



Board of Appeals of Baltimore County

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October 28, 2016

Ms. Terry Lynn Delano
22 Fullerton Heights Avenue
Baltimore, Maryland 21236

RE: *In the Matter of: Terry Lynn Delano*
Case No.: CBA-17-006

Dear Ms. Delano:

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 Ham".

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

IN THE MATTER OF:
TERRY LYNN DELANO
22 FULLERTON HEIGHTS AVENUE
BALTIMORE, MD 21236

RE: DENIAL OF RESERVED
HANDICAPPED PARKING SPACE

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-17-006

* * * * *

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 22 Fullerton Heights Avenue, Baltimore, Maryland 21236 (the “Property”), as set forth by letter dated August 8, 2016 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, Terry Lynn Delano, along with a copy of the County Policy with respect to handicapped parking spaces.

A public hearing in front of the Board was scheduled on October 13, 2016, at 10:00 a.m. Baltimore County (the “County”) was represented by James Cockrell, a Traffic Inspector for the Baltimore County Division of Traffic Engineering. Ms. Delano 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. Delano dated June 22, 2016. The MVA Application and July 8, 2016, transmittal letter to the Baltimore County Division of Traffic and Engineering is County Exhibit 1. Following receipt of the Application, Mr. Cockrell visited and inspected the Property on July 26, 2016, and took a photograph of the front of the Property (County Exhibit 2A). The Property is a single family home. County Exhibit 2A shows the front of the

Property. There is a level walkway (hereinafter Walkway 1) from the street to the front steps. There are approximately five steps to go up to the front porch and the front door. As one faces the house, there is a handrail on the right side of those steps to assist anyone going up those steps. County Exhibit 2A also indicates that when one is facing the house, there is a paved driveway on the left side of the house. This paved drive is parallel to Walkway 1 and extends to a point that appears to be essentially even with the front of the house. The driveway enables the resident to park off street next to the house. There is a paved walkway (hereinafter Walkway 2) extending in a perpendicular direction from the top of the paved driveway, passing directly by the front of the house and meeting the top of Walkway 1 right at the base of the steps leading up to the porch. Walkway 2 appears to be about 25 feet in length from the edge of the drive to the intersection with Walkway 1 at the foot of the porch. There is no rail on either Walkway 1 or Walkway 2. While Walkway 1 appears to be level, there is a slight upward grade for Walkway 2.

Mr. Cockrell, on the basis of the State's verification of physical disability, did not contest Ms. Delano'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") (County Exhibit 4), the County concluded that Ms. Delano 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 August 8, 2016 letter from Mr. Filsinger, on behalf of the County, to Mr. Beville, denying Ms. Delano's request for a reserved handicap

¹ Section 21-1005(l) 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."

parking space. (County Exhibit 5). Ms. Delano was copied on that letter and also was provided a copy of the BC Policy. (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, Section 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 as stated above that the side 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). Mr. Cockrell testified that the surface of Walkway 2 from the side drive to the bottom of the porch steps was walkable with no obstacles in Walkway 2 that would prevent Ms. Delano from using the parking pad.

Ms. Delano testified that she has significant diabetic neuropathy. She testified that the grade on Walkway 2 is too steep for her to navigate safely. There is no rail on either Walkway 1

or Walkway 2. Ms. Delano is renting the home, and the landlord has not installed a rail for either walkway. Ms. Delano testified that Walkway 1 is easier because there is no grade.

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 upheld and the application for the reserved handicapped parking space is denied.

As reflected by Mr. Cockrell's testimony and as illustrated in County Exhibit 2A, the side of the Property contains a parking pad. As referenced above, pursuant to County Policy 3(B), a reserved on-street parking space will not be authorized for any applicant whose property has a self-contained off-street parking area. (County Exhibit 4). Ms. Delano does not contest that the side of the Property contains a self-contained off-street parking area. Her position, quite simply, is that the grade of Walkway 2 makes navigating that walkway much more difficult than navigating the

slightly longer Walkway 1. There is no rail along either Walkway though, according to Ms. Delano that is because the landlord has not installed one.

It is undisputed Ms. Delano has a disability. At the same time, there must be evidence that the disability is one of such a severe degree that using the existing parking pad will constitute an extreme hardship. Ms. Delano testified that Walkway 1 is easier than Walkway 2 because Walkway 1 is level and Walkway 2 has a grade. The photographs from both the County (Exhibit 2A) and from Ms. Delano (Petitioner Exhibits 1A-E) do reveal that the distance from the parking pad to the front door is less than the distance from the street to the front door. More importantly, the photographs do not sufficiently demonstrate that the grade associated with Walkway 2 is steep enough to satisfy the statutory test to justify a dedicated parking spot. Therefore, the Board concludes that the evidence does not meet the criteria under Section 8(B) or Section 8(C). To be clear, the Board does not challenge the difficulties experienced by Ms. Delano that are attributed to her medical conditions, only that the evidence presented does not meet the heightened level of severity and does not meet the heightened level of hardship required by Section 8(B) or that sufficient evidence has been presented regarding the medical necessity that would require a dedicated parking spot under Section 8(C). As a result, the evidence cannot satisfy the requirements under Section 8 to permit this Board to reverse the original denial.

Based on the foregoing, the evidentiary record does not permit the Board to justify overturning the County's denial of the issuance of a reserved parking space for Ms. Delano.

ORDER

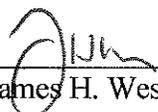
THEREFORE, IT IS THIS 28th day of October, 2016, by the Board of Appeals of Baltimore County,

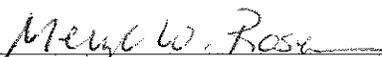
ORDERED that the decision of the Division of Traffic Engineering dated August 8, 2016 in Case No. CBA-17-006 be and the same is hereby **AFFIRMED**; and it is further,

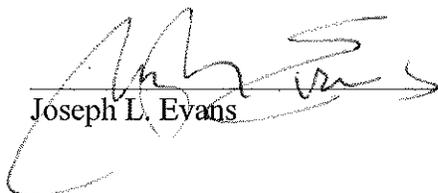
ORDERED that the application of Terry Lynn Delano for a reserved handicapped parking space at 22 Fullerton Heights Avenue, Baltimore, MD 21236, be and the same is hereby **DENIED**.

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**


James H. West, Panel Chairman


Meryl W. Rosen


Joseph L. Evans