

IN THE MATTER OF:
AUTUMN JENNIFER LUBAWSKI (minor)
c/o CRYSTAL L. DREW, PARENT
1913 MARSDALE ROAD
BALTIMORE, MD 21222

RE: DENIAL OF RESERVED HANDICAPPED
PARKING SPACE

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-13-024

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OPINION

This case comes to the Board of Appeals as the result of the denial of a reserved handicapped parking space at 1913 Marsdale Road, Baltimore, Maryland, 21222, by the Baltimore County Division of Traffic Engineering in a letter dated January 17, 2013, 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 Crystal L. Drew, mother of Autumn Jennifer Lubawski, along with a copy of the County Policy with respect to handicapped parking spaces.

The Board held a public hearing on April 9, 2013, at 10:00 a.m. Baltimore County was represented by James Cockrell, Jr., 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. Crystal L. Drew, mother of Autumn Jennifer Lubawski, represented herself, *pro se*. Also appearing at the hearing

was Autumn Jennifer Lubawski, but, as she is only three years old, she was too young to testify.

Mr. Cockrell testified that his office received an application and letter from the MVA dated January 2, 2013, concerning a request for a reserved handicapped parking space for Autumn Jennifer Lubawski, Appellant (County's Exhibit #1). The County indicated that, on the basis of the State's finding that Autumn is disabled, the County would not contest her disability.

Mr. Cockrill visited the property on March 7, 2013, and took photographs of the front and rear of the property (County's Exhibits #2a-2b). The home in which Autumn resides is her mother's home. It is an end of group townhouse located in Dundalk. Exhibit 2a shows the rear of the house which has one step into the house. There is no handrail. Exhibit 2b shows the front of the property. Ms. Drew's home has off-street parking behind the house. There is a double parking pad surrounded by a double gate.

The County did not dispute Autumn's disability as same had been certified by the State. Autumn is three years old (date of birth 07/30/09) and suffers from Mitochondrial Dysfunction. However, Mr. Cockrill testified that her mother, Ms. Drew, did not meet the requirements of the Baltimore County policy on reserved parking spaces for person with physical disabilities (County's Exhibit #4). As this property has a 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. Crystal Drew testified as to the need for a reserved on-street handicapped parking space for her daughter. She is concerned about having to get out of the car, and leave her daughter alone in the car, to open the gate to the parking pad. She presented a copy of the Maryland law on leaving a child alone in an automobile (Appellant's Exhibit #1), although she conceded that leaving your child in the car to open a gate was probably not an act prohibited under Maryland law. She has looked into the cost to have the fence removed, however at Five Hundred Dollars (\$500.00), it is too expensive (Appellant's Exhibit #2).

Ms. Drew testified that her daughter's disease is a progressive disease and she will continue to get worse. Right now Autumn can walk, and they encourage her to do so. In addition to Mitochondrial Dysfunction, she suffers from a seizure disorder and epilepsy. Presently, they encourage Autumn to walk whenever possible but it will become more and more difficult for her as she gets older. Ms. Drew presented photographs of the back hallway and step up into the house from the rear (Appellant's Exhibits #3a-3b) and the stepping stones in the front of the house and the front steps into the house (Appellant's Exhibits #4a-4b). Ms. Drew does not believe that a reserved handicapped parking space would inconvenience her neighbors.

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. Drew has a parking pad in the rear of her home. Autumn does not use a mobility aid at the present time nor has a ramp been constructed 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 nature of Autumn's disability which would also allow for an exception to be granted.

At the present time, we do not find that Autumn's disability is 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. As such, she does not meet all of the conditions set forth in Item 8. Should a change occur as Autumn gets older and her disability worsen, Ms. Drew can reapply for a reserved on-street handicapped parking space on her behalf.

ORDER


THEREFORE, IT IS THIS 25th day of April, 2013, by the Board of Appeals of Baltimore County,

ORDERED that the decision of the Division of Traffic Engineering in Case No. CBA-13-024 be and the same is hereby **AFFIRMED**; and it is furthered

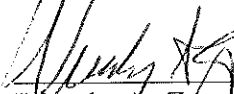
ORDERED that the application of Autumn Jennifer Lubawski for a reserved handicapped parking space at 1913 Marsdale Drive, Baltimore, Maryland, 21222 be and the same is hereby **DENIED**.

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**



David L. Thurston, Panel Chairman



Wendy A. Zerwitz



Wendell H. Grier



Board of Appeals of Baltimore County

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April 25, 2013

Autumn J. Lubawski
c/o Crystal L. Drew
1913 Marsdale Road
Baltimore, MD 21222

Stephen E. Weber, Chief
Division of Traffic Engineering
Department of Public Works
111 W. Chesapeake Avenue, Suite 326
Towson, MD 21204

RE: *In the Matter of: Autumn J. Lubawski – Minor*
Crystal L. Drew, Parent – Applicant/Appellant
Case No.: CBA-13-024

Dear Ms. Drew and Mr. Weber:

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 black ink that reads "Theresa Shelton/kc".

Theresa R. Shelton
Administrator

TRS/kc
Enclosure
Duplicate Original Cover Letter

c: Earl Beville, Assistant Manager, Investigative & Security Division/Motor Vehicle Administration
W. William Korpman, III, Chief/Bureau of Traffic Engineering
Edward Adams, Jr., Director/DPW
Nancy West, Assistant County Attorney
Michael Field, County Attorney