

IN THE MATTER OF
MERCEDES LEBRON-GONZALEZ - APPLICANT
1917 WHITE OAK AVENUE
BALTIMORE, MD 21234

RE: DENIAL OF RESERVED HANDICAPPED
PARKING SPACE

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-12-028

* * * * *

OPINION

This case comes to the Board of Appeals as the result of the denial of a reserved handicapped parking space at 1917 White Oak Avenue, Baltimore, MD 21234, by the Baltimore County Division of Traffic Engineering in a letter dated December 6, 2011, to Mr. Earl Beville, Assistant Manager, Investigative and Security Division, Motor Vehicle Administration (MVA), from Stephen E. Weber, P.E. Chief, of the Baltimore County Division of Traffic Engineering (County Exhibit No. 5). A copy of that letter was sent to Mercedes Lebron-Gonzalez, Appellant, along with a copy of the County Policy with respect to handicapped parking spaces.

The Board held a public hearing on February 14, 2012, at 10:00 a.m. Baltimore County was represented by James Gullivan, Traffic Inspector in the Baltimore County Division of Traffic Engineering and Stephen E. Weber, P.E. Chief, of the Baltimore County Division of Traffic Engineering. Mercedes Lebron-Gonzalez, Appellant, represented herself, *pro se*. Also appearing at the hearing, at the request of the Appellant, acting as the Interpreter for her, was the daughter of Mercedes Lebron-Gonzalez, namely Ivelisse Konopelski, and Ms. Lebron-Gonzalez's other daughter, Ivette Montanez-Lebron, who owns the home where Appellant lives.

Mr. Gullivan testified that his office received an application and letter from the MVA dated November 21, 2011, concerning a request for a reserved handicapped parking space for Mercedes Lebron-Gonzalez, Appellant (County Exhibit No. 1). The County indicated that, on the basis of the State's finding that Ms. Lebron-Gonzalez was disabled, the County would not contest her disability.

Mr. Gullivan visited the property on November 21, 2011, and took photographs of the front and rear of the property (County Exhibits Nos. 2a-2c). The home in which Ms Lebron-Gonzalez resides is her daughter's home. It is an end of group townhouse located in Parkville. Exhibits 2a and 2b show the front of the house which has three steps up to the porch and one into the house. There is a handrail on the right for the steps. Exhibit 2c shows the rear of the property which has a concrete pad and pavers. There is a rear door with one step into the house. It is 11 feet, 9 inches from the end of the concrete pad to the alley. The pavers extend it to 17 feet.

The County did not dispute her disability as same had been certified by the State. However, Mr. Gullivan testified that Ms. Lebron-Gonzalez did not meet the requirements of the Baltimore County policy on reserved parking spaces for person with physical disabilities (County Exhibit 4). As this property has a concrete parking pad in the back, the request does not meet the requirements of Section 3(B) or 3© or the exceptions set forth in Section 3(G). Sections 3(B) and (C) of the Baltimore County Policy on Reserved Parking Spaces for Persons with Physical Disabilities state:

(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.

Ms. Lebron-Gonzalez's daughter, Ivette Montanez-Lebron, testified on behalf of her mother. Her mother first had back surgery in 1999. Two discs were removed. There was damage to the sciatic nerve. She had her second back surgery in 2010 when screws were placed in her back. She uses a walker to help her get around. Her doctor sent a letter to the Motor Vehicle Administration, a copy of which was not made available to the Board for its review.

Ms. Montanez-Lebron testified that if you park in the back of her house, you enter in the basement and have to go up a flight of stairs to get to the main floor of the house. Appellant's Exhibit No. 1 was a picture of the stairs leading up from the basement and a picture of a bathroom in the basement, with a toilet with handrails. Ms. Lebron-Gonzalez's bedroom is in the basement. Ms. Montanez-Lebron testified that the step into the house from the back is very high, 8 inches going into the basement, while the step leading into the house from the front is 4.5 inches (Appellant's Exhibit No.3) There is a fence surrounding the back yard has two gates, one of which can be opened from the outside and one which can only be open from the inside. The larger gate must be lifted up to move. The fence was there when she purchased the house and it would be too expensive to change it. The pad in the back is not large enough for a station wagon (Appellant's Exhibit Nos. 4 and 5). Other problems with parking in the back include that in the winter no one clears the alley behind her house of snow and so you cannot move your car if you are in the middle of the block. (Appellant's Exhibit Nos. 6 and 7) Also, people leave their cars parked overnight in the alley if they cannot find parking on the street. They have had to call the police to get people to move their cars. It is dark in the alley at night, there are no street lights.

If she is able to park on the street, Ms. Lebron-Gonzalez can enter the house on the main level. This would give her easier access to the kitchen and dining room. With the exception of her bedroom, everything her mother needs is on the main floor. The front entrance has three steps, but there is a handrail to help her mother(Appellant's Exhibit No. 8). Her townhouse is an end of group unit. Although there is a fire hydrant on her block, she in essence has a double lot. Even if she were to park 15 feet away from the hydrant, there is still 24 feet available for her to have a parking space (Appellant's Exhibit No. 9). Ms. Montanez-Gonzalez testified that other

people in the neighborhood have the same problems she has with the alley and exceptions have been made for them.

Ms. Montanez-Lebron testified that she is the primary caretaker for her mother although her brother comes over to help. Her mother does not drive. Ms. Montanez-Lebron has a handicap tag on her car. She has the safest car for her mother, however it is an SUV and is difficult to maneuver it on the parking pad. Her mother needs help getting into and out of the car and getting up the steps. Ms. Montanez-Lebron testified that she also has medical issues.

Ms. Montanez-Lebron acknowledged that with the fire hydrant, there should always be an open space near the front of the house for her stop and help her mother out of the car, although people do sometimes park in front of the hydrant. She could drop her mother off in front and then ride around back to park her car.

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.

After reviewing the testimony and evidence presented, the Board has determined that the decision of the Baltimore County Division of Traffic Engineering should be upheld and that the application for the reserved handicapped parking space should be denied. Ms. Lebron-Gonzalez has a parking pad in the rear of her home. She uses a walker however she has not constructed any ramp to assist her in getting into her home as is required for an exception under Section 3(G). There has been no evidence presented to show that extremely unique circumstances and hardships exist due to the physical characteristics of the property and the Appellant's disability which would also allow for an exception to be granted. In fact, the Appellant's daughter testified that everyone has the same problems her mother does. It would be just as easy for Ms. Lebron-Gonzalez if her daughter drops her off in front of the house and then drives around back to park her car, given the fact the fire hydrant should have an open space in front of it.

The Board finds that Ms. Lebron-Gonzalez's disability is not of such a degree that an extreme hardship would exist for her to use the available off-street parking in the rear of the house. In addition, we find that the space would be more for her convenience and the convenience of her daughter. As such, she does not meet all of the conditions set forth in Item 8.

ORDER

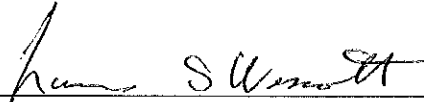
THEREFORE, IT IS THIS 12th day of March, 2012, by the Board of Appeals of Baltimore County,

ORDERED that the decision of the Division of Traffic Engineering in Case No. CBA-12-028 be and the same is hereby **AFFIRMED**; and it is furthered

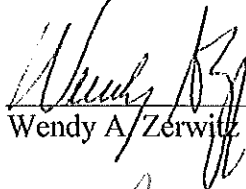
ORDERED that the application of Mercedes Lebron-Gonzalez for a reserved handicapped parking space at 1917 White Oak Avenue, Baltimore, Maryland, 21234 be and the same is hereby **DENIED**.

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*.

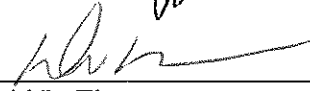
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Chairman



Wendy A. Zerwitz



David L. Thurston