

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/boa/>

Case No. A-6642

APPEAL OF ELIZABETH BRUTON et al.

OPINION OF THE BOARD

(Hearing held January 8, 2020.
Effective Date of Opinion: February 3, 2020.)

Case No. A-6642 is an administrative appeal filed October 29, 2019 by Elizabeth Bruton, Robert and April Borris, Crystal Granados, Beverly Brandt, Cecilia Umanzor-Aviles, Scott Baumgartner, Milton Rozario, Mary Gomes, Tam Nguyen, Melanie Symister, Jane MacNealy, Valarie and Vanessa Senatus, Tina Robinson, Shimels Oda, and Kathleen Mayers (the "Appellants"). The Appellants charge error on the part of Montgomery County's Department of Permitting Services ("DPS") in the October 3, 2019 issuance of Building Permit No. 881044 to add a "two story add with garage" located at 1504 Stateside Drive, Silver Spring (the "Property"). The subject Property is owned by Bangladesh Christian Cooperative Society, LLC. The Appellants reside on Stateside Drive, Cottrell Terrace (Appellant MacNealy), Arbor Hill Drive (Senatus Appellants) and Dilston Road (Appellants Robinson and Oda).

The Appellants originally asserted that DPS incorrectly issued the subject Building Permit because Appellants alleged a "commercial use of residential property" and that the Building Permit was issued so that the Property could be used as a "business in residential property. Development of meeting place to accommodate more than 50 attendants."

Pursuant to section 59-7.6.1.C of the Zoning Ordinance, the Board held a public hearing on January 8, 2020. Appellant Bruton was represented by Thomas W. Westberg-Croessmann, Esquire, of Croessmann & Westberg, P.C. Appellant Robinson appeared *pro se*, and none of the other Appellants appeared at the hearing. Associate County Attorney Charles L. Frederick represented Montgomery County.

At the outset of the proceeding, Mr. Frederick explained that Appellant Bruton had filed a Motion to Amend the Appeal Charging Document and was now alleging that

"Building Permit No. 881044 was approved in violation of Montgomery County Code § 8-24(c) (lack of qualified applicant) and § 8-25(a) (failure of Director to reject nonconforming application)" and noted that he had no objection to the amendment. See Exhibit 10.

On a motion by Chair John H. Pentecost, seconded by Member Katherine Freeman, with Vice Chair Bruce Goldensohn and Member Mary Gonzales in agreement, and with Member Jon W. Cook necessarily absent, the Board voted 4 to 0 to amend the appeal charging document as outlined in Exhibit 10.

Mr. Frederick also explained that he had filed a Motion to Dismiss the appeal based on the original assertion that Building Permit No. 881044 was issued so that the Property could be used as a commercial use. See Exhibit 6. Mr. Westberg-Croessmann, on behalf of Appellant Bruton, stated that he had no objection to the County's Motion to Dismiss.

On a motion by Member Katherine Freeman, seconded by Vice Chair Bruce Goldensohn, with Chair John H. Pentecost and Member Mary Gonzales in agreement, and with Member Jon W. Cook necessarily absent, the Board voted 4 to 0 to grant the County's Motion to Dismiss.¹ The Board then proceeded to a hearing on the amended application. See Exhibit 5.

Decision of the Board: Administrative appeal **DENIED**.

FINDINGS OF FACT

The Board finds by a preponderance of the evidence that:

1. The Property, known as 1504 Stateside Drive in Silver Spring, is an RE-60 zoned parcel identified as Lot 23, Knob Hill Subdivision.
2. On or about June 28, 2019, BCCS, LLC (Bablu Dcosta) applied to DPS for a residential building permit for a two-story addition with garage on the subject Property. See Exhibit 11, circle 6-23. On October 3, 2019, Building Permit No. 881044 was issued for the requested addition of a two-story addition with garage. See Exhibit 11, circle 5.
3. On October 29, 2019, the Appellants timely filed an appeal charging error by DPS in its decision to issue Building Permit No. 881044. See Exhibit 1.
4. Mr. Frederick proffered that both the County and Appellant Bruton had submitted the same exhibits for the Board's consideration. He argued that Bangladesh

¹ While all 17 Appellants signed an attachment indicating they were Appellants to the original administrative appeal, Appellant Bruton signed the Board's original appeal form and filed the appeal with the Board. No other Appellant provided any additional documentation in this administrative appeal or any opposition to either Appellant Bruton's Motion to Amend the Appeal Charging Document or to the County's Motion to Dismiss. Thus, the Board granted both motions with the consent of the County's attorney and Appellant Bruton's attorney and the lack of opposition from any other listed Appellant.

Christian Cooperative Society, LLC was the same entity as BCCS, LLC, to whom Building Permit No. 881044 was issued. Mr. Frederick noted that there is a separate entity registered in the County to do business as BCCS, LLC but did not know whether Bangladesh Christian Cooperative Society, LLC was aware that there was another entity named BCCS, LLC.

Mr. Frederick argued that the packet of documents that DPS had received as part of the building permit application included a survey that identifies the buyer of the Property as BCCS, LLC. See Exhibit 11, circle 23. He argued that the State Department of Assessments & Taxation (SDAT) Real Property Data Search identifies Bangladesh Christian Cooperative Society, LLC as the owner of the Property. See Exhibit 11, circle 34. Mr. Frederick argued that the SDAT property search shows that Bangladesh Christian Cooperative Society, LLC purchased the property in October of 2018, a year before Mr. Dcosta applied for Building Permit No. 881044. See Exhibit 11, circle 34.

Mr. Frederick argued that the owner of the Property was the applicant for Building Permit No. 881044. He argued that signage is required to be posted at the front of the property line when someone applies for a building permit, and that a DPS employee had inspected the Property and found that there was proper posting of the building permit at the Property. Mr. Frederick argued that no one claiming to be the owner of the Property had contacted DPS to allege the permit had been issued in error. He argued that the circumstantial evidence in this case supports the position that the owner of the Property was the applicant for Building Permit No. 881044, and that the Board could reasonably infer, based on the facts, that the permit was properly issued. Mr. Frederick argued that the applicant, Mr. Dcosta, was acting on behalf of the legal entity that owns the Property. He argued that it was reasonable for Bangladesh Christian Cooperative Society, LLC to shorten its name to BCCS, LLC when applying for the building permit. He argued that the fact that the permit was posted on the Property where the work was to be performed without complaint is further evidence that the permit was properly issued.

5. Mr. Westberg-Croessmann argued that section 8-24(c) of the Montgomery County Code requires an “[a]pplication for a permit shall be made by the owner or lessee of the building or structure, or agent of either or by the licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner or the qualified person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make such application. The full names and addresses of the owner, lessee, applicant and of the responsible officer, if the owner or lessee is a corporate body, shall be stated in the application.” He argued that BCCS, LLC is a separate entity from Bangladesh Christian Cooperative Society, LLC. Mr. Westberg-Croessmann argued that it is clear that the owner did not fill out and sign this building permit application, the name Bangladesh Christian Cooperative Society, LLC is nowhere on the application, and the application did not meet the requirements of section 8-24(c) of the County Code.

Mr. Westberg-Croessman argued that the building permit application listed BCCS, LLC as the property owner. See Exhibit 11, circle 6. He argued that the tax records show that Bangladesh Christian Cooperative Society, LLC, not BCCS, LLC, is the owner of the Property. See Exhibit 11, circle 34. Mr. Westberg-Croessman argued that the application did not meet section 8-24(c) of the County Code because Mr. Dcosta did not state that he was signing on behalf of Bangladesh Christian Cooperative Society, LLC. See Exhibit 11, circle 6-7.

Mr. Westberg-Croessman argued that section O of the building permit application requires the applicant to declare and affirm that they are duly authorized to make the permit application on behalf of the property owner. He argued that Mr. Dcosta is listed in this section as the owner of the Property but he is not the property owner. Mr. Westberg-Croessman argued that section 8-25(a) of the County Code requires the Director of DPS to reject a building permit application that does not conform to the requirements of the County Code, and that the Director does not have the discretion to accept an application that does not conform to all requirements. He argued that because this application did not meet section 8-24(c) of the County Code, the Director must reject the application, and it was administrative error on behalf of DPS to issue the building permit.

In response to questions from the Board, Mr. Westberg-Croessman argued that BCCS, LLC is a separate entity from Bangladesh Christian Cooperative Society, LLC and that the applicant needs to fill out their full name on the building permit application. He argued that the building permit application should have been denied based on the clerical error and that the applicant could amend their application. Mr. Westberg-Croessman argued that the proper owner in fee of the Property is not listed on the building permit application.

6. Mark Beall, Zoning Manager, Division of Zoning and Site Plan Enforcement, DPS, testified that the building permit applicant, Bangladesh Christian Cooperative Society, LLC, could fill out a new application with an application fee, but that the change in name on the building permit would not amount to a permit revision. He testified that DPS would then issue a new permit with any new information on it.

7. Appellant Robinson testified that if an application is incorrectly signed or contains false representations, an applicant should have to correct it.

8. Appellant Bruton testified that everyone who wants a building permit has to fill out an application, and that the application has to be accurate.

CONCLUSIONS OF LAW

1. Section 2-112(c) of the Montgomery County Code provides the Board of Appeals with appellate jurisdiction over appeals taken under specified sections and chapters of the Montgomery County Code, including section 8-23.

2. Section 2A-2(d) of the Montgomery County Code provides that the provisions in Chapter 2A govern appeals and petitions charging error in the grant or denial of any permit or license or from any order of any department or agency of the County government, exclusive of variances and special exceptions, appealable to the County Board of Appeals, as set forth in section 2-112, article V, chapter 2, as amended, or the Montgomery County Zoning Ordinance or any other law, ordinance or regulation providing for an appeal to said board from an adverse governmental action.

3. Section 8-23(a) of the County Code provides that “[a]ny person aggrieved by the issuance, denial, renewal, amendment, suspension, or revocation of a permit, or the issuance or revocation of a stop work order, under this Chapter may appeal to the County Board of Appeals within 30 days after the permit is issued, denied, renewed, amended, suspended, or revoked or the stop work order is issued or revoked. A person may not appeal any other order of the Department, and may not appeal an amendment of a permit if the amendment does not make a material change to the original permit. A person must not contest the validity of the original permit in an appeal of an amendment or a stop work order.”

4. Section 59-7.6.1.C.3 of the Zoning Ordinance provides that any appeal to the Board from an action taken by a department of the County government is to be considered *de novo*. The burden in this case is therefore upon the County to show that Building Permit No. 881044 was properly issued.

5. Section 2-42B(a)(2)(A) of the County Code makes DPS responsible for “administering, interpreting, and enforcing the zoning law and other land use laws and regulations.”

6. Section 8-24 of the County Code, “Application for permit,” requires qualified applicants for a building permit:

Sec. 8-24. Application for permit.

* * * * *

(c) *Qualified applicants.* Application for a permit shall be made by the owner or lessee of the building or structure, or agent of either or by the licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner or the qualified person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make such application. The full names and addresses of the owner, lessee, applicant and of the responsible officer, if the owner or lessee is a corporate body, shall be stated in the application.

* * * * *

7. Section 8-25(a) of the County Code, “Permits,” reads as follows:

Sec. 8-25. Permits.

(a) Action on application. The Director must examine or cause to be examined each application for a building permit or an amendment to a permit within a reasonable time after the application is filed. If the application or the plans do not conform to all requirements of this Chapter, the Director must reject the application in writing and specify the reasons for rejecting it. If the proposed work conforms to all requirements of this Chapter and all other applicable laws and regulations, the Director must issue a permit for the work as soon as practicable.

8. The Board finds the building permit application for Building Permit No. 881044 was signed by Mr. Dcosta on behalf of BCCS, LLC, which are the initials that the owner of the Property, Bangladesh Christian Cooperative Society, LLC, uses to refer to itself. The Board notes that the survey included with the building permit application identifies BCCS, LLC as the buyer of the Property. See Exhibit 11, circle 23. Thus, the Board finds that Bangladesh Christian Cooperative Society, LLC is the same entity as BCCS, LLC, to whom Building Permit No. 881044 was issued. The Board further finds that there is evidence that the application was signed by Mr. Dcosta, who swore on the application that he was authorized to make the permit application. Finally, the Board finds that notice that BCCS, LLC had applied for this building permit was posted on the Property and no one contacted DPS to allege that the permit was applied for or issued in error, further evidencing that the owner of the Property applied for this building permit.

9. Based on the foregoing, the Board finds that DPS has met its burden of demonstrating by a preponderance of the evidence that Building Permit No. 881044 was properly issued, and that the appeal should be denied.

The appeal in Case A-6642 is **DENIED**.

On a motion by Chair John H. Pentecost, seconded by Member Katherine Freeman, with Vice Chair Bruce Goldensohn and Member Mary Gonzales in agreement, and with Member Jon W. Cook necessarily absent, the Board voted 4 to 0 to deny the appeal and adopt the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of February, 2020.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 2A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure (see Section 2-114 of the County Code).