

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

**FAIRLAND PARK HOMEOWNERS
ASSOCIATION**
c/o The Management Group Associates
1 Bank Street, #301
Gaithersburg, Maryland 20878

Case No. 474-G

Complainant,

vs.

**GEADION GEBREYESE and ASRAT
GEBREMARIAM**
13201 Copland Court
Silver Spring, Maryland 20904

Respondents.

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on September 20, 2000, pursuant to sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 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:

BACKGROUND

Geadion Gebreyese and Asrat Gebremariam reside in the Fairland Park Homeowners Association and are owners of a residence at 13201 Copland Court, Silver Spring, Maryland. The Respondents purchased their residence in 1995 from the prior owner of the residence. At the time of purchase and prior to the Respondents physically moving into the residence, the

Respondents installed skylights on the roof of the residence. Within a month, the Respondents moved into their residence without objection or complaint from the Homeowners Association or homeowners residing within the community. On June 29, 1998, the managing agent for Fairland Park Homeowners Association informed the Respondents in writing that the exterior skylights on the front roof of the residence were in violation of the Declaration of Covenants, Easements, Charges and Liens for the Fairland Park Homeowners' Association, and would have to be relocated to the rear of the house structure. No action was taken by Respondents, and additional letters noting the alleged violation were sent to the Respondents by the subsequent managing agents for the Complainant on May 20, 1999, June 9, 1999, June 27, 1999, July 14, 1999, and January 6, 2000.

On July 12, 1999, at a hearing before the Board of Directors to consider the issues of the Respondents' skylights, Respondents explained that at the time of moving into their residence they were unaware of the architectural control regulation barring the installation of skylights on the front side of the roof of the residence. On July 14, 1999 the Board notified the Respondents of its decision that the Respondents were in violation of the Association's Rules and Regulation providing Respondents thirty days to rectify the condition found to be in violation.

On January 18, 2000, having failed to take any action, Respondents again wrote to the managing agent admitting in the letter they had failed to read the covenants which prohibited the installation of skylights on the front portion of roofs of the town homes. Respondents pointed out to the management agent in the letter that the addition of skylights in Respondents' opinion would not depreciate the value of the property nor did the location of the skylights on the front of the structure in any way adversely affected the aesthetics of the

town home or the community.

Ultimately, 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 set for public hearing on September 20, 2000, before a panel consisting of Commissioners Laurie Murphy and Dean Stoline, and Panel Chair William John Hickey.

FINDINGS OF FACT

1. The Respondents are owners of the town home at 13201 Copland Court, Silver Spring, Maryland 20904, in Fairland Park Homeowners Association, Silver Spring, Maryland.
2. In 1995, Respondents contracted for the installation of skylights on the front portion of the roof of their town home, which construction was completed at or before the time Respondents took physical possession of the town home.
3. The first complaint received by Respondents concerning an alleged violation of the Association's Declaration of Covenants occurred on June 29, 1998, in a letter written by Mark Hoage as agent for Fairland Park Homeowners Association, stating "exterior skylight on front needs to be moved to the rear of home," referencing section 9.4 of the Declaration of Covenants, Easements, Charges and Liens for the Fairland Park Homeowners Association.
4. Respondents were again notified in writing on May 20, 1999, this time by Alan Siefert acting as agent for the Complainants, that Respondents would have to move the skylights from the front of the roof structure to the rear of the roof structure. Respondents were advised to resolve the violation "in accordance with section 8 of the Association's Declaration of Covenants, as well as section

7.12 of the Architectural Guidelines and Regulations". (Comp. Exhibit 3)

5. On June 27, 1999, the Complainant informed the Respondents pursuant to section 11-113 of the Maryland Condominium Act that it was setting a hearing with the Board of Directors to consider the violation of Respondents having skylights on the front roof portion of their residence.
6. On July 14, 1999, Shari Giles, management agent for Fairland Park Homeowners Association notified Respondents in writing that on July 12, 1999, the Board voted that the Respondents were to remove the skylights currently located at the front of the home and to have them relocated to the rear roof of the home. Further, the Board allowed Respondents until September 30, 1999, to correct that violation.
7. Respondents never initiated any action to move or relocate the skylights from the front roof of their residence.
8. On January 18, 2000, Respondents notified the managing agent of the Homeowners Association of its disagreement with the finding by the Board of Directors, and stated that in their opinion the addition of the skylights did not depreciate the value of the property, that Respondents had reviewed the Declaration of Covenants and the six major parameters in which the Association and architectural community attempts to regulate, and acknowledged that Respondents had not prior to the installation of the skylights reviewed the Covenants or the Architectural Guidelines.
9. There are no other town homes in the Fairland Park Homeowners Association that have skylights in the front roof portion of the residence.

10. Respondents at no time made application to the Architectural Control Commission or the Board of Directors for permission to modify and/or reconstruct the physical appearance of the town home by installing skylights in the roof.
11. The Declaration of Covenants, Easements, Charges and Liens for the Fairland Park Homeowners Association was filed and recorded on October 22, 1986.
12. The construction cost incurred by the Respondents for the addition of skylights to the residence was approximately \$6,500.

CONCLUSIONS OF LAW

The Fairland Park Homeowners Association is governed by a Declaration of Covenants, Easements, Charges and Liens, duly filed and recorded in the land records of Montgomery County, Maryland. As part of that Declaration, the Homeowners Association provides in section 8.2.1. that no structure may be commenced, constructed, erected, placed, maintained or permitted to remain in any way which in the judgment of the Architectural Committee materially changes the exterior appearance thereof. The Covenants further provide that no use may be commenced unless prior thereto, plans and specifications therefore and a description of any such use have been submitted to and approved in writing by the Architectural Committee. Further, the Covenants provide that the Architectural Committee may propose to the Board of Directors and the Board of Directors may cause the Association to adopt statements of policy with respect to its approval or disapproval of the architectural styles or details or other matters reflected in any such plans submitted. The Covenants further provide that the Architectural Committee may disapprove any plan submitted to it whenever in its opinion there exists, *inter alia*:

"Any structure covered by such plans is incompatible with any structure or use of any lot, due to the former's exterior design, height, bulk, shape, color, scheme, finish, style or architecture, configuration, appearance, material, location or relative cost and any other set of circumstances which in the reasonable judgment of the Architectural Committee would render any structure or use which is the subject of such plans inharmonious with the general plan of development of the community."

On July 7, 1988, the Complainant through its Board of Directors approved the *Fairland Park Homeowners Association Architectural Committee Regulations*.¹ These regulations specifically provide that each homeowner is responsible for satisfying himself or herself that the approved architectural modifications comply with Montgomery County building and fire codes, and the homeowner shall obtain appropriate permits when required. More specifically, the guidelines provide in section 2.13 that attic fans/skylights are permitted only on the rear side of roof. Roofs are to be maintained by the homeowner. The guidelines provide a violation section in the 3.3, stating that nothing shall commence, be erected or maintained upon the property, nor shall any exterior addition, change, or improvement to or alteration therein be made until plans and location in relation to surrounding structures have been submitted and approved in writing by the Architectural Control Committee. Any homeowner in violation thereof may be required to restore the altered premises to its original

¹ Exhibit 1, pp. 7-10 contains "Architectural Guidelines and Regulations" (Articles 1 through 7.18). However there is no indication these "Guidelines" were ever approved by the Board of Directors in 1990.

condition at the owner's sole expense.

The fact that Respondents were unaware of a requirement to file an application and obtain affirmative approval for material change to the exterior structure of the town home at or about the time they purchased the residence cannot be deemed to be an exception to compliance with the Covenants and Regulations.

Further, the regulations adopted by the Homeowners Association are clear, unambiguous and reasonable.

It cannot be denied that the Respondents installed skylights at or about the time they took possession of their residence, which was more than three years before they were notified of any violation of the architectural guidelines. Notwithstanding the fact that the violation was apparent and obvious, at no time did the Respondents seek or request approval of the Complainant for the modifications Respondents undertook to construct to the residence. Since the modification has never been approved pursuant to any request or application by Respondents, and because it is clearly a violation of the architectural guidelines, Respondents are in continuing violation of the Declaration of Covenants, Easements, Charges and Liens of the Homeowners Association.

ORDER

In view of the foregoing, and based upon the evidence of the record, and for the reasons set forth above, it is the *2nd* day of *January*, 2001, by the Commission on Common Ownership Communities, ORDERED that:

1. The Respondent shall either relocate to the rear of the structure or remove completely the skylights from the roof of Respondents' residence;
2. In view of the fact that Complainant obviously was aware of the Covenant

violation for more than three years, the Respondents will have until three years from the date of this order to effectuate the removal or relocation of the skylights from the front roof of Respondents' residence.

The foregoing was concurred in by panel members Murphy and Stoline.

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 the Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

By:

A handwritten signature in dark ink, appearing to read 'William John Hickey', is written over a horizontal line.

William John Hickey
Panel Chairperson, Commission on Common
Ownership Communities