

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND
CIVIL DIVISION

-----X	:	
FLAVIA FAVALI,	:	
	:	
Petitioner,	:	
	:	
v.	:	
	:	Civil No. C-15-CV-25-000613
OFFICE OF ZONING AND	:	
ADMINISTRATIVE HEARING FOR	:	
MONTGOMERY COUNTY,	:	
	:	
Defendant.	:	
-----X	:	

ADMINISTRATIVE APPEAL HEARING

Exhibit 12(a)
OZAH Case No: ADO 26-03

Rockville, Maryland

August 22, 2025

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND
CIVIL DIVISION

-----X
FLAVIA FAVALI, :
 :
 :
 Petitioner, :
 :
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 v. :
 : Civil No. C-15-CV-25-000613
 :
 OFFICE OF ZONING AND :
 ADMINISTRATIVE HEARING FOR :
 MONTGOMERY COUNTY, :
 :
 :
 Defendant. :
-----X

Rockville, Maryland

August 22, 2025

WHEREUPON, the proceedings in the above-entitled
matter commenced

BEFORE: THE HONORABLE JEANNIE CHO, JUDGE

APPEARANCES:

FOR THE PETITIONER:

FLAVIA FAVALI, Pro Se

FOR THE RESPONDENT:

ELANA MAZEL ROBINSON, Esq.
Office of the County Attorney
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850

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P R O C E E D I N G S

THE CLERK: Calling case number C-15-CV-25-000613, in the matter of Flavia Favali.

THE COURT: The petitioner comes to the first table to my left, and the respondent, co-respondent agency can come over to this table once it's cleared. The other interested parties, if you wouldn't mind just staying in the gallery until you wish to be heard.

Ma'am, you need to come to the first table.

MS. FAVALI: I apologize, Your Honor.

THE COURT: That's all right, ma'am.

UNIDENTIFIED MALE SPEAKER: Have a good evening.

THE COURT: Thank you, sir. Good luck to you.

Would you state your name, ma'am?

MS. FAVALI: Flavia Favali.

THE COURT: Thank you. You may be seated.

And counsel.

MS. ROBINSON: Good afternoon, Your Honor. Elana Robinson, Assistant County Attorney for Montgomery County, representing the Office of Zoning Administrative Hearings.

THE COURT: Thank you.

And do I have in the gallery, if the interested parties that are present would stand and just state your name loudly and clearly and then be seated where you are.

MS. BENNET: I'm Caressa Bennet.



1 THE COURT: Thank you.

2 MS. VAUGHN: I'm Suzanne Vaughn.

3 THE COURT: I don't have you as a --

4 MS. VAUGHN: I apologize. I made a mistake. Those
5 are my supporters.

6 THE COURT: Sorry. No?

7 MS. VAUGHN: My apologies.

8 THE COURT: Okay. That's okay, ma'am.

9 All right. Who else is an interested party that has
10 filed a response?

11 UNIDENTIFIED FEMALE SPEAKER: Your Honor.

12 THE COURT: Yes.

13 UNIDENTIFIED FEMALE SPEAKER: I'm representing the
14 other party that couldn't be here today due to scheduling. So
15 I've got declarations on their behalf.

16 THE COURT: I'm sorry?

17 UNIDENTIFIED FEMALE SPEAKER: The other interested
18 parties from the hearing. I'm just saying I have declarations
19 on their behalf that I'll present when it's our turn. There's
20 no one else. There's no other interested party other than me.

21 THE COURT: Okay. And you're saying that you have
22 declarations in --

23 UNIDENTIFIED FEMALE SPEAKER: I have declarations
24 that are signed by all parties --

25 THE COURT: In my -- in my order, what I had

1 indicated was that anyone would be permitted oral argument, but
2 I can't have new evidence being submitted --

3 UNIDENTIFIED FEMALE SPEAKER: I'm going to do it
4 orally.

5 THE COURT: Thank you, ma'am. That's fine. All
6 right.

7 All right. First let me address with the petitioner
8 the petitioner's memorandum of law that was filed on July 29th
9 of 2025, again, completely fails to comply with the Maryland
10 Rules of Procedure in identifying clearly and specifically what
11 the issues are, and most importantly, with proper citation to
12 the record.

13 The record was filed in this case in April, April
14 16th of 2025. This is an appeal. In an appeal, this Court
15 does not act as a second trial level court. No new evidence is
16 taken, and there are no further fact findings to be done.
17 Recognizing that you have elected to appear without counsel.
18 It still does not excuse you from complying with your
19 requirements in order for the Court to be able to succinctly
20 understand what your arguments are, review your arguments
21 according to the record below, and then be able to make a
22 determination as to whether the agency, in fact, was acting in
23 a reasonable fashion in reaching a conclusion that any
24 reasonable mind could reach, or whether the agency erred as a
25 matter of law.

1 I gave you multiple opportunities to file a proper
2 petition. I certainly would understand if there was
3 substantial compliance. No one here is looking for perfection,
4 but there wasn't a single cite to the record in your petition.
5 You merely reference things that you recall having submitted.
6 The record in this case is extensive and voluminous. It is
7 paginated for a reason, and that reason is that whatever
8 arguments you make must be cited to the record. It is not for
9 this Court to comb through the entirety of hundreds of pages to
10 find what your point is.

11 Your arguments reference exhibits that were offered,
12 again without any reference to the record. You referenced
13 Lisa's rent rolls. No reference to anything in the record.
14 And you make many assertions that are not properly before the
15 Court, and by properly before the Court, I am -- I'm not
16 accusing you of misconduct. What I am saying is, it is not
17 legally permissible for me to consider new evidence. This is
18 not a do over.

19 Based upon the sheer inability for the Court to be
20 able to understand and address each and every item that you are
21 contested -- you are contesting, on that basis alone, this
22 Court denies your petition. But for this record, I also will,
23 in the alternative, hear you on any additional evidence today
24 that you want to cite to the record and offer to the Court.

25 Do you have anything further, ma'am?



1 MS. FAVALI: Yes, Your Honor.

2 THE COURT: Okay. Stand when you address the Court.
3 And what is it?

4 MS. FAVALI: Thank you, Your Honor. So this time
5 last year, before I applied for my second time for an ADU, I
6 emailed my five objectors from last year, that I was going to
7 do for my health. I then applied again, and on the December
8 9th Zoom hearing, I submitted those voluminous records. Like
9 you said, the rent rolls and releases. One of them was article
10 -- I'm sorry, Exhibit 11 or 8. And it said, and the --

11 THE COURT: The only thing that I can hear is a
12 proper cite to the record.

13 MS. FAVALI: Oh, it was --

14 THE COURT: What page?

15 MS. FAVALI: Exhibit 8. Oh, sure, I can actually
16 give it to you if you'd like.

17 THE COURT: I have it. You just need to cite to the
18 page.

19 MS. FAVALI: It was before the December 9th hearing.

20 THE COURT: It doesn't work that way. I'm not here
21 to comb through the record to figure out what was before or
22 after. The reason we have Bate numbers is because you cite to
23 a page. What page are you citing to, ma'am?

24 MS. FAVALI: Thank you, Your Honor. Just one second.
25 I have it right here. It was -- Exhibit -- Exhibit 12J.



1 Principal residence tally. I have a copy of it right here, if
2 you'd like.

3 THE COURT: That's not citing to the record that was
4 put in. What page --

5 MS. FAVALI: That was on --

6 THE COURT: -- number?

7 MS. FAVALI: -- the Zoom hearing on -- that's what
8 you sent. That's what I was sent, Office of Zoning and
9 Administrative Hearings.

10 THE COURT: It doesn't work that way, ma'am. You
11 don't have a proper cite. What else would you like to tell me?

12 MS. FAVALI: On that --

13 THE COURT: You can move on, ma'am.

14 MS. FAVALI: Move on.

15 THE COURT: Your point --

16 MS. FAVALI: Was on that -- on that exhibit, I --

17 THE COURT: -- cannot be addressed because you are
18 not able to --

19 MS. FAVALI: -- I sent the tally --

20 THE COURT: Excuse me. Please do not talk over the
21 Court. I'll give you a chance to respond.

22 MS. FAVALI: Oh.

23 THE COURT: I have asked you several times to cite to
24 the record. You have not done so. As such, you can move on to
25 anything else that you wish to say.

1 MS. FAVALI: Thank you, Your Honor. I think I have
2 this. Before the December 9th hearing, I submitted to OZA many
3 exhibits. One of them was on the Zoom hearing, that should be
4 on -- on case record, Office of Zoning Administrative Hearings
5 on 2/28. It was Exhibit --

6 THE COURT: What is the page number of the record
7 that you are citing to?

8 MS. FAVALI: They don't have page numbers, Your
9 Honor. They just have --

10 THE COURT: Okay. Are you citing to the transcript,
11 then?

12 MS. FAVALI: No. I'm -- before the actual transcript
13 happened, before -- before the Zoom hearing happened, I --

14 THE COURT: It doesn't work that way, ma'am. I am
15 unable to address your argument. What else would you like to
16 tell me?

17 MS. FAVALI: At that -- at that tally that I
18 presented, that the hearing officer said was a tally, I said I
19 was -- I was at my house from July of '23 to --

20 THE COURT: This is not new testimony. I am not here
21 to take testimony. I want you to address, if you wish to, the
22 points of legal error or factual error or anything in the
23 record to indicate that the hearing examiner's decision was
24 arbitrary or capricious, or where there was an error of law.

25 MS. FAVALI: I believe she interpreted my tally. She

1 said my -- my principal residence, exhibit, on whatever page
2 that was. It was different pages. She said it was a tally. I
3 said it was the nights I spent on that same sheet, on that same
4 exhibit, Your Honor. I cited on the time I spent at 7709, I
5 had and I said --

6 THE COURT: I'm sorry. What page? What page? Did
7 you just cite to a page?

8 MS. FAVALI: They never gave me pages, Your Honor.

9 THE COURT: Okay. Are you looking at a transcript?

10 MS. FAVALI: Yes, Your Honor.

11 THE COURT: All right. Which transcript?

12 MS. FAVALI: That transcript. Okay. That -- that's
13 a good one. That transcript is December 9th, 2024.

14 THE COURT: And what page? There are page numbers on
15 there, ma'am.

16 MS. FAVALI: Yes, Your Honor, I'll do that one. I
17 see how you want me to do it. I apologize.

18 Actually, you go through the whole transcript.
19 Actually, that's a good point. Thank you. I have an idea.

20 THE COURT: Please do not speak unless you're
21 responding to my question.

22 MS. FAVALI: Oh.

23 THE COURT: What page?

24 MS. FAVALI: It's 68 pages. I'll be right there.
25 I'm sorry. Page -- oh, I don't know how to say the page. It's

1 20 in parentheses, 77 to 80, transcript hearing, Planet Depos,
2 December 9th.

3 THE COURT: If you look at the upper right corner.

4 MS. FAVALI: I'm sorry, Your Honor.

5 THE COURT: If you look at the upper right corner,
6 there are page numbers there.

7 MS. FAVALI: Seventy-nine.

8 THE COURT: Page 79, and what is it that you're
9 directing me to?

10 MS. FAVALI: Ms. Bennet, here in the audience. No,
11 I'm asking you, like, do you plan to put any testimony into the
12 record today from anyone else who can corroborate what you are
13 saying? Like you spent the night there. You put it in an
14 exhibit of all the days you spent the night there, but you put
15 no testimony.

16 THE COURT: I can read that. What is your point?

17 MS. FAVALI: On that exhibit, Your Honor, which is
18 right here, I put all the names of the people that came, so
19 like J. Sire (phonetic sp.).

20 THE COURT: I don't understand what you said. Repeat
21 that, please.

22 MS. FAVALI: Yes, Your Honor. So on page 79, on the
23 transcript, she asked if I had any other corroboration of
24 testimony. And at that Zoom hearing on December 9th, I already
25 submitted that exhibit. That exhibit right here, that --

1 THE COURT: And what page is that exhibit on?

2 MS. FAVALI: That exhibit, actually, I don't know.
3 That is on -- that exhibit is on the Office of Zoning and --
4 thank you. That is on the Office of Zoning -- I just had it,
5 Your Honor. I'm so sorry. That's on -- that exhibit is this
6 exhibit right here. I don't --

7 THE COURT: I want the page number, ma'am.

8 MS. FAVALI: They don't have page numbers. What the
9 Office of Zoning Administrative gave doesn't have page numbers
10 on it. They have exhibit numbers.

11 THE COURT: Did you -- are you using the record that
12 was admitted into this case file, or are you using a different
13 record?

14 MS. FAVALI: On my February --

15 THE COURT: The record that was filed in this case
16 with the Court on April the 16th of 2025. Is that what you're
17 using?

18 MS. FAVALI: No. Your Honor, I was using the
19 December 9th.

20 THE COURT: No, you may not do that, ma'am. There's
21 a reason the record is filed. It's for you to use that record
22 in order to file your memorandum.

23 So you can move on if you want to say anything else
24 that --

25 MS. FAVALI: Yes.

1 THE COURT: -- cites to the record that was already
2 put in.

3 MS. FAVALI: Okay. So on the record I filed on
4 February 14th --

5 THE COURT: I didn't ask about what you filed, ma'am.
6 I asked you about anything else you want to say in support of
7 your argument, citing to the record that was filed in this case
8 with the Court on April 16th.

9 MS. FAVALI: Can I ask the -- the attorney? The
10 record that was filed I have was my principal residence tally,
11 which I have all the names of people that came to my house
12 between July --

13 THE COURT: No, ma'am. At this point, you may be
14 seated. I don't -- I'm not able to understand what it is that
15 you're saying.

16 Yes, ma'am.

17 MS. ROBINSON: Thank you, Your Honor.

18 THE COURT: Let me begin with asking. Why were the
19 transcripts not Bate stamped?

20 MS. ROBINSON: That is a good question, Your Honor.

21 THE COURT: This is not a proper cite. As I just
22 told the petitioner, I have some that are numbered, but none of
23 the transcripts in this case from the original hearing. Well,
24 the first hearing, I should say in July of '23, nor the
25 transcript of the hearing on December 9th, those two items were

1 not transcribed -- I'm sorry, were not Bate stamped.

2 MS. ROBINSON: Yes, that is correct, Your Honor. And
3 that reflects my record as well. My office, as well as myself,
4 is not -- typically is not responsible for filing the record.
5 It is the --

6 THE COURT: This I do understand. However, when you
7 were doing your answering memo, even though there was never a
8 memo filed, you could see that there was a problem in citation.
9 It wasn't even Bluebook citation. You were going from R dot to
10 T dot. It was incomprehensible. It took forever for the Court
11 to even understand and follow and check. It's the record that
12 is going to determine whether or not the hearing examiner can
13 be affirmed or needs to be reversed.

14 So I recognize that you're not responsible for doing
15 that. But it's the time for counsel to advise the Court, in
16 which case I could readily have had the agency resubmit a
17 properly Bate stamped record. But in any event, was there
18 anything else that was not stamped? There were a number of
19 exhibit lists or compilations that the agency had done, which
20 also was completely unhelpful, and I couldn't understand. But
21 those are not significant. That's not part of the record, but
22 I believe everything else did have a Bate stamp number.

23 MS. ROBINSON: That is correct, Your Honor.

24 THE COURT: Okay.

25 MS. ROBINSON: So you should have Bate stamp numbers

1 ranging from 1 to --

2 THE COURT: I do have that, ma'am. Thank you. I
3 have that.

4 MS. ROBINSON: Okay. Yes, so Your Honor, the only
5 things that were not Bate stamped by the agency was the hearing
6 transcript of December 9th, 2024, as well as the OZA decision
7 dated January 17th of 2025. Beyond that, everything else was
8 Bate stamped.

9 THE COURT: Okay. And just housekeeping matters.
10 When you filed your amended, the difficulty for the Court was
11 that the petitioner filed an original petition for judicial
12 review and then attached an extensive series of documents that
13 had no bearing on anything. It was incomprehensible. It was
14 just attached. And then when the petitioner filed her motion
15 for what she thought was a proper pleading, she referred back
16 to the original petition and was trying to incorporate that by
17 reference, which is not permitted.

18 And then when she did it again, she then attached as
19 a -- she tried to incorporate by reference an Exhibit B to a
20 response, which again was incomprehensible. This Court can't
21 jump through three different stacks of paper to figure out what
22 someone is saying. But similarly, after all those orders that
23 the Court had issued, the agency -- then you wrote and amended
24 answering machine -- an answering memo. An amended answering
25 memo means that it supplants the previous one.



1 In the body, then I read you are incorporating by
2 reference the previous memo. That is precisely what the Court
3 was trying to explain you can't do. I am trying to operate off
4 of it's called while you're answering, there is then an
5 opportunity to reply by the petitioner. But this is -- this is
6 just all over the map. And so now I don't think there's
7 anything else. It should have been captioned, if anything, a
8 supplemental. If you file it as a supplemental, then I would
9 know that it is something that is in addition to. But when you
10 do an amended, it means that it completely is a new document,
11 not requiring further review of the previous document.

12 MS. ROBINSON: Your Honor, may I? Thank you for
13 that, and I appreciate that, and I completely understand. I
14 was just title -- titling it, excuse me, per your order dated
15 July 3rd, 2025 --

16 THE COURT: Right.

17 MS. ROBINSON: -- that ordered that respondent may
18 file an amended answering --

19 THE COURT: Right. And that's why -- that's why the
20 title should reflect what was submitted. Meaning do it over.

21 MS. ROBINSON: Okay. Thank you.

22 THE COURT: That's what it meant.

23 MS. ROBINSON: Okay. I understand.

24 THE COURT: I didn't -- but if you insisted on doing
25 a supplemental, I can't stop you. I am just saying that the

1 whole point that had been made over and over and over again was
2 just to help the Court be able to review this file.

3 MS. ROBINSON: Certainly.

4 THE COURT: But of course, there was substantial
5 compliance by you in terms of what the rules require. I'm just
6 saying, for future reference, it's extraordinarily difficult to
7 do it this way. So let me ask you. I have reviewed both your
8 answering memo and the amended memo. So when you -- sorry --
9 to the page. When you were citing to the transcript page 57,
10 where the petitioner, by her own admission, states that during
11 the 2023 application, she did not know what primary residence
12 is, but now she does know it. So in looking at the transcript
13 -- and when you do transcript, Bluebook requires you to do line
14 numbers as well as page line numbers.

15 MS. ROBINSON: Okay. Thank you, Your Honor.

16 THE COURT: But is this -- were you just looking at
17 57, or were you telling me to look someplace else? Because I
18 saw in 57 and -- in 57, she said, so last year I didn't know
19 what primary residence is. Now I have found out that residence
20 is six months and a day. But then on page 59, it said, I do
21 not -- I did not know until last year's hearing that primary
22 residence, along with having your license, along with voting,
23 and along with your library card, and along with everything
24 else, you had to live there six months and a day.

25 Actually, I don't know where she says -- will you --

1 oh, you were not quoting. You said, but now she knows. You're
2 saying from that conversation, that from those segments of her
3 testimony, you were saying now she knows. You were not quoting
4 her.

5 MS. ROBINSON: That's correct, Your Honor.

6 THE COURT: Okay. That's fine.

7 MS. FAVALI: Your Honor.

8 THE COURT: Excuse me, ma'am. I'll give you an
9 opportunity to respond. It is not now.

10 Now, I'm now looking at the record 139 that you cited
11 to, where you state -- where you state that all the -- that the
12 neighbors provided a screenshot of recent court cases involving
13 the petitioner, two of which were as recent as 2024, which all
14 listed petitioner's address as 4222 Kennedy Street. And then
15 you cited as 139. So this was from -- this was the evidence
16 that was offered by the neighbors, right?

17 MS. ROBINSON: That's correct.

18 THE COURT: And what I'm looking at, is this, like --
19 is this from Maryland case search?

20 MS. ROBINSON: That's my understanding, Your Honor.
21 I was not involved --

22 THE COURT: Okay.

23 MS. ROBINSON: -- in that hearing, but --

24 THE COURT: Okay, that's fine.

25 MS. ROBINSON: -- that's what it appears to be.

1 THE COURT: All right. Thank you.

2 Let me see if I had any questions before I allow you
3 to make your argument. I have reviewed everything, so you
4 don't need to repeat what's already been said. But I certainly
5 will give you an opportunity to add any additional information.
6 Oh. Was there a time period after the issuance of the opinion,
7 where the record had been kept open, or was it just after the
8 hearing?

9 MS. ROBINSON: The Court's indulgence for just one
10 moment. The record was -- and I am looking at the transcript,
11 which is page 111 --

12 THE COURT: One second.

13 MS. ROBINSON: -- starting at line 14.

14 THE COURT: One second, 111?

15 MS. ROBINSON: Yes.

16 THE COURT: Yes?

17 MS. ROBINSON: Starting on line 14. According to the
18 hearing examiner, the record was left open for ten days for
19 generation of the transcript.

20 THE COURT: So you have no knowledge about the record
21 being kept open for any other purpose? This is just it.

22 MS. ROBINSON: For additional evidence? No. I'm not
23 --

24 THE COURT: Okay. Okay. It was in the first
25 hearing, I think, where the record had been kept open for

1 another 30 days.

2 MS. ROBINSON: I do not want to say based on my
3 recollection solely. I can certainly look back, if Your Honor
4 would like me to confirm that.

5 THE COURT: It's okay. All right. Thank you.

6 Yes, ma'am. Do you want to add anything?

7 MS. FAVALI: Yes.

8 THE COURT: Not you, ma'am. I'm speaking to Counsel.
9 I apologize.

10 UNIDENTIFIED FEMALE SPEAKER: Your Honor, I don't
11 have anything additional to add than what's already been in the
12 filings that were submitted. Your Honor, petitioner has failed
13 to identify or prove how the decision was in error. There was
14 no error made by the hearing examiner. Her decision was not
15 arbitrary or capricious. It was based off of substantial
16 evidence that was submitted to her in her hearing. She weighed
17 all the evidence that was presented to her. It is her duty to
18 weigh that evidence.

19 Certainly some of the evidence, such as the property
20 tax bill that petitioner submitted to her, which listed her
21 name and the subject address on, that may be evidence of a
22 primary residence. However, that evidence was refuted. The
23 hearing examiner, in her capacity, is the ultimate decision.
24 It is the ultimate -- excuse me, Your Honor. Has the capacity
25 and the ability and the experience to weigh all evidence. The

1 evidence petition -- the evidence was clearly not only found by
2 her, but any reasonable -- by any reasonable person would find
3 that the evidence that petitioner submitted to her was either
4 not credible or was refuted properly by evidence submitted by
5 neighbors.

6 There were seven neighbors that were at the hearing,
7 submitted testimony. These neighbors have resided at the
8 property from anywhere from 6 to 28 years. They had firsthand
9 daily observation of the subject property. They drive by the
10 property. They walk by the property. They have direct view of
11 the property. They speak unto tenants who reside at the
12 subject property. All of that has led the seven neighbors to
13 conclude that the petitioner does not have -- does not -- does
14 not have the subject property as her primary residence. Excuse
15 me.

16 Your Honor, again, the ultimate question is whether
17 the hearing examiner's decision was arbitrary, capricious, or
18 illegal. Petitioner has failed to identify any argument fact
19 that falls under any of those. Therefore, Your Honor, we ask
20 that you do affirm the decision made by the hearing examiner.

21 THE COURT: Thank you ma'am.

22 UNIDENTIFIED FEMALE SPEAKER: Thank you, Your Honor.

23 THE COURT: Yes. Yes, ma'am.

24 MS. FAVALI: So before --

25 THE COURT: Please stand when you address the Court.

1 MS. FAVALI: Oh, I apologize. I apologize. So
2 before the December 9th hearing, their lawyer was Bill Chen,
3 and he had a list of exhibits. And one of them was principal
4 residence. And that was when the -- the hearing examiner said
5 that was a tally, but they also had names of people that came
6 to my house, because the objectors said that, yes, I rent to
7 short-term rentals, which I did not.

8 THE COURT: Are you just reciting what happened at
9 the hearing to me?

10 MS. FAVALI: Well, I brought people that came to my
11 house between July of '23 and July of '24 to say yes, they --
12 even though the neighbors never see me, that I do live at
13 1709 --

14 THE COURT: Okay. As I indicated, ma'am, I don't
15 have the authority under law to take new evidence. That is not
16 the function of this hearing.

17 MS. FAVALI: I apologize, Your Honor.

18 THE COURT: Okay.

19 MS. FAVALI: I see. I thought that -- okay.

20 THE COURT: Anything else, ma'am?

21 MS. FAVALI: Question. Since I clearly lost this
22 year, when can I reapply for my ADU next year with proper dates
23 --

24 THE COURT: That's not for the Court, ma'am.

25 MS. FAVALI: That's not for the Court.



1 THE COURT: No.

2 MS. FAVALI: Okay.

3 THE COURT: All right. Let me take a brief recess,
4 and I will return with a ruling. Okay.

5 THE CLERK: All rise.

6 (Recess)

7 THE COURT: Be seated.

8 I neglected to allow the interested parties to make
9 oral arguments.

10 So ma'am, if you want to step forward and go to the
11 table right behind counsel.

12 MS. BENNET: Thank you, Your Honor. I appreciate the
13 opportunity.

14 THE COURT: Yes, ma'am. And what would you like to
15 say?

16 MS. BENNET: I --

17 THE COURT: Well, let's begin with your name.

18 MS. BENNET: My name is Carissa Bennett.

19 THE COURT: Okay.

20 MS. BENNET: I reside at 7075 Old Chester Road, two
21 houses down from the petitioner. And because you haven't
22 accepted her last -- her filing into the record, I don't know.
23 This may be a moot point. I just want to say that.

24 THE COURT: What do you mean I haven't accepted?

25 MS. BENNET: She accused -- she -- in her filing, she

1 accused the neighbors, the interested parties of lying. And I
2 want to go on the record as saying that they were not lying.

3 THE COURT: Well, this is not a trial, where --

4 MS. BENNET: I know.

5 THE COURT: -- we are taking --

6 MS. BENNET: I -- I just -- I -- I don't think you
7 accepted it. So I think it's a moot point.

8 THE COURT: What do you mean accepted it? I don't
9 know what you're referring to.

10 MS. BENNET: Her latest statement.

11 THE COURT: It's been -- her latest statement. You
12 mean her latest filing?

13 MS. BENNET: Yes.

14 THE COURT: The memorandum of law? Yes, that was
15 admitted. She filed it. I did not strike it, unlike the other
16 documents that she had submitted. And so that has been filed.
17 I just --

18 MS. BENNET: Right, and we were not able to --

19 THE COURT: -- said beginning --

20 MS. BENNET: We did not have time within that time
21 frame for the couple of days of when the latest thing could be
22 filed with the Court to file anything.

23 THE COURT: Right. And I --

24 MS. BENNET: In response to that filing.

25 THE COURT: And so as I indicated, there wasn't a



1 motion to shorten time that was filed. It was filed the day
2 before the responsive answering memorandum was due.

3 MS. BENNET: Right.

4 THE COURT: But under all the circumstances, because
5 this is not a proceeding, this is not a second trial on the
6 merits. This is an appeal. And because I had the benefit of
7 the transcripts of the hearing, in addition to the hearing
8 examiner's ruling, in addition to the answering memorandum that
9 was filed by counsel, as well as the amended answering
10 memorandum, I was already aware of all of the testimony
11 provided by the interested parties to the hearing examiner, as
12 well as the evidence. That was all part of the record.

13 MS. BENNET: Correct.

14 THE COURT: It is for those reasons that I made a
15 finding that petitioner is not surprised or unaware of what the
16 arguments were, and as such, I did want to give you the
17 opportunity to make an oral argument if there is something
18 additional that you wish to say. But under the circumstances,
19 I did not feel that I needed to postpone or extend a time for
20 filing anything further. But if you have anything further that
21 you would like to argue, I'm glad to hear that with citation to
22 the record.

23 MS. BENNET: Your Honor, not at this time. Thank
24 you.

25 THE COURT: Okay. Thank you so much. Let me -- let

1 me take a recess, and I'll be back shortly.

2 THE CLERK: All rise.

3 (Recess)

4 THE CLERK: All rise. The Court is back in session.

5 THE COURT: Thank you. Please be seated.

6 JUDGE'S RULING

7 THE COURT: All right. The Court has had an
8 opportunity to hear further from the petitioner and
9 respondents. And as I indicated at the outset, the original
10 petition for judicial review that was filed by the petitioner
11 had attached to it many, many documents that made no sense.
12 It's not the proper -- it's simply not a proper pleading. And
13 she then subsequently filed a petitioner's petition for
14 judicial review of the decision. And again, none of those
15 documents complied with the Court with the rules. It just did
16 not enable the Court to identify what arguments were made
17 pursuant to the record, and what were new arguments being
18 raised for the first time at the appeal level, which would not
19 be proper.

20 At each turn, the Court endeavored to get some level
21 of compliance with the requirements and explicitly ordered the
22 petitioner to file a single memorandum of law that did not
23 incorporate various other pleadings, including exhibits, to
24 pleadings that the Court was not able to discern. And so based
25 on that alone, the Court does not find that the actual

1 pleadings enable the Court to reasonably understand, based on
2 the record, what the arguments are and does deny the petition
3 for that alone.

4 But in the alternative, the Court endeavored to parse
5 through the arguments or the statements being asserted by the
6 petitioner, and once again reviews this record as an appellate
7 court since this is an on the record appeal, where no new
8 evidence is permitted, and there is no fresh fact finding to be
9 made. The decision of an agency is presumed to be prima facie
10 correct, and the burden is on the party challenging that
11 decision to establish -- it's their burden to prove that there
12 was, in fact, either legal error or that the agency was in fact
13 arbitrary or capricious.

14 Notably, and very relevant to this particular case,
15 is that the agency is entitled to determine the credibility of
16 witnesses and decide which evidence to accept and which to
17 reject. As the fact finder, the agency possesses the unique
18 opportunity to view the evidence and to observe firsthand the
19 demeanor and credibility of the witnesses during their live
20 testimony. It is not for the appellate court to simply
21 disagree with a credibility determination that was made by the
22 hearing examiner. It is for the Court to determine if there
23 is -- the test is substantial evidence in the record to support
24 that agency's findings of fact, and whether a reasoning mind
25 reasonably could have reached the factual conclusions that the

1 agency reached.

2 In this case, the record before the Court contained
3 information about a 2023 accessory dwelling unit rental
4 application that the petitioner had filed. And it is notable
5 that that hearing involved the identical issue that was again
6 presented by the petitioner in August of 2024, August 26th of
7 2024. In the first application, the hearing examiner issued a
8 report and decision in September, on September 6th of 2023. So
9 it really wasn't a great length of time that had passed since
10 then when the petitioner filed her second accessory dwelling
11 unit rental application.

12 Upon the objectors opining their reason for objecting
13 and noting their objection, a public hearing was held by the
14 hearing examiner. A transcript of which was included as part
15 of the record, and that issued on December the 9th of 2024.
16 After hearing from all interested parties, including the
17 petitioner, the hearing examiner issued her report on January
18 17th of 2025. And that is the report that the petitioner has
19 appealed.

20 She never articulated a proper question for appeal,
21 but as the agency noted, it appears that she was questioning
22 the validity of the hearing examiner's decision to deny the
23 license application based on her failure to meet the
24 requirement of primary residence. The identical issue from the
25 first application and hearings that she had been through.

1 Now, as I indicated, much of the arguments that were
2 cogently stated by the agency were contained in their answering
3 memorandum. In parsing through the arguments presented by the
4 petitioner, the agency notes that what was offered was a
5 property tax bill. There was no confusion about that. At some
6 point in her filings, the petitioner asserts that she gave her
7 driver's license in the very first hearing that occurred in
8 July of 2023, none of which would be remotely relevant to this
9 case, as if the submission of a license, even if true, would
10 somehow establish residency for this purpose.

11 The Court notes that record page 107, which is the
12 July 2023 hearing examiner's opinion and report, there is a
13 statement by the examiner that Mr. Dan Chappelle submitted a
14 written statement advising that Mr. Favali submitted her
15 driver's license to the HCA as proof that the property is her
16 primary residence.

17 Footnote four. A copy of Ms. Favali's driver's
18 license is not in this record. Despite that, at various points
19 in a rambling, incomprehensible set of filings, the petitioner
20 claims that she submitted her license and people recognized it.
21 Not true. That is not the record. Nothing from the first one
22 or the second one seems to indicate that there was any driver's
23 license that was in the record. In fact, it would be odd that
24 an objector, Dan Chappelle, was the one providing some kind of
25 verification. A review of that record suggests that there was

1 confusion or this was poorly written. I think that it's very
2 easy to just check a box off to get the initial primary
3 investigation and indicating I have a primary -- that's my
4 primary residence. But as a matter of fact, there was no
5 driver's license ever submitted that is a part of the record in
6 this case.

7 Moreover, the testimony of the hearing examiner
8 clearly found the petitioner to not be credible. It's not that
9 she was not permitted to use a property tax bill. It's just
10 that the most obvious, most simple piece of evidence was not
11 offered, even though at a hearing just prior to this one, a
12 year prior, that was the entire issue of primary residence.
13 And indeed, as the agency notes, the log that was submitted by
14 the petitioner of her own estimate or calculation of the number
15 of nights that she had been there, the hearing examiner did not
16 credit, which is the hearing examiner's right.

17 There was no error of law, because it was a question
18 of weight to be given to evidence that was submitted in the
19 face of the entirety of the record, and it was a self-serving,
20 self-created item. And the hearing examiner questioned the
21 truthfulness of that log, which the hearing examiner is
22 permitted to do.

23 In contrast, there was substantial evidence from the
24 objectors to indicate that the -- that the petitioner was not a
25 primary resident of the property located at 7709 Old Chester

1 Road, Bethesda. Not only was there evidence submitted to the
2 examiner that contradicted the testimony of the petitioner,
3 there was -- there was great -- there was a great deal of
4 documentary evidence that was submitted as well. Carissa
5 Bennet lived there for 27 years. Dan Chappelle lived there for
6 5 years. Ken Mack lived there 16 years. Britlan Malek 8
7 years. These individuals provided very specific and detailed
8 testimony, including from a case search, Maryland case search
9 analysis of cases involving the petitioner, where many -- over
10 a hundred cases listed the petitioner and her -- and/or her
11 children involved in various cases where the address was listed
12 as 4222 Kennedy Street in Hyattsville.

13 And witnesses testified, Mr. -- I believe this one
14 was Mr. Dan Chappelle, but he provided testimony and evidence
15 that some of these cases were as recently as October of 2024,
16 September of 2024 and April of 2024. That is clearly within
17 the relevant time frame of when the petitioner claims to have
18 the Bethesda residence as her primary residence. Her car has
19 South Carolina plates. Seems that the car registration records
20 showed it to be from 2019, with no change of address, not
21 refuted.

22 Then we go on to testimony from David Goodfriend. He
23 had been there for over 20 years, and he said he works from
24 home three out of five days a week. They have a dog. They
25 walk past this house literally every day for four years. For



1 four years, is what he was saying, and they just lived one
2 house away. They don't see her. We don't see her in the
3 evenings when they walk their dogs. Renters at that location
4 have approached Mr. Goodfriend to ask about how they can locate
5 the petitioner.

6 Britlan Malek testified that he's lived in that
7 neighborhood for eight years, walks by or drives by that home
8 between six to eight times a day. He's never seen her. Ken
9 Mack testified that he's been there for, as I said, 16 years.
10 He works from home. His office looks out over Old Chester
11 Road, directly across from 7709, and he also talks about
12 tenants that have -- that he has spoken to in the past. One
13 even invited him into the home. Clearly she wasn't lived
14 there. Granted, that was a few years ago, but this is a man
15 who's also very, very certain that she does not reside there.

16 And again, with Ms. Bennet, she has been there for
17 two -- for over 27 years. And she indicates that she never saw
18 her. Although the petitioner joined the Bethesda Village
19 community, she never saw her until very recently. Rarely see
20 her around the house. Occasionally would see her working in
21 the yard, maybe one or two occasions. Nothing to indicate that
22 this is a primary residence for her.

23 In contrast, the record is also clear that the
24 petitioner knew -- she claimed that she didn't know what
25 primary residence was until after the last hearing. So she

1 knew. And yet there was no license. The most simple, easy
2 thing to produce, in the face of her own admission that her
3 personal income tax goes to 4222, lists 4222 Kennedy Street.
4 That -- the hearing examiner had to ask her repeatedly to get
5 an answer out of her. Where do you -- where does your -- where
6 -- what address is listed on your tax returns?

7 All of the evidence, any evidence that is being
8 offered outside, after the filing of the hearing examiner's
9 opinion and report, January 17th is not permitted -- of 2025.
10 The hearing is closed. And it's not as if there could be any
11 mystery about what the relevant types of information could be.

12 As such, the Court is satisfied based upon this
13 record, and the arguments of -- the Court concurs with all of
14 the arguments posed -- made by the agency and finds indeed that
15 in this case, the hearing examiner had a substantial basis in
16 the record for her findings and her opinion and her ruling. As
17 such, the hearing examiner's opinion the Office of Zoning is
18 hereby affirmed.

19 Okay. Matter is concluded. Thank you.

20 MS. ROBINSON: Thank you, Your Honor.

21 THE CLERK: All rise.

22 (The proceedings were concluded.)
23
24
25

Digitally signed by Jacqueline Johnson

DIGITALLY SIGNED CERTIFICATE

eScribers, LLC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Civil No. C-15-CV-25-000613

FLAVIA FAVALI

v.

OFFICE OF ZONING AND ADMINISTRATIVE HEARING FOR MONTGOMERY
COUNTY

By:



Jacqueline Johnson
Transcriber