

Before the
Commission on Common Ownership Communities

In the matter of	x	
	x	
River's Edge Homeowners Association, Inc.	x	
Donna Mecklenburg, President	x	
12304 River's Edge Drive	x	
Potomac, Maryland 20854-1072,	x	
	x	
Complainant,	x	
	x	
v.	x	Case No. 293-G
	x	July 10, 1996
Alwin and Trudah Harding, Owners	x	
13604 Canal Vista	x	
Potomac, Maryland 20854-1072,	x	
	x	
Respondents.	x	

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on April 24, 1996, 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 duly appointed hearing Panel, having considered the testimony and evidence of record, finds, determines and orders as follows:

Background

On February 10, 1995, Donna Mecklenburg, President of the River's Edge Homeowners' Association, filed a complaint with the Office of Common Ownership Communities against Alwin and Trudah Harding, owners of 13604 Canal Vista, Potomac, Maryland 20854-1072. The complaint alleges that the enclosure required to surround an in ground pool was partially completed and that no application for approval of that enclosure had been submitted to the Association's Architectural Control Committee in accordance with the Association By-laws and that a chain link fence had been constructed around the outside of the property, also without the approval of the Association's Architectural Control Committee. The complaint requests the Commission to Order Respondents to complete construction of an enclosure around the pool which has the approval of the Association's Architectural Control Committee and to remove the chain link fence which had been installed.

Inasmuch as the matter was not resolved through mediation or discussions between the parties, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e) on March 6, 1996, and the Commission voted it was

a matter within the Commission's jurisdiction, and the matter was scheduled for a public hearing on April 24, 1996.

Findings of Fact

Based on the testimony and evidence of record, the Panel makes the following findings:

1. River's Edge Homeowners' Association includes approximately 88 1.5 to 2.5 acre lots in the area of River Road and Travillah Road in Potomac, Maryland.

2. According to Dr. Alwin Harding, the Respondents decided to buy and build in the River's Edge community in 1984. The pool was installed in 1987. The house has been unoccupied for several years.

3. Mr. Kevin Lipson, President of the River's Edge Homeowners' Association in 1993-1994, testified that, as a result of phone calls from other Association Directors, he went to see the Harding property on August 24, 1993. As a result of that visit, he wrote the Hardings the next day to advise them that the construction of a fence in the River's Edge community requires approval of the Architectural Control Committee.

4. Mr. Lipson testified that he had several telephone conversations with the Hardings in September 1993. The Hardings planned to install rubber coated chain link fence around the perimeter of their property. The policy of the community is that fences which are visible from the street may not be chain link except in some circumstances which were not applicable in this case. Further, a fence is not permitted to extend in front of the house. The Board did not approve the design proposed by the Hardings and Mr. Lipson so informed them. Brent Andrus, Chairman of the River's Edge Architectural Control Committee, testified that chain link fences are also not permitted along a boundary common to another River's Edge community homeowner.

5. On October 19, 1994, Ms. Donna Mecklenburg, then President of the River's Edge Homeowners' Association wrote to the Hardings requesting that they submit the necessary applications for the incomplete construction at their house.

6. At the hearing the Association asked that the Commission order the Respondents to complete construction of the swimming pool enclosure in the same design and materials planned and used to date and to submit an application for the perimeter fence for approval by the Architectural Control Committee of the Association and complete construction of the fence in accordance with the approved design and materials.

7. The Protective Covenants and Restrictions, filed with the Montgomery County land records in August 1978, covering the River's Edge community includes the following language, applicable to this dispute:

C. The covenants, restrictions, conditions, reservations, liens and charges are hereby declared to insure the best use and most appropriate development and improvement of each Building Site thereof; to protect the owners of the Building Sites against such improper use of surrounding Building Sites as might depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereon of improper or unsuitable materials; ... to prevent haphazard and inharmonious improvement of Building Sites; ... and thereby to enhance the value of investment made by purchasers of Building Sites therein.

1. No improvements of any character shall be erected and none begun, ... unless and until [specified elements] shall have been approved in writing by the Building Site Control Committee....

17. No fence or wall of any kind shall be erected, placed or maintained, or permitted to remain upon a Building Site, unless and until the written consent of the Control Committee has been had and obtained therefor.

8. A further River's Edge Homeowners Association, Inc. Declaration of Covenants, Conditions and Restrictions was executed in March 1986, is filed at Liber 7077 Folio 009, which reincorporates the 1978 Covenants.

Conclusions of Law

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

1. Homeowners in the River's Edge community are required to submit a detailed application in writing for approval to construct any improvement, and specifically any fence or wall, to the Architectural Control Committee and receive written approval of the Architectural Control Committee before beginning construction of such improvements.

2. Respondents have not submitted a written application meeting the requirements of the community Covenant documents for their swimming pool enclosure or their perimeter fence and have not received the required written approval from the Committee.

Order

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

1. Within 30 days of the date of this ORDER, Respondents submit a written application to construct a perimeter fence supported by sufficient detail to meet the requirements of the Covenants to the River's Edge Homeowners' Association Architectural Control Board.

2. To the extent that the application does not meet the requirements of the Architectural Control Committee or the Board of Directors, as appropriate, the appropriate representative of River's Edge will prepare a written statement of issues to Respondents who will provide written amendments to the application which are responsive to the concerns expressed within ten days of initial contact by the community representative that such written statement has been prepared.

3. Within 60 days of receiving final approval of the application for a perimeter fence, Respondents shall complete the construction of the approved fence including the removal of unapproved sections of the installed chain link fence.

4. Within 60 days of the date of this ORDER, or such longer period as may be agreed to by the River's Edge Homeowners' Association Board of Directors prior to the expiration of the 60 days, complete the construction of the pool enclosure as approved by the Architectural Control Committee.

5. Alternatively, if the River's Edge Homeowners' Association Board of Directors agrees, and if the completed pool enclosure will meet the Montgomery County Code requirements for swimming pool fencing, and no other County Code requirements exist, Respondents may complete the swimming pool enclosure and remove the perimeter fence. If Respondents choose this option, they must enter into a contract with a licensed contractor, qualified to complete the pool enclosure, to complete the construction of the approved pool enclosure within 60 days. The contract must include a clause providing that time is of the essence. Within ten days of the completion of the pool enclosure, so much of the perimeter fence as required to be removed by the River's Edge Homeowners' Association Board of Directors must be removed.

The foregoing was concurred in by Panel members Kristian, Price and Stevens.

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.

A handwritten signature in cursive script that reads "Dinah Stevens". The signature is written in dark ink and is positioned above a horizontal line.

Dinah Stevens, Panel Chairwoman
Commission on Common Ownership
Communities