

MERCERTRIGIANI

ARCHITECTURAL RULES *AFTER* BELMONT GLEN

The August 2019 decision of the Supreme Court of Virginia in *Sainani v. Belmont Glen Homeowners Association, Inc.* continued the trend of Virginia Supreme Court decisions narrowly construing restrictive covenants and rules. In *Belmont Glen*, the Virginia Supreme Court held that rules restricting seasonal decorations adopted by a Virginia property owners association were unenforceable because the rules exceeded the scope of, and were not reasonably related to, the restrictive covenants in the governing documents.

The rule giving rise to the case established specific time periods during which seasonal and holiday decorations could be displayed and required homeowners to apply for approval to display decorations for any *other* celebrations. The rule also required homeowners to turn lights off by midnight. Following a strict construction approach, the Court found that the four covenants relied upon by the association to regulate the seasonal lighting were insufficient.

Exterior Lighting – The Court found that the rule limiting seasonal decorations did *not* reference the criteria established in the covenants concerning exterior lighting and held that the seasonal decorations rule exceeded authority established by the exterior lighting covenant.

Approval – The second covenant rejected by the Court prohibited homeowners from modifying or altering property without application to and approval of the association. According to the Court, restrictions on exterior lighting may be regulated only in accordance with the exterior lighting covenant and that Board approval is only required for *permanent* changes, not temporary seasonal decorations.

General Appearance Regulation – The Court also found that the general authority to “regulate the external design and appearance of the Property . . . so as to preserve and enhance property values and to maintain harmonious relationships among structures and the natural vegetation and topography” did not provide authority for the seasonal decorations rule. According to the Court, “reading of the whole instrument” the seemingly broad authority established by this covenant is limited by other declaration provisions and the association may only regulate the permanent modification or alteration of a lot.

General Rule-Making Authority – Finally, the Court held that rules adopted under a covenant granting broad rule-making authority must be in furtherance of other restrictive covenants and because no other covenant authorized regulation of seasonal decorations, the association was without authority to do so under general rule making authority. The Court also limited implied powers to those “governing or protecting common property and preventing ‘nuisance-like activities’ on individually owned property.”

In *Belmont Glen*, as in prior Virginia Supreme Court decisions, the Court applied a standard of strict construction – common interest communities may promulgate rules *only* to the extent *expressly authorized* in recorded covenants. In other words, community associations may only adopt rules that are authorized by clear, express language in recorded documents.

Reasonable rules based on general authority are not enough, the Court requires *express authority* in the recorded documents. The courts have told us that owners have property rights and if the goal is to limit those property rights, associations must have clear authority in the recorded documents.

In establishing architectural rules (or any rules) the Board should ask whether the rule is necessary? If the rule is necessary – do the documents provide authority for the rule? If not, should the governing documents be amended to provide the authority? And, if the community has authority or amends to establish authority, is the rule clear and concise and uniformly applied? Care should be taken in developing rules, regulations, and architectural guidelines to ensure that they are based on express authority in the recorded documents.

There is a secondary lesson that we should take from *Belmont Glen* – and it is about compliance. There is nothing to suggest in *Belmont Glen* that the association acted inappropriately – in fact – the general district court and then the trial court, where due process compliance would have been considered, ruled in favor of the association. But that may become lost in the record on appeal.

So, associations should approach compliance with the goal of seeking voluntary compliance. Provide clear information on the rule. Educate owners and residents about the need for and purpose of the rule and build consensus supporting the rule. Also, review the rule periodically - circumstances change,

If there is an apparent violation, act promptly, be reasonable, provide ample time to comply, be consistent, and be flexible. And, in evaluating association action against an owner, consideration should be given to the nature of the violation and its impact.