

IN THE MATTER OF:
MARTHA L. BALDERSON^a
914 MIDDLESEX ROAD
BALTIMORE, MD 21221

RE: DENIAL OF RESERVED
HANDICAPPED PARKING SPACE

* BEFORE THE^a
* BOARD OF APPEALS
*
*^a OF^a
* BALTIMORE COUNTY^a
*
*^a Case No. CBA-18-003a

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OPINION

This case comes to the Board of Appeals (the “Board”) as the result of the denial of an application for reserved handicapped parking space at 914 Middlesex Road, Baltimore, Maryland 21221 (the “Property”), as set forth by letter dated July 26, 2017 by 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 Martha Balderson (“Ms. Balderson”) along with a copy of the County Policy with respect to handicapped parking spaces. A hearing before the Board of Appeals was previously scheduled for October 3, 2017. Appellant Ms. Balderson failed to appear for that hearing and an Order of Dismissal was issued on October 5, 2017. On November 2, 2017 a letter was received from Ms. Balderson requesting that the Board reconsider the dismissal due to the fact that she had not received notice of the hearing. On November 28, 2017 the Board convened for a public deliberation on this Motion for Reconsideration which was granted; a new hearing was scheduled for January 9, 2018.

At the public hearing before the Board Baltimore County (the “County”) was represented by James Cockrell, a Traffic Inspector for the Baltimore County Division of Traffic Engineering. Ms. Balderson represented herself *pro se*.

Mr. Cockrell testified that his office received a MVA Application for Personal Residential Permit for Reserved Parking Space (“Application”) for Ms. Balderson (dated July 13, 2017). (The MVA Application and July 13, 2017 transmittal letter is County Exhibit #1). Following receipt of the Application, Mr. Cockrell visited and inspected the Property on October 2, 2017 and July 2, 2017 and took photographs of the front and rear of the Property on his visit (See County’s Exhibits #2A-2B). The Property is middle-of-group row house. County Exhibit 2A shows the front of the Property with approximately two steps up from the street level to the front door of the Property. Photographs depict that the house next door has handicap reserved parking. Ms. Balderson testified that the neighbors’ reserved parking was for a resident who has since died. County Exhibit 2B shows the rear of the Property, which includes a concrete parking pad enclosed by a fence and gate (the car shown parked is owned by the Ms. Balderson’s husband who is hearing impaired and seldom leaves the house).

Mr. Cockrell, on the basis of the State’s verification of physical disability, did not contest Ms. Balderson’s disability. However, based upon Section 21-1005 of the Maryland Transportation Article¹ (Reservation of Parking Space for Person Confined to Wheelchair) (See County Exhibit #3) and Baltimore County Policy on Reserved Parking Spaces for Persons with Physical Disabilities (the “BC Policy”) (See County Exhibit #4), the County concluded that Ms. Balderson did not meet the requirements to be issued a reserved parking space for a person with physical disabilities. Mr. Cockrell submitted into evidence the aforementioned July 26, 2017 letter from Mr. Filsinger, on behalf of the County, to Mr. Beville, denying Ms. Balderson’s request for a

¹ Section 21-1005(I) of the Maryland Transportation Article states that “In Baltimore County, the establishment of a personal residential parking space shall be subject to approval of the Baltimore County Department of Traffic Engineering, in accordance with the charter and public laws of Baltimore County.”

reserved handicap parking space. (See County Exhibit #5). Ms. Balderson was copied on that letter and also was provided a copy of the BC Policy. (See County Exhibit # 5).

The BC Policy (County Exhibit #4) identifies the factors for determining the approval or denial of an application for reserved on-street parking spaces for persons with physical disabilities. Section 3, entitled "Parking Space", and more particularly, as is relevant here, Sections 3(B) and 3(C) of the BC Policy state the following:

(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.

(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.

When describing the Property, including reference to the photographs, Mr. Cockrell testified that the rear of the property had a self-contained off-street parking area, and as such, Mr. Cockrell testified that the application was denied pursuant to BC Policy Section 3(B), with 3(C) having applicability as well.

Ms. Balderson acknowledged the presence of the off street parking pad in the rear of her home. She testified that the car that is usually parked there belongs to her husband who is hearing impaired and rarely leaves the home. What is not present in these photographs but was testified to by Ms. Balderson, is the other side of the alley opposite from the Balderson back parking area.

Ms. Balderson testified, and Mr. Cockrell confirmed, that the property directly across from this alley does not contain residential homes, but rather is owned by a private entity (maybe a railroad) and that individuals usually park along the alley outside the fence to this property. Ms. Balderson testified that when her husband does leave the parking pad in the back, he often has to seek out the owners of these vehicles due to the fact that his car cannot make it out of the parking pad while those cars are parked in that location. Ms. Balderson further testified that this condition makes it impossible for a vehicle to turn into her driveway when those cars are parked along the fence.

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 BC Policy, entitled "Appeal of Denial of Reserved Parking Space," 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.

Based on the evidentiary record in front of the Board the decision of the Baltimore County Division of Traffic Engineering shall be reversed and that the application for this reserved handicapped parking space should be granted.

Although the Board accepts Mr. Cockrell's testimony as correct and acknowledges that the existence of the self-contained off street parking area would usually exclude Ms. Balderson from receiving a handicapped parking space, this Board finds that the testimony of Ms. Balderson regarding the inability for proper ingress and egress from her parking pad due to the use of the property directly across from her home for parking by other individuals provides evidence under Section 8a that Ms. Balderson has taken all reasonable measures to make off street parking area useable and available but due to the uncontrolled actions of others, she cannot do so.

Based on the foregoing, the Board finds that the evidentiary record provides justification for overturning the County's denial of the issue of the reserved parking space for Ms. Balderson, and that such application for reserved parking space shall be granted.

ORDER

THEREFORE, IT IS THIS 15th day of February, 2018, by the Board of Appeals of Baltimore County,

ORDERED that the decision of the Division of Traffic Engineering dated July 26, 2017 in Case No. CBA-18-003 be and the same is hereby **REVERSED**; and it is further,

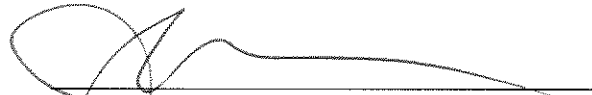
ORDERED that the application of Martha L. Balderson for a reserved handicapped parking space at 914 Middlesex Road, Baltimore, MD 21221, be and the same is hereby **GRANTED**.

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**



Andrew Belt, Panel Chair



Jason S. Garber



James H. West



Board of Appeals of Baltimore County

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February 15, 2018

Mrs. Martha L. Balderson
914 Middlesex Road
Baltimore, Maryland 21221

RE: In the Matter of: *Martha L. Balderson*
Case No.: CBA-18-003

Dear Mrs. Balderson:

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 Hays".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
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