling Unit Rental License. And if**
24 **he's not able to provide it, we wouldn't issue the**
25 **Accessory Dwelling Unit License. He would not be**

<p style="text-align: right;">77</p> <p>1 permitted to have that unit. 2 Q So if he provides the necessary proof, 3 he would get the rental license? 4 A The Accessory Dwelling Unit Rental 5 License. 6 Q The Accessory Dwelling Unit -- 7 A Correct. 8 Q -- license. Have you ever had anybody 9 appeal the issuance of the license? Not -- 10 A Not -- 11 Q -- at the preliminary inspection? 12 A No. And we've never had an issue. If 13 somebody were to come back later and we were to 14 find they weren't living there, we would deny it. 15 But it's not happened. 16 Q Where -- have you ever revoked an 17 Accessory Dwelling Unit License? 18 A Yes, but not for that reason. 19 Q What's the enforcement method for if 20 there were -- if -- if there wasn't a principal 21 residence in one of those -- 22 A Like, we would -- we -- we -- 23 Q -- one of those two? 24 A -- we would deny the application and 25 they wouldn't be permitted to have -- to have the</p>	<p style="text-align: right;">79</p> <p>1 A Okay. 2 HEARING EXAMINER: All right. So that 3 concludes the testimony from the county's 4 witnesses. 5 BY THE COURT: 6 Q So now I'm going to turn back to you, 7 Mr. Santos. Is there anything else you'd like to 8 tell me? 9 A I want to declare that I work based on 10 what the justice and law determines. So if I'm -- 11 I am authorized to build something, if I am given 12 permission, that's how I will behave and do. And 13 I do need to build the garage in order for me to 14 live in it. I cannot live in it without it being 15 built yet. So it is my plan to build to live in 16 and to render the house for my daughter to live in. 17 Q Is your daughter going to live at 907 18 or 904? 19 A 904. 20 Q Okay. All right. So you're moving out 21 of 904, so she can have 904. You're moving into 22 the accessory dwelling at 907 and will continue to 23 rent the primary dwelling; is that accurate? 24 A Yes. 25 Q Okay. Anything else you'd like to tell</p>
<p style="text-align: right;">78</p> <p>1 -- the license. 2 Q Okay. What I'm asking is, you have the 3 proof, the assumption is that that person moves 4 in. What if the person doesn't move in after the 5 fact and the rental license is issued. How is 6 that enforced. Or maybe that's a better question 7 for Mr. Johnson? 8 A Yeah, that's -- I -- I don't do 9 inspections. I have no way -- if I have the -- 10 the documentation, that's -- that's all the 11 evidence -- I -- I don't have any other way of 12 finding out. 13 Q And you've revoked ADUs before? 14 A I -- I can't remember for -- for 15 specific -- specific reasons. It's very rare that 16 we do. 17 Q Okay. 18 A And I've only been doing it a few years. 19 Q Okay. So, yeah, so you don't have the 20 full history? 21 A No. 22 Q All right. That -- I appreciate that. 23 That's super -- 24 A Sure. 25 Q -- helpful.</p>	<p style="text-align: right;">80</p> <p>1 me? 2 A I had a lot to say, but at this moment 3 I feel very agitated internally, so I prefer not 4 to. 5 HEARING EXAMINER: Okay. I understood. 6 Okay. Thank you. So is there one person that 7 would like to -- one or two people that would like 8 to speak in opposition? Sorry. So, Ms. O'Connor, 9 we'll go with you first and then with Ms. Roberts 10 Franklin. 11 Hold one. One second. Yes? 12 MS. SANTOS: I have -- also have 13 something to say about the inspection that was on 14 the 10th of September, but I don't know if I'm 15 allowed to say it. 16 HEARING EXAMINER: Is it relevant -- is 17 it -- I know you testified about whether -- you 18 know, with that -- is it about the -- the 19 inspection or is it about the -- 20 MS. SANTOS: No, it's about -- 21 HEARING EXAMINER: -- ADU? 22 MS. SANTOS: -- the belief of it being 23 an ADU and -- and we can give the reasoning as to 24 why -- 25 HEARING EXAMINER: The 904 I don't</p>

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<p style="text-align: right;">81</p> <p>1 really care about. 2 MS. SANTOS: Okay. 3 HEARING EXAMINER: Yeah. The 904 has 4 nothing to do with that. I just -- I just let Mr. 5 Johnson talk so that in my -- my brain I could get 6 through -- 7 MS. SANTOS: Well, then, that was it. 8 HEARING EXAMINER: -- what was what. 9 Yeah. So I'm not making any determinations on 904. 10 MS. SANTOS: Thank you. 11 HEARING EXAMINER: Wherever you'd like 12 to sit. And, Ms. O'Connor, you're still under 13 oath -- 14 MS. O'CONNOR: Oath -- yeah. 15 HEARING EXAMINER: -- so what would you 16 like to say? 17 MS. O'CONNOR: Yeah. So Mr. Johnson 18 has been kind of at the tail end of the -- the 19 history of this and the DHCA inspections that have 20 happened recently. But I think what happened in 21 September on the 11th was important, and it is at 22 904 because it goes to this chicken or the egg 23 thing you're kind of talking about. It feels like 24 a shell game of which property is in service in 25 what capacity?</p>	<p style="text-align: right;">83</p> <p>1 and that's the hard part here. 2 So we -- we heard of a bunch of 3 conditions under which licensing would say, okay, 4 yes, you can start. And they're not in there yet. 5 It could be under construction. It could be in 6 disrepair. The main property of 907 is fine, 7 right? That's not in disrepair. There is another 8 set of renters in there. 9 So why wouldn't he be in 907 now 10 and then apply to -- to go do this? None of this 11 -- none of this is happening the way the code says 12 it should happen. And that is the frustrating 13 part for us looking at this, trying to understand 14 why we have ADUs, same person, not following the 15 code. And we have a history of non-compliance 16 here, and that is material to this. We have a 17 history -- and in each of the cases where he was 18 taken in by the county. And so Ms. Robinson, who 19 is also with Mr. Johnson's office, has taken him 20 to court. Other inspectors have taken him to 21 court. In the Court filings it tells him to 22 follow -- don't do -- there's a statement in there 23 very specific. You probably know it better than I 24 do, but it basically says don't -- don't break any 25 county codes again. And yet this keeps happening.</p>
<p style="text-align: right;">82</p> <p>1 And at that point in time, it was 2 found that it was an ADU again. And so it was -- 3 it was in service as housing with a -- a kitchen, 4 and the kitchen gets removed, the kitchen gets put 5 back in. This is -- this is the shell game we 6 have been watching and -- and reporting into the 7 county as diligently as we can. The inspectors 8 come out at the time the inspectors are able to 9 come out and -- and try to follow up and see 10 things and -- and follow up. 11 But you can see this -- this is 12 moving all the time. There were two rental units 13 in 907. So when we talk about an ADU at 907, I 14 don't know what it means. We had two different 15 parties running there from 2018 to 2024. So which 16 one is the ADU? I don't know. It's -- it's 17 supposed to be one unit. It wasn't. It was two 18 separate units, and that's the evidence that was 19 provided. 20 So I -- I -- I'm -- we don't want 21 to couple the two, but because of the way we're 22 accepting that the statement that I'm going to 23 move in in the future or it's my intention to move 24 in in the future, it's relevant because this is 25 what -- you're only allowed one. Right? And --</p>	<p style="text-align: right;">84</p> <p>1 And so that behavior and that 2 history matters, and it goes to intent. And so I 3 -- I -- I really -- it's important and it goes 4 back to that other case where -- what are we 5 dealing with? 6 HEARING EXAMINER: Okay. Thank you. 7 Ms. Roberts Franklin? And, again, just to remind 8 you that you're still under oath? 9 MS. ROBERTS FRANKLIN: I'm under oath. 10 HEARING EXAMINER: Yes. Thank you. 11 MS. ROBERTS FRANKLIN: I just want to, 12 I guess, reemphasize that he's never lived at 907 13 Nora Drive and it's always been inhabitable, and 14 he's always had renters at 907 Nora Drive. And I 15 don't understand how the county will allow 16 construction first and then come -- if they want 17 to come back and provide proof whether it's a 18 primary residence or not. He's listed 907 as his 19 principal residence for 10 years on the tax 20 records. And 904 Nora Drive is his principal 21 residence. 22 I think Mr. Bouma talked about 23 whether it could be of someone out of the country 24 or it's not able to live in. None of that's been 25 the case. None of that's been the case at all.</p>

<p style="text-align: right;">85</p> <p>1 And it's -- it's just clear -- and I wonder, too 2 -- he has a translator here. My husband just 3 asked Mr. Bouma did he have conversations with him 4 in English, and he said, yes. That's a problem if 5 he has a translator here and he didn't have a 6 translator when he's communicating with the 7 county. Did he really understand what the 8 county's, you know, requirements were? He says he 9 does not. You know, needs a translator now. 10 I just -- I just don't understand 11 that how he's been -- you know what I said, that 12 how the county would allow him to get a license 13 for an ADU, knowing that he does not live there 14 and that he's always lived at 904 Nora Drive, and 15 to say he has an intent to move in there. He is a 16 small developer and he's using our neighborhood 17 and I -- and it's destroying the character and 18 integrity of our neighborhood. Thank you. 19 HEARING EXAMINER: Thank you. 20 BY THE COURT: 21 Q Mr. Bouma, can I ask you one other 22 question? 23 A Yes. 24 Q The policy that you talked about, where 25 you make that determination for residency at the</p>	<p style="text-align: right;">87</p> <p>1 I'll do is, I'll add that into evidence. So I've 2 received two documents today, one from Ms. Santos, 3 one from Ms. O'Connor, those will be marked -- 4 added as exhibits. They will also be uploaded. 5 Once I receive the e-mail from the county 6 regarding the county attorney's advice, I will 7 also identify that as an exhibit and upload it on 8 the website so that everyone will have it. 9 Yes? 10 MR. HOWLEY: Excuse me. I -- I'm going 11 to have to speak to the county attorney involved. 12 HEARING EXAMINER: Oh, yeah, I guess -- 13 all right. So we're going to clarify that. We 14 have to make sure that that's available for public 15 consumption. If it's attorney-client privileged 16 information, I may not be able to get it. So that 17 -- we're going to clarify that. 18 MR. HOWLEY: I'll do my best to get it 19 to you as quickly as -- an answer to you as 20 quickly as possible. 21 HEARING EXAMINER: If you could give me 22 an answer on a yes or a no as quickly as possible, 23 that would be great. 24 MR. HOWLEY: Perfect. 25 HEARING EXAMINER: Okay. That</p>
<p style="text-align: right;">86</p> <p>1 end, is that written down anywhere? 2 A I'm not sure. I don't think so. 3 Q No? Okay. That's just -- that's just 4 the practice? 5 A Yes. 6 Q All right. And you did mention that 7 there was -- the county attorney weighed in on 8 this. What did they weigh in on? 9 A I don't remember when that discussion 10 -- do you remember, Tom, when we had that 11 discussion? 12 MR. HOWLEY: What the date was? 13 MR. SCHOFER: Yeah. 14 MR. HOWLEY: I can get that for you. 15 MR. SCHOFER: Okay. 16 HEARING EXAMINER: If you could provide 17 me with the -- the advice from the county attorney 18 on how to handle this matter that led to this 19 policy, I'm going to leave the record open for 20 that. How long do you think it would take to get 21 that? 22 MR. HOWLEY: About a half hour after I 23 get back to my office. 24 HEARING EXAMINER: That's fantastic. 25 So if you could e-mail that to me. And then what</p>	<p style="text-align: right;">88</p> <p>1 concludes the testimony. Let me get my -- my 2 little cheat sheet out here on next steps. 3 Actually, I know what it is. All right. We're 4 going to leave the record open for a period of 10 5 days. This will allow -- hopefully, I can get a 6 copy of the county attorney's decision. If not, 7 I'll receive an e-mail telling me one way or 8 another yes or no. That will be an exhibit and 9 will be uploaded. 10 The court reporter will provide a 11 transcript to me within a period of 10 days. Once 12 the record closes in 10 days, I have 30 days 13 within which to issue my decision. Any party that 14 objects to my decision has the right to appeal 15 that decision within 10 days, to the County Board 16 of Appeals. 17 How you would appeal that decision 18 will be at the bottom of that final decision from 19 me. 20 MR. SCHOFER: Can I speak? 21 HEARING EXAMINER: No, because we 22 already closed the record and -- and their -- it's 23 their burden, not your burden, for the objection. 24 So they got -- they got to do the last order. 25 Okay. And with that -- as I said,</p>

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1 all the exhibits are accepted, adding two more in
2 either an e-mail, and/or an opinion, or just an
3 e-mail.
4 All right. Thank you, everyone.
5 I appreciate you all coming out and participating
6 today. And we're off --
7 (OFF THE RECORD AT 11:11 AM)
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1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC
2 I, JORDAN OGIHARA, the officer
3 before whom the foregoing proceedings were
4 taken, do hereby certify that any witness(es) in
5 the foregoing proceedings were fully sworn;
6 that the proceedings were recorded by me and
7 thereafter reduced to typewriting by a
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10 true and accurate record to the best of my
11 knowledge, skills, and ability; and that I am
12 neither counsel for, related to, nor employed
13 by any of the parties to this case and have
14 no interest, financial or otherwise, in its
15 outcome.
16
17 *Jordan Ogihara*
18 _____
19
20 JORDAN OGIHARA
21 NOTARY PUBLIC FOR THE STATE OF MARYLAND
22 September 30, 2024
23
24
25

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1 CERTIFICATE OF TRANSCRIBER
2 I, Maliq Smith, do hereby certify
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5 said proceedings were reduced to typewriting under
6 my supervision; that said transcript is a true and
7 accurate record of the proceedings to the best of
8 my knowledge, skills, and ability; and that I am
9 neither counsel for, related to, nor employed by
10 any of the parties to the case and have no
11 interest, financial or otherwise, in its outcome.
12
13 
14 _____
15 Maliq Smith
16 Planet Depos, LLC
17 September 30, 2024
18
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