

Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland
April 22, 1994

In the Matter of	x	
Middlebridge Village Homeowners	x	
Association, Inc.	x	
Complainant	x	
	x	
	x	
Vs.	x	Case No. 235-G
	x	
	x	
Glenn Pendleton	x	
1908 Middlebridge Drive	x	
Silver Spring, MD 20906	x	
Respondent	x	

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, 10-B-11 (e), 10B-12 and 10B-13 of the Montgomery County Code, 1984, as amended, of record, it is therefore, this 22nd day of April, 1994, found, determined and ordered as follows:

BACKGROUND

On May 25, 1993, the Middlebridge Village Homeowners Association, Inc., (hereinafter the "Complainant") filed a formal dispute with the Office of Common Ownership Communities in which the Complainant alleged that Glen Pendleton (hereinafter the "Respondent") had violated Article VIII, Section 7(h), (l) and (p) of the Declaration of Covenants for the Middlebridge Village Homeowners Association by placing or erecting a portable basketball backboard and related components on his property, located at 1908 Middlebridge Drive, Silver Spring, Maryland 20906. In its complaint the Complainant seeks an Order directing the Respondent to immediately and permanently remove the basketball backboard and related components from his lot which is located within the Middlebridge Homeowners Association.

The Respondent claims that the basketball backboard and related components which form the subject of this Complaint do not violate the provisions of the Declaration cited by the Complainant because they are portable.

Inasmuch as this matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On January 26, 1994, the Commission conducted a public hearing in this case,

following which the record was left open for ten (10) business days in order for both sides to submit written comments on a memorandum from the Montgomery County Government dated January 25, 1994. The record was then closed on February 9, 1994.

FINDINGS OF FACT

Based on the stipulations of the parties and the testimony and evidence of record, the Commission makes the following findings:

1. The Complainant is a community association consisting of 193 single-family homes and 112 townhomes located in Silver Spring, Maryland, and is governed by a Declaration of Covenants recorded at Liber 6438, Folio 424 among the Land Records for Montgomery County, Maryland. The issues in this case involve the meaning and application of Article VIII of Declaration. This Article governs the construction of any building, fence, wall or other improvements or structures on Association properties and contains a list of prohibited uses and nuisances in Section 7 thereof. The parties have disputed the meaning of particular provisions contained in Section 7 which are set forth hereinbelow:

ARTICLE VIII

* * *

Section 7. Prohibited Uses and Nuisances. Except for the activities of the Declarant during the construction of development of the community, or except with the prior written approval of the Board of Directors of the Association or the Architectural and Environmental Review Committee, or as may be necessary in connection with reasonable and necessary repairs or maintenance to any dwelling or upon the common areas:

* * *

(h) no decorative lawn ornament, no structure of a temporary character, and no trailer, tent shack, barn, pen, kennel, run, stable outdoor clothes dryer, shed or other buildings shall be erected, used or maintained on any lot at any time.

* * *

(l) no play equipment including, without limitation, basketball backboards, basketball hoops and other equipment associated with either adult or juvenile recreation, shall be attached in any manner to the exterior of any dwelling. Any basketball backboards, hoops, supporting standards and the like which are permitted to be erected by the Architectural and Environmental Review Committee shall be painted to match the trim color of the dwelling situated upon the lot on which such

equipment is constructed and shall be maintained in good order and repair at all times.

* * *

(p) no play equipment shall be installed beyond the front building line of the dwelling on any lot or upon the rear deck of the dwelling of any Townhouse Lot.

2. In the Spring of 1992, George Hedrick, as property manager for the Complainant became aware of a portable basketball backboard and related components having been placed on the Respondent's property and wrote a letter to the Respondent on May 7, 1992, requesting that the Respondent remove the "temporary basketball backboard from (his) driveway when it is not in use so as to become compliant with the Declaration."

3. After receiving no response, Mr. Hedrick forwarded a certified letter to the Respondent dated July 21, 1992, in which he alleged that the Respondent's temporary basketball backboard violated Article VIII, Section 7, paragraphs (h)(1), and (p) of the Declaration and must be removed within ten (10) days.

4. After receiving no response to this second letter, Mr. Hedrick referred the matter to the Association's attorney, Shelah Fidellman Lynn, who directed a letter to the Respondent on September 23, 1993, in which she notified the Respondent that the temporary basketball backboard on the driveway of his home was in violation of Article VIII, Section 7(1) and 7(p) of the Association's Declaration and must be removed.

5. On May 25, 1993, after the Respondent had failed to remove the temporary basketball backboard on his driveway, the Complainant filed this dispute with the Commission on Common Ownership Communities seeking an Order directing the Respondent to remove the backboard pursuant to the aforesaid provisions of Declaration of Covenants.

6. The Respondent testified at the hearing in this matter that he attempted to speak with Mr. Hedrick on a number of occasions, but was unable to obtain the names of the Architectural Review Committee members to discuss this dispute with them directly. He acknowledged that the temporary basketball backboard which is at issue in this matter has been placed on his front driveway and that it will not be removed without an Order by this Commission.

7. A number of pictures were introduced by each of the parties to this dispute showing the appearance of the temporary basketball backboard on Respondent's property. These pictures show that the backboard is usually located on Respondent's driveway between the two

garage doors in front of Mr. Pendleton's home. When placed in an upright position the backboard is the typical height of a basketball backboard and sits on a large gray base approximately thirty-eight (38) inches wide which contains an eight (8) inch roller that allows the base to be wheeled to its desired location. Mr. Pendleton testified that he occasionally lowers the backboard and wheels the entire structure into his garage. This occurs approximately two to three times annually when Mr. Pendleton's family goes on extended vacations.

CONCLUSIONS OF LAW

Based upon a preponderance of the evidence, including, but not limited to, testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, the Commission concludes that:

1. This matter turns primarily upon the interpretation of Article VIII, Section 7(h) (l) and (p) of the Association's Declaration. These provisions, as set forth hereinabove, set forth prohibited uses which the Complainant alleges prohibit the erection of a temporary basketball backboard on the Respondent's property. For the reasons set forth below, the Commission does not agree with the Complainant's contention and therefore denies the relief requested by the Complainant.

2. The Commission finds that Article VII, Section 7(h) does not prohibit Respondent's temporary basketball backboard because it is not a "structure of a temporary character" and is therefore not prohibited by that subsection. While the phrase "structure of a temporary character" is not specifically defined in the Declaration of Covenants for Middlebridge Village, the Commission finds that a structure must be affixed or attached to a property for some period of time in order to be considered a structure. No one would argue that a car, trailer, bicycle or the like is a "structure of a temporary character" because those items are placed on wheels and can be easily moved. Similarly, the basketball backboard which has been placed on the Respondent's property is also on rollers which allow it to be freely wheeled about his property and prevent it from being considered a structure. This interpretation is consistent with the balance of prohibited uses set forth in Subparagraph (h) which are generally structures which are affixed or placed on one's property such as tents, barns, kennels, etc. These items are temporary structures because although they do not have a permanent foundation, they are difficult to move once they have been placed upon the ground. Respondent's temporary basketball backboard may be readily moved with a minimal of effort and is designed for that very purpose. In that regard, the Commission notes that the Maryland Courts interpret restrictions on the use of property strictly and

have repeatedly stated that any ambiguity in the meaning of the language should have been resolved in favor of the unrestricted use of property. See Patuxent Development Company v. ADES of Lexington, Inc., 257 Md. 398, 405 (1970). While Maryland Courts have more recently grafted a "reasonableness rule" on the strict construction rule, this reasonableness rule merely requires that disapprovals of architectural control requests must be reasonable and exercised in good faith, and that any doubts should be resolved in favor of the unrestricted use of property. See Harbor View Improvement Association, Inc. v. Downey, 270 Md. 365, 372 (1973); Markey v. Morris Wolf, et al., 92 Md. App. 137 (1992). Accordingly, if any ambiguity exists in the meaning of the phrase "structure of a temporary character" as that provision is set forth in Subparagraph (h), the Commission finds that the ambiguity must be resolved in the favor of the unrestricted use of Respondent's property and that the provisions of that Subparagraph therefore do not prohibit Respondent's temporary basketball backboard. Consequently, the Commission finds that it is not a structure of a temporary character and does not violate the provisions of Subparagraph (h).

3. The Commission further finds that the Respondent's temporary basketball backboard does not violate the provisions of Article VIII, Section 7(1) because those provisions only prohibit the erection of basketball backboards and basketball hoops which are "attached" to the exterior of a dwelling in the community. The Respondent's temporary basketball backboard is not attached to the exterior of his dwelling but is simply placed on the driveway thereof. Therefore, the temporary basketball backboard is not a prohibited use under subparagraph (1).


4) The Commission further finds that the Respondent's temporary basketball backboard does not violate the provisions of Article VIII, Section 7(p) because those provisions prohibit any equipment from being "installed beyond the front building line" of any dwelling in the Complainant's community, but do not prohibit the placement of a temporary basketball backboard on the driveway of Respondent's home. The term "installed" as used in Subparagraph (p), implies a semi-permanent fixture or structure which has been attached to the property in a permanent or semi-permanent fashion. There are no concrete footings, nails, stakes or other devices which affix the temporary basketball backboard on Respondent's property. Respondent's backboard is simply rolled onto his driveway and may be rolled off the driveway at any time. As such, it is not installed as that word is commonly used and any ambiguity in the meaning of the term must be resolved in the favor of the unrestricted use of Respondent's property. Accordingly, the Commission finds that the Respondent's temporary basketball backboard does not violate this provision of the Association's Declaration.

ORDER

In view of the foregoing, and based on the evidence of record, the Commission orders that the relief requested in the Complaint in this matter be denied.

The foregoing was concurred in by panel members Blumberg and Auvil.

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


David C. Gardner, Panel Chairperson
Commission on Common Ownership
Communities

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