

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
240-777-6600

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

**Case No. A-6918**

**APPEAL OF RYAN G. WALLACH**

OPINION OF THE BOARD

(Board pre-hearing conference held June 25, 2025)  
(Effective Date of Opinion: July 18, 2025)

Case No. A-6918 is an administrative appeal filed April 22, 2025. Ryan G. Wallach (the “Appellant”) charged error on the part of Montgomery County's Department of Permitting Services (“DPS”) alleging that “[t]he property owner submitted to DPS a Foundation Survey confirming in three locations that the foundation on the side abutting Appellant's property is exactly seven (7) feet from the property line with no margin for error. Subsequently the property owner added exterior covering elements, not exempted by the Zoning Code, extending into the seven-foot setback. DPS does not have authority to allow setback encroachments not expressly authorized by the Zoning Code.” Therefore, the Appellant asserted that DPS should have failed the final inspection. The subject property (the “Property”) is Lot P27, Block K, Sec 2 Battery Park Subdivision, located at 7819 Exeter Road, Bethesda, Maryland, 20814, in the R-60 Zone.

Pursuant to section 59-7.6.1.C of the Zoning Ordinance<sup>1</sup>, the Board scheduled a hearing for September 10, 2025. Pursuant to sections 2A-7 and 2A-8 of the County Code, and Board of Appeals’ Rule of Procedure 3.2, on June 9, 2025, the County filed a Motion to Dismiss or for Summary Disposition. See Exhibit 6. Mid-Atlantic Custom Builders, Inc., the owners of the Property, filed a Motion to Dismiss or for Summary Disposition on June 13, 2025. See Exhibit 7. The Appellant filed a Response to Motions to Dismiss or for Summary Disposition Filed by Respondents Montgomery County and Mid-Atlantic Custom Builders, LLC. on June 20, 2025. See Exhibit 8.

At the pre-hearing conference on June 25, 2025, the Board granted Mid-Atlantic Custom Builders, Inc.’s Motion to Intervene. (the “Intervener”) See Exhibit 5. The Board, pursuant to Board Rules 3.2.1, 3.2.2, and 3.2.5, then decided the Motions to Dismiss or

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<sup>1</sup> All references to the Zoning Ordinance refer to the 2014 Ordinance, unless otherwise indicated.

for Summary Disposition and the opposition thereto. Elana M. Robison, Esq. appeared on behalf of the County. Peter Z. Goldsmith, Esq. appeared on behalf of the Intervener. Michele McDaniel Rosenfeld appeared on behalf of the Appellant.

Decision of the Board:       The County and the Intervener's Motions to Dismiss or for Summary Disposition **granted**;  
Administrative appeal **dismissed**.

### **RECITATION OF FACTS**

**The Board finds, based on undisputed evidence in the record, that:**

1. DPS issued Building Permit No. 1038349 on November 17, 2023.
2. A single-family home was constructed on the Property pursuant to the building permit, and the final inspection of the home by DPS passed on March 24, 2025. See Exhibit 3(a).

### **MOTION TO DISMISS OR FOR SUMMARY DISPOSITION — SUBJECT MATTER JURISDICTION**

1. Counsel for the County argued that while issues pertaining to building permits are appealable to the Board under sections 2-112 and 8-23(a) of the County Code, DPS inspections are not appealable to the Board. She argued that section 8-23(a) of the County Code only provides the Board with jurisdiction over appeals of a building permit by “[a]ny person aggrieved by the issuance, denial, renewal, amendment, suspension, or revocation of a permit...” and that a DPS inspection does not fall within the purview of section 8-23(a). Therefore, Counsel argued that the Board lacks jurisdiction over this matter.

2. Counsel for the Intervener argued that the Intervener concurs with the County's argument. He argued that the Appellant had previously filed an appeal of the issuance of the building permit for the Property, and that the Appellant withdrew this appeal when he conceded that he misunderstood the calculation of the Established Building Line (“EBL”) for the Property. Counsel emphasized that the Board does not have jurisdiction over a DPS inspection for a house that has been built.

3. Counsel for the Appellant argued that this appeal alleges that the residential structure now built on the Property violates the side yard setback standards and the setback limitations established in the building permit. She argued that DPS passed the structure during a final inspection despite violations of the building code, and noted that this appeal is not an appeal of a building permit.

In her opposition memorandum, Counsel for the Appellant stated that “Appellant Wallach does not oppose the jurisdictional arguments presented by Respondents.” See Exhibit 8, paragraph 9. She stated that the Appellant had filed this appeal to ensure that

he had “exhausted all administrative remedies in connection with this matter.” See Exhibit 8, paragraph 10. At the hearing, Counsel argued that the Appellant had not found legal authority to support that the Board has jurisdiction over this appeal.

### **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. Under section 2A-8 of the County Code, the Board has the authority to rule upon motions and to regulate the course of the hearing. Pursuant to that section, it is customary for the Board to dispose of outstanding preliminary motions prior to the hearing. Board Rule 3.2 specifically confers on the Board the ability to grant motions to dismiss for summary disposition in cases where there is no genuine issue of material fact and dismissal should be rendered as a matter of law (Rule 3.2.2). Under Board Rule 3.2.2, the Board may, on its own motion, consider summary disposition or other appropriate relief.

5. The Board finds that the basis for this appeal is the Appellant’s allegations that, following issuance of Building Permit No. 1038349 and the construction of a single-family home on the Property, DPS conducted a final inspection pursuant to section 8-17(a) of the County Code and the home passed inspection. The Board finds that the County Code does not provide the Board with jurisdiction over final inspections, and that the Board’s jurisdiction is created and limited by statute. *Holy Cross Hospital, Inc. v. Health Svcs. Cost Review Comm’n*, 283 Md. 677, 683, 383 A.2d 181 (1978). Because the Board does not have the authority to decide matters for which it has not been granted jurisdiction by

statute, the Board must dismiss this appeal. See *United Parcel Service v. People's Counsel*, 336 Md. 569, 650 A.2d 226 (1992).-

The Board further finds that, while it does have jurisdiction over the issuance, denial, renewal, amendment, suspension, or revocation of a building permit, it does not have jurisdiction over an inspection following the issuance of a building permit. In support of this finding, the Board notes that section 8-23(a) of the County Code states that "[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." Therefore, it is clear that only the actions expressly listed in section 8-23(a) of the County Code are appealable, and the Board finds that, if the County Council, acting as the District Council, had intended to include "inspections" in the list of appealable actions, they would have done so. Therefore, the Board finds that it lacks jurisdiction over the final inspection following the issuance of Building Permit No. 1038349 for the Property.

6. The County and the Intervener's Motions to Dismiss or for Summary Disposition in Case A-6918 are granted, and the appeal in Case A-6918 is consequently **DISMISSED**.

On a motion by Chair Caryn L. Hines, seconded by Member Alan Sternstein, with Member Amit K. Sharma in agreement, and Member Don Silverstein in opposition, and with Vice Chair Richard Melnick necessarily absent, the Board voted 3 to 1 to grant the County and the Intervener's Motions to Dismiss or for Summary Disposition and to dismiss the administrative appeal.

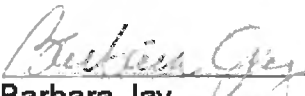
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition.



Caryn L. Hines

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 18th day of July, 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).

