

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6458

APPEAL OF RICHARD HAISLIP

OPINION OF THE BOARD

(Hearing held March 25, 2015)
(Effective Date of Opinion: April 14, 2015)

Case No. A-6458 is an administrative appeal filed February 6, 2015, by Mr. Richard Haislip (the "Appellant"), who is the President of Current Electric, Inc. Mr. Haislip charges error on the part of the County's Department of Permitting Services ("DPS") in the issuance of its December 19, 2014, Notice of Violation, citing Current Electric for violation of 2008 NEC 230.70(A)(1). Mr. Haislip and his attorney assert that the work in question was correctly done and installed, and passed a rough-in/close-in inspection. His appeal notes that as the electrician, he was not responsible for enclosing or heating the room in question, or for other alterations. Finally, he asserts that the Notice of Violation is time barred due to limitations and laches. The work in question was performed at Property located at 14608 Woodcrest Drive in Rockville, MD 20853, in the R-60 Zone.

The Board scheduled a public hearing on the appeal, with oral argument on preliminary motions to be held March 25, 2015. Pursuant to its authority in Section 2A-8 of the Montgomery County Code, the Board heard oral argument on a preliminary Motion to Dismiss filed by the County and on Opposition thereto filed by the Appellant. Associate County Attorney Charles L. Frederick represented the County. The Appellant was represented by Thomas S. Rand, Jr., Esquire.

Decision of the Board: Motion to Dismiss **granted**; administrative appeal
dismissed.

RECITATION OF FACTS

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

1. The Appellant is the principal of Current Electric, Inc. See Exhibit 8.
2. In 2010, Current Electric, Inc. performed electrical work (wiring a sunroom for a fan and electrical outlets) at Property known as 14608 Woodcrest Drive, in Rockville, Maryland.
3. On December 19, 2014, DPS issued a Notice of Violation (“NOV”) to Current Electric, citing violation of 2008 NEC 230.70(A)(1), and asserting that the “[e]lectrical service in enclosed in sunroom addition and does not terminate inside the dwelling at the nearest point of entry.” See Exhibit 3.
4. The NOV was sent by certified mail, return receipt requested, and was retrieved by the Appellant on January 22, 2015. See Exhibit 7.
5. On February 6, 2015, the Appellant filed appeal A-6458, challenging the issuance of this NOV. See Exhibit 1. Montgomery County filed a Motion to Dismiss this appeal, and the Appellant filed an Opposition thereto. See Exhibits 7 and 8.

MOTION TO DISMISS—SUMMARY OF ARGUMENTS

1. Counsel for the County first argued that the Board had no subject matter jurisdiction over this appeal. Counsel indicated that under Sections 17-20(f) and 17-28(a) of the County Code, the Board of Appeals has subject matter jurisdiction over the denial of, or the suspension, revocation, or refusal to renew, an electrician’s license, but stated that the NOV does not involve licensing. Counsel further indicated that the NOV did not involve the issuance of a permit or stop work order such that it would be appealable under Section 8-23(a) of the County Code. Thus Counsel concluded that the Board did not have subject matter jurisdiction to hear this appeal.

Counsel then noted that even if the Board were to have subject matter jurisdiction under Sections 17-20 or 17-28, the Board would still lack jurisdiction over this matter because any appeal under those Sections had to be filed not later than 10 days after notice was served or received. Counsel stated that this appeal was filed 15 days after the NOV was received. Thus Counsel argued that even if the Board were to have subject matter jurisdiction, it would still lack jurisdiction to hear this matter because it was not timely filed. In response to Board questioning, Counsel cited *National Institutes of Health Federal Credit Union v. Hawk*, 47 Md. App. 189, 422 A.2d 55 (1980), *cert. denied*, 289 Md. 738 (1981), as support for this conclusion.

Finally, in addressing an issue raised by the Appellant in his Opposition, namely an assertion that while the DPS had renewed the Appellant’s master electrician license, it had refused to issue him the photograph identity card which he is required to have in his

possession when performing any electrical work in Montgomery County, Counsel for the County explained that there was a technical issue with the camera equipment when Appellant went to have this card issued. Counsel stated that he had informed the Appellant that the equipment was back in working order, and that the card could be issued immediately. He stated that it was his understanding that the Appellant was going to DPS to have the card issued at the conclusion of the hearing.

2. Counsel for the Appellant confirmed that the Appellant had been told that he could go get his photographic identification card. Counsel conceded that the Board did not have subject matter jurisdiction over this NOV. Accordingly, he indicated that there was no need to reach the timeliness issue.

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 and Section 17-28. Section 2-112(d) states that the "Board must hear and decide any other appeal authorized by law."

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. Under Section 2A-8 of the Montgomery 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 the hearing or, as was the case here, to bifurcate the proceedings and set a separate hearing date for preliminary motions. In the instant matter, the County filed a Motion to Dismiss, and the Appellant filed an Opposition to that motion. Board Rule 3.2 specifically confers on the Board the ability to grant Motions to Dismiss for lack of jurisdiction (Rule 3.2.1).

4. 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."

5. Section 17-20(f) of the County Code provides that “(f) All approvals or denials of said applications [for an electricians’ license] shall be personally served or mailed by certified mail to the address on the application. Any denial may be appealed to the County Board of Appeals by the applicant not later than ten (10) days after such notice is personally served or received.”

6. Section 17-28(d) of the County Code provides that “(d) Any person, firm, company, corporation or partnership to whom a license has been denied or whose license has been revoked or suspended or any such person, firm, company, corporation or partnership who believes himself aggrieved by any action of the board or director may appeal to the county board of appeals by filing a notice of such appeal to the county board of appeals by filing a notice of such appeal with the clerk of the appeals board within ten (10) days from the date of receipt of notice of the action of the board or director. Notice of action of the board or director shall be personally served or be mailed by certified mail to the last address on file with the board.”

7. The Board finds that the December 19, 2014, NOV that is the subject of this appeal did not involve the issuance or renewal of an electricians’ license such that it would be appealable under Sections 17-20(f) or 17-28(d) of the County Code, nor did not involve the issuance or revocation, etc., of a permit or stop work order by DPS such that it would be appealable under Section 8-23(a). The subject NOV involved a violation of Section 230.70(A)(1) of the 2008 National Electric Code (NEC). See Exhibit 3. The Board does not have jurisdiction to hear appeals from violations of the NEC. Thus the Board finds that it lacks subject matter jurisdiction to consider this appeal, and need not reach the timeliness issue. Counsel for the Appellant conceded this at the hearing. For the foregoing reasons, the Board finds that the County’s Motion to Dismiss this matter should be granted.

8. The Motion to Dismiss Case A-6458 is granted, and the appeal is consequently **DISMISSED**.

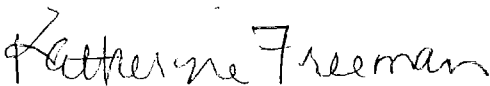
On a motion by Chair David K. Perdue, seconded by Member Stanley B. Boyd, with Vice Chair Carolyn J. Shawaker and Members John H. Pentecost and Edwin S. Rosado in agreement, the Board voted 5 to 0 to grant the County’s Motion to Dismiss and thus to dismiss the appeal, and adopted the following Resolution:

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.



David K. Perdue, Chair
Montgomery

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 14th day of April, 2015.



Katherine Freeman
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).