



Board of Appeals of Baltimore County

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May 25, 2016

Theresa Ann Kendall
1005 Elm Ridge Avenue
Baltimore, Maryland 21229

RE: *In the Matter of: Theresa Ann Kendall*
Case No.: CBA-16-026

Dear Ms. Kendall:

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:
Theresa A. Kendall
1005 Elm Ridge Avenue
Baltimore, Maryland 21229

RE: DENIAL OF RESERVED HANDICAPPED
PARKING SPACE

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-16-026

* * * * *

OPINION

This case comes before the Board of Appeals (the “Board”) as the result of the denial of a reserved handicapped parking space. Appellant Theresa Ann Kendall, of 1005 Elm Ridge Avenue, Baltimore, Maryland 21229 (the property), received a denial letter dated December 2, 2015, from Michael F. Filsinger, Chief of the Baltimore County Division of Traffic Engineering.

The Board held a public hearing on March 30, 2016, at 10:00 a.m. Baltimore County (the “County”) was represented by Ed Reed, Traffic Inspection Supervisor in the Baltimore County Division of Traffic Engineering. Ms. Kendall represented herself, *pro se*.

Mr. Reed testified that his office received an MVA application prepared by Ms. Kendall requesting a reserved parking space and a transmittal letter from Earl Beville, Assistant Manager – Investigation and Internal Affairs for the MVA, dated November 16, 2015, concerning Ms. Kendall’s request for a reserved handicapped parking space (The MVA Application and the Letter from Mr. Beville together are County Exhibit #1).

Mr. Reed visited the property prior to the hearing before the Board and took photographs of the front and rear of the property (County Exhibits #2a-2c). The Property is a single family home located in Southwestern Baltimore County. County Exhibit 2a shows the front of the Property with five total steps and no hand rails leading up to the house. County Exhibit 2b shows

the rear of the Property. This photograph shows a parking pad in the rear of the house, with a detached garage. County Exhibit 2c also shows the rear alley with a vehicle parked across the street.

Mr. Reed testified that the County did not dispute the legitimacy of Ms. Kendall's disability because it had been previously conceded 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. Kendall did not meet the requirements to be issued a reserved parking spaces for person with physical disabilities. Mr. Reed submitted into evidence a letter dated December 2, 2015 from Michael F. Filsinger, Chief of the Baltimore County Division of Traffic Engineering, to Ms. Kendall denying her request for a reserved handicap parking space. (See, County Exhibit 5).

As the photographs clearly show, the Property has a detached garage 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.

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."

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. Kendall was ambulatory and did not require the use of a mobility aid device, such as a wheelchair. Ms. Kendall conceded that there was a detached garage in the rear of the Property; however, she testified that it was very difficult for her to enter her house from the rear entrance because of the many steps, her breathing problems and her asthma. She also testified that she cannot park across the street from the Property in the rear because someone else owns the property. Ms. Kendall stated that it is difficult for her to use the rear garage due to the siding on the garage door making it narrow. She further stated that due to the many homes near her being rentals, it was difficult to find a parking spot in the front of her home. Appellant 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 the application for the reserved handicapped parking space should be denied. The facts show that Ms. Kendall has a detached garage in the rear of her Property. The facts also show that Ms. Kendall does not use a mobility device, such as a wheelchair, 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. Kendall 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

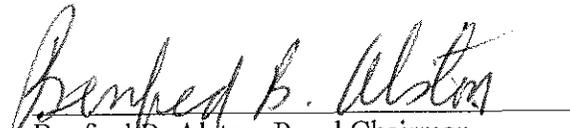
THEREFORE, IT IS THIS 25th day of May, 2016, by the Board of Appeals of Baltimore County,

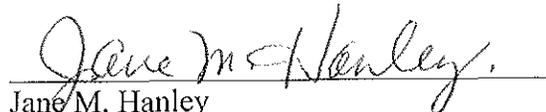
ORDERED that the decision of the Division of Traffic Engineering in Case No. CBA-16-026 be and the same is hereby **AFFIRMED**; and it is furthered

ORDERED that the application of **Theresa Ann Kendall** for a reserved handicapped parking space at 1005 Elm Ridge Avenue, 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**


Benfred B. Alston, Panel Chairman


Jane M. Hanley


Meryl Rosen