



Board of Appeals of Baltimore County

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October 28, 2016

Mr. Kenneth Freeland
305 Wisewell Court
Baltimore, Maryland 21227

RE: *In the Matter of: Kenneth Freeland*
Case No.: CBA-17-003

Dear Mr. 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 Han".

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
Steven A. Walsh, P.E., Director/DPW
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF:
KENNETH FREELAND
305 WISEWELL COURT
BALTIMORE, MD 21227

RE: DENIAL OF RESERVED
HANDICAPPED PARKING SPACE

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-17-003

* * * * *

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 305 Wisewell Court, Baltimore, Maryland 21227 (the “Property”), as set forth by letter dated June 29, 2016 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, Kenneth Freeland (“Mr. Freeland”), along with a copy of the County Policy with respect to handicapped parking spaces.

The Board held a public hearing on September 28, 2016, at 10:00 a.m. Baltimore County (the “County”) was represented by Wesley Bohle, a Traffic Inspector for the Baltimore County Division of Traffic Engineering. Mr. Freeland represented himself *pro se*.

Mr. Bohle testified that his office received a MVA Application for Personal Residential Permit for Reserved Parking Space for Mr. Freeland (dated June 8, 2016). (The MVA Application is County Exhibit #1). Following receipt of the Application, Mr. Bohle visited and inspected the Property and took photographs of the front and rear of the Property (See County’s Exhibits #2A-2D). The Property is a middle-of-group townhouse located in the Halethorpe area. County Exhibit 2C shows the front of the Property with approximately five steps to the first level of the front lawn, with an additional five steps to the front door. County Exhibit 2A shows the rear of the Property

and reveals a concrete pad enclosed by a large, heavy stockade-type fence and gate. Mr. Bohle, on the basis of the State's verification of physical disability (attached as County Exhibit # 6), did not contest Mr. 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 Mr. Freeland did not meet the requirements to be issued a reserved parking space for persons with physical disabilities. Mr. Bohle submitted into evidence the aforementioned June 29, 2016 letter from Mr. Filsinger, on behalf of the County, to Mr. Beville, denying Mr. Freeland's request for a reserved handicapped parking space. (See County Exhibit #5).

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 in this case, Section 3(B) 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 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(I) 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."

When describing the Property, including reference to the photographs, Mr. Bohle testified that the rear of the property had a self-contained off-street parking area, and as such, Mr. Bohle testified that the application was denied pursuant to BC Policy Section 3(B).

Mr. Freeland testified that he is a Vietnam Veteran who suffers from extensive periodic pain due to "Agent Orange" exposure during the war. Mr. Freeland testified that he has serious safety concerns with parking in the rear of his property and has had many instances of theft and vandalism in his back yard in the past. He explained that the large gate and subsequent fence and gate on the second level of his backyard are for security purpose. Unfortunately, the size and weight of these gates makes it impractical for his wife to open and close them and she is the one who is responsible for transporting him to and from the house when Mr. Freeland's symptoms are severe.

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 reversed and that the application for the reserved handicapped parking space should be granted.

Under Section 8(A), there must be evidence that Mr. Freeland or his household has taken "all reasonable measures to make the off-street parking area usable and available" to Mr. Freeland. The Board finds that due to the circumstances described by Mr. Freeland, the use of his parking pad in the rear of his property is impractical.

ORDER

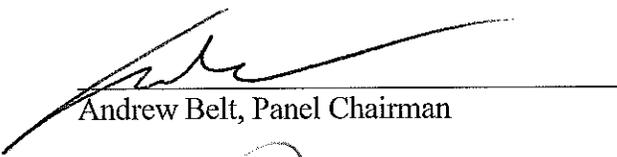
THEREFORE, IT IS THIS 28th day of October, 2016, by the Board of Appeals of Baltimore County,

ORDERED that the decision of the Division of Traffic Engineering dated June 29, 2016, in Case No. CBA-17-003 be and the same is hereby **REVERSED**; and it is further,

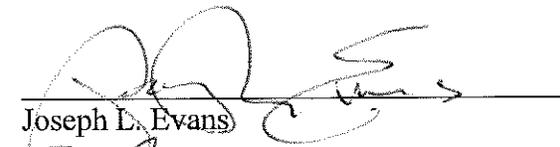
ORDERED that the application of Kenneth Freeland for a reserved handicapped parking space at 305 Wisewell Court, Baltimore, MD 21227, be and the same is hereby **GRANTED**.

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*.

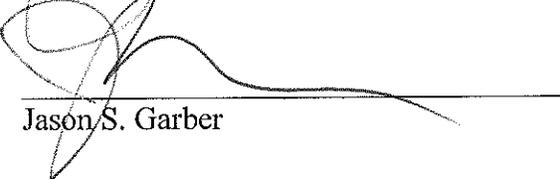
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew Belt, Panel Chairman



Joseph L. Evans



Jason S. Garber