



Board of Appeals of Baltimore County

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February 19, 2014

Johnny G. Brown, Sr.
2704 Norfen Road
Baltimore, MD 21227

RE: *In the Matter of: Johnny G. Brown, Sr. -- Applicant/Appellant*
Case No.: CBA-14-024

Dear Mr. Brown:

Enclosed please find a copy of the final Opinion and Order 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 cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

Enclosure

c: Earl Beville, Assistant Manager/Investigative & Security Division/Motor Vehicle Administration
W. William Korpman, III, Chief/Bureau of Traffic Engineering
Stephen E. Weber, Chief/Division of Traffic Engineering
Mark Gonc, Inspector/Division of Traffic Engineering
Edward Adams, Jr., Director/DPW
Nancy West, Assistant County Attorney
Michael Field, County Attorney

IN THE MATTER OF
JOHNNY G. BROWN, SR.
2704 NORFEN ROAD
BALTIMORE, MD 21227

RE: DENIAL OF RESERVED
HANDICAPPED PARKING SPACE

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO: CBA-14-024

* * * * *

OPINION

This case comes to the Board of Appeals as the result of the denial of a reserved handicapped parking space at 2704 Norfen Road, Baltimore, Maryland, 21227, by the Baltimore County Division of Traffic Engineering in a letter dated October 25, 2013, to Mr. Earl Beville, Assistant Manager, Investigative and Security Division, Motor Vehicle Administration (MVA), from Stephen E. Weber, P.E. Chief, of the Baltimore County Division of Traffic Engineering (County Exhibit No. 5). A copy of that letter was sent to Johnny G. Brown, Sr., along with a copy of the County policy with respect to handicapped parking spaces.

The Board held a public hearing on January 28, 2014, at 10:00 a.m. Baltimore County was represented by Edward Reed, Traffic Inspector in the Baltimore County Division of Traffic Engineering and Stephen E. Weber, P.E. Chief, of the Baltimore County Division of Traffic Engineering. Johnny G. Brown, Jr., appeared pro se.

BACKGROUND

Mr. Reed testified that his office received an application and letter from the MVA dated October 10, 2013, concerning a request for a reserved handicapped parking space for Mr. Brown, Appellant (County Exhibit No. 1). The County indicated that, on the basis of the State's

finding that Mr. Brown was disabled, the County would not contest her disability.

Mr. Reed visited the property on October 22, 2013 and took photographs of the front and rear of the property (County Exhibits Nos. 2a-2b). Mr. Brown's home is not an end of group unit of row homes in the Halthorpe Community. County Exhibit 2a shows the rear of the house which has an off street parking pad and one landing step into the house.

Exhibit 2a shows the front of the house; which has four steps plus a landing step into the house and handrails the side.

The County does not dispute Mr. Brown's disability as same had been certified by the State. However, at the time the application was reviewed by the County, the disability had not been verified. Regardless, the County did investigate the application to determine if Mr. Brown, if disabled, met the criteria for a reserved, on street handicapped parking space. Maryland law states that, in Baltimore County, once a person has been determined to be disabled, establishment of a reserved handicapped parking space is subject to the approval of the Baltimore County Department of Traffic Engineering, in accordance with the charter and public local laws of the County (County Exhibit No. 3). Mr. Reed testified that Brown's home did not meet the requirements of the Baltimore County policy on reserved parking spaces for person with physical disabilities (County Exhibit No. 4) as this property has a parking pad in the back of his home. Accordingly, he testified that the request does not meet the requirements of Section 3(B) or 3(C) or the exceptions set forth in Section 3(G). Sections 3(B) and (C) of the Baltimore County Policy on Reserved Parking Spaces for Persons with Physical Disabilities state:

(B) A reserved on-street parking space will not be authorized for any applicant whose property has a self-contained off-street parking area or where off-street parking is provided to the applicant by private sources. This item shall apply to all properties regardless of the time they were built or subdivided. (The

property shall be considered to have an available off-street parking area if the aforementioned area existed at the time that the applicant purchased or moved into the property or if it was made available at any subsequent time. If a parking pad, driveway, concrete ribbons, garage, soil stabilized area, etc., was removed or made inaccessible at any time after the applicant purchased or moved into the property, the parking area shall still be considered to exist for purposes of this policy.

Section 3(C) states:

(C) The property shall be evaluated on whether the off-street parking area exists, NOT on whether an off-street parking area is available for use. In addition, the placement of any non-permanent objects on top of a parking area (e.g., boats, campers, trailers, above-ground pools, sheds, etc.) will not in any way alter the recognition that the parking area does in fact exist.

Section 3(G) sets forth the exceptions and states:

(G) The DTE may grant an exception to the condition in Paragraph (B) above if the Appellant has a physical disability that limits mobility and/or requires the use of a wheelchair, scooter, walker, crutches, etc., AND that same applicant has constructed a ramp from the house to the street to provide for their mobility. The on-street parking must be more accessible than any off-street space that exists on applicant's property. The DTE may consider the granting of an exception to the condition in paragraph (B) above where extremely unique circumstances and hardships exist due to physical characteristics of the property and the applicant's disability. Additional medical certification may be required to provide sufficient documentation of physical limitations caused by the disability.

On October 25, 2013, a letter was sent to Mr. Earl Beville by Stephen E. Weber, P.E., Chief, Division of Traffic Engineering, conditionally denying Mr. Brown's request as it did not conform with Item 3B. A copy of the denial letter was sent to Mr. Brown along with a copy of the County's policy (County Exhibit No. 5). The reason for the conditional denial was that the State, at that point, had not verified Mr. Brown's disability. On December 11, 2013, Mr. Brown sent a letter to Mr. Weber asking him to reconsider his denial. On January 27, 2014, Mr. Weber received a letter from Mr. Beville verifying Mr. Brown's disability (County Exhibit 6).

There are two ways that a person can obtain an application for a reserved on street handicapped parking space. In this case, Mr. Brown mailed his application directly to the County without going through the MVA. The reason for the conditional denial was that the County concluded its investigation prior to receiving the MVA's disability letter. After the County received the letter verifying Mr. Brown's disability, the County's position did not change. The County was not aware that Mr. Brown used a wheelchair, however for him to be entitled to an exemption under Section 3G, Mr. Brown would need to have a mobility device and have constructed a ramp into his house.

Mr. Brown testified on his own behalf. He explained that the parking pad leads into his basement and there are 14 steps for him to get to the main level if he enters from the basement. He has multiple health problems and has been in a wheelchair for four years. His house is on a hill and he lives in the middle of a row of townhouses. If he parks on the pad, his wife has to push him around to the front of the house. He can walk a little and can maneuver the four steps in the front. He cannot maneuver the 14 steps in the house to get to the main level. Mr. Brown's son, Johnny G. Brown, Jr. testified next. He testified as to the problems getting Mr. Brown into the house when they use the parking pad. Mr. Brown's wife, Gloria Brown, also testified. They have had a handicapped parking tag since 2010. They originally received the tag because Mr. Brown had a kidney transplant. Since then, Mr. Brown has had many more health issues.

DECISION

In order to reverse the decision of the Baltimore County Division of Traffic Engineering with respect to handicapped parking spaces; Section 8 of the County Policy requires that the Board find that the Applicant meets all of the conditions set forth therein.

The conditions are as follows:

(A) The applicant and/or their household have taken all reasonable measures to make the off-street parking area usable and available to the disabled applicant.

(B) The disability of the applicant is of such a severe degree that an extreme hardship would exist if the applicant were to use the available off-street parking.

(C) The approval of a reserved on-street space is determined to be one of medical necessity and not one of mere convenience for the applicant.

(D) The hardships placed on the applicant's neighbors by reserving an exclusive on-street space for the applicant is outweighed by the hardship that would be placed on the applicant if the space were not approved.

After reviewing the testimony and evidence presented, the Board has determined that the decision of the Baltimore County Division of Traffic Engineering should be reversed and that the application for the reserved handicapped parking space should be granted. Mr. Brown has a parking pad in the rear of his home. He has made all reasonable efforts to use same. Due to no fault of own, he cannot use the pad because he is unable to walk the 14 steps which lead from the basement to the main level of his house. He can walk up the four steps to get into the front door. For him to use the parking pad would require his wife or son to push him around the row of townhouses and up a hill to the front of his house. This Board believes that because of Mr. Brown's physical conditions, his need for a wheelchair, his inability to maneuver the 14 steps to the main floor of his house, requiring parking in the rear would create an extreme hardship to Mr. Brown and his family.

In conclusion, the Board will overturn the denial of the Baltimore County Division of Traffic Engineering and will GRANT the Appellant's request for a reserved handicapped parking space 2704 Norfen Road, Baltimore, Maryland 21227.

ORDER

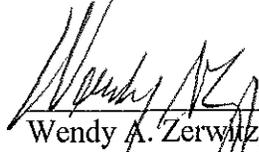
Therefore, it is this 19th day of February, 2014, by the Board of Appeals of Baltimore County

ORDERED that the decision of the Division of Traffic Engineering in Case No. CBA-14-024, be and the same is hereby **REVERSED**; and it is furthered

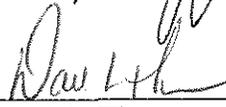
ORDERED that the application of Johnny G. Brown, Sr. for a reserved handicapped parking space at 2704 Norfen Road, Baltimore, MD 21227 be and the same is hereby **GRANTED**.

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*.

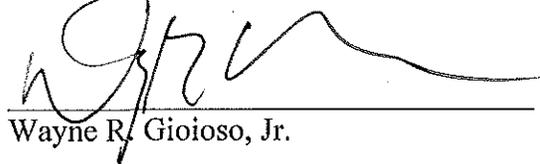
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Wendy A. Zerwitz, Chairperson



David L. Thurston



Wayne R. Gioioso, Jr.