

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY, MARYLAND

**IN THE MATTER OF AN OBJECTION** )  
**TO ACESSEORY DWELLING LICENSE** )  
**NO. 157919** )  
7709 Oldchester Road )  
Bethesda, MD 20817 )  
 )  
Caressa Bennet, et al. )  
 )  
Objectors )  
\_\_\_\_\_)  
 )  
Flavia Favali )  
License Applicant )  
\_\_\_\_\_)

**OZAH Case No. ADO26-03**

**APPLICANT FLAVIA FAVALI'S REBUTTAL MEMORANDUM**

**IN RESPONSE TO**

**POST-HEARING BRIEF OF OBJECTOR KENNETH MACK**

**INTRODUCTION**

COMES NOW License Applicant Flavia Favali, by Counsel, and responds to the Post-Hearing Brief submitted by Objector Kenneth Mack, and joined in by Objector Caressa Bennet. Ms. Favali finds fault with many of the arguments, recollections and conclusions stated in the Objector's brief. Applicant further notes that many of the Objector's arguments are premised upon matters which are beyond the scope of the case parameters designated by the Hearing Examiner; i.e., residency and parking. Under the circumstances, Counsel submits that it would simplify the Hearing Examiner's review to reprint Objector's brief with interlineated comments **in blue**, as follows:

## **OBJECTOR KENNETH MACK'S POST HEARING BRIEF**

### **WITH APPLICANT COMMENTS**

The instant action is Applicant Flavia Favali's ("Applicant") third attempt in three consecutive years to obtain the same outcome based on the same facts. In each of the last two years, OZAH has determined that 7709 Oldchester Road in Bethesda, Maryland ("7709

Oldchester") is **not** her primary residence and, therefore, her prior applications were denied. **The OZAH determination was that at the time of Ms. Favali's prior applications, the subject property was not her primary residence. Such finding is not relevant to the instant case.**

For her 2024 application, Applicant elected to appeal the Hearing Examiner's ruling to the Circuit Court for Montgomery County, Maryland, which affirmed the OZAH decision. These prior hearings, including the appeal to the circuit court, were final determinations as to the issue presented and had a preclusive effect on Applicant's ability to obtain the license she previously sought without any change in circumstances, facts, or law.

**Objector's foregoing statement presumes no change in "facts", whereas Applicant's primary residence – or indeed any person's primary residence – always is subject to change and cannot be finally determined by a prior court action. Without the benefit of an independent fact finding, the Circuit Court had little choice but to uphold the findings of the Hearing Examiner and therefore held that 7709 Oldchester was not the Applicant's primary residence in 2024. HOWEVER, at the 2025 hearing, Applicant provided documentary proof including a daily log and sworn testimony by multiple witnesses that 7709 Oldchester is her residence in 2025 and 2026. Such evidence constitutes the change in circumstances sought by Counsel for the Objector.**

At the hearing for the current proceeding, Applicant presented no testimony that anything has changed since OZAH's prior determination that could justify a different outcome. The evidence presented once again failed to establish that Applicant resides at 7709 Oldchester as her primary residence. Furthermore, to the extent additional conditions could be imposed to alleviate the concerns raised by the application, Applicant's prior conduct demonstrates that such conditions would have little to no impact because of her continued apathy toward the rules and

regulations governing the subject property. For these reasons, as further discussed below, the application should be denied.

**It appears that Counsel for the Objector inadvertently may have overlooked the extensive witness testimony and documentary evidence presented by the Applicant that 7709 Oldchester is her primary residence. Counsel for Applicant avers that the testimony of persons who actually reside, previously have resided, and have visited Applicant (including overnight stays) at the premises must be given much greater weight than the testimony of neighbors who have never been inside the house and have a motivation to persuade the Hearing Examiner that Ms. Favali does not reside in their neighborhood, whereas Applicant's witnesses have nothing to gain from testifying on her behalf.**

BACKGROUND (Stated by Objector Mack)

In 2023, Applicant sought a Class 3 Accessory Dwelling Unit (“ADU”) license for 7709 Oldchester. Alexandre Finkel and other neighbors filed objections to the Director of the Department of Housing and Community Affairs’ (“DHCA”) preliminary determination that the application met the code and zoning ordinance requirements. A hearing was conducted before the Office of Zoning and Administrative Hearings (“OZAH”) on July 27, 2023 in which Applicant testified that “this is my principle residence.” (Exhibit 12(i) at 60:11-12.) The objectors testified to the contrary, each of them describing the things they would have expected to see if Applicant lived at 7709 Oldchester – the types of things they saw all their neighbors doing – but did not with respect to Applicant.

**Under the theory espoused by the Objectors, a hermit who never leaves his/her home or a homeowner with limited mobility (such as a broken ankle and ankle replacement surgery) requiring the person to recuperate and rehabilitate outside the home for an extended period of time, would justify a conclusion that this person did not reside in the home, and presumably these Objectors would so testify under oath. Applicant suggests that we all have neighbors whom we've never met or who rarely, if ever, interact with their neighbors. This would seem to be especially valid in a situation in which neighbors evidently have banded together and repetitively acted against a homeowner's efforts to avail herself of Montgomery County's evolving policies toward ADUs. Why, indeed, could one reasonably expect Ms. Favali to undertake a relationship with any of the nine (9) objectors?**

Ultimately, the Hearing Examiner “found none of Applicant's testimony credible.”

(Exhibit 12(f) at 21.) The Hearing Examiner concluded “that Ms. Favali does not and has not occupied the property since 2015.” The Hearing Examiner’s Report and Decision went on to say “[n]or is the Hearing Examiner convinced by Ms. Favali’s testimony that she intends to live in the ADU in the future because it is handicapped accessible.” (*Id.* at 23.) Based on these findings, the objections to Applicant’s license application were granted and DHCA was ordered to deny the license application.

**Prior case decision has no bearing upon 2025 residency. However the foregoing statement by the Hearing Examiner in the previous case regarding Ms. Favali’s intent to reside in the ADU invites a question how the Hearing Examiner would explain the Applicant incurring the substantial incremental expense of handicapped access compliance if she did not intend to occupy the ADU.**

In 2024, Applicant again sought a Class 3 ADU license. As in the previous year, Caressa Bennett and a number of neighbors filed an objection to the DHCA preliminary determination that the application met all code and zoning requirements. On December 9, 2024 a hearing was conducted on the objections before an OZAH Hearing Examiner. Again, Applicant testified that 7709 Oldchester was her primary residence. Again, all neighbors testified to the contrary. Notably, at that hearing, Applicant testified, “Okay. So I’m going to probably lose this year. So I have to figure, what were the ground I lost this year...And I will probably do a different...And so I’ll have some evidence for next year that, yes, you all say I don’t live here.” (Exhibit 12(g) at 84:8-25.) Applicant also presented a “Principal Residence Tally” at that hearing to support her position that the property was her primary residence, which listed the number of nights she purportedly lived at 7709 Oldchester. **Prior case decision has no bearing on 2025 residency.**

The Hearing Examiner found that Applicant was misguided in her belief that proving she resided at a property six months plus one day would establish primary residency.

**This is the exact threshold used by the Comptroller of Maryland to determine Maryland residency.**

Again, the Hearing Examiner found the objectors and neighbors credible in their testimony that Applicant did not live at 7709 Oldchester and made a finding that her “behavior prior to and including the past 12 months at the subject property indicates the actions of a landlord, not an owner occupant.” (*Id.* at 15.) After hearing all the evidence, the Hearing Examiner found “the subject property is *still not* Ms. Favali’s primary address.” (Exhibit 12(d) at 3 (emphasis in original).) Therefore, the Hearing Examiner again found that the property was not Applicant’s primary residence, granted the objections, and ordered DHCA to deny the license application. (*Id.*) **2024 residency (or non-residency) does not prove 2025 residency status.**

On September 4, 2025, Applicant once again sought the same Class 3 ADU license from DHCA. Once again, Caressa Bennet and other neighbors objected to DHCA’s preliminary determination, and a hearing was scheduled for December 19, 2025. At that hearing, Applicant presented eleven witnesses in addition to herself, all of whom testified as to the residency issue. Their pertinent testimony was as follows:

- Suzanne Vaughn testified that she “can’t tell you the exact date that she moved there,” but only that she was “raised in that house, and she spent many years there off and on.” (Day 1 Tr. 33:6-9.) When asked when she moved into 7709 Oldchester, her response was “I’m not really clear that she ever left.” (Day 1 Tr. 36:9-12.)
- Stephen Igbokwe testified that he had lived in the property since 2022 and that “As far as I’m aware, this residence has always been her place of living. She’s always been here since I’ve been here.” (Day 1 Tr. 44:3-13.) On cross-examination, Mr. Igbokwe claimed that there was “no change” in Applicant’s use of the property in the three years he had lived there. (Day 1 Tr. 45:13-17.)
- Constance Sutter testified that she had known Applicant for three years and it was “the

only residence I knew of, up until this hearing stuff.” (Day 1 Tr. 46:22-47:14.)

According to Ms. Sutter, she first visited Applicant at 7709 Oldchester on December 9, 2023 and she believed it was her primary residence at the time. (Day 1 Tr. 48:10-15.)

- James Cyr testified that “She’s lived in that house for a very long time.” (Day 1 Tr. 53:17.) He stated that he was a prior tenant of 7709 Oldchester, which was Applicant’s primary residence at the time he moved out in 2022. (Day 1 Tr. 55:1-6.) He also stated he was “not aware of any change in the status of her residence” since he moved out in 2022. (Day 1 Tr. 56:15-18.)
- Donna Reynolds testified that Applicant “moved there in 2023.” (Day 1 Tr. 65:16-20.) Ms. Reynolds stated that she moved to Pennsylvania three years ago and has visited Applicant at 7709 Oldchester 3-4 times since then. (Day 1 Tr. 65:25; 67:23-68:1) When asked if there was anything different about the property in 2025 than there was on her prior visits, Ms. Reynolds stated, “No.” (Day 1 Tr. 68:15-19). She contended that the property had been Applicant’s primary residence for “[t]hree years.” (Day 1 Tr. 68:20-22.)
- Janet Long testified that Applicant “has made it known clearly to me that now her primary residence is in Bethesda,” that this has been the case for “the past couple years,” that she and Applicant are very close and talk to each other about what is going on in their lives, and that she was not aware of any “significant change” for Applicant in the past year. (Day 1 Tr. 80:7-22.)
- Nancie Park was less certain about Applicant’s residency, stating that she didn’t know the date or even the year she allegedly moved to 7709 Oldchester, saying “You’d have to ask somebody else...” (Day 1 Tr. 119:16-24.)
- Rose Nantango testified that she “found [Applicant] there” (Day 1 Tr. 126:21) when she moved to the property at the end of June 2025 and that she did not observe Applicant

moving into the property at any point from June 2025 through the hearing. (Day 1 Tr. 126:2-6.)

- Kathy O'Brien testified that 7709 Oldchester has been Applicant's primary residence from "2023 to the present." (Day 1 Tr. 129:15-18.) She added that Applicant "officially did some kind of thing based on wanting to get this ADU" (Day 1 Tr. 130:25-131:1) and that she "made it her primary residence in 2023" based on what Applicant told Ms. O'Brien. (Day 1 Tr. 131:19-25.)
- Anand Jagessar testified that Applicant has "been living in the Oldchester Road as her primary home" for "roughly at least three, three and a half years, roughly." (Day 1 Tr. 137:15-19. She added that there has been "no change" in Applicant's residence in the last three years. (Day 1 Tr. 139:24-140:1.)
- Veronica Moskaitis, Applicant's daughter, testified that 7709 Oldchester has been Applicant's primary residence after she broke her leg and "its been going on three years." (Day 1 Tr. 199:8-12.) She added that she is always "doing something" to "all her *houses*." (Day 1 Tr. 202:4-11 (emphasis added).)

Applicant's testimony was consistent with that of her witnesses on this focal issue. She was asked by her attorney (on at least three occasions before responding to the question) at what point 7709 Oldchester became her primary residence. She answered, "**July of 2023.**" (Day 1 Tr. 146:7-9.) On cross-examination, the following exchange occurred:

Q. All right. Ms. Favali, you're still contending that you moved into the property in 2023 following your accident, right?

A. Yes.

Q. Okay. And you're aware that you came before this entity last year on December 9, 2024, and made the same argument. And, at that time, it was determined that 7709 Oldchester was not your primary residence, right?

A. Yes.

Q. Okay. And, in fact, at some point during the middle of that

hearing, you realized that, or you believed, that that was going to be the outcome, right?

**A. Yes.**

Q. And you said something to the effect of, So there's eight of you and seven of you. There's eight of you saying that you're under perjury, that I don't live here. And it was me saying, I do live here. So somebody is lying; either eight people are lying or I'm lying. Do you remember saying that?

**A. Yes, I do.**

Q. Okay. And you understand that, to the extent that you put it that way, the determination was made that you were lying at that time, right, not the other eight people?

**A. Yes, I do.**

Q. Okay. But you're still contending today that you've lived there since 2023, right?

**A. Yes.**

Q. And then you said, so I have to figure what were the grounds that I lost this year? And then you said, Yes, I will live here like I'm living here the last year. And I will take a picture every day of something notable that happens on the street that would only happen this particular day at this particular time. Do you remember telling everybody that's what you were going to do?

**A. Yes. And that's what I did. That's why you have so many 434 pages of exhibits. I'm sorry.**

(Day 1 Tr.166:8-167:21.)

All objectors and neighbors testified that they rarely saw Applicant at the property and that their observations of her use of the property were unchanged since the prior hearings. The objectors and other neighbors consistently testified that they see each other “all the time” (Day 1 Tr. 213:21) and described various activities and occasions when they would interact. They uniformly noted that Applicant was not present during any of these occasions.

**These neighbors evidently are friends who interact socially on a regular basis, invite each other to their homes, walk their dogs together, etc. Applicant does not understand why these neighbors would expect to have regular contact with a person whom they clearly do not like and with whom they do not interact socially.**

Most testified that they had seen Applicant two or three times over the course of the year, which paled in comparison to every other person living on that block. The objectors also testified about

problems they experience with on-street parking, and attributed it to vehicles associated with 7709 Oldchester.

**Objectors nearly uniformly testified that they, their guests, children’s friends and contractors regularly park on the street and back out into the street as their narrow driveways do not permit turning their vehicles around to front out to the street. Mr. Mack had a vehicle for sale parked on the street for several months and Mr. Goodfriend testified that he routinely parks one of his vehicles on the street. Messrs. Finkel and Chappell, Applicant’s two (2) immediate next door neighbors, also testified that they each have a basketball hoop set up off the curbs in front of their houses and that their children routinely have room to play there in the street – and indicated that they consider it safe for their children to do so. Each basketball hoop occupies space which eliminates at least one on-street parking space, yet they express concern about street parking only in front of Ms. Favali’s home, disregarding the fact that the ADU will include two (2) new off-street parking spaces.**

#### ARGUMENT

**a. Applicant’s license application is precluded by the doctrines of res judicata and collateral estoppel.**

The doctrine of *res judicata* provides that “a judgment on the merits in a previous suit between the same parties or their privies precludes a second suit predicated upon the same cause of action.” *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979). In Maryland, *res judicata* has been described as an “absolute bar, not only as to all matters which were litigated in the earlier case, but also as to all matters which could have been litigated.” *Whittle v. Bd. Of Zoning Appeals*, 211 Md. 36, 49 (1956). In the context of a zoning hearing where the applicant is seeking the same relief as a prior application, the doctrine of *res judicata* will apply unless “there have been **substantial changes in facts and circumstances** between the first case and the second...” *Id.* at 45 (emphasis added).

**Objector’s improper and overly expansive application of the doctrine of *res judicata* would prevent any owner of a property, once determined by an adjudicative body to be a non-resident, ever to make the property his/her residence. This is a fallacious argument which clearly is not the intention of the legislature or the courts. But more importantly, Counsel for the Objector is striving to characterize the Applicant as a repetitive plaintiff initiating a court action. In fact, Ms. Favali is not the moving party. She has filed an application to DHCA in accordance with her rights under County law. As it is the Objectors, rather than**

**the Applicant, who are the party seeking redress from the OZAH and the courts, it is questionable whether *res judicata* is applicable to our situation. The determination of applicability is the sole province of the judiciary and well beyond the jurisdiction of an administrative agency. As Counsel for Mr. Mack has noted above, before one can apply *res judicata*, there must be a finding whether there have been “changes in facts and circumstances between the first case and the second...”. Such a determination would require an evidentiary hearing in open court.**

In 1992, the Maryland Supreme Court removed any doubt as to whether *res judicata* applies to decisions by administrative agencies, such as OZAH. *See Batson v. Shiflett*, 325 Md. 684, (1992). In *Batson*, the court held that an administrative agency’s ruling “is entitled to preclusive effect” where it meets the test set forth in *Exxon Corp. v. Fischer*, 807 F.2d 842, 845-46 (9th Cir. 1987). Under that test, three factors are considered in determining whether *res judicata* applies to a prior decision: (1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the [reviewing] court was actually litigated before the [agency]; and (3) whether its resolution was necessary to the [agency's] decision. *Id.*; *see also Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n*, 192 Md. App. 719, 736 (2010). Where the administrative decision is appealed to the circuit court and a judgment is entered affirming the judicial decision, the doctrine of *res judicata* is even more appropriate. *Fertitta v. Brown*, 525 Md. 594 (169).

The doctrine of collateral estoppel requires that “factual issues resolved in the adjudication of one claim are binding for the purpose of subsequent adjudication of another claim.” *Becker v. Falls Rd. Cmty. Ass'n*, 481 Md. 23, 46 (2022). Collateral estoppel applies where the following four conditions are satisfied:

- (1) The issue decided in the prior adjudication is identical to the one presented in the present case;
- (2) There was a final judgment on the merits;
- (3) The party against whom the plea is asserted was a party or in privity with a party in the prior adjudication; and
- (4) The party against whom the plea is asserted was given a fair opportunity to be heard on the issue.

*Id.* (citing *Washington Suburban Sanitary Comm'n v. TKU Assocs.*, 281 Md. 1, 18-19) (1977)). In *Batson*, the Court also applied the doctrine of collateral estoppel to findings made by administrative agencies, applying the same *Exxon* test cited above. *Batson*, 325 Md. at 701-03.

Where a decision is made by an agency and then a subsequent application is presented on the same or substantially similar facts, a subsequent contrary or inconsistent decision has been held to be “no more than a mere impermissible change of mind.” *Lambert v. Seabold*, 246 Md. 562 (1967) (reversing a zoning authority’s approval of an application for reclassification from residential to business use where a similar application regarding the same properties had been denied three years earlier). *See also Polinger v. Briefs*, 244 Md. 538, 541 (1966) (holding that the zoning authority’s decision that was inconsistent with its determination two years prior “without any change in circumstance, fact or applicable law” to be “arbitrary and capricious” and “no more than the mere impermissible change of mind that was condemned in [prior cases].”)

Here, all elements of *res judicata* and collateral estoppel are met and, therefore, Applicant should be precluded from proceeding with her license application because the same issue has been litigated and adjudicated twice already. There was no evidence offered by Applicant that there has been any change in circumstances that could justify a different outcome than was already determined by OZAH each of the previous two years. Instead, as listed in detail above, Applicant and all of her witnesses testified that she moved into the subject property as her primary residence in 2023 (or earlier, according to some witnesses). Therefore, the only outcome Applicant seeks is the “impermissible change of mind” that is prohibited under the authority cited above.

In addition to the testimony, the documents Applicant relies upon also demonstrate that there has been no change since the prior OZAH decision. Her voter registration card is dated

December 3, 2018 and her driver's license is dated December 6, 2019. (Exhibit 10.) All of Applicant's tax bills, going back to Levy Year 2022 show credits applicable to a primary residence designation, which the record already established Applicant did for the benefit of receiving tax benefits. (Exhibit 16(a).)

**Objector's counsel is testifying as to Applicant's state of mind. The testimony at the hearing was that Oldchester is her primary residence thereby entitling her to the small owner occupant credit. The County has not disputed her status.**

Setting aside the troublesome nature of those disclosures, this is not evidence of any change in circumstances following the last OZAH decision. These documents do not establish anything positive for Applicant, who has a history of making false representations to government entities that result in financial benefits to her, as further discussed below. Applicant even recycled many of her exhibits from the prior hearings including, but not limited to, the "Principal Residence Tally."

Remarkably, Applicant even telegraphed her intention to re-litigate the same facts when she testified at the second proceeding, saying "So I'm going to probably lose this year. So I have to figure, what were the ground I lost this year...And I will probably do a different...And so I'll have some evidence for next year that, yes, you all say I don't live here." (Exhibit 12(g) at 84:8-25.) This, plus the evidence presented by Applicant at the hearing, demonstrate that there has been no change in circumstances, facts, or law and that she is simply seeking another bite at the same apple with the hope of a different outcome. This "impermissible change of mind" is not permitted; therefore, her application should be denied.

**This is quite a stretch. Counsel for Mr. Mack has drawn a conclusion premised upon a strange interpretation of Ms. Favali's very reasonable statement at the prior hearing that she recognized that she could have presented a better case and recognized the need to correct the gaps in her evidence and arguments. She expressed the need to take remedial action to present affirmative evidence of her residency as well as to retain counsel better able to present evidence in support of her subsequent application.**

- b. Even if the Hearing Examiner were to disregard the doctrine of *res judicata* and the prohibition on an “impermissible change of mind,” Applicant’s request should still be denied.**

While Applicant should be precluded from obtaining the license she seeks for the reasons stated above, even if the Hearing Examiner were to consider the evidence without any prior litigation history, the application should be denied because Applicant has (once again) failed to establish 7709 Oldchester is her primary residence and the objectors have satisfactorily demonstrated that Applicant’s use of the property causes inadequate on-street parking.

### Residency

Pursuant to Section 29-19(b)(1)(B) of the Montgomery County Code, certain documents are listed as “evidence” of primary residence, but they are not proof thereof, and can certainly be misleading, particularly when there is a financial motive for doing so. For example, Applicant testified that she moved into 7709 Oldchester in July 2023, following an accident. (Day 1 Tr. 146:7-9.) Presumably then, she at least admits that she did not live at the property prior to that date. However, Applicant represented to other authorities that 7709 Oldchester was her primary residence at least as early as 2022, as noted in Exhibit 16(a), which is an Annual Tax Bill for Levy Year 2022 and lists 7709 Oldchester as Applicant’s “principal residence.” The same tax bill also shows Applicant received a “Design for Life Tax Credit,” which required the property to be applicant’s “principle residence”<sup>1</sup> at the time it was received. Therefore, while the county code lists a real property tax bill as an example of evidence that can be used to prove primary residence, in Applicant’s case, the evidence proves otherwise. The same can be said of her driver’s license and voter registration, both of which contained the 7709 Oldchester address well before even Applicant contends she moved into the property and certainly before the prior OZAH decisions.

**County authorities have determined the bases which they use to make a determination of residency. The applicant provided extensive witness testimony that the Oldchester property is her primary residence, including the items admitted to by Objector's counsel, as well as tax returns, tax refunds, and other documents.**

As Applicant attempted to collect additional documents to support her claim, she went to the library on a weekend to scan the documents and submit them – the Hyattsville library (Day 2 Tr. 126:21-127:5) that is located near her Kennedy Street property, which is the same property where her car was photographed the weekend before the first day of the hearing. (Exhibit 12(h).) Applicant would not have driven from Bethesda to Hyattsville to use a scanner if she was at home on a weekend at 7709 Oldchester.

**Applicant's use of the Hyattsville library is consistent with her repeated testimony that she uses the Hyattsville property as her office.**

Without the ability to rely upon documents, the evidence to be considered then is the testimony of the witnesses who participated in the hearing. Here, the prior proceedings cannot be ignored, as Applicant was found to be not credible when testifying under oath at the two prior OZAH hearings on the very same matters about which she testified in this proceeding.

Furthermore, Applicant's credibility was undermined by her disregard for the rules and procedures of the hearing, most notably at the January 12, 2026 where Applicant had Suzanne Vaughn, one of her witnesses who testified earlier in the hearing, coaching her from off-camera in the room. (Day 2 Tr. 57:19-60:22.) Minutes later, Applicant was texting from her phone while testifying. (Day 2 Tr. 58:4-11.) This episode undermines not only Applicant's testimony, but also those of her witnesses. It is hard to imagine Ms. Vaughn believed it was appropriate to coach Applicant off-camera during the proceeding.

**Counsel Gottein may dispute the Applicant's credibility but he has laid no foundation for questioning the credibility of her 11 witnesses, none of whom will derive any benefit from the proposed ADU.**

All of the objectors and other neighbors testified that they are familiar with each other,

regularly see each other, and are aware of each other's actions. They all testified that they do not see Applicant at or around the property in any of the ways that they see each other. Mr. Finkel and Mr. Mack testified about a recent incident when the police showed up at the property. What was notable there was not the nature of the incident, but that Applicant was not present. If she lived at the property, then during an evening when the tenants and other neighbors were all home, she would have been there and would have been involved with the same interactions as those who testified about what occurred. In sum, the substantial weight of credible evidence once again leads to the conclusion that 7709 Oldchester is not Applicant's primary residence.

i. Parking

The testimony of the neighbors was credible, corroborated, and not directly disputed with respect to on-street parking around the subject property. Multiple neighbors testified that on-street parking is limited because of the number of vehicles associated with 7709 Oldchester, which are frequently parked in the street. **Objectors' photos indicate otherwise.** While many of the neighbors have driveways and/or garages that make it possible for them to park their own cars at their homes, that is not what the code addresses. The code allows the Hearing Examiner to consider the sufficiency of **on-street** parking, not whether or not neighbors have sufficient alternative off-street parking. Here, there was an abundance of testimony that on-street parking is already limited; therefore, the addition of an ADU at 7709 Oldchester would exacerbate that problem.

**Counsel Goitein disregards the facts that the ADU will include two (2) new off-street parking spaces with no increase in the number of occupants of 7709 Oldchester Road.**

Ms. Bennet testified that on a number of occasions her guests have been unable to park in front of her house (Day 1 Tr. 209:9-22) and that there is no parking available in front of her house 20-30 times a year (Day 1 Tr. 212:15-21). David Goodfriend (Day 1 Tr. 240:18-241:6)

and Britalen Malek (Day 1 Tr. 260:2-3) testified about the congestion on the street that is caused by the number of cars that are associated with 7709 Oldchester due to the number of people living there. There was also considerable testimony that the 7709 Oldchester driveway is a tandem driveway. While several other homes in the neighborhood have tandem driveways, Applicant's is more problematic because of the number of occupants and, therefore, vehicles associated with her property, which requires more movement and then spills out onto the street, causing dangerous conditions.<sup>2</sup>

Another issue that arose with respect to parking related to the "parking pad" being constructed by Applicant, without the proper permits. This evidence was emblematic of why Applicant's license application should be denied. David Johnson, a DHCA inspector, was shown a photo of the parking pad being constructed by Applicant, which evidently was present during his inspection. After viewing the photos, Mr. Johnson stated, "That parking pad is totally unexpected. For someone to create a pad that enters the public right-of-way would require permits, and they would have to go through the Department of Permitting Services." (Day 1 Tr. 103:9-12.) Despite ample opportunity, including a break in the proceedings of several weeks, there was no evidence that Applicant had even applied for these permits, once again displaying apathy for the county code. As Mr. Finkel testified, the addition of the parking pad actually removes 1-2 parking spaces from the on-street parking, as no cars could park along the street to block in the cars in the pad. (Day 2 Tr. 47:4-9.)

**Inspector Johnson stated that the parking pad was "unexpected" because there is no parking pad. Ms. Favali testified that the pavers are intended to create a front patio. It is unfathomable to the undersigned how Mr. Goitein can rely upon Mr. Finkel's characterization of an improvement on a neighbor's property, *rather than the property owner's statement*. Moreover, even if Mr. Finkel's characterization was correct, which we deny, his statement that the pad would eliminate two (2) parking spaces ignores the creation of one (1) space which would be created if indeed this was intended to be a parking pad. However, as this will be a patio, and as Ms. Favali already has nearly 1,500 square feet of off-street parking, there clearly will be no effect upon on-street parking.**

While the prior hearings should have a preclusive effect on Applicant's request, the evidence presented at the instant hearing, standing alone, does not substantiate her license application because she does not reside at 7709 Oldchester and the use of her property already creates insufficient off-street parking, which will only get worse if the ADU provides additional living spaces.

**We find it surprising that Counsel for the Objector is willing to substitute his judgment that the property has “insufficient off-street parking” for regulatory requirements as well as the determination by the expert, DHCA Inspector Johnson, who testified that the property will have triple the required off-street parking. Counsel’s judgment is especially questionable considering that the ADU will add two (2) new parking spaces (with only one occupant) and in light of Ms. Favali’s suggestion that approval be premised on a reduction of the number of tenant roommates. Although there currently are five (5) people (including Ms. Favali) residing in the house, the number would be reduced to three (3) in the house plus one (1), the Applicant, in the ADU.**

**c. Limitations or conditions ordered by OZAH will not result in compliance or accomplish their intended purpose.**

In Applicant's brief, she proposes various conditions that the Hearing Examiner could impose as a means to get her license application approved. This suggestion does not circumvent the law with respect to the *res judicata* doctrine and the inability for OZAH to rule in a manner that would still amount to an impermissible change of mind. But even more importantly, Applicant has demonstrated repeatedly that she will disregard directives, OZAH's findings, regulations, and the code if any of those rules are inconsistent with or inconvenient for her objectives, particularly her pecuniary interests. There are examples of this throughout the history of Applicant's use of the subject property.

**Counsel for Mr. Mack argues that “limitations or conditions imposed by OZAH will not result in compliance.” If Ms. Favali’s ADU application is approved with conditions and she fails to honor those conditions, we have no doubt that these neighbors will take legal action to enforce those conditions.**

Most notably, Applicant admittedly rents rooms within the property to tenants. She

currently has four tenants. (Day 2 Tr. 120:2-5.) Applicant does not have a rental license for the property, which she let lapse, because she was told that if she was living in the property, she did not need a rental license. (Day 1 Tr. 172:11-143:3.) Applicant even offered as an exhibit the DHCA Room Rentals publication, which makes very clear that the typical licensing requirement only does not apply if the property is owner-occupied. Exhibit 10(a), Part i. On September 6, 2023, when the Hearing Examiner issued a Report and Decision that found Applicant did *not* reside in the property, that not only resulted in a denial of Applicant’s pending ADU license application, but it also resulted in a determination by a Montgomery County entity that the property was not owner-occupied. At that point, Applicant’s room rental arrangement was no longer viable, and she should have – at a minimum – obtained a license to rent the property.

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<sup>2</sup> Applicant makes much of the allegation that the pertinent section of Oldchester Road is eight (8) feet wider than another section of the road that is not affected by the congestion at Appellant’s property. This is irrelevant, as the issue here is whether there is sufficient on-street parking available that is associated with the license application, not somewhere else. **Counsel for the Objector has misunderstood the reference to the width of Oldchester Road. The relevance of the street width is that the Objectors have invented the term “chokepoint” and alleged that it exists in front of 7709 and the Objectors’ homes where the street is 26 feet wide. If, in fact, a chokepoint existed, it would logically be on the two (2) blocks of this three-block long street which are only 18 feet wide rather than on their one block which is 44% wider. The block on which the Applicant and Objectors live evidently is sufficiently wide that several Objectors testified that they regularly park on the street. Nevertheless, they wish to eschew any responsibility for avoiding off-street parking and place the onus solely upon the Applicant. Objectors’ argument disregards the many photos which the Objectors introduced into evidence demonstrating that Applicant and her tenants generally park their vehicles in off-street spaces on Applicant’s property. Objectors repeatedly identified Ms. Favali’s silver Mitsubishi as her primary vehicle. All photographs of the Mitsubishi which they introduced into evidence showed the vehicle parked off-street on Ms. Favali’s property. Ms. Favali testified that as she can only drive one vehicle at a time, if the Mitsubishi is there, her other vehicles are at the Hyattsville property which serves as her office. Ms. Bennet’s photo of the Hyattsville property supported Ms. Favali’s statement.**

However, that would have been a problem for her as well because since she did not live in the property and the property is zoned for R-90 use, her multi-family housing would be required to satisfy the limited use or conditional use standards to become licensed. *Montgomery County*

*Zoning Ordinance*, Section 3.3.1.E. In other words, OZAH’s finding in 2023 that Applicant did not live in the property meant that her rental operation was unlicensed and most likely not even permissible in a residentially zoned (R-90) area such as the neighborhood at issue here. Rather than investigate or remedy this situation, Applicant simply continued to rent rooms, disregarding OZAH’s findings. In 2024, OZAH again determined that Applicant did not reside in the property, once again undermining her entire rental scheme. Still, she took no remedial action, and then even advertised for and obtained a new tenant.

This is the most egregious and applicable example of Applicant’s disregard for the rules that govern the property; however, there are others, including her acceptance of the Design for Life tax credit of \$10,000.00, as discussed above, and her unpermitted parking pad, which she conveniently began constructing after her DHCA inspection.

**Counsel for Objector has ignored the DHCA determination that the property has THREE TIMES the required parking, even before construction of the patio which he purports to refer to as a “parking pad”. As regards the Design for Life tax credit – which has no bearing upon the issues in the instant proceeding, Ms. Favali acknowledges the Circuit Court ruling but submits that courts sometimes make erroneous findings and firmly believes this was such an occasion. This is why there are multiple levels of appellate courts. Ms. Favali consistently has testified under oath that she has resided in the property since 2023, as corroborated by eleven (11) witnesses who testified under oath at this hearing. Moreover, the property is now her principal residence which would be inaccessible to her without the subject ramp. Ergo either she needed it at the time (as she asserts) or, if one accepts the Objectors’ denial of 2023 residency, then it was installed as a requisite condition for her current residency.**

This conduct substantiates the opinions of her neighbors, including Mr. Goodfriend (Day 1 Tr. 247:15-252:14), who testified in detail about why Applicant cannot be expected to follow any conditions that could be ordered by OZAH, when she has not abided by the findings made by the Hearing Examiner in the prior proceedings. Therefore, Applicant’s suggestion that imposing

additional regulations in the form of conditions to the license will remediate any concerns should not be accepted. It is more likely the case that, if allowed to construct the ADU, she will simply rent the additional room and expand her already unlawful rental scheme, continuing to disregard the county zoning and licensing requirements.

**Applicant finds it surprising that Mr. Goodfriend, who has no relationship with Ms. Favali, considers himself to be so omniscient that he can read her mind. While Ms. Favali acknowledges that his foregoing statement is expressed as the Objector’s opinion (i.e. “It is more likely the case...”), his belief that she will “simply rent the additional room” is mere speculation and arguably inadmissible. Applicant submits that there is zero evidence upon which to base an opinion that she would use the ADU as a means to rent additional rooms, especially considering the Applicant’s proposal in her Post Hearing Memorandum to actually reduce the number of tenants from four to three persons. Moreover, Counsel for Objector’s statement that the Applicant intends to “expand her already unlawful rental scheme, continuing to disregard the county zoning and licensing requirements,” is knowingly false. The evidence adduced at the hearing is that Ms. Favali’s current use of her property is in full compliance with all Montgomery County requirements.**

## ARGUMENT BY APPLICANT

Montgomery County Government favors the construction of Accessory Dwelling Units. The County has adopted a policy to care for, and improve the quality of living for its senior citizens who are anticipated to comprise 20% of the County population by 2040. The County's mission statement regarding seniors states, in pertinent part:

*To ensure that older adults will have choices of dwelling types to meet the changing needs and preferences of this population. The County will support initiatives to assist older adults to age in place, downsize, choose rental housing or home ownership. Further, the County will support housing with supportive services so that older adults can remain in the community. • Expand affordable housing options. • Introduce aging in place and wrap around services to affordable senior living communities. • Explore the opportunity to develop affordable assisted living in the county.* <https://www.montgomerycountymd.gov/senior/Resources/Files/3-years-action-plan.pdf> @ p.25.

Recent County initiatives to expand the availability of accessory dwelling units, including liberalizing the residency requirement, have been consistent with the foregoing mission statement. In furtherance of such mission, the County has approved nearly 100 ADUs since Ms. Favali's first application was approved by DHCA in 2023.

In a March 18, 2026 article in the Business Section of Washington Post Online, author Julie Weill wrote:

*As the housing cost crunch has spread from coastal cities to nearly every town in America, and consensus has coalesced around the idea that undersupply of housing is to blame, many communities have changed their laws to allow more "middle" or "infill" housing in existing neighborhoods.*

Although the Post article concentrates upon Portland, Oregon, our local jurisdictions, notably Montgomery County and the City of Falls Church, have demonstrated a favorable attitude toward increased density in residential neighborhoods. Resulting legislation has encouraged Accessible Dwelling Units, as well as subdividing residential lots. The passage and subsequent

implementation of such legislation often has been opposed by property owners in affluent neighborhoods who fear that the resultant new housing will enable less affluent persons to move into their neighborhoods and potentially impact the value of existing single-family homes.

## **RESIDENCY**

As the Hearing Examiner recently noted in an email to all parties, Montgomery Council Bill 31-12 relaxed the residency requirement by modifying the statutory language deleting the previous requirement of absolute occupancy and replacing such language with “primary residence”. In doing so, the Council recognized that one may not always occupy the property which he/she identifies as the primary residence; i.e., even if there was validity to the Objectors’ claim that Ms. Favali does not always sleep at Oldchester Road – *and Applicant has denied the Objectors’ allegation under oath* – the property may well be her primary residence in compliance with the County Code. As noted in Applicant’s initial Post-Hearing Memorandum, Ms. Favali has satisfied DHCA three (3) times that she meets the residency requirement and further has produced numerous indicia of her residency at 7709 Oldchester, as well as the testimony of eleven (11) witnesses, none of whom has anything to gain nor any incentive to risk committing perjury.

DHCA is charged with making the preliminary determination of an applicant’s residency and has found that requirement to be satisfied in three (3) consecutive years. Applicant submits that the DHCA determination is a rebuttable presumption which the Objectors were able to overcome in prior years. However, any person’s residence in a given year is not dispositive of such person’s primary domicile in a subsequent year. Ms. Favali has produced witnesses, dated logs and documentary evidence clearly demonstrating 7709 Oldchester Road to be her primary residence. Undersigned counsel submits that Applicants’ eleven (11) witnesses, all of whom have been in the premises on multiple occasions over periods of years, must be accorded greater credibility than the testimony of the lesser number of Objectors, none of whom have been in the house or made an effort to maintain a relationship with the Applicant.

Even if the Hearing Examiner does not accept Ms. Favali's evidence of residency to be sufficient, it is unquestioned that she will be the fulltime resident of the ADA compliant Accessory Dwelling Unit.

### **PARKING**

As noted by the Hearing Examiner on multiple occasions, the only cognizable issues in this matter are Residency and Parking. As DHCA has approved the parking plans on three (3) separate applications, and determined in 2025 (per Inspector Johnson's *undisputed* sworn testimony) that the property will have nearly triple the required parking, this would not appear to be an issue which is subject to further review. There will be off-street parking for three (3) vehicles on the existing circular driveway plus two (2) new spaces as designated on the ADU plan, as well as a lengthy driveway leading to the ADU. Notwithstanding the very ample off-street parking, Applicant has offered to reduce the total number of residents (including herself) to four (4) effective upon her assuming occupancy of the proposed Accessory Dwelling Unit.

### **TANGENTIAL ISSUE: TENANT ROOM MATES**

Applicant has submitted the DHCA "Room Rentals" guidebook into evidence. As the residents of 7709 Oldchester share a kitchen, this is not a rooming house and does not require a separate license (although an ADU license will be required if the application is approved).

Objectors have expressed numerous criticism regarding the 7709 occupants. They have falsely testified under oath that there has been significant tenant turnover while admitting that only one or two of them have ever spoken to the tenants or made any effort to introduce themselves. Applicant, on the other hand, has introduced sworn witness testimony, ledgers and leases (in 2024 and 2025) proving that three (3) tenants have lived in 7709 continually since

2022 or 2023, and the fourth, Ms. Rose Nantango, has lived there for the past seven (7) months. Undersigned counsel does not suggest that Objectors' false statements were intentional, but I am concerned that Applicant's neighbors would proceed to testify under oath without engaging in the basic due diligence to verify their impressions.

**CONCLUSION**

In consideration of the evidence presented by the Applicant Flavia Favali demonstrating satisfaction with parking and residency requirements, Applicant respectfully prays that the objections to her Application for Accessory Dwelling Unit be denied.

Respectfully submitted,

/s/ Greg S. Friedman  
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**Certificate of Service**

I HEREBY CERTIFY that on this 19th day of March, 2026, a copy of the foregoing was served on all parties and counsel through electronic mail.

/s/ Greg S. Friedman  
Greg S. Friedman