

**Before the**  
**Commission on Common Ownership Communities**

November 4, 1999

In the Matter of  
Longmead Crossing Community Services Assn.  
c/o Tamara A. Stoner  
Lerch, Early & Brewer, Chtd.  
3 Bethesda Metro Center, Suite 380  
Bethesda, MD 20814

Complainant

vs.

Mary Jeannette Bright  
2017 Park Vista Drive  
Silver Spring, MD 20906

Respondent

Case No. 430-G

**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 duly appointed hearing panel having considered the testimony and evidence of record, finds, determines and orders as follows:

**BACKGROUND**

On November 19, 1998, Longmead Crossing Community Services Association (hereinafter "Complainant" or "Association") filed a formal dispute with the Office of Common Ownership Communities ("Commission") against Mary Jeannette Bright (hereinafter "Respondent"). The Complainant alleged that the Respondent built a fence on her lot without written approval by the Association as required by the Association documents. Respondent contended that a fence was approved and she merely changed the type of fence. The Complainant asked the Commission to order the Respondent to modify the fence to come into compliance with the type, style and size of picket fence approved by the Association, or remove the fence entirely.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities and the Commission voted that it was a matter within the Commission's jurisdiction and the hearing date was scheduled originally for June 16, 1999, and continued by consent to September 22, 1999.

### FINDINGS OF FACT

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

1. Mary Jeannette Bright is the owner of a single family home within the Longmead Crossing Community Services Association, located at 2017 Park Vista Drive, Silver Spring, Maryland 20906 (the "Lot").
2. The Association was created by Articles of Incorporation and Declaration of Covenants, Conditions and Restrictions (the "Declaration"), which was recorded among the Land Records of Montgomery County, Maryland, on or about December 28, 1983, and which encumber and bind the Respondent's lot, among others.
3. Article VI, Section 1(c), *inter alia*, the following:

"No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any lot or common area or the improvements thereon from its natural or improved state, existing on the date such property was first subject to this Declaration shall be made or done without the prior approval of the Architectural Review Board. No building, residence or other structure, fence, wall or landscaping in lieu thereof, shall be commenced, erected, maintained, improved, altered, made or done on such property without the prior written approval of the Architectural Review Board."
4. The Supplementary Declaration of Covenants and Restriction (Park Vista Manor Cluster) was recorded among the Land Records of Montgomery County, on or about May 25, 1993, in Liber 11410-334, and covers the subject lot.
5. Article V, Section 11, entitled "Fences and Walls," reads in part as follows:

"No fence, wall, tree, hedge or shrub planting shall be erected or maintained in such a manner as to obstruct sites lines for vehicular traffic. All fences or enclosures must be approved by the Architectural Review Board as to location, material and design; provided, however, the type of fencing must conform to the

restrictions imposed by this Section and the location of any fence must conform in all respects to the "Fence Plan" attached hereto and incorporated herein by reference as Exhibit "B". ... Except for fences constructed by the Developer, any fence constructed upon a Lot shall be of a split rail variety and shall not extend beyond the front building line of the dwelling on the Lot upon which any such fence is erected. The Architectural Review Board shall have the right to require alternative placements of fencing and shall have the right to allow other variety of fences in its sole discretion. ..."

6. On or about May 1, 1998, the Architectural Control Committee (sic) drafted Architectural Control Guidelines for Longmead Crossing Community Services Association which reads, in part, in Section I, "Fences":

"Requires prior ACC Approval"

In subparagraph 2, entitled "Single Family Homes", section b. states as follows:

"Only a split-rail fence will be permitted for a front yard fence. It may have 2 or 3 rails with a maximum height of 42 inches. (Post and/or rails cannot exceed 42 inches.)

Subsection c. states:

"Backyard fences for single family homes may be split rail, stockade or board-on board."

7. On or about March 21, 1997, the Respondent had submitted a request for architectural approval. The proposed change included a deck and a fence (split-rail). The deck and the split-rail fence were approved by the Architectural Review Board on or about March 25, 1997. Said approval was sent to the Respondent on or about April 2, 1997.

8. In or about November, 1997, the Respondent began erecting a picket fence around her yard which had posts of 60 inches and pickets ranging in size from 36 inches to 60 inches in a half-moon style.

9. On or about November 11, 1997, the Respondent was notified by Mark Hoage, Agent for the Association, of the requirement that she submit an application for the erection of her picket fence.

10. On or about November 11, 1997, the Respondent submitted a request to have a picket fence installed around her property.

11. On or about November 14, 1997, the Architectural Control Committee denied the request for the picket fence stating: "Does not meet ACC guidelines." Said rejection was mailed on or about November 19, 1997.

12. On or about November 20, 1997, the Association, acting through Mark Hoage, Agent for the Association, posted a notice to the Respondent property that she was proceeding without the approval of the Architectural Review Committee with regard to the construction of her fence.

13. At the Association's Board of Directors meeting on November 25, 1997, the Respondent appealed the decision of the ACC to the Board of Directors to allow her to install her picket fence.

14. On or about December 23, 1997, the Board of Directors advised the Respondent that the appeal had been denied and that the fence was in violation of the Architectural Control Guidelines in effect for the property. The letter further informed the Respondent that she had until March 31, 1998, to remove the picket fence.

15. On or about July 24, 1998, the Association adopted revisions to Architectural Standards and Guidelines concerning fences, effective August 1, 1998. This revised guideline with regard to fences for single family homes was amended in paragraph 3.c. to say:

"Backyard fences for single homes may only be split-rail, stockade, board-on-board or picket." (emphasis added)

A new paragraph 3.e. was added which says as follows:

"The following guidelines will apply to picket fences only:  
Approved picket fence style is Fredericktowne Picket. The stabilizing posts may have a decorative top and must be 70" tall. The pickets must be 3 1/2" side and installed in a half-moon style with the height of the picket ranging from 54" to 60". All picket fences must be constructed of pressure-treated wood."

16. The fence constructed by the Respondent does not meet the guidelines for the only type of picket fence allowed by the Association pursuant to its May 1, 1998 revisions to its Architectural guidelines, which is of the Fredericktowne picket style with the 70 inch tall posts and 54 to 60 inch boards constructed in the half moon style.

#### 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. The Architectural Review Board of the Association has the express authority in Article VI of the Association's Declaration to approve any exterior additions, changes, or alterations upon the property prior to commencement of the alteration.

2. Supplemental Covenants recorded in the Land Records of Montgomery County further govern the construction of fences on the subject lot.

3. Architectural Guidelines dated March 1, 1988, and Revised Guidelines dated July 25, and adopted July 21, 1998, were adopted in accordance with the covenants.

4. The Respondent's initial application was approved for a deck and split rail fence only.

5. The Respondent began constructing a picket fence without approval.

6. The Respondent, upon learning of the necessity of filing for approval of the picket fence, filed an application on November 11, 1997, which was denied.

7. The denial by the Architectural Review Board and the ratification of the denial by the Board of Directors were not arbitrary or capricious, and were reasonably related to the style of fencing permitted by the Association in an effort to preserve esthetic harmony. There was insufficient evidence presented by the Respondent that any other fences were approved by the Association subsequent to the Developer construction.

8. The Declaration of Covenants and Supplementary Declaration of Covenants specifically reject the use of picket fences in the property.

9. The Guidelines developed under those Covenants on May 25, 1998, specifically prohibit picket fences in that location on that Lot.

10. The Revised Architectural Guidelines specifically prohibit the type of picket fence erected by the Respondent, but do allow another style of picket fence.

11. The adoption by the Architectural Control Committee and the Board of Directors of Guidelines is within the powers granted to the Committee and the Board pursuant to the Covenants recorded with the land which control alterations on the Lot.

12. The actions of the Association were within the powers granted to it by applicable documents.

13. No evidence was presented by either party as to legal fees and costs incurred, and therefore no legal fees or costs shall be awarded.

## ORDER

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

1. The Respondent must modify her fencing to a style, size and construction material which comply with the Revised Guidelines adopted by the Association effective August 1, 1998.
2. Prior to making the modification, the Respondent must submit a request for approval of the proposed fencing to be erected on the Lot, which must be submitted within thirty (30) days of the date of this Order.
3. The Association must act within thirty (30) days of receipt of the application through the Architectural Control Committee or the Board of Directors.
4. If approval is given to the required modification, the Respondent must modify the fence within thirty (30) days of receipt of the approval. If approval is denied for the modification requested by the Respondent, then the Respondent must remove her fencing within thirty (30) days of the disapproval, or modify her plans and re-submit the application within fifteen (15) days of the disapproval.
5. Upon denial of a one-time subsequent application, the Respondent must modify or remove the fence within thirty (30) days of the approval or denial.
6. If Respondent or Association is delayed or prevented from performing any of its obligations under this Order by reason of weather, strike, labor troubles, or any similar cause whatsoever beyond their control, the period of such delay or such prevention will be added to the time provided for the performance of any such obligation by either party.

The foregoing was concurred in by panel members, Axelson, Kristian and Perkins.

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 Chapter 1100, Subtitle B, Maryland Rules of Procedure governing administrative appeals.

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