



Board of Appeals of Baltimore County

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January 8, 2016

Ms. Myrtle E. Freeland
7924 Eastdale Road
Baltimore, Maryland 21224

RE: *In the Matter of: Myrtle Elizabeth Freeland*
Case No.: CBA-16-013

Dear Ms. Freeland:

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/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF:
MYRTLE E. FREELAND
7924 EASTDALE ROAD
BALTIMORE, MD 21224

RE: DENIAL OF RESERVED
HANDICAPPED PARKING SPACE

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-16-013

* * * * *

OPINION

This case comes to the Board of Appeals (the “Board”) as the result of the denial of an application for reserved handicapped parking space at 7924 Eastdale Road, Baltimore, Maryland 21224 (the “Property”), as set forth by letter dated September 1, 2015 by Michael F. Filsinger, Chief of the Baltimore County Division of Traffic Engineering to Mr. Earl Beville, Assistant Manager, Investigative and Internal Affairs, Motor Vehicle Administration (MVA). A copy of that letter was sent to Applicant/Appellant Myrtle E. Freeland (“Ms. Freeland”) along with a copy of the County Policy with respect to handicapped parking spaces.

The Board held a public hearing on December 2, 2015, at 10:00 a.m. Baltimore County (the “County”) was represented by James Cockrell, a Traffic Inspector for the Baltimore County Division of Traffic Engineering. Ms. Freeland represented herself *pro se*.

Mr. Cockrell testified that his office received a MVA Application for Personal Residential Permit for Reserved Parking Space for Ms. Freeland, dated July 27, 2015, and a transmittal letter, dated August 10, 2015, from Earl Beville, Assistant Manager – Investigation and Internal Affairs for the MVA. (The MVA Application and the August 10, 2015 Letter from Mr. Beville together are County Exhibit #1).

Following receipt of the Application, Mr. Cockrell visited and inspected the Property and

took photographs of the front and rear of the property (See County's Exhibits #2A-2B). The Property is an end-of-group townhouse located in Dundalk. County Exhibit 2A shows the front of the Property with two steps to the front door, with no handrails. County Exhibit 2B shows the rear of the Property and reveals a concrete pad, as well as six steps to the back door, with no handrails.

Mr. Cockrell, on the basis of the State's verification of physical disability, did not contest Ms. Freeland's disability. 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), the County concluded that Ms. Freeland did not meet the requirements to be issued a reserved parking space for person with physical disabilities. Mr. Cockrell submitted into evidence a letter dated September 1, 2015 from Mr. Filsinger, on behalf of the County, to Mr. Beville, denying Ms. Freeland's request for a reserved handicap parking space. (See County Exhibit #5). Ms. Freeland was copied on that letter and also was provided a copy of the BC Policy.

The BC Policy (County Exhibit #4) identifies the factors for determining the approval or denial of an application for reserved on-street parking spaces for persons with physical disabilities. Section 3, entitled "Parking Space", and more particularly, as is relevant, Sections 3(B), 3(C) and 3(G) of the BC Policy 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

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."

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.

When describing the Property, including reference to the photographs, Mr. Cockrell testified that the rear of the property had a self-contained off-street parking area. Mr. Cockrell testified that the application was denied under BC Policy Section 3(B) for this reason. Mr. Cockrell provided testimony, supported by the photographs, that, as of the date of his visit and time of the photographs, the Property did not have a ramp from the house to the street to provide for Ms. Freeland's mobility and access to the house. Mr. Cockrell testified that the exception found in Section 3(G) to the BC Policy was inapplicable to Ms. Freeland as it requires the use of a mobility aid and the construction of a ramp at the Property. Therefore, Ms. Freeland was ineligible under the Policy and exception.

Ms. Freeland testified that she has difficulty walking up steps. To that end, she testified that at least on one occasion, she fell while on the steps in the rear of the Property after her knee gave out on her. Her fall required her to go to the hospital. In addition to having a problem with her knee, Ms. Freeland relayed several other health conditions that cause complications, including suffering two heart attacks, kidneys problems that may require dialysis, arthritis, and a bad neck. She testified that her health can limit her ability to carry certain items up the steps. Ms. Freeland also testified that she never has anywhere to park. Finally, Ms. Freeland presented a list of medications she takes to address her kidney and heart problems (Appellant Exhibit No. 1).

Ms. Freeland's son, James, testified on her behalf as well. He testified that the parking pad was there when they moved in. He added that his mother has problems backing in and out of the space. Lastly, he reiterated that his mother has arthritis in her knees and stents in her heart.

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 BC Policy, entitled "Appeal of Denial of Reserved Parking Space," 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.

Based on the evidentiary record in front of the Board, 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.

As reflected by Mr. Cockrell's testimony and as illustrated in County Exhibits 2A and 2B, the rear of Ms. Freeland's Property contains a parking pad. As referenced above, a reserved on-street parking space will not be authorized for any applicant whose property has a self-contained off-street parking area. (Section 3(B)). Ms. Freeland does not contest that the rear of their Property contains a self-contained off-street parking area. The testimony presented that the parking pad has been there since they moved in. It is undisputed that at the time of the inspections, as well as at the time of the hearing, there was no ramp at the Property.

Under Section 8(A), there must be evidence that Ms. Freeland or her household has taken "all reasonable measures to make the off-street parking area usable and available" to Ms. Freeland. The record, however, is silent as to what measures, if any, have been undertaken. Similarly, Section 8(C) requires that the reserved on-street space be a "medical necessity." It does not appear that there is any dispute about whether Ms. Freeland has health issues that complicate her mobility. The evidentiary record concerning Ms. Freeland's medical condition, however, does not permit a finding that her disability is of such a severe degree that an extreme hardship would exist if she were to use the parking pad in the rear. Similarly, the record cannot support a finding that a reserved space is a medical necessity under Section 8(C). As a result, the evidence cannot satisfy the requirements under Section 8 to permit this Board to reverse the original denial.

Based on the foregoing, the evidentiary record does not permit the Board to justify overturning the County's denial of the issuance of a reserved parking space for Ms. Freeland.

ORDER

THEREFORE, IT IS THIS 8th day of January, 2018⁷, by the Board of Appeals of Baltimore County,

ORDERED that the decision of the Division of Traffic Engineering in Case No. CBA-16-013 be and the same is hereby **AFFIRMED**; and it is further,

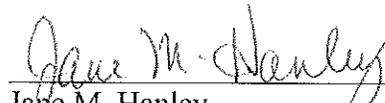
ORDERED that the application of Myrtle E. Freeland for a reserved handicapped parking space at 7924 Eastdale Road, Baltimore, MD 21224, be and the same is hereby **DENIED**.

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*.

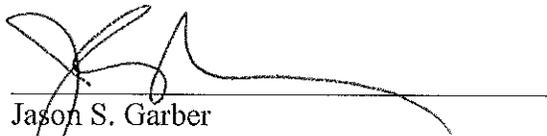
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Benfred B. Alston, Panel Chair



Jane M. Hanley



Jason S. Garber