

**Before the
Commission on Common Ownership Communities**

September 30, 1994

In the Matter of	x	
Seneca Forest Community Association, Inc.	x	
c/o The Management Group	x	
One Bank Street, #301	x	
Gaithersburg, Maryland 20878	x	
	x	
Complainant	x	
	x	Case 249-G
Vs.	x	
	x	
Charles and Nancy Meiselman	x	
18916 Treebranch Terrace	x	
Germantown, Maryland 20874	x	
	x	
Respondent	x	

DECISION AND ORDER

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and evidence of record, it is therefore this 30th day of September, 1994, found, determined and ordered as follows:

BACKGROUND

On September 8, 1993, the Board of Directors, Seneca Forest Community Association, (hereinafter the "Complainant") filed a formal dispute with the Office of Common Ownership Communities in which they alleged that Charles and Nancy Meiselman, owners of 18916 Treebranch Terrace, Germantown, Maryland, (hereinafter the "Respondents"), constructed a hot tub, tool shed, and deck without prior approval of the Association, contrary to the Association's regulations.

FINDINGS OF FACT

1. The Complainant, Seneca Forest Community Association, is a community consisting of 425 townhouses.
2. Charles and Nancy Meiselman own property at 18916 Treebranch Terrace, Germantown, Maryland which is in the Seneca Forest Community.

3. The Declaration of Covenants, states in pertinent part:

Section 1. Architectural and Environmental Control Committee.

Except for construction or development by, for, or under contract with the Declaring, and except for any improvements to any lot or to the common areas accomplished by the Declaring concurrently with said construction and development, and except for purposes of proper maintenance and repair, no building, fence, wall or other improvements or structures shall be commenced, directed, placed, moved, altered or maintained upon the Property, nor shall any exterior addition to or change (including change of color) or alternative thereupon be made until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change (including without limitation, any other information specified by the Architectural and Environmental Control Committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by an Architectural and Environmental Control Committee designated by the Board of Directors.

4. The Architectural and Environmental Control Committee adopted a "design concept" guideline in 1987 pursuant to Article VII of the Declaration of Covenants. The original guidelines provide that "all changes to the outside of your home and/or surrounding property must first be approved by the Architectural Review Committee" (Commission Exhibit No. 2). The 1987 Guidelines did not address hot tubs or tool sheds but, as noted above, since they were changes to the outside of the residence they did require prior approval of the Architectural Review Committee.

5. The relevant sections of the March 1993 amended Community's Architectural and Environmental Control Committee guidelines state:

A. Decks - 1. Size - Cover entire back side of home up to one foot from center line of party wall. End units, flush on non-party wall side only.

2. Steps - Not to extend beyond property line. Steps on end unit may not extend beyond building line.

* * *

J. Hot Tubs

1. All hot tubs are subject to approval by the Seneca Forest AECC.

K. Sheds Before submitting plans, applicants are advised to contact the AECC for recommended guidelines for shed construction.

1. All sheds shall be constructed consistent with the shed models built by Porten Sullivan in the development and according to the plans provided by the AECC.

6. The Respondent installed the tool shed, the hot tub and the steps on the side of the deck which extended beyond the building line of the house in late 1989 through the Spring of 1990. The 1987 Guidelines provided that steps on an end unit such as the Respondents may not extend beyond the building line. The steps installed by Respondent between the two floors of its deck did so extend.

7. At the suggestion of a representative of the management company, approximately 10 months after the work was completed, the Respondents submitted an Architectural Change Request Form dated February 1, 1991 for building a second story deck, ground level deck, fence, hot tub, and shed.

8. On May 14, 1991, the Architectural Control Committee approved the Respondents request to build the fence and disapproved the deck, hot tub, and shed.

9. By correspondence dated June 20, 1991, the Respondents were notified that the fence they requested had been approved but the shed, deck and hot tub had been denied. The Respondents were invited to resubmit their request for the shed after July 16, 1991 because the Board would be reviewing architectural policies to possibly allow sheds in the future. The Respondents were advised that "it has been standard policy that decks may not extend beyond the exterior wall of end unit townhomes." The Respondents were notified that the stairs on their existing deck would need to be relocated and that hot tubs and pools are prohibited.

10. By correspondence dated October 12, 1992, the Respondents were notified that the Board had scheduled a hearing for November 23, 1992 concerning the outstanding architectural violations on their property.

11. At the same hearing, the Board also considered a written request to approve a metal tool shed at 13012 Cherry Bend Terrace, Germantown, Maryland, which was installed by a previous owner. After deferring decision until the March 1993 guidelines were adopted, the Board, noting that the applicant had purchased 13012 Cherry Bend Terrace with the shed already in place, allowed the metal shed to remain subject to restrictions. Respondent alleged, without submitting additional proof thereon, that there was evidence of inconsistent enforcement.

12. By correspondence dated November 9, 1992, the Respondents were notified that the architectural violations were still outstanding. The Respondents were informed of the hearing scheduled before the Board of Directors on November 23, 1992.

13. By correspondence dated December 18, 1992, the Respondents were notified of the Board's decision on their architectural violations. The Board of Directors made the following decisions:

A. All further action and enforcement by the Board will be stayed until after the Seneca Forest homeowners have an opportunity to vote on a proposed amendment for sheds.

B. The Respondents will be required to file an AECC application for the existing hot tub. A certificate or written affidavit by an authorized contractor must accompany the application attesting that the hot tub meets the Montgomery County Building Code for hot tubs.

C. Mrs. Meiselman shall furnish a medical letter indicating her disability which dictates her limited use of steps, including an explanation of why the steps must remain in the current location.

The Respondents were notified that their failure to comply with these requirements would result in an immediate cease and desist order on all violations.

14. At the hearing Mrs. Meiselman testified that the deck steps in their current location were no longer medically necessary or indicated due to the abatement of her past medical disability.

15. By correspondence dated April 22, 1993, the Respondents were notified of the revised Architectural Guidelines dated March 22, 1993 which included standards by which sheds and hot tubs would be approved. The Respondents were requested to submit an Architectural Change Request form for their shed and hot tub. The Respondents were given 60 days to comply with the Board's request.

16. By correspondence dated August 12, 1993, the Respondents were requested to comply with the Board's request that they submit Architectural Change Request forms for their hot tub, deck, and shed. The Board notified the Respondents that they still had not provided the information requested by the Board in their letter of December 18, 1992. The Respondents were advised to provide the requested documentation prior to August 31, 1993.

17. Respondents testified that when they moved in 1981, it was the spirit of the community to enhance the value of the community by improving your property; that a number of neighbors and officers of the Association had praised the quality and design of their improvements; that to their knowledge no one had complained of their changes and that when invited to re-submit requests for approval, Respondent had seen little point to doing so since it was in effect a "paper chase" in which their prior request had been denied; and that the tool shed was an improvement in safety and aesthetics compared to seeing lawn mowers and garden utensils on each neighbors deck.

CONCLUSIONS OF LAW

The Commission concludes, based upon a preponderance of the testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, that:

1. The stair case adjoining the deck was installed in violation of the 1987 guidelines adopted by the Architectural and Environmental Control Committee.
2. The hot tub was installed in violation of the prior approval procedure imposed by the 1987 Guidelines, which were in effect at the date of the installation. Since that time, the Guidelines have been revised to permit hot tubs subject to approval of the Association.
3. The tool shed was installed in violation of Section 7 of the Declaration of Covenants which, by its terms, prohibits sheds.

4. The Board acted reasonably in its disposition of the tool shed case and the shed described in finding #11 above and did not act in an inconsistent manner.

5. Respondent has failed, refused, or ignored a number of written requests and encouragements by Complainant to re-submit a change request form. Although the product of Respondent's work may rightfully be satisfactory to themselves and to other individuals in the community, nevertheless they have not complied with the architectural controls and procedures of the Complainant to which they submitted when they purchased a unit within the Association Community. Respondent must now take the necessary steps to comply with the same.

ORDER

In view of the foregoing and based on the evidence of record, it is hereby ORDERED that:

1. Within forty-five (45) days from the date of this Order, weather permitting, the Respondent shall, in accordance with applicable building codes, remove the stair case adjoining the deck and close the railing, or within 30 days from the date of the date hereof at their election they shall apply to the Association to relocate the stairs.

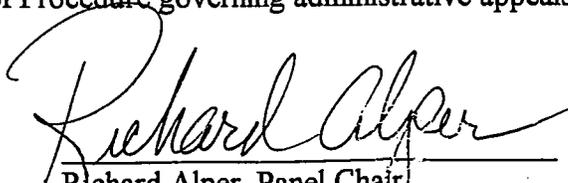
2. Within thirty (30) days from the date hereof, Respondent shall apply to the Association for approval of the covered hot tub.

3. Within forty-five (45) days from the date hereof, weather permitting, the tool shed shall be removed or within thirty (30) days from the date hereof at their election, the Respondent shall apply to the Association to modify the tool shed to conform to the existing guidelines of the Association. In the event the Board in its reasonable discretion grants the request for modification, the Board in its decision shall establish a clear and specific time frame for completion by the Respondents of modification of the tool shed.

4. Time is of the essence with respect to each time frame stated in this Order.

The foregoing was concurred in by panel members, Alper, Auvil, and Sullivan.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.


Richard Alper, Panel Chair
Commission on Common Ownership
Communities