

IN THE MATTER OF
DORIS M. SILWONUK - APPLICANT,
1122 FOXWOOD LANE
BALTIMORE, MD 21221

RE: DENIAL OF RESERVED HANDICAPPED
PARKING SPACE

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-10-012

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OPINION

This case comes to the Board of Appeals from the denial of a reserved handicapped parking space at 1122 Foxwood Lane, Baltimore, Maryland, 21221, by the Baltimore County Division of Traffic Engineering in a letter dated July 24, 2009 to Mr. Sidney R. Hyatt, Assistant Manager of Investigative and Security Division, Motor Vehicle Administration. A copy of that letter was sent to Mrs. Silwonuk with a copy of the County Policy with respect to handicapped parking spaces. (County Ex. 7).

A public hearing was held on Wednesday, September 30, 2009. Baltimore County was represented by James Gullivan, Traffic Inspector of the Division of Traffic Engineering. Mrs. Silwonuk represented herself and was accompanied by her husband, Nicolas Silwonuk.

Mr. Silwonuk testified that his wife needs a handicap parking space in front of their house due to her medical condition which includes severe respiratory insufficiency due to end stage emphysema and back pain due to a compression fracture. Mrs. Silwonuk carries an oxygen tank to breathe and regularly uses a wheelchair. Mr. Silwonuk stated that there were 4 steps leading up to his front door and 5 steps leading from the back door. He measured the distance from the front door of his house to the curb which he testified was 40 feet. He then measured the distance from his back door to the car port which he testified was 95 feet. He stated that using the back door and carport is very difficult for his wife due to the number of steps and distance to the carport.

In addition, he mentioned that, due to her medical conditions, his wife, lives in the front living room of the house which is another 30 feet to the rear car port. He was upset that other properties in his neighborhood had handicap parking spaces and in his view, those neighbors appeared to be healthy. He took photographs of those other handicap parking spaces. (Petitioner's Ex. 1).

Mrs. Silwonuk testified about her medical condition and the difficulty getting out to the back carport, due to her limited breathing and back problems stemming from a broken back in June of 2008. She testified that it would be helpful for her to use the front steps because there are 2 railings on the front steps that she can hold onto. When questioned, she admitted that she did not obtain an estimate of the cost of installing handrails or a handicap ramp. She added that they could not afford to make alterations to the property.

Mr. James Gullivan testified on behalf of the County. Mr. Gullivan has been traffic inspector for Baltimore County for 13 years. He testified that on July 17, 2009 his office received a letter from the Motor Vehicle Administration (MVA) (County Ex. #1) concerning Mrs. Silwonuk's application for a handicapped parking space (County Ex. #2). The County indicated that, on the basis of the State's finding that Mrs. Silwonuk was disabled, the County was not contesting her medical disability (County Ex. #3).

Mr. Gullivan made three (3) visits to the Silwonuk home on July 22, 2009, August 4, 2009 and September 9, 2009. He stated that the home is located in Essex area and is an end unit of a row of homes on Foxwood Road. Mr. Gullivan took photographs of the front and rear of the home on his last two visits. (County Exs. 4A through 4D). From County Ex 4B, it is clear that the front of the property has a total of six (6) steps leading from the curb to the front door (not 4 steps as Mr. Silwonuk indicated). Mr. Gullivan was unable to view the number of steps leading up into the rear door of the property due to the enclosed lattice porch on the rear of the home. Three (3) photographs presented by the County with respect to the rear of the property shows a concrete parking pad in the rear with a large shed to the left of the pad and a fence around the pad with a locked gate. In the photograph, there was a truck parked on the parking pad which the Silwonuks indicated belonged to their son.

Mr. Gullivan stated that, upon review of the situation, his agency denied the application for the parking space on the basis of Item 3B of the Baltimore County Parking Policy on Reserved Parking Spaces (County Ex. 6) which states:

(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.

Decision

In this case, the concrete parking pad in the rear of the Silwonuks' home is the self contained off-street parking pad described in Section 3(B) of the Baltimore County Policy on Reserved Parking Spaces for Persons with Physical Disabilities (County Ex. 6) which disqualifies Mrs. Silwonuk from consideration of the permit that she seeks. This policy is authorized under MD Code Ann., TR, §21-1005. Thus, under Section 3(B) of the Policy, the County was correct to deny the Application. The only basis for this Board to reverse the County's decision under Section 3(B) is found in Section (8) which states that an Applicant must meet all of the following conditions:

- (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 all of the testimony and evidence presented, the Board has determined that the decision of the Bureau of Traffic Engineering should be upheld and that the application for handicapped parking space should be denied. Mrs. Silwonuk has not proven she is entitled to an exception under the Section (8) conditions. She did not prove that accessing her vehicle by way of the rear door (5 steps) is any more difficult than descending 6 steps leading to the curb in front. Further, Mrs. Silwonuk has not taken any measures (albeit due to purported financial constraints) to make the rear parking pad usable and available. It is clear from the photographs in evidence that Mrs. Silwonuk's vehicle could be backed up to the rear porch door which would then be a shorter distance to her vehicle than descending the front steps and using the wheelchair to the front street. She could descend the back steps as she does in the

front and use her wheelchair to get to the parking pad. While her medical condition is serious, because descending the back is no more difficult than the front, it is clear that her request is one of more convenience. In addition, there was no evidence submitted by Mrs. Silwonuk that granting the request would not be a hardship on her neighbors.

Therefore, the Board unanimously finds that the Applicant has not taken all reasonable measures to make the off-street parking area usable and available, and that the approval of a reserved parking space in the front of the home would be solely for the convenience of the Applicant and not for medical necessity.

ORDER

THEREFORE, IT IS THIS 16th day of October, 2009, by the County Board of Appeals of Baltimore County

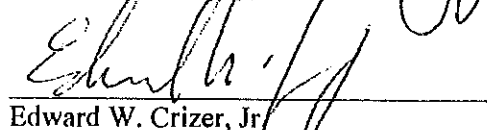
ORDERED that the decision of the Division of Traffic Engineering in Case No. CBA-10-012 be and the same is hereby **AFFIRMED**; and it is furthered,

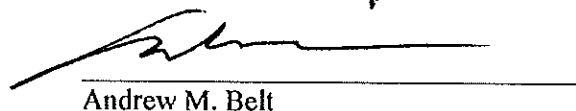
ORDERED that the application of Doris Silwonuk for a reserved handicapped parking space at 1122 Foxwood Lane, Baltimore, MD. 21221 be and the same is hereby **DENIED**.

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*.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chairman


Edward W. Crizer, Jr.


Andrew M. Belt