

IN THE MATTER OF
MARK ROMIG, APPELLANT
11317 MAYS CHAPEL ROAD
LUTHERVILLE-TIMONIUM, MD 21093

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: CBA-24-014

RE: Appeal of denial of Electrical Permit
#RE23-06026

* * * * *

OPINION

This case comes to the Board of Appeals for Baltimore County (“Board”) on appeal of the decision of the Electrical Administrative Board of Baltimore County (“EAB”) dated September 21, 2023, denying the issuance of an electrical permit to Mark Romig¹ (“Appellant”). The Board held a virtual hearing in this matter on December 6, 2023. Barklie Estes, Master Electrician with Nova Solar, Inc. appeared on behalf of the Appellant. Baltimore County (“the County”) was represented by Assistant County Attorney Marissa L. Merrick, Esquire.

FACTUAL BACKGROUND

Appellant signed a contract to purchase a rooftop solar system for his residential property, which was installed by Nova Solar, Inc. (“Nova Solar”) on August 14, 2023. On September 7, 2023, Baltimore County Electrical Inspector, Edgar Bull, informed Nova Solar via email that it had failed the Electrical Final Inspection for an electrical permit. Mr. Bull included the following comments in explanation of the reason for the failure: “1 cannot install tray cable in attic 2 in attic the wiring must be At [sic] least 10 inches down From [sic] the roof.”

“Tray cable” here, refers to Nova Solar having power cables running down from the solar panels into the home, through the attic. The inspector objected to these cables not being run

¹ Although Mr. Romig is the homeowner in whose name this action was filed, Nova Solar Inc., applied for the permit on his behalf and has acted as the Petitioner/Appellant throughout.

through a metal raceway or metal jacketed cable, pursuant to the Baltimore County Electrical Code, (“BCEC”) as he understood it. As to the wiring having to be at least 10 inches down from the roof, the inspector believed that this too is required by the BCEC. Baltimore County maintains a publication entitled *Solar Photovoltaic (PV) Installation Baltimore County Requirements* (“PV Guidelines”) on its public website. The requirement that PV Circuits run inside a building must be installed in a raceway or metal jacketed cable is found in this publication.

Nova Solar filed an appeal to the Electrical Administrative Board, arguing that the failure to issue a permit was improper because the requirements being applied are applicable only to PV Circuit Conductors, which are DC conductors, and not to what Nova Solar had run, which was AC attic wiring.² Nova Solar cited in support to the current iteration of the National Electrical Code (“NEC”). No hearing was held before the Electrical Administrative Board, which met and determined the issue on its own, and no opportunity was given to Nova Solar to present its arguments, other than what was in its notice of appeal.

The Electrical Administrative Board wrote on September 21, 2023, in upholding the inspection failure,

The board has reviewed your request on the two violations for this permit. While the board understands your reasoning that these may not be violations of the NEC, Baltimore County has requirements for PV installations that go above the requirements of the NEC. Keep in mind that the NEC is the minimal requirements provided and the Authorities Having Jurisdiction may exceed these. As parts of the permits process, Baltimore County clearly communicated that “ALL PV CIRCUITS TO BE RUN INSIDE A BUILDING MUST BE INSTALLED IN A METAL RACEWAY OR METAL JACKETED CABLE”

Based on this, the installation is in violation of the county requirements and must be changed in order to receive a final inspection.

² Our understanding, based on the arguments before us, is that DC conductors are a significant hazard, and that the requirements that they be jacketed and run in a certain way are eminently reasonable, but that the modern solar systems of the kind installed by Nova Solar do not run DC conductors down from the solar panels into the house, but instead are inverted on the rooftop panels into AC current, which then runs into the house. The wiring that runs throughout the rest of a typical home also carries AC current.

Nova Solar appealed to this Board from the decision of the EAB.

APPLICABLE LAW

For appeals of this nature, the Baltimore County Code requires this Board to conduct a hearing within the limitations set forth in Section 3-6-303. This Section states:

§ 3-6-303. - HEARING.

(a) Hearing on the record.

(1) (i) Except as provided in subsection (b) of this section, the Board of Appeals hearing shall be limited to the record created before the Hearing Officer, which shall include:

1. Except as provided in paragraph (2) of this subsection, the recording of the testimony presented to the Hearing Officer;
2. All exhibits and other papers filed with the Hearing Officer; and
3. The written findings and final order of the Hearing Officer.

(ii) If the violator requests a transcription of the recording, the violator shall pay the cost of the transcription.

(2) In lieu of a recording, the violator and the Code Official or the Director, as applicable, may present written summaries of the testimony presented to the Hearing Officer.

This Board is limited in its disposition of a case by way of Section 3-6-304. This Section states:

(a) Disposition options. In a proceeding under the subtitle, the Board of Appeals may:

- (1) Remand the case to the Hearing Officer;
- (2) Affirm the final order of the Hearing Officer; or
- (3) Reverse or modify the final order if a finding, conclusion, or decision of the ... Hearing Officer
 - (i) Exceeds the statutory authority of jurisdiction of the...Hearing Officer;
 - (ii) Results from an unlawful procedure;
 - (iii) Is affected by any other error of law;
 - (iv) ...is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - (v) Is arbitrary or capricious.

“With regard to agency factual determinations, the standard of review is whether the finding is ‘unsupported by competent, material, and substantial evidence in light of the entire

record as submitted,' also known as substantial evidence review." *Charles County Dep't of Soc. Servs. V. Vann*, 382 Md. 286, 295 (2004) (citations omitted). A reviewing body gives less deference to an agency's legal conclusions, and will not uphold an administrative decision premised solely upon an erroneous conclusion of law. *HNS Dev. LLC v. People's Counsel*, 425 Md. 436, 449 (2012). Judicial review of an agency decision does not involve an independent decision on the evidence; instead, a court is limited to determining whether there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. *United Parcel Serv., Inc. v. People's Counsel for Baltimore Cnty.*, 336 Md. 569, 577 (1994).

DISCUSSION

Nova Solar appealed then to this Board, pursuant to Baltimore County Code ("BCC"), §3-6-301, arguing that the EAB erred in several respects, including that the issue of the second violation is not addressed at all in the EAB's ruling; that the PV Guidelines requiring that PV Circuits run inside a building must be installed in a raceway or metal jacketed cable is not an enforceable code because the BCC §21-7-303 requires that "all electrical installations shall conform to the National Electrical Code, NFPA 70, published by the National Fire Protection Association, latest edition, as it now exists or as it may from time to time be amended" (the latest edition at the time of this denial being the 2023 NEC), that the 2023 NEC definition of PV Circuits includes DC conductors and not AC conductors, and that therefore the Department of Permits, Approvals, and Inspections was usurping legislative authority from the County Council in adopting a requirement beyond what was required by the BCC; that the EAB admitted in its ruling that it could find no violation of the NEC and had improperly adopted rules that "go above

the requirements of the NEC”; and that the ruling failed to make any claim as to where it derived authority to treat the PV Guidelines as enforceable.

Baltimore County dismissed the second violation, concerning the placement of the attic wiring, conceding that the fire code allows AC circuits to be run in this fashion. The County further conceded that the EAB “deliberated on the appeal and issued a decision without conducting a hearing or otherwise allowing Petitioner to speak before the Electrical Board,” stating that “the decision itself makes no factual findings or legal analysis that explains how the Electrical Board arrived at its conclusions.” Therefore, the Appellant was not afforded due process of law in the proceedings before the EAB.³

It is also the case that the Appellant, from neither the original code denial letter nor from the EAB’s appellate letter, would have any idea how to determine which code it was supposed to use, because the County agencies rely entirely on a pdf posted online, without citing the authorizing legislation or code reference. Moreover, the page relied on, erroneously states that “Effective September 1, 2017, Baltimore County adopted the 2017 National Electric [sic] Code.” Although this may have been the code that controlled at the time the PV Guidelines document was posted, the County’s position does not account for the rolling adaptation of the updated electrical code each year pursuant to §27-1-303, nor how the previously adopted exceptions and definitions of terms from the 2014 electrical code still pertain.⁴

Neither the initial denial by the county inspector, nor the EAB letter, gave the appellant any understanding that the County’s position relied upon an interpretation that the county

³ The County also admits that although the EAB is required to promulgate rules of procedure, it has not done so.

⁴ Section 201.3 of Bill 40-15 states, “WHERE TERMS ARE NOT DEFINED IN THIS CODE AND ARE DEFINED IN THE ... NATIONAL ELECTRICAL CODE, 2014 EDITION ... SUCH TERMS SHALL HAVE THE MEANINGS ASCRIBED TO THEM AS IN THOSE CODES.”

building code incorporated definitions of terms from the 2014 NEC and not the current version of the code, or from where it derived its definition of Photovoltaic Wiring. The EAB opinion, in fact, seemed to say that Nova Solar was in conformance with the NEC, and that the “stricter” interpretation of the law was its own, and not that the County Council had adopted a set of definitions from 2014, and not from the current electrical code, that the EAB considered to be controlling. In fact, the County revealed to the Appellant the statutory basis for the denial for the first time before this Board.

Specifically, the County argued that any photovoltaic wiring between a modular to a combiner or junction box must be in a raceway or track, pursuant to Part 128.11 of Baltimore County Council Bill 40-15. Bill 40-15 is the authorizing statute for the county’s adoption of the most recent version of the NEC into its own building code.

The Appellant counters that no such wiring exists in the installation because the DC wiring that leaves the module goes directly into the inverter, which is on the roof, and that any wiring coming off the roof is AC. And that the definition of photovoltaic wiring from the 2014 NEC, which the County argues is operative, includes only DC circuits. In support of this, Appellant offers the definitions found at part 690.3 of the 2014 NEC of Photovoltaic Output Circuit, Photovoltaic Power Source, and Photovoltaic Source Circuit, each of which refers to applying only to DC power and DC equipment.

The County offers that the definition of the term Photovoltaic System, found in Article 100 of the 2014 NEC, controls, and that because Photovoltaic System is defined as “[t]he total components and sub-system that, in combination, convert solar energy into electric energy suitable for connection to a utilization load” that “photovoltaic wiring” consists of both DC and AC circuits, which then requires that all wiring must be in a raceway or track.

We do not agree. It is not at all clear that this general definition of Photovoltaic System, which necessarily includes all of the parts of the installation, including the wiring, can be said to include Photovoltaic Wiring, which is more similar to the definitions later in the article, and even if it were included under the term Photovoltaic System we do not see how the definition of the term photovoltaic system is applicable to the issue of whether the final wiring mentioned in Section 128.11 has to be run in a raceway or track. We think that Solar Photovoltaic Wiring, as applied to the “final wiring from the last modular of the array to the combiner or junction box” is not applicable in this case because, as the Appellant has argued, there is no such wiring in this installation.

Regardless, the County made the above arguments for the first time before us, and they were never raised before the EAB. Therefore, even if we did not find the Appellant’s arguments more compelling, we would be required to disregard those made by the County pursuant to BCC 3-6-306(a), as they have not been properly preserved and are not part of the record.

DECISION

Notwithstanding the due process issues, the County argues that this case should be remanded to the Electrical Board, which has the subject matter expertise to analyze the arguments before it. We decline to do so because we believe that remanding the matter to the EAB based on the definition of Photovoltaic Wiring as we understand it, above, would not result in a finding other than what we order today; and that therefore justice will not be served by further proceedings below when the substantial merits of the case can be determined herein. We therefore decline to remand.

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Based on the lack of due process provided by the EAB during the conduct of its hearing, including not having any rules and procedures, and the failure of the County to preserve at the lower levels any of the arguments made before this Board, we reverse the decision of the EAB.

ORDER

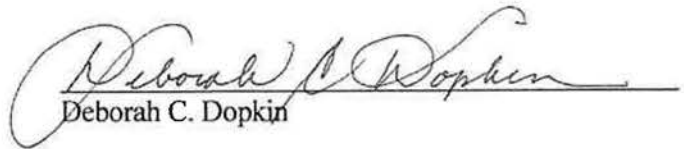
THEREFORE, IT IS THIS 25th day of April, 2024, by the Board of Appeals of Baltimore County:

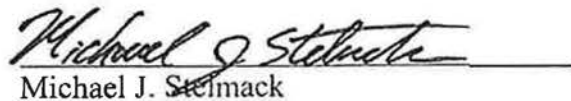
ORDERED, that the decision of the Electrical Hearing Board dated September 25, 2023, regarding the Denial of Electrical Permit #RE23-06026 be and is hereby **REVERSED** and that; and it is further

ORDERED, that Electrical Permit #RE23-06026 be granted to Nova Solar, Inc.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Deborah C. Dopkin


Michael J. Steimack

IN THE MATTER OF
MARK ROMIG, APPELLANT
11317 MAYS CHAPEL ROAD
LUTHERVILLE-TIMONIUM, MD 21093

* BEFORE THE
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RE: Appeal of denial of Electrical Permit
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* * * * *

CONCURRENCE AND DISSENT

I concur with my colleagues regarding the propriety of how the Electrical Administrative Board of Baltimore County (“EAB”) handled its review of the electrical work in this matter and the defective process by which it refused to approve the project. I dissent as to the specific remedy that I believe is appropriate.

The EAB’s process was simply wrong. There is no reason to have major confusion about which requirements apply and then be denied the opportunity to be heard. However, as enticing as it might be to rule on the merits, it is my view that we lack the expertise to do so. We are attorneys, not electricians. I am reluctant to rule upon the technical requirements necessary for the safe installation of residential solar power systems. The County has suggested that this case should be remanded to the Electrical Board, which has the subject matter expertise to analyze the arguments before it. I would accept the County’s suggestion that this matter be remanded for a full hearing by the EAB for a resolution of the technical issues presented. I would require that this hearing comport with all of procedural due process requirements applicable to administrative proceedings, and I would direct the County Attorney to ensure that all procedural requisites are adhered to.

In the matter of: Mark Romig
Case No.: CBA-24-014

April 25, 2024



Joseph L. Evans, Chair



Board of Appeals of Baltimore County

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April 25, 2024

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Mark Romig
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RE: *In the Matter of: Mark Romig*
Case No.: CBA-24-014

Dear Messrs. Merrick and Romig:

Enclosed please find a copy of the final Opinion and Order, and Concurrence and Dissent, issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in blue ink that reads "Sunny Cannington" with a stylized flourish at the end.

Krysundra "Sunny" Cannington
Legal Administrative Secretary

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Barklie Estes, Master Electrician/Nova Solar, Inc.
Tyrone Basham, Electrical Department/PAI
Robert Roby, Executive Secretary/Electrical Administrative Board
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law