

**Before the  
Commission on Common Ownership Communities  
Montgomery County, Maryland**

In the matter of:

Karla Palacios	:	
14 Dunsinane Court	:	
Silver Spring, MD 20906,	:	
	:	
Complainant,	:	
	:	
v.	:	Case No. 75-08
	:	<b>July 1, 2009</b>
Oxford Crossing Condominium	:	
Association	:	
3725 Dunsinane Drive	:	
Silver Spring, MD 20906,	:	
	:	
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-4(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, finds, determines and orders as follows:

**Background**

Karla Palacios (Complainant) filed a complaint with the Office of Common Ownership Communities on November 28, 2008, against Oxford Crossing Condominium Association (Respondent or Association), alleging that the community had failed to “properly adopt a budget or rule.” More specifically, she alleged that the process of allocating parking spaces is unfair and that while three permits are provided for her unit she needs a fourth which she feels has been improperly denied. She also requested the Commission return her filing fee.

On behalf of Oxford Crossing Condominium Association, Gregory Bryant, President of the Board of Directors responded with a description of the process the Board had taken in developing and adopting the revised parking regulations and explained that under the new regulations Ms Palacios does not qualify for a fourth parking permit.

Inasmuch as this matter was not resolved through mediation, the dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e) on February 4, 2009, and the Commission accepted jurisdiction. The matter was scheduled for public hearing on March 31, 2009. A public hearing was conducted on that date, at the conclusion of which the record was closed.

### **Findings of Fact**

Oxford Crossing Condominium Association is the trade name for Georgian Colonies Condominium No. 5. Undisputed evidence in the record indicates there are 228 units and 480 parking spaces in the community.

Ms Palacios testified that she, her brother and her brother's girlfriend bought the townhouse at the above address in the Oxford Crossing Condominium Association community in May 2007. At the time of their purchase they were given parking regulations that were revisions to the original rules and regulations and purportedly were effective September 1, 2006. Ms Jacqueline Leese, Vice President of the Association, testified that those regulations were never implemented. The relevant language in those regulations read:

2.109. Reserved Parking Spaces. Each unit owner will be assigned two (2) "RESERVED" parking spaces. No person other than a unit owner or other occupant shall park any vehicle in a parking space marked "RESERVED" other than the one reserved to the owner's unit.

2.110. Unreserved Parking Spaces. Guests, visitors and licensees of unit owners or other occupants shall park only in a parking space which is not marked "RESERVED" or is assigned to the unit owner they are visiting.

Ms Palacios indicated that she and her unit co-owners were comfortable with these regulations because they believed that each of the owners of the unit would be entitled to two reserved parking spaces. According to Ms Leese's testimony the regulations were intended to mean that each unit would be accorded two parking permits, not each owner.

The Board was not satisfied that the above modification would solve the community parking problem. Ms Leese chaired a Board Parking Committee that continued to investigate alternative community parking solutions and consulted with others who might offer useful advice on how best to regulate the parking in the community for the best interests of the owners.

The record includes a flurry of notices from the Board to the residents of Oxford Crossing between July and December 2008 explaining the new parking permit regulations and how they would be implemented. The effective date on which towing of unpermitted vehicles was to begin was December 1, 2008. Every vehicle parked in the community overnight is required to have a permit. The permits were distributed so that each unit could have up to two permanent permits for vehicles owned by residents. For units that qualified for two permanent permits, one temporary permit would also be issued. If the residents of a unit had fewer than two vehicles, two temporary permits would be available.

One of the documents included with the notices to residents refers to a special meeting held on October 27, 2008, to discuss the concerns of the community regarding the new parking regulations. The record does not include a notice of this special meeting. The reference to this meeting is in a document dated November 10, 2008, on the subject of "Parking Permit Exception Guidelines". This document addresses the question of units owning more than three cars. In order to qualify for an additional permit all the residents of the unit must either be co-owners of the unit or "immediate" family members.

Ms Palacios testified that the community had refused to issue a fourth permit for their unit and that she needs one for her fiancé. She also introduced into evidence a marriage license issued by the State of Maryland on November 1, 2008 for her to marry. The document indicates that the marriage is scheduled for April 24, 2009.

Kelley Landbohm, a co-owner of Ms Palacios' unit, testified that it appeared to her that at least one neighbor is parking more than three cars in the community and that was unfair. She thought it possible that someone was sharing permits which would not be in accordance with the regulations. The permit parking regulations include careful administration to avoid sharing in this way. The permanent permits were to be installed at the community office and the temporary permits are recorded as assigned to specific units.

It is unclear from the record when the Board officially adopted parking regulations or what the regulations adopted say. Ms Leese and Ms Ginger Miller, the Association manager testified at the hearing that it was at a meeting held on February 23, 2009. The record at the close of the hearing did not include a copy of the adopted regulations. The minutes of the Board meeting introduced at the hearing as evidence of the adoption of the parking regulations say, "The Vice President explained that the 'rule change' is to remove the verbiage on two (2) reserve space allocation and also to update/change the wording from 'each unit owner' to now read 'each unit'."

After the hearing, in response to an order from the panel dated May 6, 2009, the Association manager submitted a document marked "Adopted: January 17, 2009 Effective Date: March 10, 2009" that includes revisions to the rules for vehicles. These rules indicate at §2.109 that each unit will be assigned one reserved parking space and at §2.110 that "guests, visitors and licensees of unit owners or other occupants shall park only in a parking space which is not marked 'RESERVED' or is assigned to the unit owner they are visiting." There is no reference to parking permits of any kind.

## Discussion

It was recognized at the hearing that if Ms Palacios and her fiancé got married as planned, they would qualify under the parking permit rules of the community for the additional (4<sup>th</sup>) permit they need.

The condominium documents (declarations and bylaws) of the Oxford Crossing Condominium, and all other condominium communities, have been held to be covenants running with the land. *Kirkley v. Seipelt*, 212 Md. 127 (1957), *Sea Watch Stores Ltd. Liability Co., et al. v. Council of Unit Owners of Sea Watch Condominium*, 115 Md.App. 5, 691 A.2d 750 (1997), *cert. granted*, 347 Md. 253, 700 A.2d 1214 (1997), *cert. dismissed* as improvidently granted, 347 Md. 662, 702 A.2d 260 (1997).

In *Kirkley v. Seipelt, supra*, the Court held that regulation of the use of property based on covenants of this kind must be reasonable and bear some relationship to the general plan, be in good faith and not high-handed. As with the architectural control issues which were the subject of the *Kirkley* case, use restrictions and rules relating to use of the property must be reasonable as the Oxford Crossing Bylaws at Article VIII, Section 1 recognize. While the Board made a good faith effort to allocate the commonly owned resource of spaces to

park, sharing such resources based on familial relationship is not reasonable. The relationship of people sharing a housing unit bears no relationship to the allocation of commonly owned resources such as parking spaces. Unit owners may reasonably expect that they will have equal right to the use of commonly owned resources without regard to the relationship status of those who may share their housing.

### **Conclusion of Law**

Parking permits or privileges may not be allocated based on an approach that considers familial status.

### **ORDER**

Oxford Crossing Condominium Association shall, if it is still using a parking permit scheme that takes familial status into consideration, as soon as possible but not more than one year from the date of this Decision, establish a standard on which extra permits may be distributed within the community which treats all unit owners equally, and withdraws the permits allocated on the basis of a familial relationship of a unit's residents. If Ms Palacios was married as planned and received the fourth permit, she will have the use of it with all others similarly situated until the new regulations are adopted. If not, she will need to await the new regulations in order to obtain a 4<sup>th</sup> permit.

Ms Palacios' request for return of her filing fee is denied.

The foregoing is concurred in by Commissioners Karen Shakira Kali and Andrew Oxendine.

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, under the Maryland Rules of Procedure.

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Dinah Stevens, Panel Chairwoman  
Commission on Common Ownership

Communities