

IN THE MATTER OF:
RICHARD L.WHALEY, SR.
7114 GOUGH STREET
BALTIMORE, MD 21224

RE: DENIAL OF RESERVED HANDICAPPED
PARKING SPACE

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-15-013

* * * * *

OPINION

This case comes to the Board of Appeals as the result of the denial of a reserved handicapped parking space at 7114 Gough Street, Baltimore, Maryland, 21224, by the Baltimore County Division of Traffic Engineering in a letter dated February 17, 2015, to Mr. Earl Beville, Assistant Manager, Investigative and Security Division, Motor Vehicle Administration (MVA), from Michael F. Filsinger, Chief, of the Baltimore County Division of Traffic Engineering (County Exhibit No. 5). A copy of that letter was sent to Richard L. Whaley, Sr., along with a copy of the County Policy with respect to handicapped parking spaces.

The Board held a public hearing on May 20, 2015, at 10:00 a.m. Baltimore County was represented by James Cockrell, Jr., Traffic Inspector in the Baltimore County Division of Traffic Engineering. Richard L. Whaley, Sr. represented himself, *pro se*.

Mr. Cockrell testified that his office received an application and letter from the MVA dated February 5, 2015, concerning a request for a reserved handicapped parking space for Richard L. Whaley, Sr., Appellant (County's Exhibit #1). The County indicated that, on the

basis of the State's finding that Mr. Whaley, Sr. is disabled, the County would not contest his disability.

Mr. Cockrell visited the property prior to the hearing before the board and took photographs of the front and rear of the property (County's Exhibits #2a-2b). The home is an end of group townhouse located in Essex. Exhibit 2b shows the rear of the house which has approximately 18 steps, 10 initially, then 8 after the landing into the house. There is a handrail on each side. Exhibit 2a shows the front of the property. Mr. Whaley, Sr. has an off-street parking pad behind the house. This parking pad is surrounded by a gray brick wall-type fence and both chain link and wooden fencing surrounding said pad.

Mr. Cockrell testified that Mr. Whaley, Sr. 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(C) 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.

Mr. Whaley, Sr. testified that he and his son built the park pad due to the steep grade. He said it is difficult to deal with his current parking situation when it snows. He also stated that he has to catch his breath after traversing the first flight of steps. Mr. Whaley, Sr. also noted that he underwent open heart surgery at the V.A. hospital several years ago.

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. Mr. Whaley, Sr. has a parking pad in the rear of his home. While Mr. Whaley, Sr. appeared at the hearing before this Board with a mobility aid, a ramp has not been constructed to assist him in getting into his 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 which would also allow for an exception to be granted.

ORDER

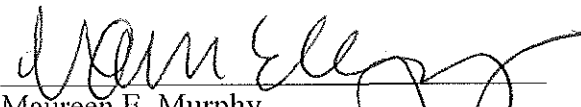
THEREFORE, IT IS THIS 25th day of June, 2015, by the Board of Appeals of Baltimore County,

ORDERED that the decision of the Division of Traffic Engineering in Case No. CBA-15-013 be and the same is hereby **AFFIRMED**; and it is further

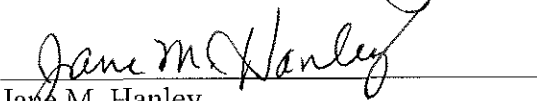
ORDERED that the application of **Richard Lee Whaley, Sr.** for a reserved handicapped parking space at 7114 Gough St., Baltimore, Maryland, 21224 be and the same is hereby **DENIED**.

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**



Maureen E. Murphy



Jane M. Hanley

David Thurston was Chairman of the Board of Appeals at the hearing on May 20, 2015. He resigned effective June 16, 2015.



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

June 25, 2015

Mr. Richard L. Whaley, Sr.
7114 Gough Street
Baltimore, Maryland 21224

RE: *In the Matter of: Richard L. Whaley, Sr., Applicant/Appellant*
Case No.: CBA-15-013

Dear Mr. Whaley:

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".

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 West, Assistant County Attorney
Michael Field, County Attorney