



## **RECITATION OF FACTS**

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

1. Appellant filed an application with DPS on January 15, 2018 for an electrical permit to install and maintain a photovoltaic ("PV") solar array system on the Property, pursuant to sections 17-18 and 17-29 of the Montgomery County Code, Permit No. 823534. See Exhibit 8.

2. On January 19, 2018, DPS rejected Appellant's e-plans submittal for Permit No. 823534 because the application was not signed by a master electrician. See Exhibit 3.

3. Appellant obtained a written copy of DPS's January 19, 2018 rejection on February 20, 2018 and submitted the written copy as part of his administrative appeal. See Exhibit 1.

## **MOTIONS FOR SUMMARY DISPOSITION—SUMMARY OF ARGUMENTS**

1. Appellant clarified that his references to the Code of Montgomery County Regulations ("COMCOR") in his filings for this administrative appeal refer to the County Code, not COMCOR. Appellant argued that pursuant to section 17-18(b) of the County Code, any person who installs, repairs, or maintains electrical equipment in a detached single-family residence which that person owns need not obtain a license under Article 17 of the County Code. He argued that section 17-29 of the County Code further states that all permit applications shall be signed by a master electrician or master electrician limited except those signed by homeowners pursuant to section 17-18.

Appellant argued that PV is included in the 2014 National Electric Code ("NEC"), which the County has adopted as the electrical code of the County pursuant to section 17.02.01.03 of COMCOR. He argued that the County Code's definition of "electrical equipment" in section 17-11 would include the PV system he seeks to install at the Property because PV systems are included in the NEC.

Appellant argued that NEC Article 690, which governs PV systems, lists under section 690.4 as equipment "[i]nverters, motor generators, PV modules, PV panels, ac PV modules, dc combiners, dc-to-dc converters, and charge controllers intended for use in PV power systems shall be listed for the PV application." He argued that this section of the NEC uses the term "equipment" to list all the PV equipment. Appellant argued that section 17-11 of the County Code defines "electrical equipment" as "any other equipment coming within the purview of the electrical code of the County." He argued that because equipment in the PV chapter of the NEC (Article 690) lists all PV equipment, this equipment is covered under section 17-11's definition of "electrical equipment."

Appellant argued that certain sections of the NEC, for example Article 680 for pools, hot tubs, and spas, require a licensed electrician to install. He argued that the NEC did not exclude Article 690, which governs PV systems, from the equipment that a homeowner can install. Appellant argued that the electrical equipment listed in section 17-11 of the County Code and the equipment listed in the NEC, Article 100, are not exhaustive lists of the type of electrical equipment that a homeowner can install, which is why the NEC, Article 100 definition of "equipment" includes "and the like used as a part of, or in connection with, an electrical installation."

Appellant argued that a qualified person is someone who understands how to install a PV system. He argued that the standard for a qualified person is found in the Informational Note to the NEC, Article 100 definition of "qualified person," which states "Informational Note: Refer to NFPA 70E-2012, *Standard for Electrical Safety in the Workplace*, for electrical safety training requirements." He argued that a master electrician would not be required to be trained on how to install a PV system. Appellant argued that DPS has never tested whether he was a qualified person to install the PV system. He argued that he is only seeking for DPS to give him a test to prove his qualifications to install the PV system.

Appellant further argued that the Maryland Department of Labor, Licensing and Regulation ("DLLR") regulation on DLLR's website referenced by DPS was about contractors. He argued that the fact that this DLLR website requires an individual who connects solar panels to an electric box or grid to hold an electrician's license is irrelevant to this appeal because all contractors are required to be licensed.

Appellant argued that, under Board Rules 3.2.2 and 3.2.3, the County's Opposition to and Cross Motion for Summary Disposition were untimely filed. Appellant argued that, under Rule 3.2.2, the County's Cross Motion for Summary Disposition should have been filed 20 days prior to the hearing, and that the County's Cross Motion was filed six days prior to the hearing, on April 19, 2018. He argued that, under Rule 3.2.3, the County's Opposition to his motion should have been filed no later than 10 days prior to the hearing, and that the County's response was filed six days prior to the hearing, also on April 19, 2018.

2. Counsel for the County argued that section 17-18(b) of the County Code applies to a person who installs, repairs, or maintains electrical equipment. He argued that "electrical equipment" is defined in section 17-11 of the County Code as: "[t]he term 'electrical equipment' shall include electrical conductors, raceways, wiring filings, devices, appliances, fixtures, apparatus, and any other equipment within the purview of the electrical code of the County." Counsel argued that Appellant had failed to demonstrate that the PV system he proposed to install and maintain at the Property fit within the County Code's definition of "electrical equipment."

Counsel for the County further argued that by County Executive Regulation, COMCOR section 17.02.01.03, the County had adopted the NEC as the electrical code of the County, provided that whenever COMCOR and the NEC were in conflict, COMCOR

would govern in the County. He argued that the NEC further defines what constitutes electrical equipment, and that the PV solar array system Appellant wants to install and maintain is not electrical equipment as a matter of law.

Counsel argued that PV solar arrays are electrical generating systems, not electrical consumption systems. Counsel argued that the series of terms under the section 17-11 definition of "electrical equipment" in the County Code are items that are energy consuming, not energy generating. He argued that the NEC has a general definition of what constitutes electrical equipment, found in Article 100 of the NEC, which is consistent with the definition of "electrical equipment" in section 17-11 of the County Code. Counsel for the County argued that "equipment" in Article 100 of the NEC is "[a] general term, including fittings, devices, appliances, luminaires, apparatus, machinery, and the like used as a part of, or in connection with, an electrical installation." He argued that this is the same definition that the County Code uses, and that the definition does not include PV arrays.

Counsel for the County argued that PV systems are covered in an entirely separate chapter of the NEC, Article 690. Counsel argued that Part One of the NEC contains Article 100, which are the definitions that apply to this administrative appeal. He argued that Part Two of the NEC includes Article 690, which specifically governs PV systems. He argued that Article 690 and its definitions are specific to PV systems.

Counsel for the County argued DLLR requires PV systems be installed by licensed master electricians, which is consistent with DPS's position that a licensed master electrician is required to install these systems. Counsel further argued that the County could have amended the sections of the NEC that apply to PV systems at the time the County adopted the NEC in COMCOR but did not do so. Therefore, Counsel argued that the County Code and the NEC are the laws that apply to this administrative appeal.

Counsel for the County further argued that Article 690.4(C) of the NEC requires that, for a PV system, "[t]he installation of equipment and all associated wiring and interconnections shall be performed only by qualified persons." He argued that section 17-18(c) of the County Code requires the Director of DPS to determine whether the person, including a homeowner, who is applying for an electrical permit is qualified. Counsel argued that Appellant has not demonstrated or presented anything with his permit application to show that he is qualified to install the PV system.

Counsel argued that the Board does not have the authority to order DPS to create a test for Appellant to take to determine whether he is qualified to perform the proposed work under section 17-18(c) of the County Code. He argued that under the Code, the Director of DPS has the discretion to determine who is a qualified person, and that the DPS Director, consistent with DLLR and the NEC, has determined that a licensed master electrician must sign and apply for a permit to install a PV system. Counsel argued Appellant has failed to demonstrate that the DPS Director's failure to find him qualified to install a PV system was an error of law.

## **CONCLUSIONS OF LAW**

1. Sections 2-112(c) and (d) of the County Code provide the Board of Appeals with appellate jurisdiction over appeals taken under specified sections and chapters of the Montgomery County Code, including section 17-28 and any other appeal authorized by law.

2. Section 2A-2(d) of the 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 17-28(d) of the County Code provides “[a]ny 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.”

4. Section 17-18 of the County Code, “Applicability of article; exceptions,” reads as follows:

### **Sec. 17-18. Applicability of article; exceptions.**

(a) The licensing requirements of this Article apply only to electrical work covered by this Chapter, as specified in Section 17-1. Each licensee must perform all electrical work as required by this Chapter and the code and regulations adopted under it.

(b) Any person who installs, repairs, or maintains electrical equipment, in a detached single- family residence which that person or a member of the person’s immediate family owns, for the person’s or immediate family’s use, need not obtain a license under this Article. Before any electrical work is performed under this subsection, the owner of the residence must apply to the Director for a permit if a permit is otherwise required by this Chapter.

(c) Before issuing a permit under this subsection, the Director must require the person who will perform the work to show that he or she is qualified to perform the proposed electrical work in a capable manner so as not to endanger the life and property of occupants or neighbors, or property belonging to any public utility. If the Director finds that the designated person is qualified to perform the proposed electrical work, the Director must issue a permit for that work, subject to compliance with all otherwise applicable requirements of this Chapter.

(d) A permit is not required for any minor repair, as defined in this Chapter.

5. Section 17-29 of the County Code, which governs general requirements for electricity permits, reads as follows:

**Sec. 17-29. General requirements.**

(a) *Required.* Except as provided in section 17-1 of this chapter, no electrical equipment which is subject to the provisions of this chapter shall be installed until a permit therefor has been issued by the department.

(b) *Application.* All applications for permits shall be in writing and in such form as may be prescribed by the department. All applications shall be signed by a master electrician or master electrician limited except those signed by homeowners pursuant to section 17-18 and those signed by an officer of the company pursuant to section 17-25(b) and (c). Each application shall describe the work to be done and the location thereof and shall be accompanied by such plans, specifications and schedules as shall be necessary to determine whether the installation will be in conformity with the provisions of this chapter and, if necessary, provisions of chapter 8 of this Code.

(c) *Contents; conformity with permits; expiration upon noncommencement of work, etc.* Each permit shall describe with particularity the installation to be done thereunder, and no person shall install any electrical equipment other than in accordance with the permit. All permits shall expire and be null and void unless the work authorized thereunder is commenced within six (6) months from the date of issuance; provided, that the department may upon good cause shown extend a permit one or more times from periods not exceeding sixty (60) days.

(d) *Repairs exempted.* No permit shall be required to repair portable electrical equipment or lighting fixtures, or to repair or replace sockets, receptacles or snap switches, or to make other minor repairs at existing outlets, or to repair motors, or to replace motors with motors of the same nameplate rating.

(e) *Supervision.* It shall be unlawful for any licensee to allow the installation, repair or maintenance of any electrical equipment requiring a permit from the department unless under the immediate and personal supervision of either a licensed master or journeyman.

6. "Electrical equipment" under section 17-11 of the County Code is defined as "[t]he term 'electrical equipment' shall include electrical conductors, raceways, wiring fittings, devices, appliances, fixtures, apparatus, and any other equipment coming within the purview of the electrical code of the County."

7. The Director of DPS has the authority to recommend written regulations to administer Chapter 17 of the County Code. Section 17-2 reads as follows:

**Sec. 17-2. Regulations.**

(a) The director may recommend written regulations for the administration of the provisions of this chapter and may, at his discretion, hold public hearings as part of this regulation-making process. Such regulations and amendments thereto shall not conflict

with nor waive any provisions of this chapter nor be less restrictive than its provisions and shall be adopted by the county executive under method (2) of section 2A-15 of this Code.

(b) The director shall hold public hearings, upon adequate public notice, with opportunity for full participation from members of the board of electrical examiners and shall obtain the recommendations of the board of electrical examiners prior to forwarding his recommendations for regulations setting forth the standards and requirements for all installations of electrical equipment within the county. Such regulations shall be based upon a designated edition of the National Electrical Code and local amendments thereto, including but not limited to those for the installation of fire alarm systems. Such regulations and amendments thereto shall be adopted by the county executive under method (2) of section 2A-15 of this Code.

8. Section 17-3 of the County Code, "Adoption of basic electrical code," provides that "all electrical installations and equipment shall meet the standards and requirements set forth in accordance with procedures established in section 17-2 of this chapter. The edition of the National Electrical Code and any local amendments thereto, which are adopted in accordance with procedures established in section 17-2 of this chapter, shall be the basic electrical code for the county."

9. COMCOR 17.02.01, "Adoption of the 2014 National Electrical Code," reads as follows:

**17.02.01.01**

In accordance with procedures authorized in Chapter 17, Sections 17-2 and 17-3, Regulations and Adoption of Basic Electrical Code, Montgomery County Code, as amended (the code), the following executive regulation applies to all electrical equipment, installations, and activities within Montgomery County.

**17.02.01.02**

Unless otherwise noted, all references to the National Electrical Code (hereafter referred to as NEC) contained in this regulation are to the National Electrical Code (NFPA No. 70-2014), adopted by the National Fire Protection Association at its Association Technical meeting held June 10-13, 2013, in Chicago, IL. This regulation supersedes all previously promulgated references to the NEC.

**17.02.01.03**

The 2014 NEC is adopted as the Electrical Code of Montgomery County, and all electrical installations and equipment must meet the standards and requirements set forth in that code or in this regulation. The 2014 NEC is incorporated by reference as if that code were fully set forth with the following additions, deletions, and amendments.

Whenever the provisions of this regulation and those of the NEC are in conflict, the provisions of this regulation will govern and be enforced in the County. The Director is solely responsible for the interpretation of these regulations as amended.

10. Relevant portions of the 2014 NEC include:

Article 100, Definitions, the definition of "equipment" is defined as "[a] general term, including fittings, devices, appliances, luminaires, apparatus, machinery, and the like used as a part of, or in connection with, an electrical installation";

Article 690, Solar Photovoltaic (PV) Systems, 690.4(C) "**Qualified Personnel.** The installation of equipment and all associated wiring and interconnections shall be performed only by qualified persons. Informational Note: See Article 100 for the definition of *qualified person*."; and

Article 100, Definitions, the definition of "qualified person" is defined as "[o]ne who has skills and knowledge related to the construction and operation of the electrical equipment and installations and has received safety training to recognize and avoid the hazards involved."

11. The Board finds that it has jurisdiction to hear this appeal. Appellant was personally served with notice of DPS's action on February 20, 2018, the date that Appellant's administrative appeal was filed and within the ten day appeal period required under section 17-28(d) of the County Code.

12. 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. The Board may also approve a motion for summary disposition less than 20 days prior to the hearing.

13. 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.

14. The Board finds that, while Appellant had less than 10 days to respond to the County's motion for summary disposition, Appellant did respond to the County's motion on April 20, 2018. See Exhibit 16. Further, the Board finds that Appellant had advanced all arguments and responses to the County's motion in Appellant's Motion for Summary Decision (See Exhibit 7), Appellant's pre-hearing submission (See Exhibit 8), and Appellant's Follow-Up Pleading for Appellant Motion for Decision (See Exhibit 16). Therefore, the Board finds that it can consider and rule upon both Appellant's and the County's motions for summary disposition upon the conclusion of oral argument by both parties.



15. The Board finds that there are no genuine issues of material fact to be resolved by the Board. The Board further finds that, while a homeowner who shows they are qualified to install, repair, or maintain electrical equipment in their detached single-family residence may be issued a permit under section 17-18(b) of the County Code, PV systems are not "electrical equipment" under section 17-18. The Board finds the electrical items specifically listed in the definition of "electrical equipment" under section 17-11 of the County Code are electrical consuming items, not electrical generating systems. The Board notes that the County Code's definition of "electrical equipment" also includes "any other equipment coming within the purview of the electrical code of the County." The Board finds that such "other equipment" is defined in the NEC, the electrical code of the County, under Article 100, as other electrical consumption items.

The Board finds that the installation of PV systems is the production of energy and is also not included under the NEC's general definition of "equipment." Instead, PV systems are governed by their own Article in the NEC, Article 690, with separate definitions pertaining to PV systems. The Board finds that because PV systems are not "electrical equipment" under section 17-18(b) of the County Code, as defined in section 17-11 of the County Code, DPS properly denied Appellant's request for a permit to install a PV system at the Property under section 17-18(b) of the County Code.

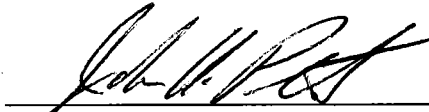
16. The Board further finds that the Director of DPS properly found that Appellant was not a qualified person under section 17-18(c) of the County Code to perform the proposed electrical work in a capable manner so as not to endanger the life and property of occupants or neighbors, or property belonging to any public utility. The NEC, section 690.4(C) requires that the installation of equipment (PV systems) be performed only by qualified persons. Appellant could not have provided evidence to DPS that he was skilled in the construction and operation of PV systems, that he had the knowledge related to the construction and operation of PV systems, and that he had received safety training to recognize and avoid the hazards of the installation of a PV system, because the Director of DPS has determined that only a master electrician can be a qualified person as a matter of law.

17. The County's Cross Motion for Summary Disposition in Case A-6559 is granted, and the appeal in Case A-6559 is consequently **DISMISSED**.

On a motion by Chair John H. Pentecost, seconded by Vice Chair Edwin S. Rosado, with Members Bruce Goldensohn and Katherine Freeman in agreement, and Member Stanley B. Boyd opposed, the Board voted 4 to 1 to deny Appellant's Motion for Summary Decision.

On a motion by Member Katherine Freeman, seconded by Vice Chair Edwin S. Rosado, with Chair John H. Pentecost and Members Stanley B. Boyd and Bruce Goldensohn in agreement, the Board voted 5 to 0 to grant the County's Cross Motion for Summary Disposition and to dismiss the administrative appeal and adopt the following Resolution:

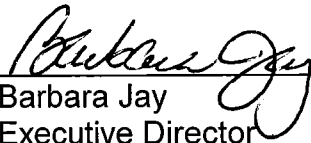
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.



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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 1st day of June, 2018.



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Barbara Jay  
Executive Director

**See attached Statement from Member Stanley B. Boyd explaining why he voted against the Motion to Deny Appellant's Motion for Summary Decision.**

**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).

**Statement from Member Stanley B. Boyd explaining why he voted against the Motion to Deny Appellant's Motion for Summary Decision**

I would like it explained in the Opinion why I voted AGAINST the motion to deny Appellant Summary Decision. I did not agree with the statement #16 that the Appellant was not qualified. When I questioned the DPS Director as to what she would accept as a person "qualified" to install and activate a solar photovoltaic (PV) system, she replied that he would have to be a licensed electrician. When I asked her if there was any exam or action by which a person could demonstrate he was "qualified", she said no. The DPS had no method or way to meet show qualification, other than being a licensed master electrician. 2014 NEC Article 690.4(C) for Solar Photovoltaic (PV) Systems defines a qualified person as "One who has skills and knowledge related to the construction and operation of the electrical equipment and installation and has received safety training to recognize and avoid the hazards involved." stud From the Official Maryland DLLR requirement for the Master Electrician License, there is no evidence that holding such a license would mean a person "has the skills and knowledge related to the construction and operation of the electrical equipment and installations and has received safety training to recognize and avoid the hazards involved for PV interactive systems. The Master Electrician qualification for Montgomery County makes no mention of any specific training on the provisions of NFPA 70E, which is the standard that defines the training required to be a "Qualified Person."

Here are a few of the reasons I consider the applicant for a permit to be a Qualified Person to install and activate solar panels:

1. He studied and took the PV manufactures online training for the specific products and methods to be installed;
2. He received a passing score on the accredited "heatspring" online testing used for preparation for the North American Board of Certified Energy Practitioners PV Installation Professional Certification;
3. He studied the 2014 NEC and NFPA 70E and passed substantial full-scope online practice tests for the Master Electrician Licensing Exam;
4. He planned and performed all the existing electrical work on his own solar home to accommodate PV on the roof compliant with building codes;
5. He holds a Bachelor's degree in Building Design with a minor in Solar Technologies from an accredited US University;

The DPS Director has not in any way assessed the qualifications of this homeowner applicant. She only would accept a Master Electrician License which is disallowed by COMCOR 17-29.

I voted for the County Summary Decision only because if the DPS is violating the law in determining "qualification" then it is up to the Court to decide.

Stan Boyd