

IN THE MATTER OF
JOSEPH E. WHARTON - APPLICANT
8116 DEL HAVEN ROAD
BALTIMORE, MD 21222

RE: DENIAL OF RESERVED
HANDICAPPED PARKING SPACE

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-11-021

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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 8116 Del Haven Road, Baltimore, MD 21222, by the Baltimore County Division of Traffic Engineering in a letter dated March 18, 2011, to Mr. Earl Beville, Assistant Manager, Investigative and Security Division, Motor Vehicle Administration (MVA), from Stephen E. Weber, P.E., Chief, Bureau of Traffic Engineering and Transportation Planning for Baltimore County (County Exhibit No. 5). A copy of that letter was sent to Joseph E. Wharton, Appellant, along with a copy of the County Policy with respect to handicapped parking spaces.

Background

On March 6, 2011, Appellant/Applicant, Joseph E. Wharton, 8116 Del Haven Road, Baltimore, MD 21222, submitted an application for a personal residential permit for reserved parking space to the Motor Vehicle Administration (MVA). The application was forwarded by letter dated March 15, 2011 to Stephen E. Weber, Chief of Baltimore County Division of Traffic Engineering from Earl Beville, Assistant Manager, Investigative and Security Division, Motor Vehicle Administration (MVA). Mr. Beville, in his letter verified Mr. Wharton's disability, in that the Applicant met the provision of the Maryland Vehicle Law § 21-1005. He requested that

the Division of Traffic Engineering process the application to determine, from a traffic-engineering standpoint, if the request met the criteria of the operations.

As stated above, by letter dated March 18, 2011, Stephen E. Weber, replied to Mr. Beville's request to review the application for a reserved handicapped space for Mr. Wharton. Mr. Weber informed Mr. Beville that the request for reserved handicapped parking space was denied, since the request did not conform with Item 3B of the Baltimore County Policy on Reserved Parking Spaces for Persons with Physical Disabilities.

Item 3B of the Baltimore County Policy on Reserved Parking Spaces for Persons with Physical Disabilities 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.)”

On April 22, 2011, the Applicant submitted a request to appeal the denial of his request for a reserved parking space.

Evidence and Testimony

The Board held a public hearing on June 9, 2011. Baltimore County was represented by Mr. Stephen E. Weber and Mr. James Gullivan, Division of Traffic Engineering. Mr. Wharton was not represented and appeared *pro se*.

Mr. Gullivan testified on behalf of the County that he had conducted a personal inspection of the Appellant's property on March 17, 2011 and took photographs of both the front

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and the rear of the property, which were presented into evidence. He stated that the property has five (5) steps in the rear of the premises. There is a driveway pad with a set of swing away gates (County Ex. 2c) located in the back of the house. The picture of the front of the home (County Ex. 2a) reveals there is a chain link fence with a swing away gate and two (2) steps in the first part of the sidewalk then on the porch end is another six (6) steps before coming level with the front entrance. The County does not dispute Mr. Wharton's illness. Mr. Gullivan suggested that Mr. Wharton could move the fence closer to the house or remove it all together. Mr. Gullivan testified that with less steps in the rear of the house than in the front, the granting of the reserved handicapped parking space would be a matter of convenience. Mr. Gullivan testified that he did not feel that Mr. Wharton had taken all reasonable measures to make the rear parking area more usable. Therefore, the request for the parking space was denied on the basis of Section 3B of the Baltimore County Parking Policy for Reserved Parking Spaces for persons with physical disabilities because Mr. Wharton had a parking pad at the rear of his home.

Mr. Wharton testified that he and his wife are the property owners of 8116 Del Haven Road located in the Dundalk area and would like to have the ability to park in the front of his house with the assistance of reserved handicapped parking. Mr. Wharton did not argue that there are less steps in the rear of the house compared to the front of the house. Mr. Wharton said his problem was that it is very cumbersome to open and close the driveway gates as he takes his truck in and out of the driveway. Mr. Wharton testified that he drives a Chevy full-size truck and his wife has a Toyota car. In his testimony, he recognized that he had not tried to move the gates or fencing. He testified that he needed to keep the gates up to keep local kids out of his yard. Only Mr. Wharton testified and he did not offer any evidence to be logged.

There were no neighbors testifying.

Decision

The Board has reviewed the testimony and evidence presented by both parties in this matter. These are not easy cases and the granting of a parking space is not one that is easily obtained.

Any applicant who is aggrieved by a decision of Baltimore County DTE under Item (3)(B) only may appeal that decision to the County Board of Appeals as provided for under Article VI of the Baltimore County Charter and Sections 3-5-104 and 3-5-105 of the Baltimore County Code. The Board of Appeals may overturn the County's denial if **ALL** the following conditions are found to exist:

(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.

The Board does not question the disability of Mr. Wharton. However, the Board does not feel that Mr. Wharton has taken all reasonable measures to make the rear parking area more usable and because Mr. Wharton has a parking pad at the rear of his home.

Therefore, the Board finds that the granting of the parking space at the front of Mr. Wharton's home would be more for his convenience than true medical necessity. The Board finds that there is not sufficient substantiation to indicate that Mr. Wharton has met the requirements under the Baltimore County Policy on Reserved Parking Spaces for Persons with

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Physical Disabilities. 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.

ORDER


THEREFORE, IT IS THIS 14th day of September, 2011, by the Board of Appeals of Baltimore County,

ORDERED that the decision of the Division of Traffic Engineering in Case No. CBA-11-021 be and the same is hereby **AFFIRMED**; and it is furthered

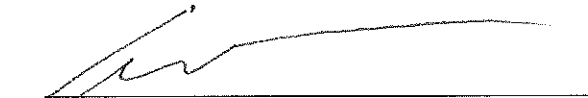
ORDERED that the application of Joseph E. Wharton for a reserved handicapped parking space at 8116 Del Haven Road, Baltimore, MD 21222, be and the same is hereby **DENIED**.

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*.

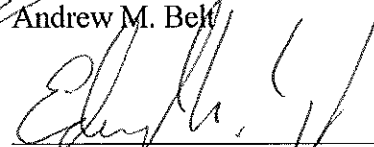
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Wendell H. Grier, Panel Chair



Andrew M. Bell



Edward W. Crizer, Jr.