

IN THE MATTER OF
KATHERINE BREIGHNER,
8002 KAVANAGH ROAD
BALTIMORE, MD 21222

RE: DENIAL OF RESERVED HANDICAPPED
PARKING SPACE

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-12-035

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OPINION

This case comes to the Board of Appeals from the denial of a reserved handicapped parking space for Katherine Breighner, Appellant, at 8002 Kavanagh Road, Baltimore, Maryland, 21222, by the Baltimore County Division of Traffic Engineering in a letter dated December 27, 2011 from Stephen Weber, P.E. Chief of Division of Traffic Engineering to Applicant, Katherine Breighner

A public hearing was held on March 8, 2012. Baltimore County was represented by James Gullivan, Traffic Inspector of the Division of Traffic Engineering. Ms. Breighner represented herself. Mr. James Gullivan testified that his office received an application and letter from the Motor Vehicle Administration (MVA) dated December 13, 2011 concerning the request for a handicapped parking space for Ms. Breighner. The County indicated that, on the basis of the State's finding that Ms. Breighner was disabled, it was not contesting his disability.

The County's first witness was James R. Gullivan. Mr. Gullivan testified that he has been employed by Baltimore County for 26 years and presently holds a position as an inspector in the Division of Traffic Engineering. His work includes the inspection of the subject property when the Motor Vehicle Administration notifies Baltimore County that an application for a reserved handicapped parking space has been made to the State (County Exhibit #2). In this case, Mr.

Gullivan pointed out that the MVA had certified the applicant's disability (County Exhibit #1), and through the normal course of his duties, he then visited 8002 Kavanagh Road on January 30, 2012, where he took photographs (County Exhibits #2A-F).

Mr. Gullivan observed that this is a townhouse community and that the house where the Applicant lives is in the middle of the group. In the rear there is a large gate as well as a pedestrian gate to access the alley from the yard. There is no evidence of parking on the grass and the rear yard contains a concrete slab improved with a shed. There are five steps up to the back door. In the front, Mr. Gullivan observed one step up on the walkway plus four more to the porch and one into the house.

It was Mr. Gullivan's opinion that it is possible for the Applicant to park in the rear by opening all gates, noting that the rear property is 16 feet wide.

Mr. Weber submitted a letter to the MVA dated December 27, 2011 (County Exhibit #6) which denied the applicant's request because "This request in particular does not conform with Item 3A" of Baltimore County's Policy on Reserved Parking Spaces for Persons with Physical Disabilities (County Exhibit #5).

Item 3A states as follows:

A reserved parking space will not be authorized for any applicant whose property has a self-contained driveway and/or garage or where off-street parking is provided by public or private sources.

Mr. Gullivan stated that, upon review of the facts, his agency denied the application for the parking space on the basis of Item 3B of the Baltimore County Parking Policy on Reserved Parking Spaces which states:

(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.

In addition, Item 3(C) is applicable here and reads:

(C) The property shall be evaluated on whether the off-street parking area exists, NOT on whether the off-street parking area is available for use.

He noted that the County does not dispute Ms. Breighner disability but the department is allowed no discretion in their decision except under Item 3E which requires both the need for a wheelchair and a ramp in front of the house. Mr. Gullivan found no evidence of compliance with these requirements in this case.

The next witness was the Appellant/Applicant Katherine Breighner. Ms. Breighner explained that she lives at 8002 Kavanagh Road and is the owner of the property..

She testified that the rear yard is neither large enough nor accessible for parking. She also testified that the only time a car had been parked there was when her disabled vehicle had been towed there by mistake. Ms. Breighner stated that she has lived at Kavanagh Road for over 40 years.

Additionally Ms. Breighner testified that due to irregular drainage problems in the alley behind her home, the property where the parking pas exists is prone to standing water. Ms. Breighner submitted a photograph of the alley behind her fence where the County has constructed a series of bricks to stem the water flow. (Applicant Exhibit #3). It is clear from these photographs that these bricks create an additional impediment to Ms. Breighner safely entering her parking pad and safely exiting her car.

DECISION

The Board finds unanimously that the Applicant should be granted a reserved parking space in front of 8002 Kavanagh Road. We find through the testimony and evidence presented that the subject property contains unique characteristics not controlled by Ms. Breighner that impede the use of her backyard parking area.

Item 3(G)(B) of the Baltimore County Parking Policy on Reserved Parking Spaces states:

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 property.

We find that the structure of bricks placed in the rear of the Applicant's yard by Baltimore County create a unique characteristic to the property that is contemplated by Item 3 (G)(B).

In conclusion the Board will overturn the denial of the Baltimore County Division of Traffic Engineering and GRANT the Appellant's request for a reserved handicapped parking space at 8002 Kavanagh Road, Baltimore, MD 21222.

ORDER

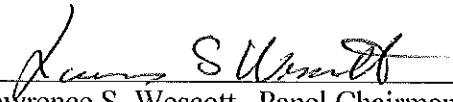
THEREFORE, IT IS THIS 15th day of May, 2012 by the Board of Appeals of Baltimore County

ORDERED that the decision of the Division of Traffic Engineering in Case No. CBA-12-035 be and the same is hereby **REVERSED**; and it is further

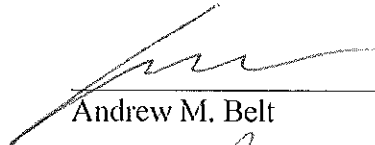
ORDERED that the Application of Katherine Breighner for a reserved handicapped parking space at 8002 Kavanagh Road, Baltimore, MD 21222, be and the same is **GRANTED**.

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*.

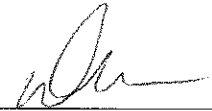
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Panel Chairman



Andrew M. Belt



David L. Thurston