

Circuit Court for Montgomery County
Case No. 450427V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 61

September Term, 2019

CHRISTOPHER J. CARTER

v.

MONTGOMERY COUNTY, MARYLAND

Meredith,
Nazarian,
Wells,

JJ.

Opinion by Wells, J.

Filed: April 30, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Christopher Carter, appellant, filed an application with the Montgomery County Department of Permitting Services (DPS) for a permit to self-install a solar energy-generating photovoltaic system on his residential property. DPS denied the permit application because it was not signed by a master electrician. Mr. Carter then appealed to the Montgomery County Board of Appeals (“the Board”). The Board found that DPS properly denied the permit and granted a motion for summary decision filed by Montgomery County, appellee.

Mr. Carter then filed a petition for judicial review in the Circuit Court for Montgomery County.¹ The circuit court affirmed the Board’s decision. This appeal followed, in which Mr. Carter presents three questions for our review, which we have distilled into one:

Did the Board of Appeals err in concluding that a photovoltaic system is not “electrical equipment” within the meaning of Montgomery County Code §17-18(b)?²

¹ Pursuant to Article V, § 2-114 of the Montgomery County Code, which governs the Montgomery County Board of Appeals, a party aggrieved by a decision of the Board may seek judicial review in the Circuit Court. The same provision grants a right of appeal to this Court to a party aggrieved by a decision of the Circuit Court.

² The verbatim questions presented in Mr. Carter’s brief are:

1. Was it lawful for DPS to deny the permit applied for by the Appellant for the reason that the homeowner applicant, defined in MCC [Montgomery County Code] Sec 17-18(b), did not hold a Master’s Electrician license, when the homeowner applicant applied in full compliance as provided in Chapter 17 (MCC Sec 17-18 and 17-29) and as published on the DPS website to take the electrical exam offered by DPS for establishing qualification under MCC 17-29?

For the reasons that follow, we shall affirm the judgment of the circuit court.

APPLICABLE COUNTY CODE PROVISIONS

Resolution of the issue before us requires application and interpretation of Montgomery County Code provisions and County regulations that govern the issuance of electrical permits. Accordingly, it is helpful to provide an overview of those provisions and regulations before reciting the facts.

Chapter 17 of the Montgomery County Code, entitled “Electricity[,]” applies to “all electrical equipment and the installation thereof for light, heat or power within or on public or private buildings, structures or premises[.]” Montgomery County Code §17-1.³

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2. Was the Board of Appeals’ (BOA) finding that Photovoltaic (PV) Solar equipment described in the permit application No 823534 to be installed by the appellant was not “Electrical Equipment” under the law according to the definitions and terms in the MCC Chapter 17-11 legally correct when there is no provision in the county code for an electrical permit if it does not qualify as Electrical Equipment under the MCC scope and definitions?

 3. Were the findings, Opinions and Order February 8, 2019 of the Circuit Court entered lawfully correct that there is “distinguishing language” between the terms “Electrical Equipment” and “Electric Systems” and sufficient definition of the term “Electrical Systems” under the MCC and the NEC to both warrant different handling and in effect substantive exemption from the provisions of the County Code with suitable distinguishing guidance on specific provision applicability of the County Code to allow DPS to conflict with provisions 17-28 and 17-29 of the MCC?

³ All references herein to §17-1, *et seq.*, are to Chapter 17 of the Montgomery County Code.

Montgomery County has adopted the 2014 National Electrical Code (NEC) as the “basic electrical code for the county[,]” subject to local amendments. §17-3. *See also* Code of Montgomery County Regulations (COMCOR) 17.02.01.03. The administration and enforcement of Chapter 17 is the responsibility of the County’s Department of Permitting Services. §17-4.

A permit is required for the installation of any electrical equipment that is subject to Chapter 17 of the County Code, except for certain exceptions which are not applicable here. §17-29. Permit applications must be signed by a master electrician or a master electrician limited, subject to limited exceptions.⁴ §17-29(b).

⁴ County Code § 17-11 defines “master electrician” and “master electrician limited” as follows:

Master electrician: A person licensed by the County as qualified to install, repair, maintain and erect electrical wiring, equipment, apparatus and systems, within the purview of the electrical code of the County, including, but not limited to, electrical raceways, conductors, fixtures, signs, motors, switchgears and distribution systems, fixed electrical heating systems or any other fixed or stationary electrical equipment or apparatus which conducts or consumes electricity.

Master electrician limited: A person licensed by the County as qualified to install, repair and maintain a particular appliance, apparatus, device or fixture within the purview of the Montgomery County electrical code and limited to a branch circuit or feeder for elevators; gasoline pumps; automatic heating furnaces whose principal operation is derived from fuel oil, gas, steam, solar panels or coal; lighting fixtures; refrigeration and air conditioning equipment; illuminated signs and similar specialties; or limited to equipment for a plant, factor [sic], apartment complex or any other public occupancy employing maintenance forces; fire alarm systems and electronic equipment; or major appliances; all employing the use of the electrical current or connections and such other classes designated in accordance with Section 17-22of the Chapter.

One exception to the requirement that a permit application be signed by a master electrician or master electrician limited is if the permit is signed by a homeowner pursuant to §17-18. *Id.* Section 17-18(b) allows a homeowner who is not a licensed electrician to install, repair or maintain “electrical equipment” in their home, and provides as follows:

(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.

Here, the issue is whether a photovoltaic system is “electrical equipment” for purposes of §17-18(b). The County Code defines “electrical equipment” in §17-11 as follows:

The 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.

Under §17-18, a homeowner who applies for a permit to install, repair, or maintain electrical equipment in their residence must “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[.]” §17-18(c). A permit must be issued “[i]f the Director finds that the designated person is qualified to perform the proposed electrical work[.]” *Id.*

FACTUAL BACKGROUND

In January 2018, Mr. Carter applied, pursuant to §§17-18 and 17-29, for a permit to install a photovoltaic system at his home. A photovoltaic (or PV) system is defined as “the

total components and subsystem that, in combination, convert solar energy into electric energy suitable for connection to a utilization load.” NEC, Article 100, 70-33.⁵

The permit application included the following certifications:

I am the owner of the residence at the address shown above, intending to install and maintain the electrical systems on my residence, which is for my use and am applying for the permit pursuant to Montgomery [C]ounty Code Chapter 17, Sections 17-18 and 17-29. Based on the manufacturer’s specifications and the National Electric Code (2014 NEC), I prepared the electrical drawings and related documents for the photovoltaic (PV) system for the above location.

I am prepared to show the Director that I am 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, as specifically provided in Montgomery County Code Section 17-18(c).

The design of the PV system, and all electrical installations and equipment, meets the standards and requirements of the National Electrical Code as adopted by Montgomery County in COMCOR 17.02.01.

DPS rejected Mr. Carter’s permit application because it was not signed by a master electrician. Mr. Carter noted an appeal to the Montgomery County Board of Appeals.

The parties then filed cross-motions for summary decision, which were argued at hearing on April 25, 2018.⁶ Mr. Carter asserted that the photovoltaic system he sought to

⁵ All references to the NEC are to the 2014 edition.

⁶ Rule 3.2.2 of the Montgomery County Board of Appeals Rules of Procedure provides as follows:

Motion for summary disposition. Any party may file a motion to dismiss any issue in a case on the grounds that the application and other supporting documentation establish that there is no genuine issue of material fact to be resolved and that dismissal or other appropriate relief should be rendered as a matter of law.

install was “electrical equipment” within the meaning of the exception to the licensing requirement in §17-18(b). According to him, DPS should have issued him a permit once he demonstrated, under §17-18(c), that he was qualified to perform the proposed work. Further, he claimed that, because the definition of “electrical equipment” in §17-11 included the phrase “anything else under the purview of the electrical code of the County,” that included photovoltaic systems since the section of the NEC specific to photovoltaic systems “uses the term equipment to list all the photovoltaic equipment.” In support of his argument, Mr. Carter pointed to the following provision in NEC Article 690 (“Solar Photovoltaic (PV) Systems”):

690.4 General Requirements

...
(B) Equipment. Inverters, 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.

The County, on the other hand, asserted that DPS properly denied the permit as a matter of law, because the term “electrical equipment” does not include *energy-generating* devices such as a photovoltaic system.⁷

⁷ The County also asserted that DPS properly denied the permit application because Mr. Carter failed to present DPS with evidence upon which it could determine that he was qualified to perform the work. Mr. Carter asserts that DPS was obligated, pursuant to §17-18(c) to assess his qualifications. As we find no error in the Board’s conclusion that the exception in § 17-18(b) does not apply to the work proposed in the permit application at issue, the nature and extent of Mr. Carter’s qualifications are irrelevant.

Chief among the exhibits before the Board was a two-page email sent to Mr. Carter from Diane Schwartz Jones, the Director of DPS, in which she explained why the term “electrical equipment” did not include photovoltaic systems. In the email, Director Schwartz Jones advised that the reference, in the definition of “electrical equipment,” to “any other equipment coming within the purview of the electrical code of the County” means “equipment” as that term is defined in the NEC:

Equipment: A general term, including fittings, devices, appliances, luminaires, apparatus, machinery, and the like used as part of, or in connection with, an electrical installation.^[8]

Director Schwartz Jones further explained that the kind of electrical work that is “intrinsic to a household’s usage of electricity from the meter box forward” was defined in the County Code’s definition as “electrical equipment.” But a photovoltaic system, which produces electricity, was not included in either of the NEC’s definitions of “equipment.” [Apx. 32] She noted that the intent of the licensing exception in §17-18(b) “was to allow a homeowner the ability to perform less restrictive work on his or her property while leaving more critical installations to licensed professionals.”

Before the Board, Director Schwartz Jones reiterated, as she had to Mr. Carter in her email, that, for purposes of §17-18(b), the term “electrical equipment” was interpreted using the general definition of “equipment” in Chapter 1 of the NEC, which does not include anything that generates power. She distinguished the type of equipment listed in the general definition from a photovoltaic system which creates energy, and, therefore “has

⁸ NEC Article 100, 70-30.

its own very specific provisions and very specific definitions” in a separate chapter of the NEC.

After the hearing, the Board issued a written order denying Mr. Carter’s motion for summary decision but granting the County’s same motion. The Board based its decision on a finding that the photovoltaic system Mr. Carter sought to install was not “electrical equipment” within the meaning of § 17-18(b). The Board explained its findings as follows:

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, [photovoltaic or] 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.

Mr. Carter filed a petition for judicial review of the Board’s decision in the circuit court. Following a hearing on the petition, the court affirmed the decision of the Board. This appeal followed.

STANDARD OF REVIEW

“In reviewing a circuit court decision on appeal from an administrative agency decision, our role is precisely the same as that of the circuit court.” *Assateague Coastkeeper v. Maryland Dep’t of Env’t*, 200 Md. App. 665, 691 (2011) (citations and internal quotation marks omitted). “We review[] the agency’s decision, and not that of the circuit court.” *Id.* (citations and internal quotation marks omitted).⁹ Our role is narrow and is “limited to determining if 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.” *Motor Vehicle Admin. v. Weller*, 390 Md. 115, 141 (2005) (citation omitted). We “review the agency’s decision in the light most favorable to the agency, since decisions of administrative agencies are *prima facie* correct, and carry with them the presumption of validity.” *Motor Vehicle Administration v. Medvedeff*, 466 Md. 455, 465 (2019) (citation omitted).

As the Court of Appeals has recognized, “[a]dministrative agencies possess an ‘expertise’ and, thus, have a greater ability to evaluate and determine the matters and issues that regularly arise, or can be expected to be presented, in the field in which they operate or in connection with the statute that they administer.” *Adventist Health Care, Inc. v. Maryland Health Care, Com’n*, 392 Md. 103, 119 (2006). When an appellate court reviews an administrative decision, its task “is not to substitute its judgment for the expertise of

⁹ Because we limit our review to the agency’s decision, we do not consider, nor will we address any of the challenges Mr. Carter raises in the third question presented in his brief.

those persons who constitute the administrative agency. . . . [T]he expertise of the agency in its own field should be respected.” *Id.* (quoting *Board of Physician Quality Assur. v. Banks*, 354 Md. 59, 68-69 (1999) (internal quotation marks and additional citations omitted)).

Although a case involving the interpretation and application of Maryland statutory and case law is reviewed *de novo*, “a reviewing court should give weight to the administrative agency’s interpretation and application of the statute that the agency administers.” *Motor Vehicle Administration v. Smith*, 458 Md. 677, 686 (2018). *Accord Assateague Coastkeeper*, 200 Md. App. at 690 (“an administrative agency’s interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts.” (citation omitted)); *Adventist Health*, 392 Md. at 119 (“the interpretation of a statute by the agency charged with administering the statute is entitled to great weight.”) This is especially true when the statute is ambiguous or unclear. *Maryland Ins. Com’r v. Central Acceptance Corp.*, 424 Md. 1, 16 (2011) (citations omitted).

DISCUSSION

On appeal, Mr. Carter reasserts the same claim he made before the Board, namely that photovoltaic systems are included in the definition of “electrical equipment,” because (1) the definition includes the phrase, “any other equipment coming within the purview of the electrical code of the County[,]” and (2) Article 690 of the NEC, which relates specifically to photovoltaic systems, employs the term “equipment” to refer to various

components of a PV system.¹⁰ The County argues that DPS correctly interpreted the electrical code in determining that photovoltaic systems are not “electrical equipment” for purposes of §17-18(b).

The question before us is one of statutory interpretation: Does the term “electrical equipment” in §17-18(b) include a photovoltaic system? If the answer is yes, then a permit should have been issued after the Board determined that Mr. Carter was qualified to perform the work. If the answer is no, then the exception to the requirement found in §17-18(b), that a permit application be signed by a master electrician, does not apply, and therefore, the Board correctly concluded that DPS properly denied the application.

As stated, we give some weight to an agency’s interpretation of a statute which it administers. “In determining the weight to be accorded an agency’s interpretation of a statute, we consider the extent to which the agency engaged in a process of reasoned

¹⁰ Mr. Carter points to the following two provisions in Article 690 of the NEC, where the word “equipment” is used to refer to various components of a photovoltaic system:

690.2 Definitions

...

Inverter. Equipment that is used to change voltage level or waveform, or both, of electrical energy. . . .

690.4 General Requirements

...

(B) Equipment. Inverters, 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.

deliberation in interpreting the statute.” *General Motors Corp. v. Bannings Beltway Pontiac*, 138 Md. App. 671, 675 (2001). “[W]hen an agency clearly demonstrates that it has focused its attention on the statutory provisions in question, thoroughly addressed the relevant issues, and reached its interpretation through a sound reasoning process, the agency’s interpretation will be accorded the persuasiveness due a well-considered opinion of an expert body.” *Id.* at 676 (quoting *Haigley v. Department of Health & Mental Hygiene*, 128 Md. App. 194, 216-17 (1999)). *Accord*, *Maryland Office of People’s Counsel v. Maryland Public Service Com’n*, 226 Md. App. 483, 505 (2016).

It is apparent from our review of the record that, in denying the permit at issue, Director Schwartz Jones focused on the statutory provisions at issue, specifically, the definition of “electrical equipment” under §17-18(b). We are satisfied that the Director addressed the relevant issues and employed a sound reasoning process in explaining how and why the County’s electrical code specifically limits the electrical equipment that a homeowner may install, without possessing an electrician’s license, to energy-consuming items.

Accordingly, we conclude that the Director’s interpretation of the relevant code provisions of the County’s electrical code is entitled to considerable weight and deference. We further conclude that the Board did not err in determining that, because a photovoltaic

system is not “electrical equipment” within the meaning of §17-18(b), DPS properly denied Mr. Carter’s permit application.¹¹

¹¹ To avoid cluttering the opinion with the subsidiary issues Mr. Carter raises, we address them in this footnote.

1. Mr. Carter argues that the Board erred in concluding that §17-18(b) applied to electrical consuming items, and not to electrical generating systems, because neither the County Code nor the NEC distinguish between energy-consuming and energy-generating functions in its definitions. Mr. Carter, however, does not dispute that the only examples of electrical equipment in the relevant definitional provisions are those which consume electricity. Accordingly, we find no significance in the fact that the definitions do not specify that the items of equipment that are listed are energy-consuming, as opposed to energy-generating.
2. Mr. Carter further asserts that “[t]he alleged distinguishing terminology” between “electrical equipment” and an energy-generating “system” cannot justify the Board’s conclusion because neither the County Code nor the NEC uses or defines the term “electrical system.” As the County points out, the County Code distinguishes between the two in defining “master electrician” as someone who is licensed as qualified to “install, repair, maintain and erect electrical . . . equipment . . . and systems.” In addition, Section 690.1 of NEC refers to photovoltaic systems as “electrical energy systems.”
3. Finally, Mr. Carter suggests the following syllogism: If we agree with the Board that a photovoltaic system is not within the definition of “electrical equipment,” then Chapter 17 of the County Code, which applies “to all electrical equipment and the installation thereof,” does not apply to photovoltaic systems and, thus, DPS has no statutory jurisdiction over them. The issue before us is limited to whether the Board erred in concluding that photovoltaic systems are electrical equipment within the meaning of §17-18(b), not whether the electrical code of Montgomery County applies to photovoltaic systems at all. Nonetheless, we note that Mr. Carter’s argument suggests a regulatory interpretation that is “absurd, illogical, or incompatible with common sense.” See *e.g. Robinson v. Baltimore Police Dep’t.*, 424 Md. 41, 51 (2011) (“we must avoid a construction of a statute that is ‘absurd, illogical, or incompatible with common sense.’”) (citation omitted).

Mr. Carter interprets §17-18(b), and the specific definitions that apply, to mean that photovoltaic systems must be considered “electrical equipment” because the word “equipment” twice appears in NEC Article 690 referencing components of a photovoltaic system, even though the items listed in the NEC definition of “equipment” do not include photovoltaic systems or its components. This is a strained interpretation. At best, Mr. Carter’s argument hints at a possible ambiguity. If that were the case, the considerable weight afforded to DPS’ interpretation of the electrical code, which it enforces, would compel the same conclusion.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**