

**BOARD OF APPEALS**  
**for**  
**MONTGOMERY COUNTY**

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**Case No. A-6938**

**Appeal Of Washington Adventist ACC, Board of Council Unit Owners by Lavanya Sithanandam, MD, President**

OPINION OF THE BOARD

(Motions hearing held December 17, 2025)

(Effective Date of Opinion: January 30, 2026)

Case No. A-6938 is an administrative appeal filed August 29, 2025 by Washington Adventist ACC, Board of Council Unit Owners by Lavanya Sithandam, MD, President (the "Appellants"). The Appellants charged error on the part of Montgomery County's Department of Permitting Services ("DPS") in the issuance of Commercial Building Permit, No. 1116230, on August 11, 2025. The Appellants stated that Permit No. 116230 "for construction of a commercial miscellaneous structure" should have been denied.

Building Permit No. 1116230 was issued for the property at Block P51, Parcel N360, B F G Subdivision, located at 7600 Carroll Avenue, Takoma Park, Maryland, 20912, in the CR-1.25 C-1.25 R-1.25 H-120 Zone. (the "Property").

Pursuant to section 59-7.6.1.C of the Zoning Ordinance, the Board scheduled a hearing for December 17, 2025 to consider the appeal. Adventist HealthCare Mid-Atlantic Corporation, the owner of the Property, filed a motion on September 19, 2025, and sought to intervene at the pre-hearing conference on October 22, 2025. See Exhibit 4. At that time, the Board granted the request for the Property owner to intervene (the “Intervenors”).

Pursuant to sections 2A-7 and 2A-8 of the County Code, and Board of Appeals’ Rule of Procedure 3.2, counsel for DPS, on October 3, 2025, filed a Motion to Dismiss or for Summary Disposition of the administrative appeal. See Exhibit 6. The Appellants filed an opposition on October 20, 2025. See Exhibit 7. The Board, pursuant to Board Rule 3.2.5, heard oral argument on the Motion to Dismiss or for Summary Disposition, and the opposition thereto, at the outset of the scheduled hearing on December 17, 2025. The Appellants were represented by Soo Lee-Cho, Esquire. Elana Robison, Assistant County Attorney, represented Montgomery County. The Intervenor was represented by Patrick O’Neil, Esquire.

Decision of the Board: County’s Motion 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 Commercial Building Permit No. 1116230 for the Property. See Exhibit 3.

2. Permit No. 1116230 was issued for the construction of a commercial miscellaneous structure on the Property.

3. The subject appeal concerns not the construction of a commercial miscellaneous structure but the permit condition which allows the erection of a temporary

construction fence approximately 3,400 feet long to serve as a temporary site security fence around the construction area.

4. According to Appellants' counsel, much of the testimony and documentary evidence that Appellants intended to introduce in the hearing was to establish Appellants' right to use parking spaces on the Property Intervenor owns. See also Exhibit List.

5. DPS had no actual or constructive notice, such as on a recorded plat or in other official record, of Appellants' claimed right to use parking spaces on the Property.

### **MOTIONS TO DISMISS OR FOR SUMMARY DISPOSITION—SUMMARY OF ARGUMENTS**

1. Counsel for the County, Ms. Robison, argued that this appeal involves whether DPS erred when it issued Permit No. 1116230. She argued that the Property has an extensive history and that this appeal involves a permit for the construction of a temporary site security fence. Counsel argued that DPS checked the fence height and setback requirements, which were all met, and also found the fence was not located in a drainage area or in an easement.

Ms. Robison argued that the Property was originally subject to a special exception, but the Board revoked the exception in 2024, and that this building permit was issued in 2025. She noted that Appellants claim DPS has exceeded its authority by allowing the fence, which obstructs parking capacity that is their right to use and they are required by law to provide h. Ms. Robison argued that Appellants' claim involves factual findings and a legal determination that are not within the Board's jurisdiction to decide. She argued, therefore, that there is no genuine issue of material fact the Board should to decide.

In response to questions from the Board, Ms. Robison argued that DPS properly issued Intervenor's permit. There had been no change in the proposed floor area, building capacity, or parking design on the Property. She argued that, when issuing a construction permit, DPS is not required to consider or calculate what parking is required by law for a development but just ensures that there is some area available for parking during construction. DPS does not have the authority to make decisions regarding the parking required during construction, as opposed to occupancy. She also argued that there was no claim that the fence was located within any drainage, utility or similar easement, Ms. Robison argued that if the Property were still subject to a special exception and this case

involved a permit for a fence, this appeal might involve different issues, but that in this case, whether there is a parking agreement between the Appellants and the Intervenor is a private dispute that does not involve DPS or that the Board may resolve.

2. Counsel for the Intervenor argued that there is no dispute that the Intervenor owns the Property, and that any use by the Appellants for the parking lot would occur via a lease. He also noted that there are still numerous parking spots available to Appellants on the Property. In response to questions from the Board, Mr. O'Neil argued that the decision about rights to parking is a legal decision for the courts, and that the Board is not the proper forum to hear this case because it involves a private dispute about parking rights and a property right that was never recorded. Mr. O'Neil further noted that the fence will only be in place until June of 2026.

3. Counsel for the Appellants argued that the placement of the fence had changed because Intervenor asserted that it would move the fence in October of 2025 but failed to do so. See Exhibit 7, pp. 22-24. She argued that there is a material dispute of fact preventing the grant of summary disposition because the Appellants are entitled to a specific number of parking spaces but that, due to the fence, the Appellants are no longer in compliance with the County Code. Ms. Lee-Cho argued that the fence reduces the number of available spaces for the Appellants because Appellants own the office building depicted by the small white rectangle on Exhibit 7, p. 24 , and the fence obstructs the parking adjacent to that area, which the Appellants, Ms. Lee-Cho claimed, lease from the Intervenor.

In response to questions from the Board, Ms. Lee-Cho reiterated that the existence of the fence reduces the number of parking spaces required under the County's Zoning Ordinance. She argued that the Appellants, therefore, have a legal right to the parking and that the parties have a legal dispute, not an administrative dispute. Ms. Lee-Cho argued that DPS erred in allowing the fence's location, which should have gone in the middle of the parking lot. She argued that there is also a dispute of fact about how many parking spaces the Appellants need.

Ms. Lee-Cho further argued that the building permit was arbitrarily issued, and that DPS had an obligation to go onsite to see that the hospital had misrepresented the fact that 112 parking spaces were allocated to the Appellants. She argued that DPS erred in allowing the erection of the fence, which has affected the Appellants' rights under an agreement with the Intervenor.

## **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 59-6.4.3.C.2.c of the Montgomery County Zoning Ordinance states, “A wall or fence must not be located within any required drainage, utility or similar easement, unless approved by the agency with jurisdiction over the easement.”

5. 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 at the outset of or 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.

6. Under Board Rule 3.2.4, the Board has the discretion to hear oral argument on a motion to dismiss, and under Board Rule 3.2.5, the Board must decide the motion after the close of oral argument or at a Worksession.

7. The Board concludes that the dispute over the parking area ultimately relates to whether there is a private agreement between the Appellant and the Intervenor and that the Board does not, as a matter of law, have jurisdiction to resolve such a dispute. No issue concerning government, as opposed to private, regulation of land use is before the Board. Accordingly, even if that dispute involves disputed factual issues about actions that Appellants and Intervenor have taken between them, they are not factual issues that the Board needs to or may resolve.

8. The Board further concludes that the placement of the fence does not violate any County law, and that, even if a private agreement existed between the Appellants and Intervenor for the use of Intervenor's parking area, that agreement would not be a part of DPS's permit review process or something of which DPS was required to take cognizance, unless it had been recorded and shown on the record plat, which it was not. See Exhibit 6, ex. B.

9. The Board also concludes that there are no genuine issues of material fact to be resolved by the Board. Therefore, the Board orders that the appeal must be dismissed.

The County's Motion to Dismiss or for Summary Disposition in Case A-6938 is granted, and the appeal in Case A-6938 is consequently **DISMISSED**.

On a motion by Chair Caryn L. Hines, seconded by Vice Chair Richard Melnick, with Member Alan Sternstein and Don Silverstein in agreement, the Board voted 4 to 0 to grant the County's Motion to Dismiss or for Summary Disposition and to dismiss the administrative appeal and adopt the following Resolution:

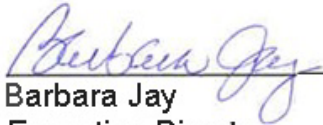
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition.



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Caryn L. Hines  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 30th day of January, 2026.



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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).