

IN THE MATTER OF:
RAYMOND L. WHITNEY
4444 NORFEN ROAD
BALTIMORE, MD 21227

RE: DENIAL OF RESERVED
HANDICAPPED PARKING SPACE

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-17-024

* * * * *

OPINION

This case comes to the Board of Appeals (the “Board”) as the result of the conditional denial of an application for reserved handicapped parking space at 4444 Norfen Road, Baltimore, Maryland 21227 (the “Property”), as set forth by letter dated December 30, 2016 from 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, Raymond L. Whitney. A public hearing in front of the Board was scheduled on February 21, 2017, at 10:00 a.m. Mr. Wesley Bohle, a Traffic Inspector for the Baltimore County Division of Traffic Engineering, represented Baltimore County (the “County”). Mr. Whitney appeared *pro se*.

Mr. Bohle testified that his office received an MVA Application for Personal Residential Permit for Reserved Parking Space (“Application”) on Mr. Whitney’s behalf. The Application was dated December 14, 2016. (County Exhibit 1). On December 20, 2016, Mr. Bohle conducted a site visit; he investigated the exterior of the Property, a single-family townhome, and photographed the front and rear of the Property. (County Exhibit 2 A-B). The front of the home has two steps from the sidewalk to the porch; the steps do not have a railing. (County Exhibit 2B). The rear of the Property contains a garage with a single door, and a relatively narrow adjacent path leading to

the rear door. Facing the rear of the home, the walkway to the home's rear door is adjacent to and left of the garage. There also appears to be a small parking pad in front of the garage, further from the home. (County Exhibit 2A). Mr. Bohle testified that the garage is approximately 8' wide.

Mr. Bohle did not contest Mr. Whitney's disability. Indeed, the Application contains a statement from Mr. Whitney's doctor that Mr. Whitney is permanently disabled because of an ischemic stroke, and that Mr. Whitney would endure a hardship if he should enter or leave his vehicle at a location less convenient than the requested reserved spot. (County Ex. 1). Mr. Bohle cited and submitted §21-1005 of the Maryland Transportation Article (Reservation of Parking Space for Person Confined to Wheelchair) which permits issuance of a reserved parking space for a person subject to a severe disability and states further that the issuance of any such permit in the County is subject to approval of the Baltimore County Department of Traffic Engineering. (See County Exhibit 3). Mr. Bohle also referenced and introduced the Baltimore County Policy on Reserved Parking Spaces for Persons with Physical Disabilities (the "BC Policy") which sets out the factors used in evaluating an application for a reserved spot. (County Exhibit 4).

Mr. Bohle testified that Mr. Whitney did not meet the requirements to be issued a reserved parking space. He submitted into evidence the December 30, 2016 letter from Mr. Filsinger, on the County's behalf, to Mr. Beville, conditionally denying Mr. Whitney's Application. (County Exhibit 5). Mr. Whitney was copied on that letter. According to Mr. Bohle, the County denied the Application because of a failure to conform with Item 3B of the BC Policy. That provision denies a reserved parking space for any applicant whose property has a self-contained off-street parking area, stating as follows:

(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.

(County Ex. 4.). When testifying as to the reasons underlying the denial, Mr. Bohle stated that the denial was based on the fact that the rear of the Property contained a garage on top of a parking pad.

Mr. Whitney's verbal and motor functions are such that he was functionally unable to testify on his own behalf. His daughter, Christina Schreiber, lives at the Property, and testified as to the conditions at the Property and Mr. Whitney's disability. Ms. Schreiber stated she has lived at the Property for 29 years with her parents. She testified that Mr. Whitney had a stroke in October 2016, has no balance, and uses a walker. As to the existing garage in the rear of the Property, Ms. Schreiber stated that the garage is so narrow that it makes parking a car inside virtually impossible, especially when considering the space needed to open a car door and enter and exit the car. The constriction results from the existence of two long concrete slabs on the interior sides of the structure, slabs which have been there as long as she can remember. She does not recall any car using that garage. Ms. Schreiber also testified that the pathway parallel and adjacent to the garage is very narrow, and that getting to the rear door of the house requires climbing five steps that lack any type of railing. Even if Mr. Whitney parked on the small pad in front of the garage (and even further to the rear of the home), he would still be required to negotiate that tight path and up five steps to the rear entrance.

According to Ms. Schreiber, it also is very difficult to find parking on the street anywhere near the front of the Property as it is always crowded. She stated that the adjacent neighbors have multiple cars per family member and usually leave them near the front of the Property, often for extended periods of time.

DECISION

To reverse the County's denial of a reserved parking space predicated on a property having an off-street parking area, the Board must find that the Applicant/Petitioner meets all the conditions set forth in Paragraph 8 of the BC Policy. These 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.

(See Ex. 4 at ¶ 8).

As to the first of these factors, the Board finds that Mr. Whitney and his household have taken all reasonable measures to make the off-street parking area usable to Mr. Whitney. Although a garage exists on the Property, the evidence indicates that the interior concrete slabs make the garage so narrow that even if Mr. Whitney's car could manage to fit inside, it would be difficult if not impossible for Mr. Whitney to enter or exit the car. In essence, using the garage would be so difficult that the garage is not "available" for Mr. Whitney's use. This difficulty is compounded by the fact that to access the home's rear door from either the garage, or the parking pad behind the garage, Mr. Whitney would be forced, with his walker, to traverse a narrow pathway and then climb five stairs (without a railing) to reach the rear porch. Alleviating or eliminating these physical barriers would take an unreasonable expenditure of resources.

Second, Mr. Whitney's doctor avowed that Mr. Whitney's disability is permanent and so severe that the Applicant/Petitioner would endure a hardship or be subject to a risk of injury if he

was required to park off street, in other than a reserved spot in front of or near his home. The Board's observations of Mr. Whitney yield a similar conclusion, and the Board finds that Mr. Whitney's disability is so severe that he would suffer an extreme hardship if he were to use the garage or the parking pad behind the garage. Third, the Board further finds that approval of a reserved on-street space is one of medical necessity for Mr. Whitney, rather than mere convenience. Finally, there was no testimony indicating that reserving an on-street space for Mr. Whitney's use would cause any hardship for his neighbors, much less a greater hardship on them than that Mr. Whitney would face if a space was *not* approved. All available testimony yields a conclusion that the balance of hardships requires the reservation of a space for Mr. Whitney.

Based on the foregoing, the evidentiary record leads this Board to overturn the County's denial of the issuance of a reserved parking space for Mr. Whitney.

ORDER

THEREFORE, IT IS THIS 10th day of March, 2017, by the Board of Appeals of Baltimore County,

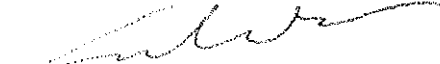
ORDERED that the decision of the Division of Traffic Engineering dated December 30, 2016 in Case No. CBA-17-024 be and the same is hereby **REVERSED**; and it is further,

ORDERED that the application of Raymond Lee Whitney for a reserved handicapped parking space at 4444 Norfen Road, Baltimore, Maryland 21227, be and the same is hereby **GRANTED**.

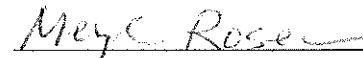
In the matter of Raymond L. Whitney
Case No: CBA-17-024

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*.

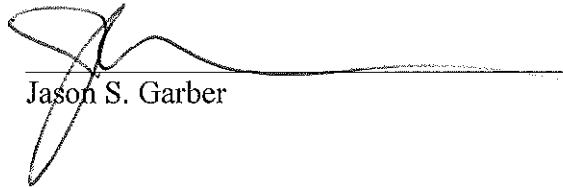
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew M. Belt, Panel Chairman



Meryl W. Rosen



Jason S. Garber



Board of Appeals of Baltimore County

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March 10, 2017

Mr. Raymond L. Whitney
4444 Norfen Road
Baltimore, Maryland 21227

RE: *In the Matter of: Raymond L. Whitney*
Case No.: CBA-17-024

Dear Mr. Whitney:

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