

Before the
Commission on Common Ownership Communities

September 22, 1997

In the Matter of	*	
Jeffrey Winans	*	
10419 Capehart Court	*	
Gaithersburg, MD 20879	*	
	*	
Complainant	*	
	*	
vs.	*	Case No. 353-O
	*	
Montgomery Village Foundation, Inc.	*	
10120 Apple Ridge Road	*	
Montgomery Village, MD 20886	*	
	*	
Respondent	*	

DECISION AND ORDER

The above entitled 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 this 22nd day of September, 1997, found, determined and ordered as follows:

BACKGROUND

On February 5, 1997, Jeffrey Winans, owner of 10418 Capehart Court, Gaithersburg, Maryland (hereinafter "Complainant"), filed a formal dispute with the Office of Common Ownership Communities in which he alleged that the Montgomery Village Foundation, Inc. (hereinafter "Board" or "Association") failed to properly process his application for alterations to his property, and unreasonably denied his ability to replace the side window in the front of his home located in the Stedwick Community of Montgomery Village.

FINDINGS OF FACT

1. The Complainant, Jeffrey Winans, owns property, with his wife, at 10418 Capehart Court, Gaithersburg, MD, located in Stedwick Homes Corporation of Montgomery Village.

2. The Complainant resides in a home located in the Stedwick Homes Corporation, which was declared to be part of Montgomery Village.

3. Stedwick Homes Corporation has delegated certain of its functions, including architectural control, to the Montgomery Village Foundation, Inc., pursuant to Declaration of Covenants, Conditions and Restrictions dated August 14, 1967 (hereinafter "Declaration").

4. Said Declaration provides, in pertinent part, in Article VIII, entitled "Architectural Control Committee", as follows:

"From and after the completion of construction and first sale and settlement of a Private Dwelling Unit within Stedwick by the Developer, its heirs, successors or assigns, no building, fence, wall or other structure shall be commenced, erected or maintained within Stedwick nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Montgomery Village Foundation or by an Architectural Control Committee composed of three (3) or more persons appointed by the Board. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The Montgomery Village Foundation shall have the right to charge a reasonable fee for reviewing each application in an amount not to exceed \$25.00. Provided that nothing herein contained shall apply to any buildings, fences, walls or other structures commenced, erected, maintained or to be erected upon land within Montgomery Village as long as title to such land is held by the Developer. Any such exterior addition to or change or alteration made without application having first been made and approval obtained as provided above, shall be deemed to be in violation of this covenant and may be required to be restored to the original condition at Owner's cost."

5. The Architectural Control Committee, periodically, on approximately a bi-monthly basis, publishes a newsletter which provides information regarding the policies and procedures of the Architectural Control Committee. The newsletter provided, at various times, the following:

"All exterior alterations must be reviewed by the ARB before work may begin."

"Applications will be processed and returned within one week following the meeting."

"Additional guidelines for different modifications such as decks, replacement windows, etc. are available upon request."

6. In or about February, 1996, Jeffrey Winans had all of his windows at the subject residence replaced. During the course of the replacement, the sidelight next to his front door (hereinafter "sidelight") was broken and replaced with two slider windows.

7. On about June 24, 1996, a complaint was made to the Architectural Control Committee about the installation of the replacement windows and the sliding windows installed as replacement for the sidelight in the front of the door at Complainant's residence.

8. On or about June 24, 1996, Mr. Winans was cited by the Architectural Standards staff for window replacement violation, in that the replacement had taken place without the submissions of an application and without approval of the installation.

9. On or about July 9, 1996, some seven months after the replacement of Mr. Winans windows, an application was submitted by the Complainant for the replacement windows.

10. On July 25, 1996, the Architectural Control Committee approved, by document No 08260, all window replacements, except for the replacement of the sidelight by the sliding windows.

11. On August 11, 1996, the Complainant filed an appeal on the rejection of his sidelight windows.

12. The data presented to the Executive Committee included a complete history of the violations and prior applications of the Complainant from the time of his moving in to the Community in July of 1988. The history was entitled, "Chronological History of Architectural Problems at 10418 Capehart Court." Several versions were submitted.

13. On or about October 9, 1996, a Memorandum was prepared by Diane B. Stasiewicz, director of architectural standards of Montgomery Village Foundation, Inc. to the Montgomery Village Foundation Executive Committee concerning the appeal of the Complainant. The October 9, 1996 Memorandum again had a shortened history of the Complainant's prior architectural disputes with the Village.

14. The staff recommendation concerning the Complainant's appeal states as follows:

"Mr. Winans is not a cooperative homeowner. He has violated the architectural covenants on numerous occasions. The sidelight replacement is completely different from any other front entrance door in the community and is aesthetically unacceptable. The sidelight replacement should be denied and Mr. Winans required to install the correct type of skylight no later than November 30, 1996."

15. The Complainant's appeal was originally scheduled to be heard at the Executive Committee meeting of September 17, 1996. Mr. Winans could not attend on September 17th and his appeal was continued until the October 15, 1996 meeting. Mr. Winans left that meeting earlier than the time his appeal was set to be heard on the Executive Committee agenda. The

hearing was then rescheduled for November 12, 1996, at which time a decision was made by the Executive Committee to affirm the decision of the Architectural Control Committee.

16. The Motion to Reconsider the decision of the Executive Committee was discussed on December 17, 1996. At that time, the decision to deny the slider replacement to the sidelights was affirmed. The Executive Committee stated that:

"the sliders originally altered the original design intent for the front entranceway in Cluster II. Slider windows are not normally installed as part of a front entrance feature, and aesthetically do not enhance the appearance of your front door."

17. Having exhausted his administrative remedies within the Montgomery Village Foundation procedures, the Complainant then filed this Complaint.

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. All of the windows installed by the Complainant were installed in violation of the Declaration of Covenants in force in Stedwick Homes Corporation and the Rules and Regulations of the Architectural Control Committee of Montgomery Village Foundation.
2. A belated application of the Complainant was properly filed.
3. The denial by the Architectural Control Committee of the sidelight windows and the approval of the installation of all other replacement windows was properly within the province of the Architectural Control Committee.
4. The seven day guideline for distributing the decision on architectural matters published in the newsletter of the Architectural Control Committee is not binding upon the Foundation in terms of the time of denial. Only the thirty day rule prescribed in the Declaration is binding.
5. In any event, the Commission is satisfied that the Foundation mailed out the notice of approval of the replacement windows with the exception of the sidelight in a timely manner, although it is possible that the Complainant did not receive the original mailing of such action.
6. The decision of the Architectural Control Committee was not arbitrary and capricious in that the sidelight windows as installed are substantially different than any other feature in the community and it was within the discretion of the Architectural Control Committee to deny the application on the sidelight.
7. However, the procedures of the Architectural Control Committee and the Executive

Committee are inherently unfair and the reviews are improperly conducted.

8. The Commission finds that due process requires that each application be considered on its own merits and not be based on any prior conduct of the applicant. The only time the prior history of the applicant should be taken into consideration in deciding architectural control decisions is if the applicant denies having knowledge of the procedures and it is shown that the applicant has participated in the process at a prior time.

9. The bias of the Architectural Control Committee is evident by the wording and tone of each of its recommendations. The information submitted to the Executive Committee was biased and contained irrelevant and prejudicial information concerning the applicant which was entirely unnecessary in considering the decision as to the esthetics of the installation of the sliding sidelight windows.

10. The Montgomery Village Foundation Executive Committee and the Montgomery Village Foundation Architectural Committee are hereby put on notice that the disclosure of irrelevant information concerning the character and past actions of the applicant is unfair and does not meet the standards of due process required by the State of Maryland and Montgomery County, Maryland.

11. Notwithstanding this bias indicated in its recommendations and in the decision of the Executive Committee, the Commission finds that in this instance it was harmless error since the majority of the application was approved and only the installation of the sidelight was denied. This sidelight was unique in its application in Stedwick Homes and materially changed the nature of the appearance of the front door, and its denial was within the province of the Architectural Control Committee and the Executive Committee of the Montgomery Village Foundation. Therefore, the Complaint is denied.

ORDER

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

1. Within thirty (30) days from the date of this Order, the Complainant shall submit an application, in accordance with applicable building codes, to remove the sliding windows in the sidelight at his front door and replace them with window sidelights of a conventional type;

2. Prior to the commencement of work, the Architectural Control committee shall give approval to the work being done, which approval shall not be unreasonably withheld, conditioned or delayed; and

3. Within thirty (30) days of the date of the approval of an appropriate application, weather permitting, the Complainant shall install the approved sidelight windows; and

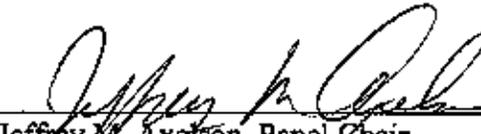
4. Montgomery Village Foundation Architectural Control Committee and the Montgomery Village Foundation Executive Committee shall cease and desist from considering

or commenting on the character and prior history of the applicant (a) in considering any application in the initial action or (b) in recommending any action in the appellate stage of the application procedure, except insofar as it relates to the applicant's knowledge of the architectural approval process within Montgomery Village Foundation, if that issue is raised by the applicant; and

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

The foregoing was concurred in by panel members, Axelson, Perlingiero and Wilson.

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.



Jeffrey M. Axelson, Panel Chair
Commission on Common Ownership
Communities