

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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

**Case No. A-6893**

**APPEAL OF WILLIAM B. ROWLES**

**OPINION OF THE BOARD**

(Hearing held February 19, 2025)  
(Effective Date of Opinion: April 7, 2025)

Case No. A-6893 is an administrative appeal filed October 7, 2024 by William B. Rowles (the “Appellant”). The Appellant charges error on the part of Montgomery County’s Department of Permitting Services (“DPS”) in the August 21, 2024 issuance of building permit No. 1050889 to construct an attached garage with an apartment above located at 907 Nora Drive, Silver Spring (the “Property”). The subject Property is owned by Arilton Santos. The Appellant resides at 904 Nora Drive, Silver Spring.

The Appellant asserts that building permit No. 105889 was issued in error and should have been denied because the proposed structure is noncompliant with Montgomery County Code sections 59-3.3.3, 29-19, and 29-20. See Exhibit 1.

Pursuant to section 59-7.6.1.C of the Zoning Ordinance<sup>1</sup>, the Board held a public hearing on February 19, 2025. The Appellant appeared *pro se*. Assistant County Attorney Elana M. Robison represented Montgomery County. The owner of the Property, Mr. Santos, requested to intervene in this appeal; that request was granted on December 4, 2024, and Mr. Santos appeared as the Intervener.

Decision of the Board:      Administrative appeal **DENIED**. The action of DPS in granting building permit No. 1050889 is **AFFIRMED**.

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<sup>1</sup> All references to the Zoning Ordinance refer to the Montgomery County Zoning Ordinance (2014) unless otherwise indicated.

### **FINDINGS OF FACT**

#### **The Board finds by a preponderance of the evidence that<sup>2</sup>:**

1. The Property, known as Lot 7, Block 1, Springbrook Knolls Subdivision, is a R-90 zoned parcel, located at 907 Nora Drive, Silver Spring, Maryland 20904.

2. On August 21, 2024, building permit No. 1050889 was issued to the Intervener, Mr. Santos, to construct an attached garage with an apartment above on the Property. See Exhibit 3.

3. On October 7, 2024, the Appellant filed an appeal charging error by DPS in its decision to issue building permit No. 1050889. See Exhibit 1.

4. The Board held a pre-hearing conference on October 30, 2024. The Board further held a motions hearing on December 4, 2024 on the County's Motion to Dismiss or for Summary Disposition. See Exhibit 6. At that hearing, the Board also considered the Appellant's Statement and Response to Motion to Dismiss. See Exhibit 8. At the outset of this hearing, as noted above, the Board granted Mr. Santos' request to intervene in this appeal. See Exhibit 7. Ultimately, the Board voted unanimously (5-0) to deny the County's motion to dismiss and proceed with this hearing on February 19, 2025.

5. At the outset of the hearing on February 19, 2025, counsel for the County renewed her motion to dismiss/for reconsideration of the Board's denial of that prior motion based on her argument that the appeal was untimely filed. She argued that the County Code allows 30 days to appeal the issuance of a permit. Ms. Robison argued that Maryland appellate rules and courts are persuasive in finding that if an appeal is not filed within 30 days the Board has no jurisdiction over the appeal, and that it is undisputed in this case that the appeal was filed over 30 days after the building permit was issued.

Ms. Robison argued that the Appellant appeared at the Board's office on the last day that for the timely filing of his appeal, and the Board's office was not physically open; however, the office was open virtually to accept an email filing, as required by the Board's rules and outlined on their website and voicemail message. She argued that extending the 30-day deadline would create an unfavorable precedent. Ms. Robison acknowledged that the law regarding the fixed statutory deadline applied to Maryland courts, not the Board, but that it was relevant because if a court cannot extend a deadline, the Board also does not have that authority.

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<sup>2</sup> At the outset of the hearing, Kevin Braun and Elmara Ramos were sworn in as simultaneous interpreters for the Intervener, interpreting from English to Portuguese.

5. In response to the County, the Appellant argued that he based the timeliness of his appeal on the instructions outlined in the application for appeal provided by the Board. He argued that this document states that the appeal should be mailed to the Board, but because he was running out of time to file his appeal, he appeared in person to the Board's office on a Friday, which was the date marking 30 days to file his appeal, and the office was closed for in-person activity. The Appellant argued that he returned to the Board's office on Monday after the 30-day period had run and was able to file his appeal.

6. The Intervener argued that he posted the sign regarding his building permit timely, and that the Appellant should have seen it and filed his appeal timely as well.

On a motion by Member Alan Sternstein, seconded by Chair Caryn Hines, with Members Amit K. Sharma and Don Silverstein in agreement, and Vice Chair Richard Melnick opposed, the Board voted 4 to 1 to deny the renewed motion to dismiss and/or reconsideration, and to proceed with this appeal hearing.

7. Proceeding on to the substance of the appeal, Patrica Wolford testified that she is the Zoning Manager for DPS's Division of Zoning and Code Enforcement. She testified that her division is responsible for processing all zoning permits, providing zoning interpretation, and in general handling all zoning matters for the County. Ms. Wolford testified that she has held her position for over ten years.

Ms. Wolford testified that she is familiar with the Property, and that her group processed the building permit for an accessory dwelling unit ("ADU") and the garage at issue in this case. See Exhibit 3. She testified that the Property is zoned R-90, and that the building permit was issued to build an attached garage with an apartment above it for an ADU. See Exhibit 3. Ms. Wolford testified that DPS considers the proposed ADU to be an attached unit. She explained that an attached ADU is attached to the primary dwelling, so that you can go to the ADU from the primary dwelling without being exposed to the elements; you are in a conditioned space. Ms. Wolford testified that a detached unit would be similar to a shed or garage with no physical attachment to the primary structure, noting that a covered patio walkway would also not be considered an attachment. She testified that once an attachment is enclosed, it becomes part of the primary structure.

Ms. Wolford testified that plans were submitted for this proposed ADU, and that the first floor is the view at the top right of an attachment to Exhibit 12, (submitted at the hearing as County ex. 2), which is the proposed two-car garage level, and that there is a bathroom to the right located within the garage. She testified that the existing home faces Nora Drive, and that a driveway off Redick Road would come to the two-car garage with the bathroom in the back. Ms. Wolford testified that to the right of the garage is a platform wherein someone

could go through a door into the garage or go up a series of steps to another platform, turn right, and enter another foyer.

Ms. Wolford testified that immediately to the right of the garage there is storage on the first floor that connects to the garage on the far right, indicating that the dashed line on Exhibit 12 (submitted County ex. 2) is the existing primary structure, which is the first floor. She testified that the second floor is the ADU/apartment level, with the garage on the lower level. Ms. Wolford testified that to the right of the ADU are steps coming up from the first floor. She testified that, upon coming up the steps, on the right is an entry passageway to the ADU on the left and to the existing single-family dwelling on the right.

In response to questions from the Board, Ms. Wolford testified that the center of submitted County ex. 2 is the first-floor storage area, and that the second-floor entry passageway goes to the ADU. She testified that the entry passageway is 9 feet wide by 32 feet long with heat and air-conditioning, and that it has walls and windows. Ms. Wolford testified that the connectivity between the structures is on the second floor to connect the proposed structure with the existing structure. She testified that the proposal is an addition to the existing house that enables the inhabitants to move from one area to another without being exposed to the elements.

In response to further questions from the Board, Ms. Wolford testified that "[t]he two-car garage with the second-floor apartment and the two-story corridor that gets you there is an addition to the primary structure because you're always within conditioned space." She testified that the entrance to the garage is part of the attached structure, and that there is a door in the garage that allows entry into the house. Ms. Wolford testified that what is the proposed second floor to the proposed attached garage is the first floor for the existing house due to a grade drop on the Property, and that is what provides the ability to construct a lower-level garage.

In response to further Board questions, Ms. Wolford testified that that the proposed ADU would be on the same level as the existing house due to the grade change. She testified that the door to enter the garage was necessary to connect the garage to the house and create an attached dwelling unit. Ms. Wolford described the proposed construction in detail and explained why it should be considered an attached structure, namely because it is connected to the principal structure with conditioned space, such that one could go from the primary dwelling to the ADU without being exposed to the elements. Because of a grade change on the property, the garage level of the addition is lower than the principal dwelling, and the second floor/ADU level of the addition is at the same elevation/level with and is connected to the main floor. This conditioned connection makes the ADU an attached ADU.

Following further Board questions, Ms. Wolford testified that the legislation creating ADU's enables an attached ADU to be greater in size than the actual dwelling unit, while a detached ADU has size requirements and must be subordinate to the primary structure. She testified that an attached ADU has greater setbacks because it must adhere to the primary structure setbacks, which in this case are 8 feet on the right side of the Property and 12 feet in the rear. Ms. Wolford testified that this proposal is not a new concept for the zoning department to interpret, and that in this case, while the Zoning Ordinance requires that this addition meet the ADU requirements, which it does, it is also considered a proposed addition that just happens to include an ADU, and therefore is reviewed under both the addition and the ADU zoning standards.

Ms. Wolford testified that if this proposed ADU was a detached structure, it would require an additional foot setback in the rear and 16 feet on the side. She testified that because this is an attached ADU, the front setback is 30 feet, the side setback is 8 feet, and the rear setback is 25 feet, noting that this is a corner lot, so the setbacks vary somewhat from non-corner lots. Ms. Wolford discussed lot coverage for this proposed ADU and testified that because this proposed addition constituted greater than 50 percent of the existing home, it is considered infill development, and the allowable lot coverage decreases. She provided a summary of how to calculate allowable lot coverage in this case and testified that the allowable maximum under the law in this case is 20.53 percent pursuant to the Zoning Ordinance standards for all zones.

Ms. Wolford testified that this proposal is under the 20.53 percent allowed and emphasized that because the proposal is for an attached ADU and garage it creates an infill development standard that requires the proposal go down almost 10 percent from what would be permitted were it not attached, noting that a detached addition could max out at 30 percent. She testified that the height of the ADU is calculated based on the average grade, and is 23 feet, 8 inches. Ms. Wolford testified that this addition is well below the 35 foot height allowed in the zone.

Ms. Wolford testified that the proposal included a two-car garage with an ADU above the garage. She testified that it included a center corridor that allows entry through steps, and that the existing house footprint is on the far right. Ms. Wolford testified that the grade of the Property drops in the back. She testified that the attached ADU meets all the primary development standards. Ms. Wolford testified that an applicant for an ADU must apply for a license with the County's Department of Housing and Community Affairs ("DHCA"), and DHCA then starts a preliminary inspection report. She testified that the ADU applicant must submit to DHCA a stamped copy of the site plan showing that they can meet parking requirements as well as floor plans showing conformance to the Zoning Ordinance and DHCA standards. Ms. Wolford testified that DPS looks for the stamped drawings of approval from DHCA as part of DPS's approval process.

In response to Board questions, Ms. Wolford testified that an ADU applicant only receives a license from DHCA after the ADU is constructed and DHCA approves the floor plan and all other applicable requirements. She testified that DPS received the stamped approval from DHCA in this case. See Exhibit 12 (submitted County ex. 5). She testified that this approved apartment plan is part of DPS's review process. Ms. Wolford reiterated that if this ADU were considered a detached accessory structure, it would not share any common walls with the primary structure. She testified that the term "accessory dwelling unit" refers to the use, which is a use that is subordinate to the primary use of the property, here a single-family detached house. Ms. Wolford clarified that the accessory dwelling unit can be part of the primary structure, or it can be a separate accessory structure not attached to the primary structure. She testified that this proposal is an addition to the home that has a use subordinate to the primary use of the Property, which is how DPS has interpreted a case such as this one for years.

In response to further Board questions, Ms. Wolford testified that a detached ADU would have to be 50 percent of the footprint of the principal dwelling, 10 percent of the lot area, or 1,200 square feet of gross floor area. She testified that an attached ADU can have a maximum square footage of 1,200 square feet since it is part of the primary structure and does not have to appear to be subordinate. Ms. Wolford testified that square footage of this ADU is 1,186 square feet, including the bathroom in the garage and a storage room under the foyer. See Exhibit 12 (submitted County ex. 3a). She testified that the foyer on the first floor is used by both the primary structure and the ADU so it is considered part of the primary structure.

In response to further Board questions, Ms. Wolford testified that the proposed garage is for the primary structure, and that the applicants would use the connected corridor to access the proposed garage. She testified that the corridor is 9 feet by 32 feet, and a total of 576 square feet. See Exhibit 12 (submitted County ex. 3a). She testified that the existing house including the porch and existing garage are 1,887 square feet. Ms. Wolford testified that, while the building permit does not specify that the addition will be used as an ADU, DPS's files that include the building permit drawings show that it was reviewed and approved as an ADU. See Exhibit 12 (submitted County ex. 2-5). She testified that these files are public information, and if there was ever a complaint about the use at an approved ADU, DPS inspectors pull the plans to ensure that the property owner is in compliance with the approved files.

Ms. Wolford testified that the Board had previously considered a similar addition that included a garage that was larger in square feet than the house, with the garage being 5,192 square feet and the house being 3,200 square feet. See Exhibit 12 (submitted County ex. 6). She referred to a picture of this property that was the subject of the prior Board opinion, noting that between the garage and the house was a corridor which the Board considered as an addition that was part of the primary structure and not an accessory structure. See Exhibit 12 (submitted

County ex. 7). Ms. Wolford testified that if this prior case was just a covered roof with pavers, it would have been a detached garage, but because it was closed DPS's interpretation was and has always been that it is attached.

In response to cross-examination from the Appellant, Ms. Wolford testified that she cannot address what DHCA inspects, but that part of DPS's approval is to obtain a stamped drawing of the proposal. She testified that DPS does work with DHCA to determine what properties have been approved for an ADU and that the process to determine whether there are violations is complaint driven. Ms. Wolford testified that, in this case, the proposal is a new building, and that the final approval is for DHCA to conduct an inspection.

In response to further cross-examination from the Appellant, Ms. Wolford testified that if the use is denied use as an ADU, the property owner could still use the area, but just would not be able to rent it as an ADU. She testified that DPS relies upon representations from the property owner to determine how a property is going to be used, and that if someone has evidence that a property is not being used as was represented, they could file a complaint with the County.

8. The Intervener, through interpreters, referred the Board to four letters of support he had obtained in support of this project. See Exhibit 15. He testified that he has lived at the Property since 1999 and began having issues in 2014.

9. Estefan Santos, the Intervener's daughter, testified that the Appellant sent a packet of information to individuals who support the project. She testified that DPS has approved this project based on what they believe is allowed. Ms. Santos testified that the Appellant has known about this permit application for quite a while and noted that an architect had designed the proposed addition.

10. Douglas Mader, the architect for the addition, testified that he runs Douglas Mader AIA, an architectural firm. He testified that he is licensed in 8 states, including Maryland, has been an architect for 31 years, has worked for at least 6 firms, and started his own firm in 2004. Mr. Mader testified that his work has been entirely residential, 95% of which has been in Montgomery County. He testified that he agreed with Ms. Wolford's testimony. Mr. Mader testified that he would use the phrases upper and lower level with respect to this project because it is a one-story house with a garage in the back at the basement level. He testified that the Appellant is required to occupy either the primary dwelling or the ADU, but does not need to reside there prior to the construction of the ADU.

Mr. Mader testified that, in his experience in Montgomery County, a linkage connection such as this proposed passageway between a house and another part of the house must be a minimum of 7 feet wide, and that the linkage in this case is 9 feet wide. He testified that he had a case about 18 or 19 years ago wherein an ADU in a backyard was required to be attached to the primary structure, had to be

heated and air-conditioned, and had to be 7 feet wide. Mr. Mader testified that the proposed addition in this case, in his professional opinion, is attached.

Mr. Mader testified that an 8-foot side setback, not a 12-foot side setback, applies to this addition because it is attached, not detached. He testified that he provided the Intervener with options for both an attached and a detached addition, and that an apartment over a garage as an addition is not uncommon. Mr. Mader testified that the bathroom in the garage makes sense for a variety of reasons, including using the garage space to work on cars, as a workshop, or for gardening or washing dogs.

In response to questions from the Board, Mr. Mader testified that the existing garage on the Property is original to the house. He testified that the entry passageway has access to the outside of the Property from both the front and the back of the house, and has access to the existing garage, the ADU, and the new garage.

In response to cross-examination from the Appellant, Mr. Mader testified that the entry passageway is a heated and conditioned space, not a breezeway. He testified that, at 32 feet, it is a long passageway for a house, but that in this case there are challenges due to height differences on the Property. Mr. Mader testified that he added the connection between the structures so that the Intervener could build what he wanted on the Property in accordance with the County's zoning laws. In response to questions from the Board, he acknowledged that the purpose of the passageway was to create an attached structure.

In response to follow-up questions from the Board, Mr. Mader testified that the Intervener is proposing to put a back door on the existing garage that would link to the interior passageway, and that looking at Exhibit 12 (submitted County ex. 7) you would be able to see little to none of the new construction. He testified that the addition would extend to the back of the house. Mr. Mader testified that there would be a doorway from the existing garage to the walkway, and that there would be back stairs, front stairs, and exterior stairs. He testified that interior stairs would go to the second-floor apartment (ADU) and to the lower level two-car garage.

11. The Appellant testified that he feels the passageway is proposed to limit the application of the R-90 zoning requirements on height and length. He testified that if the R-90 zoning requirements were in effect, the minimum setback for the ADU would require an additional 29 feet on the property line with the abutting property, but that under this proposal the setback is 8 feet. The Appellant testified that there will be a large two-story building that will obliterate the neighboring homeowner's view. He testified that he did not think the process should have gone as far as issuing this building permit.



12. Lisa O'Connor testified that her mother resides at 11805 Renick Lane. She provided exhibits showing where various neighbors reside in conjunction with the Property. See Exhibits 14-18. Ms. O'Connor testified that a portion of the proposed addition includes a wall that is 90 feet long, and that in her opinion this constitutes a huge addition. See Exhibit 12 (submitted County ex. 3). She testified that it is unclear what the grade of the proposal will be, or if it would be seen from the front of the street. See Exhibit 12 (submitted County ex. 4).

Ms. O'Connor testified that it was very unusual to have a full bathroom in a garage and questioned whether the garage was part of the full living space for the ADU. She testified that part of the passageway is shared, so that all the square footage for the passageway was not attributed to the ADU. Ms. O'Connor testified that her experience has been that different divisions of the County do not work in coordination. She testified that during each stage of this ADU approval process, the neighbors have thought that the approval would not go forward, and noted that while DPS had told her that they would not do anything until the ADU license was approved, that the license does not get approved until the structure is already built and DHCA conducts their final inspection. Ms. O'Connor testified that DPS should never have become involved in this approval until everything was finalized with DHCA.

Ms. O'Connor testified that there is a pattern with usage at the Property with the Intervener violating County law and complaints filed about uses of the Property. She testified that the 32 by 8-foot passageway and 90-foot wall for the proposed addition are out of sync with the neighborhood, and summarized her testimony by stating that she is concerned about the usage of this proposed addition as well as the scale and location of the proposal.

13. Barry Wides testified, over objections from the County because he was not listed on the Appellant's pre-hearing submission, that he resides at 11803 Ithaca Drive, which is about 8 houses away from the Property. He testified that this proposal is not compatible in size or length with other houses in the area. Mr. Wides testified that the area that is attributed to the ADU compared to that attributed to the main dwelling seems arbitrary and is not clearly established in the architectural plans.

Mr. Wides testified that the County Council passed legislation permitting ADUs around 2019, and that he was involved in this legislative process. He testified that the intent was to allow detached buildings to serve as ADUs, and that there was a lot of opposition from citizens who were concerned that large buildings such as the one at issue in this case would be built. Mr. Wides testified that the passageway allows a much larger building to be built than was anticipated under the law, and testified that Councilmembers had assured him that a loophole allowing a larger building would not be permitted.

### **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. Sections 8-23(a) and (b) of the County Code provide that:

(a) Any 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.

(b) After notice and hearing, the Board may affirm, remand, modify, or reverse the action of the Department.

4. The Board finds that the issuance of building permit No. 1050889 conforms with the development standards outlined in the Zoning Ordinance. Looking to these development standards under § 59-4.4.8 of the Zoning Ordinance, the Board finds that, upon their finding that DPS correctly interpreted that this proposed addition is an attached structure, there is no argument from the Appellant that it did not meet the standard method development standards set forth under the Zoning Ordinance for the R-90 zone. The Board finds that DPS's interpretation that this proposed addition is attached rather than detached is consistent with DPS's longstanding practice as well as prior Board decisions such as the Opinion of the Board in Case No. A-6476 (8600 Goshen View Drive)

Therefore, the Board finds that DPS appropriately approved the building permit in this case. The Board further notes that DPS is charged with interpreting the Zoning Ordinance, and the Board is persuaded that the County met its burden in proving that this proposal meets all the requirements of the Zoning Ordinance and the County Code. Further, while the Board understands that the neighbors

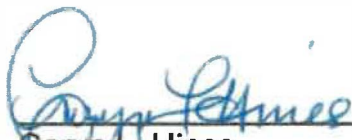
have concerns about this project, the Board finds that it does not have enforcement power over potential future violations in this use, and that if there is an allegation of a violation in the future the appropriate course of action is to file a complaint with DPS. Accordingly, the Board finds that it must uphold the grant of building permit No. 1050889 because the proposed addition is legally allowed on the Property under County law.

10. Based on the foregoing, the Board concludes as a matter of law that building permit No. 1050889 was properly issued, and that the appeal should be denied.

The appeal in Case A-6893 is **DENIED**.

On a motion by Chair Caryn L. Hines, seconded by Vice Chair Richard Melnick, with Members Alan Sternstein, Amit K. Sharma, and Don Silverstein in agreement, the Board voted 5 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.

  
Caryn L. Hines  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 7th day of April 2025.

  
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).