



Board of Appeals of Baltimore County

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November 20, 2015

Ms. Denise Yvette Fortson
5425 Whitlock Road
Baltimore, Maryland 21229

RE: *In the Matter of: Denise Yvette Fortson, Applicant/Appellant*
Case No.: CBA-16-005

Dear Ms. Fortson:

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 Ham".

Krysundra "Sunny" Cannington
Administrator

KC/tam
Enclosure

c: Earl Beville, Assistant Manager/Investigative & Security Division/Motor Vehicle Administration
Michael F. Filsinger, Chief/Division of Traffic Engineering
Edward Adams, Jr., Director/DPW
Nancy C. West, Assistant County Attorney
Michael E. Field, County Attorney

IN THE MATTER OF:
DENISE YVETTE FORTSON
5425 WHITLOCK ROAD
BALTIMORE, MD 21229

RE: DENIAL OF RESERVED HANDICAPPED
PARKING SPACE

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-16-005

* * * * *

OPINION

This case comes to the Board of Appeals (the “Board”) as the result of the denial of a reserved handicapped parking space at 5425 Whitlock Road, Baltimore, Maryland 21229 (the “Property”), by the Baltimore County Division of Traffic Engineering in a letter dated July 31, 2015, to Mr. Earl Beville, Assistant Manager, Investigative and Security Division, Motor Vehicle Administration (MVA), from Michael F. Filsinger, Chief of the Baltimore County Division of Traffic Engineering. A copy of that letter was sent to Denise Yvette Fortson, Applicant/Appellant, (“Ms. Fortson”) along with a copy of the County Policy with respect to handicapped parking spaces.

The Board held a public hearing on October 20, 2015, at 10:00 a.m. Baltimore County (the “County”) was represented by Michael F. Filsinger, Chief of the Baltimore County Division of Traffic Engineering, and Edward Reed, Traffic Inspector in the Baltimore County Division of Traffic Engineering. Ms. Fortson represented herself, *pro se*.

Mr. Reed testified that his office received an MVA application prepared by Ms. Fortson requesting a reserved parking space dated June 26, 2015 and a transmittal letter from Earl Beville, Assistant Manager – Investigation and Internal Affairs for the MVA, dated July 15, 2015, concerning Ms. Fortson’s a request for a reserved handicapped parking space (The MVA Application and the Letter from Mr. Beville together are County Exhibit #1). The County

indicated that, on the basis of the State's finding that Ms. Fortson is disabled, the County would not contest her disability.

Mr. Reed visited the property prior to the hearing before the board and took photographs of the front and rear of the property (County's Exhibits #2a-2d). The Property is an end-of-group townhouse located in Catonsville. County Exhibit 2a shows the front of the Property with four steps and one threshold into the house. County Exhibit 2b shows the rear of the Property. This photograph shows a garage located in the rear and the address of the Property affixed to the door of the garage. County Exhibit 2c also shows the rear of the Property and a ten steps plus one threshold leading up to the back door of the house. County Exhibit 2c also shows a rear parking pad located adjacent to the garage. County Exhibit 2d is a photograph of the general overview of the area showing the Property and the rear garage. Mr. Reed testified that for each set of front and rear steps there were hand rails. He also testified that the rear parking pad and the garage are classified as off-street parking.

Mr. Reed testified that the County did not dispute the legitimacy of Ms. Fortson disability because it had been previously certified by the State; however, based upon Section 21-1005 of the Maryland Transportation Article¹ (Reservation of Parking Space for Person Confined to Wheelchair) (See, County Exhibit #3) and Baltimore County Policy on Reserved Parking Spaces for Persons with Physical Disabilities (the "BC Policy") (See, County Exhibit #4), Ms. Fortson did not meet the requirements to be issued a reserved parking space for person with physical disabilities. Mr. Reed submitted into evidence a letter dated July 31, 2015 from Michael F. Filsinger, Chief of the Baltimore County Division of Traffic Engineering, to

¹ Section 21-1005(l) of the Maryland Transportation Article states that "In Baltimore County, the establishment of a personal residential parking space shall be subject to approval of the Baltimore County Department of Traffic Engineering, in accordance with the charter and public laws of Baltimore County."

Ms. Fortson denying her request for a reserved handicap parking space, (See, County Exhibit 5).

As the photographs clearly show, the Property has a garage and parking pad in the rear. The Photographs also show that, as of the date of the photographs, the Property does not have a ramp from the house to the street to provide for her mobility and access to the house. Sections 3(B), 3(C) and 3(G) of the BC Policy (Parking Space) state the following:

(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.

At the hearing, Ms. Fortson was ambulatory and did not require the use of a mobility aid device, such as a wheelchair. Ms. Fortson testified that it was very difficult for her to enter house from the rear entrance because of the many steps and her disability. She also testified that oftentimes cars and trucks illegally park in the rear alley which makes it difficult for her to park her vehicle in the rear of the Property. Ms. Fortson did not offer any evidence to refute or contradict the testimony and evidence offered by the County.

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 has 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.

The decision of the Baltimore County Division of Traffic Engineering shall be upheld and that the application for the reserved handicapped parking space should be denied. The facts show that Ms. Fortson has a parking pad and a garage in the rear of her Property. The facts also show that Ms. Fortson does not use a mobility aid at the present time and she has not constructed a ramp to assist her in getting into her home, as is required for an exception under Section 3(G). Moreover, there has been no evidence presented to show that extremely unique circumstances and hardships

exist due to the physical characteristics of the property which would also allow for an exception to be granted. After reviewing the testimony and evidence presented, the Board has determined that Ms. Fortson has not met the conditions set forth in Section 8 of the BC Policy, or Sections 3(B), 3(C) or 3(G) of the BC Policy to justify the County's issuance of a reserved parking space for a person with a physical disability.

ORDER

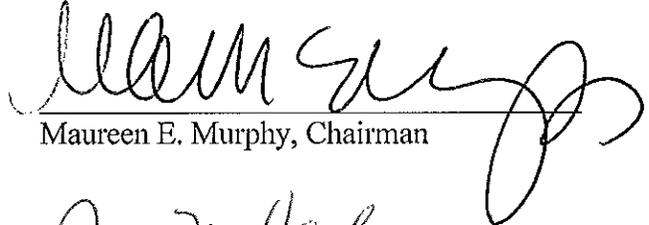
THEREFORE, IT IS THIS 20th day of November, 2015, by the Board of Appeals of Baltimore County,

ORDERED that the decision of the Division of Traffic Engineering in Case No. CBA-16-005 be and the same is hereby **AFFIRMED**; and it is further,

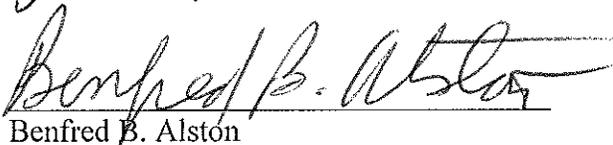
ORDERED that the application of Denise Yvette Fortson for a reserved handicapped parking space at 5425 Whitlock Road, Baltimore, Maryland, 21229 be and the same is hereby **DENIED**.

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**


Maureen E. Murphy, Chairman


Jane M. Hanley


Benfred B. Alston