

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
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**Case No. A-6923**

**PETITION OF OSCAR SANCHEZ AND 1511 BRIGHTON DAM LLC**

OPINION OF THE BOARD  
(Hearing Date: July 9, 2025)  
(Effective Date of Opinion: July 16, 2025)

Case No. A-6923 is an application by Petitioner Oscar Sanchez for six variances needed for the construction of a detached accessory dwelling unit ("ADU"). The Petitioner seeks to convert an agricultural barn into an ADU. As determined by the County's Department of Permitting Services and originally noticed by the Board of Appeals, the proposed construction required the following variances:

The proposed detached ADU wall requires a variance of 31.2 feet as it is within 11.80 feet of the rear lot line. The required setback is forty-three (43) feet, in accordance with Section 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed porch requires a variance of forty-two (42) feet as it is within one (1) foot of the rear lot line. The required setback is forty-three (43) feet, in accordance with Section 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed deck requires a variance of forty-three (43) feet as it is within zero (0) feet of the rear lot line. The required setback is forty-three (43) feet, in accordance with Section 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed detached ADU requires a 636.57 square foot variance as the proposed gross floor area ("GFA") is 1,308.30 square feet total. The maximum permitted GFA is 671.70 square feet or 50% of the footprint of the principal dwelling, in accordance with Section 59.3.3.3.C.2.e of the Zoning Ordinance.

The proposed detached ADU requires a 1,886.80 square foot variance as the proposed cumulative footprint of all accessory buildings on the lot is 2,558.50 square feet. The cumulative footprint may not exceed 671.70 square feet,

or 50% of the footprint of the principal building, in accordance with Section 59.4.3.4.B.2.e of the Zoning Ordinance.

The proposed construction is a detached ADU with an attached porch and deck. Seventy-four (74) square feet of the existing porch is to be removed. One existing accessory structure is to be removed.

Prior to the hearing and pursuant to an agreement with PEPCO that PEPCO would not oppose the requested variances if a five (5) foot setback from the shared property line were observed, the Petitioner made revisions to his variance request to reflect adherence to this five (5) foot setback. As reflected on the Petitioner's revised Statement of Justification and on the amended Hearing Agenda prepared by counsel for the Petitioner, the Petitioner now requires, and is seeking, the following variances [changes shown in **bold**]:

The proposed detached ADU wall requires a variance of 31.2 feet as it is within 11.80 feet of the rear lot line. The required setback is forty-three (43) feet, in accordance with Section 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed porch requires a variance of **thirty-eight (38) feet** as it is within **five (5) feet** of the rear lot line. The required setback is forty-three (43) feet, in accordance with Section 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed deck requires a variance of **thirty-eight (38) feet** as it is within **five (5) feet** of the rear lot line. The required setback is forty-three (43) feet, in accordance with Section 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed detached ADU requires a 636.57 square foot variance as the proposed gross floor area ("GFA") is 1,308.30 square feet total. The maximum permitted GFA is 671.70 square feet or 50% of the footprint of the principal dwelling, in accordance with Section 59.3.3.3.C.2.e of the Zoning Ordinance.

The proposed detached ADU requires a **1,797.8** square foot variance as the proposed cumulative footprint of all accessory buildings on the lot is **2,469.5** square feet. The cumulative footprint may not exceed 671.70 square feet, or 50% of the footprint of the principal building, in accordance with Section 59.4.3.4.B.2.e of the Zoning Ordinance.

The proposed construction is a detached ADU with an attached porch and deck. **One hundred sixty-three (163) square feet** of the existing porch is to be removed. One existing accessory structure is to be removed.

Because all of the requested changes reduced the extent of the variances that are needed relative to the variances that were originally noticed, the Board was able to proceed with the July 9, 2025, hearing as scheduled. Petitioner Oscar Sanchez participated in the proceedings in support of the requested variances. He was

represented by Soo Lee-Cho, Esquire. John Gontrum, Esquire, appeared on behalf of PEPCO, which owns the abutting property to the north and east of the subject property. Terry Anderson, whose property abuts the subject property to the west, also appeared and testified.

Decision of the Board: Variances **GRANTED**.

## EVIDENCE PRESENTED

1. The subject property is Lot 1, Block A, Brighton Farms Subdivision, located at 1511 Brighton Dam Road in Brookeville, Maryland, 20833, in the RC Zone. The property is located on the north side of Brighton Dam Road and is 3.34 acres in size. It has an unusual, four-sided shape, with converging side lot lines that are not perpendicular to the property's front lot line. Because the property's left side lot line is much longer than its right side lot line (571.98 feet versus 392.03 feet), the property's rear lot line is sharply angled and the northern-most portion of the property is "pointed" where the left side lot line and rear lot line meet. The property was platted in 1976, and is improved with a primary dwelling that was built in 1978. It is bordered to the north and east by a 350 foot wide PEPCO right-of-way. Per SDAT, it was purchased by Petitioner Oscar Sanchez in 2019, and sold to 1511 Brighton Dam LLC in March of this year. See Exhibits 3, 4, and 7(a), and SDAT Printout.

2. The Petitioner's Statement of Justification ("Statement") states that in addition to the primary dwelling, the subject property also contains several accessory structures, including a "agricultural barn" that the Petitioner is seeking to convert to a detached accessory dwelling unit ("ADU"). The Statement includes photographs of this barn, and additional photos are included in Exhibit 5(d). See Exhibits 3 and 5(d).

3. The Statement indicates that the Petitioner sought approval of a Class 3 ADU license from the County's Department of Housing and Community Affairs ("DHCA") in 2020. The Statement states that this license was conditionally approved, subject (among other things) to the Petitioner obtaining the necessary permits from the County's Department of Permitting Services ("DPS"), as follows:

The Petitioner filed an application for a Class 3 ADU License (#120242) with the Department of Housing and Community Affairs (DHCA) on September 1, 2020. A Preliminary Inspection Report that outlines the parameters under which the agricultural barn could be renovated into an ADU (with approved floor plans) was issued by DHCA on October 20, 2020, attached hereto as **Exhibits A and B**. DHCA's approval remains active/pending subject to issuance of necessary renovation/alteration permits by the Department of Permitting Services (DPS).

See Exhibit 3, 3(a), and 3(b). The Statement states that when the Petitioner went to DPS to get permits for the proposed construction, "it became evident that several variances

would be required to facilitate conversion of the agricultural barn structure into an ADU in accordance with DHCA's conditional approval." See Exhibit 3.

4. The Statement asserts that the strict application of the "regulatory standards of the County's Zoning Ordinance will cause an undue hardship on the Petitioner," and explains why the requested variances are justified in order to overcome the practical difficulties that would occur as a result of strict compliance with the Zoning Ordinance. The Statement states that the requested variances cannot be avoided "due to the barn's existing location near the rear boundary line of the Property that prevents it from being able to comply with the enhanced setback calculations triggered by the proposed ADU use of the barn." See Exhibit 3.

5. The Statement states that the subject property is unique because it is "surrounded on two sides (inclusive of the rear boundary line from which Petitioner is seeking variances) by a 350' wide PEPCO right-of-way...." In addition, the Statement states that the proposed ADU would "utilize/enhance an existing legal nonconforming property and structure." The Statement states that the existing barn that the Petitioner is seeking to convert to an ADU is a legal nonconforming structure because it was built lawfully when the property was located in the RE-2 Zone, which required that accessory structures have a ten (10) foot rear setback. See Exhibit 3.

6. The Statement states that the special circumstances/conditions necessitating the variances are not the result of actions by the Petitioner because "[t]he legal nonconformity of the barn is a pre-existing condition established prior to Petitioner's acquisition of the Property." The Statement further states that the requested variances are the minimum necessary to overcome the practical difficulties that are posed by strict compliance with the Zoning Ordinance, and that they can be granted without substantial impairment to the intent and integrity of the general plan because "[t]he conversion of existing accessory structures to detached ADU use is supported by County policy and enacted laws with which the Petitioner is seeking to comply and implement in accordance with DHCA's conditional approval." See Exhibit 3.

7. Finally, the Statement states that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties because the proposed ADU "mainly builds on top of the existing footprint of the property and will remain consistent with the overall character, massing/scale and design of the neighborhood." See Exhibit 3.

8. On July 2, 2025, the Board received a Notice of Appearance from John Gontrum, Esquire, on behalf of PEPCO. See Exhibit 9. Mr. Gontrum submitted an Exhibit List and three multi-part exhibits for the record, as follows:

PEPCO Exhibit List		(BOA Exhibit No. 10)
PEPCO Exhibit 1A.	SDAT Property Info	(BOA Exhibit No. 10(a))
PEPCO Exhibit 1B.	Record Plat	(BOA Exhibit No. 10(b))
PEPCO Exhibit 1C.	Deed	(BOA Exhibit No. 10(c))
PEPCO Exhibit 2A.	Aerial Photo – 2019	(BOA Exhibit No. 10(d))

PEPCO Exhibit 2B.	Aerial Photo – 2020	(BOA Exhibit No. 10(e))
PEPCO Exhibit 2C.	Aerial Photo – 2023	(BOA Exhibit No. 10(f))
PEPCO Exhibit 3A-E.	Photos	(BOA Exhibit No. 10(g))

9. At the hearing, Ms. Lee-Cho stated that the subject property is a 3.34 acre lot that is currently located in the RC Zone but was previously located in the RE-2 Zone. She stated that the agricultural barn the Petitioner is seeking to convert to an ADU was constructed when the property was located in the RE-2 Zone, and that it met the ten (10) foot setback from the rear lot line that was required at that time.

Ms. Lee-Cho stated that after the Petitioner purchased the subject property, he worked with the County's Department of Housing and Community Affairs to convert the barn structure to an ADU. She stated that conditional approval for this was issued in 2019, but that there were a number of conditions attached to that approval. See Exhibits 3(a) and (b). Ms. Lee-Cho stated that the Petitioner tried to meet all of the County requirements, and noted that the setbacks for ADUs are complicated when the construction involves reuse of an existing structure. She stated that as a result of the conversion, the floor area and size of the barn did not change, but that the Petitioner did add a wrap-around porch.

Ms. Lee-Cho stated that five variances are needed, all of which are related to the conversion of an existing legal nonconforming structure (i.e. the barn) to an ADU. She stated that PEPCO requested that the Petitioner observe a minimum five (5) foot setback from the shared lot line, and that she had submitted revised documentation reflecting this setback. See Exhibit 3. Ms. Lee-Cho also provided the Board with an amended Hearing Agneda showing the full extent of the revisions to the Petitioner's original variance request. See Exhibit 12. She then reviewed each of the requested variances, as amended, with the Board.

Ms. Lee-Cho stated that the barn had a ground floor and a mezzanine half floor. She stated that the footprint of the actual ADU unit is the same as that of the barn, but that the footprint of the proposed porch is also counted by the County's Department of Permitting Services ("DPS") as part of the ADU footprint. Ms. Lee-Cho noted that if the proposed porch was not a part of an ADU, it would have been allowed to extend up to nine (9) feet into the required rear setback.

In summarizing her position, Ms. Lee-Cho stated that the existing barn was compliant with the setbacks required in the RE-2 Zone when it was built, making it a legal nonconforming structure. She stated that ADUs require additional setbacks, and that the Petitioner would suffer an undue hardship if the Zoning Ordinance were strictly enforced because the existing structure does not meet those setbacks. In response to a Board acknowledgement that the existing nonconforming structure may need setback variances, but questioning why it would need square footage variances, Ms. Lee-Cho stated that the Petitioner is not adding to the floor area of the barn, which was conforming as an agricultural barn. She stated that the footprint of the barn was 743.6 square feet and did not change; she stated that the only thing that was added was the porch, which

the DPS counts as part of the footprint. Ms. Lee-Cho stated that the Petitioner is seeking to convert the barn to an ADU with a main floor and a half floor above. She stated that while a barn does not need a porch, a porch is appropriate for an ADU.

10. Mr. Gontrum appeared on behalf of PEPCO. He stated that PEPCO had entered into an agreement with the Petitioner in which PEPCO agreed not to oppose the requested variances if the Petitioner observed an agreed upon, revised setback from the lot line his property shares with the PEPCO property.

11. Terry Anderson testified that she is an immediate neighbor of the subject property and has a full view of the Petitioner's ADU building. She testified that the ADU building is largely finished, and that the original barn structure was completely torn down because it was not salvageable. Ms. Anderson submitted three photographs to the Board, the first of which she said was included in the Petitioner's Statement. See Exhibits 11(a)-(c). She testified that from a neighborhood standpoint, the ADU is almost as big as a house, describing it as a "very large" structure. Ms. Anderson testified that the ADU did not resemble the original barn structure. She highlighted what she described as the "huge" cement pad and porch, and stated that the structure is now two full stories.

Ms. Anderson testified that the Petitioner did not convert his barn into an ADU, but rather that he built a new structure. She testified that while the new structure may have been constructed over the footprint of the original barn, the cement area was not in the original footprint, the upper dimensions of the structure have changed, and the Petitioner has added a porch. Ms. Anderson testified that the size of the structure is beyond what is allowed by the County. She testified that October 2019 Google earth images show the old barn and that images from October 2020 show the new structure.

Ms. Anderson testified that the Petitioner does not live at the subject property, and that he has to live there to have an ADU. She testified that the Petitioner transferred ownership of the property to an LLC. Ms. Anderson testified that the building is currently used for storage of equipment.

12. Mr. Sanchez testified that he is a builder. He testified that the barn was damaged when he purchased the subject property, and that it needed to be fixed. Mr. Sanchez noted that the barn already had power and water when he bought it. He testified that as shown on Exhibit 5(d), all of the concrete in the existing barn was existing. Mr. Sanchez testified that he did some underpinning of that concrete to help shore up the existing foundation because he wanted to put a new roof on the building. Mr. Sanchez testified about the portions of the barn that were retained, including the floor joists and 40% of the headers supporting the second floor, and the portions that were replaced/improved. He testified that the foundation of the barn remains the same, and that the joists and posts were original. Mr. Sanchez later elaborated on this, testifying that the concrete and most of the framing and floor joists are the same, but that there is new plywood and some new framing. Mr. Sanchez testified that he changed the windows and roof of the original building.

Mr. Sanchez testified that when he originally started fixing the barn, his neighbors had called the County, and Inspector Kim came out and told him that he would need permits. Mr. Sanchez testified that this was the start of this process. He testified that the County asked him if he wanted to convert the barn to an ADU, and that he decided that would be a good idea since it could then be used to provide lodging for his parents and for friends who come to visit.

Mr. Sanchez testified that he did not think it would take so long to complete the processes associated with the conversion of the barn to an ADU, and noted that it took a year and a half to get septic approval for the ADU. He testified that the building is currently incomplete because the County made him stop work. Mr. Sanchez testified that he planned to move into the main house on the property after he purchased it, but that he wanted to do some renovations to the house before moving in, and wanted to fix the barn first. He testified in response to a Board question that some of his friends are currently living in the house because he did not want the house to be empty. Mr. Sanchez testified that he intends to move into the main house.

13. In response to a Board question noting that the property was currently owned by an LLC, and asking if Mr. Sanchez was the sole member, Ms. Lee-Cho stated that he is the managing member, and that he was advised by other counsel to put the property in an LLC. Ms. Lee-Cho requested that the variance, if granted, be issued in the names of Mr. Sanchez and 1511 Brighton Dam LLC.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the requested variances, as revised to reflect the Petitioner's agreement with PEPCO and stated herein, can be granted. The Board finds that the revised requested variances comply with the applicable standards and requirements set forth in Section 59.7.3.2.E of the Zoning Ordinance, as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59.7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;*

The Board finds, based on the Statement, that the barn that the Petitioner is seeking to convert to an ADU is a legal nonconforming structure because it was built lawfully when the property was located in the RE-2 Zone, which required that accessory structures have a ten (10) foot rear setback. See Exhibit 3. Because the proposed development uses this existing structure, the Board finds that this element of the variance test is satisfied.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds, based on the Statement, that the barn that the Petitioner is seeking to convert to an ADU existed and was made nonconforming by a change in zoning prior to his purchase of the subject property. See Exhibit 3. Thus the Board finds that the special circumstances or conditions relating to this property and structure are not the result of actions by the Petitioner, and that this element of the variance test is satisfied.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that strict compliance with the Zoning Ordinance poses a practical difficulty for the Petitioner with respect to his ability to convert an existing barn for use as an ADU, and that the requested variances, needed to allow improvements to the existing structure that do not increase its footprint (other than to add a porch), are the minimum needed to overcome this practical difficulty. In support of this finding, the Board finds that the Petitioner's ADU uses the foundation and footprint of the original barn, and, per the testimony of Mr. Sanchez, a significant portion of the original floor joists, framing, and headers.<sup>1</sup> See Exhibits 3, 5(b), and 5(c). The Board recognizes that an open porch has been added as part of the conversion of this barn to an ADU, but agrees that an open porch, while not appropriate for a barn, is appropriate for an ADU. In light of the foregoing, the Board finds that the variances requested are the minimum needed to allow the Petitioner to reuse this nonconforming barn for an ADU, and thus to overcome this practical difficulty that full compliance with the Zoning Ordinance would entail, in satisfaction of this element of the variance test.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds, based on the Statement, that the requested variances, needed to allow the proposed conversion of the Petitioner's barn to an ADU, is supported by County policy and enacted laws, and thus can be granted without substantial impairment to the intent and integrity of the general plan and applicable master plan, in satisfaction of this element of the variance test. See Exhibit 3.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds, based on the Statement, that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties because the

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<sup>1</sup> The Board recognizes that Mr. Sanchez's testimony differs from the testimony offered by Ms. Anderson. The Board notes that Mr. and Mrs. Anderson left the hearing room while Mr. Sanchez was addressing their allegations, and further notes that Ms. Anderson returned to the hearing room after the Board asked that their departure be noted in this decision.



proposed ADU “mainly builds on top of the existing footprint of the property and will remain consistent with the overall character, massing/scale and design of the neighborhood.” See Exhibit 3. In addition, the Board finds, based on the Statement, Site Plan, and representations of Mr. Gontrum, that the proposed ADU will be located closest to property owned by PEPCO, and that with the agreement to observe a five (5) foot setback from their shared property line, PEPCO has agreed not to oppose the requested variances. See Exhibits 3 and 4. On the basis of the foregoing, the Board finds that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variances, as revised and set forth at the beginning of this Opinion, which are needed for the conversion of the Petitioner’s barn to an ADU, are **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a)-(b) (exterior elevations/dimensions only).

Based upon the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Richard Melnick, Vice Chair, with Alan Sternstein and Amit Sharma in agreement, and with Donald Silverstein not in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is 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 16th day of July, 2025.



Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59.7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.