

COMMISSION ON COMMON OWNERSHIP COMMUNITIES  
FOR MONTGOMERY COUNTY, MARYLAND

In the Matter of:

DENNIS BARNES  
9504 Aspenwood Place  
Montgomery Village MD 20886

Case No. 504-0

Complainant

vs

MONTGOMERY VILLAGE FOUNDATION:  
10120 Apple Ridge Road  
Montgomery Village MD 20881

Respondents.

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on July 26, 2001, pursuant to Sections 10B-5(l), 10B-9(a), 10B-10, 10B-12, and 10B-13 of the Montgomery County Code 1984 as amended, and the duly appointed hearing panel having considered the testimony and evidence of record, finds, determines and orders as follows:

PRELIMINARY MOTION TO ADD THIRD PARTY RESPONDANT

Montgomery Village Foundation filed on April 25, 2001 a Motion to Add Third Party Respondent (Commission Exhibit 1 – Pg. 75) and renewed at the hearing a Motion for Lack of Jurisdiction of the Commission without Mr. and Mrs. Burley as parties. These Motions were denied by letter dated April 11, 2000 and again at the hearing. These motions are moot.

BACKGROUND

Dennis Barnes resides in Salem Grove, North Village Home Corporation of Montgomery Village Foundation, which is a member of and subject to the covenants of Montgomery Village

Foundation ("MVF"). Mr. Barnes owns the premises at 9504 Aspenwood Road. Mr. Barnes lives next door to Mr. and Mrs. John Burley, who reside at 9509 Aspenwood Place.<sup>1</sup>

On or about May 9, 2000, the Burleys made an application to the Montgomery Village Foundation for the installation of a basketball structure consisting of a pole (of approximately 10 feet) and a square translucent backboard, standard rim and net. The structure was considered by the MVF Architectural Review Board ("ARB") and the Burley's request was denied by letter dated May 22, 2001 (Commission Exhibit 1 – Pg. 53). In accordance with the policy of the MVF, the Burley's requested a reconsideration of the decision of the May 22 letter. The Burleys resubmitted an application with modifications on or about June 9, 2001 (Commission Ex. 1- Pg.50). The MVF Architectural Review Board reconsidered this matter, approved the basketball structure on June 21, 2001 and confirmed this reconsideration approval by letter dated June 28, 2000 (Commission Exhibit 1 – Pg. 49). The Complainant complained and appealed before MVF Executive Committee and by letter dated September 26, 2000 (Commission Exhibit 1 – Pg. 10), the decision of the ARB approving the structure was approved. In her letter dated September 26, 2001, Diane B. Stasiewicz, Director, MVF Architectural Standards provided as follows:

"The Executive Committee determined the ARB took into consideration the fact that there was a bike path and plantings between the two properties which is normally required to maintain some privacy toward the front of homes."

The Complainant alleged that the approval was in violation of the Association documents including the Montgomery Village Foundation Basketball Backboard Policy.

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<sup>1</sup> Although the Barnes live next door to the Burleys, there is a community bike path of approximately 5 feet between their properties (See Commission Exhibit 1– Pg. 6.) and some evergreens on Mr. Barnes property.

A complaint was filed by Complainant with the Commission on Common Ownership Communities. The matter was referred to mediation with the Commission on Common Ownership Communities, which did not resolve the dispute between the parties. This matter was then originally set for public hearing on April 25, 2001 and then rescheduled and heard on July 26, 2001, before a panel consisting of Commissioners Barry Wertlieb, Richard Price and Panel Chair Jeffrey Van Grack.

#### FINDING OF FACT

1. Complainant is owner of the single family residence located within both North Village Home Corporation and Montgomery Village Foundation at 9504 Aspenwood Terrace, Montgomery Village, Maryland, 20886.
2. In May of 2000, complainant's next door neighbor (Mr. and Mrs. John Burley) made a written request for a basketball backboard on his property. The request was initially denied by the ARB on July 23, 2000 (Commission Ex. 11-Pg. 49) and then, after a resubmitted application, was reconsidered and approved by the ARB.
3. Both prior to the hearing and again at the hearing, the Respondent (MVF) challenged that the Burleys should have been made parties and challenged the jurisdiction pursuant to County law. This request was denied and addressed earlier in this opinion.
4. There was conflicting testimony as to the use of the Basketball Court by the Complainant and Mr. Burley. The Complainant alleged that there was regular playing of basketball by adults and the complainant even brought a basketball with him to the hearing and bounced it, so that the panel could hear the sound of a bouncing basketball. The Burleys indicated that the basketball hoop was used primarily by their young children and used by adults on occasion. The evidence was undisputed that there were no floodlights for nighttime use and the facility was generally used during light hours.

5. The ARB indicated that after the initial disapproval, a more detailed inspection was made of the property and in light of the MVF Basketball Backboard Policy (Commission Exhibit 1 – Pg. 11), and the facts of this case, approved the installation. The evidence was clear that the ARB carefully considered this matter in making their decision.

#### CONCLUSION OF LAW

The North Village Home Corporation is governed by a Declaration of Covenants, Conditions and Documents duly filed and recorded in the land records of Montgomery County, Maryland on or about March 14, 1979. The Montgomery Village Foundation consistent with its authority created a Basketball Backboard Policy. Although the original request was denied, the ARB after receiving a request for appeal, with the exercise of careful review and detailed view of the properties changed their decision and permitted the basketball court to remain. The ARB and Executive Committee exercised due diligence and as such, acted in accordance with their duties.

Further, the Montgomery Village Foundation Basketball Backboard Policy as adopted by the Homeowners Association is clear, unambiguous and reasonable.

#### ORDER

In view of the foregoing, and based upon the evidence of the record, and for the reasons set forth above, it is the 11<sup>th</sup> day of September 2001 by the Commission on Common Ownership Communities, ORDERED that:

1. The Respondent's request that the Commission overturn the decision of the ARB and MVF Executive Committee is denied.
2. The Acts of both the ARB and MVF Executive Committee were well within their power and authority and were consistent with the decision making of the Association when considered with these facts, serious considerations and reflective of the Basketball Backboard Policy.

The foregoing was concurred in by panel members Price and Wertlieb.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty days after date of this Order, pursuant to the Maryland Rules of Procedures governing administrative appeals.

By: 

Jeffrey Van Grack

Panel Chairperson, Commission on  
Common Ownership Communities

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