IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

REYBOLD VENTURE GROUP XI-A, LLC; REYBOLD VENTURE GROUP XI-B, LLC; REYBOLD VENTURE GROUP XI-C, LLC; REYBOLD VENTURE GROUP XI-D, LLC; REYBOLD VENTURE GROUP XI-E, LLC; REYBOLD VENTURE GROUP XI-F, LLC; and REYBOLD VENTURE GROUP XV, LLC, Plaintiffs, v. ERROL A. SMITH, ELSIE R. SMITH, HAZEL R. SMITH, and NVR, INC., Defendants.	)	C.A. No. 4524-VCL

MEMORANDUM OPINION

Date Submitted: June 15, 2012
Date Decided: July 3, 2012

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LASTER, Vice Chancellor.

After agreeing to purchase a new townhouse, the Smiths leased it back to the builder, Ryan Homes, to use for six months as a model home. Ryan Homes converted the garage into a sales office. When the Smiths took possession, they used the converted garage as additional living space. The subdivision developer now seeks a mandatory injunction forcing the Smiths and Ryan Homes to convert the space back to a functional garage. I grant judgment for the defendants.

I. FACTUAL BACKGROUND

This case was tried on February 13, 2012. My factual findings follow.

A. Meridian Crossing

Meridian Crossing is a mixed-product residential subdivision located in Bear, Delaware. The plaintiffs (collectively, "Reybold") are single-purpose subsidiaries of non-party Reybold Venture Group. Reybold owns, develops, and sells lots in Meridian Crossing. Defendant NVR, Inc., doing business as Ryan Homes, is a residential builder that sold and constructed homes in Meridian Crossing.

The development at Meridian Crossing is governed by a Record Subdivision Plan (the "Record Plan") recorded in the Office of the Recorder of Deeds of New Castle County. The Record Plan does not explicitly impose any restrictions on property owners converting a garage into living space.

Meridian Crossing is also subject to a recorded Declaration of Restrictions. The Declaration of Restrictions does not explicitly impose any restrictions on converting a garage into living space.

Section 21 of Article I of the Declaration of Restrictions states:

> Notwithstanding anything contained herein to the contrary, no outbuilding, buildings, structures of a temporary or permanent nature, in ground swimming pools, fences, solar panel or collector, or other construction or improvements shall be constructed, erected, or placed upon any Lot, nor shall any exterior addition to or change or alteration thereof, including but not limited to exterior façade, color change and/or change in grade or drainage, be made until the plans and specifications with illustrations, showing the nature, kind, shape, color[,] height, materials and proposed location of same, shall have been submitted to and approved in writing by the Declarant. In the event that Declarant fails to approve or disapprove such architectural change request within thirty (30) days after receipt of said plans and specifications, approval thereof will be deemed to have been given. Denials submitted to the applicant shall be deemed to have met the thirty (30) day period so long as the denial is sent by certified mail, and the date of stamp by the postal service is within the above stated thirty day period. In connection with the review of said plans, specifications and illustrations, Declarant shall have the right to approve or disapprove any such matters which in its opinion are not suitable or desirable to the community. In passing upon such plans and specifications, Declarant shall consider the following factors:
>
> a) The quality, aesthetic suitability, nature, kind, shape of the proposed building or other structure;
> b) The color, height and materials of which it is to be constructed;
> c) The specific site upon which it is proposed to construct or erect the same;
> d) The harmony of the proposed change, alteration, addition, building or structure with structures on neighboring properties and the outlook and view from the neighboring properties; and/or
> e) The effect on the reasonable passage of light and air to the neighboring properties.
>
> For purposes of this Declaration, Declarant shall have the sole and exclusive right to determine when Lot lines and/or street lines shall be "front" or "side" lines.
>
> Declarant may assign the function of architectural review to the Homeowner's Association pursuant to the terms of Article II.

JX 3 at 6-7. The Declaration of Restrictions defines "Declarant" as the seven plaintiffs in this action, *viz.* Reybold. *Id.* at 1. Section 1 of Article IV of the Declaration of Restrictions provides that "[a]ction of enforcement may be brought by the Declarant, its

successors and assigns, or any owner of any land which is the subject of this Declaration. The Meridian Crossing Homeowner's Association shall have authority to enforce these restrictions." *Id.* at 11. In light of this rather obvious grant of enforcement authority to Reybold, both explicitly and as a continuing owner of land in Meridian Crossing, I will pass over the defendants' strained arguments that Reybold lacks standing to sue.

Pursuant to the authority granted by Section 21 of the Declaration of Restrictions, Reybold adopted Architectural Guidelines and Design Themes for Meridian Crossing. The Architectural Guidelines do not explicitly impose any restrictions on converting a garage into living space. The only potentially applicable restriction is the requirement for architectural approval also found in Section 21.

B. The Disputed Property

On March 15, 2006, Reybold sold a group of lots to Meridian Crossing Funding Co., Inc., which improved the lots. The group included Lot #267, known as 379 Sun Boulevard (the "Disputed Property"). On September 22, 2006, Ryan Homes bought a group of improved lots, including the Disputed Property, from Meridian Crossing Funding Co.

Greg Lingo of Ryan Homes spoke with Jerome S. Heisler of Reybold about the lots. Lingo told Heisler that Ryan Homes planned to build three model townhouses and would need to convert the garage spaces in the model homes into sales offices. The two men specified three lots for the model homes: Lot #144, Lot #273, and the Disputed Property. At trial, Heisler testified that he recalled Lingo committing that Ryan Homes would convert the sales offices back to garage space. Lingo has left Ryan Homes and did

not testify. Jonathan P. Moats, Lingo's supervisor and successor on the Meridian Crossing project, denied that Ryan Homes agreed to reconversion. He testified that Ryan Homes' practice is to offer the homeowner the option to keep the living space and that there are approximately ten to twelve former model homes in New Castle County where the homeowners have made that choice. There is no contemporaneous written documentation referencing the alleged reconversion agreement.

At some point before December 4, 2006, Ryan Homes submitted building plans for a Griffin Model townhouse to Reybold. The plans contemplated a functional two-car garage. Reybold approved the plans. On December 4, New Castle County approved the building plans for the Griffin Model. The approved plans contemplated a functional two-car garage.

C. The Smiths Agree To Purchase The Disputed Property And Lease It To Ryan Homes For Use As A Model Home.

In December 2006, Errol and Hazel Smith were thinking about buying a home in Meridian Crossing. On December 18, 2006, they selected a Griffin Model townhouse that included a two-car garage. On December 30, the Smiths entered into a purchase agreement with Ryan Homes for a Griffin Model to be built on the Disputed Property. A floor plan initialed by the Smiths indicated that the townhouse would have a two-car garage. As part of the contracting process, the Smiths also approved Ryan Homes' "Master Selection Sheet," which identified a garage as one of the features of the home.

The Smiths also signed a "Garage Acknowledgement." By signing this form, the Smiths acknowledged that they had been informed of and understood the following information about the Disputed Property:

> 1. Purchaser has been advised that the garage constructed on the Property . . . may not accommodate some vehicles. . . .
>
> 2. No representations or warranties whatsoever have been made concerning Purchaser's ability to park any vehicle inside the garage . . . .

JX 8. The "Garage Acknowledgement" did not address the conversion of the garage into living space.

As part of the sale, the Smiths agreed to lease the Disputed Property to Ryan Homes for use as a model home. The Smiths signed Ryan Homes' standard form "Deed of Lease." Paragraph 7 authorized Ryan Homes to make minor alterations that Ryan Homes deemed reasonably necessary for use as a model home. The last sentence of Paragraph 7 stated: "If the box to the left is checked, [Ryan Homes] shall convert the office to a garage at the time the Property is surrendered to the [Smiths]." JX 12 at 2. The box was not checked, and someone wrote "N/A" on the form. At trial, Mr. Smith denied making the annotation and did not recall any discussion about the garage when executing the lease.

D. Ryan Homes Converts The Garage To A Sales Office But Does Not Convert It Back.

Ryan Homes built townhouses on the three lots selected for model homes. On March 19, 2007, Ryan Homes conveyed title to the Disputed Property to the Smiths.

When the Smiths conducted their pre-closing inspection, the townhouse had a two-car garage.

After closing, Steve Neuberger of Ryan Homes called Mr. Smith and told him Ryan Homes would be making improvements to the Disputed Property for use as a model home. The improvements included installing upgraded moldings, tile, and carpet; adding a deck; landscaping the driveway; and converting the garage into a sales office. Neuberger told Smith that after the lease expired, the Smiths could keep the improvements free of charge, except that the additional landscaping would have to be removed and the area converted back into a driveway. Ryan Homes made the improvements and used the Disputed Property as a model home.

By letter dated October 26, 2007, Ryan Homes terminated its lease with the Smiths effective November 30, 2007. The Smiths opted to keep the improvements. When the Smiths took possession, the sales office remained living space. Ryan Homes also had not converted the landscaped area back into a driveway.

The state of the Disputed Property did not escape Reybold's notice. Even before the Smith's took possession, Heisler sent a reminder letter dated November 5, 2007, to Moats and Joe Morrissey of Ryan Homes. The letter commented that the sales offices in the three model homes needed to be converted back to garages "because they are considered parking spaces." JX 14. Heisler recalls Moats telling him orally that he would work on it.

By letter dated November 30, 2007, Heisler wrote Moats specifically about the Disputed Property:

> After we spoke last night, I drove by [the Disputed Property], which was scheduled for settlement today, and not only has the garage not been converted back from an office to garage space but there is no driveway. The garage needs to be converted back and a driveway needs to be added in order to comply with the Record Plan for Meridian Crossing.

JX 15.

By letter dated December 7, 2007, Heisler again wrote to Moats and Morrissey. Heisler provided them with a copy of a letter from Ted C. Williams of Landmark Engineering, which Heisler claimed "confirms that the garages on the townhouses are not to be converted to living space due to the fact that they are considered to be one of the two required on-lot parking spaces." JX 16. Moats disagreed because a number of townhouses, including the Disputed Property, had two-car garages and two-car driveways. Moats believed that even with a garage conversion, a two-car driveway would satisfy the parking requirement. It is not clear whether Moats communicated his view to Heisler.

By letter dated February 6, 2008, Heisler wrote the Smiths in his capacity as Chairman of the Meridian Crossing Architectural Committee. The letter stated:

> Per the requirements of the Architectural Standards originally created for Meridian Crossing and the Record Plan for the community, your house at the above mentioned address is required to have a functional drive way and garage that is able to house two (2) cars. From personal inspection it has been found that there is no driveway at the house or a garage for which [sic] to accommodate two cars, therefore the house is not in compliance with Architectural Standards.
>
> At the time the house was built, there was an understanding that the garage would be a showroom while it was a model, however, this was not to be a permanent situation. Since this house is no longer a model, please have a driveway created and the garage converted to its original intended use as

> soon as possible and provide us with a timetable as to when the space will be converted back to a garage within the next thirty (30) days.

JX 16. Although Ryan Homes converted the landscaped area back to a driveway, Ryan Homes and the Smiths did not restore the garage.

E. Reybold Sues.

By letter dated April 24, 2008, Heisler again wrote Moats and Morrissey to reiterate his position that "the garage space on the model homes *must* be converted back to garages because they are considered parking spaces." JX 17. Ten months later, by letter dated February 26, 2009, Heisler again wrote to the Smiths in his capacity as Chair of the Meridian Crossing Architectural Committee. He noted that "[w]hile a driveway has been added, you have now had over a year to return the garage to its original intended state and have failed to do so." JX 18. Heisler advised the Smiths that if they did not make "every effort to convert the garage back to its intended use as parking" within the next ten days, then Reybold would be "forced to begin litigation processes regarding this situation." *Id.* When this letter failed to produce results, Reybold filed this action on April 22, 2009.

F. The Certificate of Occupancy Sideshow

In addition to filing this action, Reybold contacted the New Castle County Department of Land Use about the Disputed Property. On November 16, 2009, New Castle County issued a Notice of Violation to the Smiths for using the garage as living space without required permits. Over the next fifteen months, modifications were made, inspections conducted, and certifications obtained to meet New Castle County's

requirements. On February 16, 2010, New Castle County issued a Certificate of Occupancy for the converted living space.

II. LEGAL ANALYSIS

Reybold seeks a mandatory injunction compelling the Smiths and Ryan Homes to restore the two-car garage on the Disputed Property. Reybold contends that using the garage as living space violates the Declaration of Restrictions and the Architectural Guidelines. Reybold separately contends that Ryan Homes breached an oral agreement to convert the living space back into a garage.

A. The Declaration of Restrictions and Architectural Guidelines

The Declaration of Restrictions does not explicitly restrict the use of a garage as living space, nor does it affirmatively require a garage. The Declaration of Restrictions thus lacks the type of express servitude that has provided the predicate for relief in other cases. *Cf. Sherwood Lake Ass'n v. DeAngelo*, 2008 WL 4191023, at *2, *7 (La. Ct. App. 1st Cir. Sept. 12, 2008) (affirming mandatory injunction requiring functioning garage door in light of restrictive covenant stating "no garage may be used as living quarters"); *Foxwood Homeowners Ass'n v. Ricles*, 673 S.W.2d 376, 378 (Tex. App. Houston [1st Dist.] 1984) (affirming requirement of functioning garage where restrictive covenant stated "[w]ith each Detached Residence, there shall be an attached or detached, private, enclosed garage"). Reybold instead relies on the architectural approval requirement.

Section 21 of the Declaration of Restrictions requires architectural review and approval by the Architectural Committee for the construction of any "outbuilding, buildings, structures of a temporary or permanent nature, in ground swimming pools,

fences, solar panel or collector, or other construction or improvements" or for "any exterior addition to or change or alteration thereof, including but not limited to exterior façade, color change and/or change in grade or drainage." JX 3 at 6. "Architectural review covenants . . . are neither new nor uncommon in Delaware . . . ." *Lawhon v. Winding Ridge Homeowners Ass'n*, 2008 WL 5459246, at *5 (Del. Ch. Dec. 31, 2008). "They will be upheld if they present clear, precise, and fixed standards of application." *Id.* "An individual's, or a committee's, opinion of what is tasteful does not constitute an objectively fair and reasonably ascertainable standard." *Id.* Aesthetic criteria may be applied, however, when still subject to objective review. "For example, our courts regularly enforce architectural review provisions designed to ensure the overall harmony of appearance within a community, when that community possesses a sufficiently coherent visual style enabling fair and even-handed application." *Id.* (internal quotation marks omitted).

Ryan Homes and the Smiths contend that the Meridian Crossing Architectural Guidelines are impermissibly vague. To the contrary, the Architectural Guidelines describe a coherent visual style reflecting the architectural traditions of Colonial Delaware. Although the guidelines might be applied improperly, arbitrarily, or capriciously in a specific case, they are sufficiently specific to be used when evaluating matters subject to architectural review under Section 21.

Ryan Homes and the Smiths next argue that the Architectural Guidelines cannot be applied to interior space like the garage. The plain language of the Declaration of Restrictions addresses exterior features and calls for review and approval of "any *exterior*

addition to or change or alteration thereof, including but not limited to an *exterior* façade . . . ." JX 3 at 6 (emphasis added). At trial, Reybold's witness admitted that the language of the Declaration of Restrictions does not restrict purely interior changes, such as painting a room pink. *See* Tr. 229-31 (J. Heisler). It might be possible to draft architectural guidelines that would extend to interior construction, and one court has held that guidelines were not solely focused on external construction and would apply to a garage conversion when they contemplated approval by the architectural committee as to "quality of workmanship and materials." *Woodland Trails N. Cmty. Improvement Ass'n v. Grider*, 656 S.W.2d 919, 921 (Tex. App. Houston [1st. Dist.] 1983). In this case, however, the plain language of the Meridian Crossing Architectural Guidelines applies only to exterior features.

Anticipating this reading of the Architectural Guidelines, Reybold offers two reasons why the garage conversion affects the exterior. Reybold first argues that the partition wall running down the center of the garage can be seen from the street through the garage door window. The parties have not identified, nor have I located, a judicial opinion exploring this argument. The closest analogy is to cases reviewing decisions by historic district commissions. *See* Jeffrey S. Wieand, *Historic District Commissions in Massachusetts*, 85 Mass. L. Rev. 113 (2001).

Historic district commissions are charged by statute with reviewing changes to building façades and other exterior architectural features, but they do not have the power to review interior features not subject to public view. *Id.* at 114-15. The Appeals Court of Massachusetts has held that a historic district commission could review a neon

"OPEN" sign hung inside the front window of a video store, even though technically it was not affixed to the building's exterior. *Historic Dist. Comm'n of Chelmsford v. Kalos*, 725 N.E.2d 245, 246 (Mass. App. Ct. 2000). The court explained that "[t]he purpose of the sign, manifestly, was to be seen by the public passing the outside of the store" and noted that "[t]he visual appearance to the public of certain buildings and their windows is central to the preservation and protection purposes of the Historic Districts Act." *Id.* The court concluded that interior features would be subject to review if they "are intended to be and are visible to the public." *Id.* at 247.

The reasoning of the historic commission cases commends a similar approach here. If an interior feature was intended to be and is visible to the public, then it is subject to architectural review under exterior-only guidelines like Meridian Crossing's. Applying this test, and after considering the witness testimony and the pictures placed into evidence by Reybold, I find that (i) the garage conversion in this case was not intended to be visible to the public and (ii) the partition wall is not sufficiently noticeable from the exterior of the Disputed Property to trigger architectural review. In the picture taken from the street, it is difficult to see the partition wall at all. The degree of obstruction of the window is similar in kind to what might happen if a homeowner placed shelving in the garage or leaned objects against the garage door.

Reybold's second argument about exterior consequences is more attenuated. According to Reybold, the garage conversion has exterior effects and the architectural review requirement should apply because if many townhouse owners convert their garages, it will decrease the total number of available parking spaces. Drivers will park

on the street. Eventually, says Reybold, too many conversions will produce a level of congestion that will have a detrimental effect on the character and desirability of the community, which is precisely the harm that the architectural review requirement seeks to address. This threat is too speculative. The Smiths have been occupying the Disputed Property with the as-converted garage for over four years. Reybold could not identify a single request for a garage conversion in that time. There are still two parking spaces on the driveway of the Disputed Property, and Meridian Crossing appears to have ample parking to support the number of townhouses depicted on the Record Plan.

Finally, a garage conversion case not cited by the parties provides an additional reason why Section 21 of the Declaration of Restrictions does not apply to the Disputed Property. A Texas court has held that when a builder permissibly converts a garage into a sales office and then fails to follow the "customary practice" of converting the sales office back into a garage, an architectural review requirement will not apply to owners who accept the property as converted by the builder. *See Bravo v. Settlers Village Cmty. Improvement Ass'n*, 1988 WL 73320, at *1 (Tex. App. Houston [1st Dist.] 1988). The architectural review covenant in *Bravo* stated:

> Approval of Building Plans. No building shall be erected, placed, or altered upon the Properties until the construction plans and specifications and a plot plan showing the location of the structure, have been approved in writing as to harmony of exterior design and color with existing structures, as to location with respect to topography, finished ground elevation . . . A copy of the construction plans and specifications and a plot plan, together with such information as may be deemed pertinent, shall be submitted to the Architectural Control Committee, or its designated representative, prior to the commencement of construction. The Architectural Control Committee may require the submission of such plans, specifications, and

> plot plans, together with such other documents as it deems appropriate, in such form and detail as it may elect at its entire discretion.

Id. at *2 (omission in original). After recognizing that the section "clearly requires approval of the committee for all new building and exterior alterations to existing buildings," the *Bravo* court held that the section "does not require, however, approval for appellants to continue using the area, initially built out as a sales office, as additional living area." *Id.* The court noted that the party seeking to enforce the covenant did not allege that the owners themselves made any alterations that would have required committee approval. *Id.*

The facts in *Bravo* closely resemble the facts of this case. The Smiths did not convert the garage; Ryan Homes did. Section 2 of Article V of the Declaration of Restrictions expressly exempts the conversion by Ryan Homes:

> Notwithstanding anything contained in this Declaration, its provisions shall not be applied or construed as to prohibit or impede the construction by [Reybold] or its successors in title to vacant Lots [*e.g.*, Ryan Homes] from building or selling dwelling houses, maintaining an office or offices (including trailers) for the construction and/or sales, storing construction materials and equipment, posting for sale signs, posting marketing and information signs, or generally carrying on its business as to the development of the Property.

JX 3 at 11. When the Smiths took possession of the Disputed Property, their home did not have a functional garage. It had interior living space that Ryan Homes permissibly created as part of its right to "maintain[] an office or offices" and "generally carry[] on its business as to the development of the Property." *Id.*

Reybold therefore cannot rely on the Declaration of Restrictions or the Architectural Guidelines. The partition wall of the garage conversion is not sufficiently

visible to the public to trigger architectural review, and Reybold's fears about parking problems are overly speculative. Even assuming that the conversion was sufficiently visible, the Smiths did not convert the garage into living space. Ryan Homes converted it, and the Smiths were entitled to continue that use.

B. The Oral Agreement

Reybold separately contends that Ryan Homes agreed orally to restore the garage. Having weighed the evidence, I find that Reybold failed to carry its burden of proof.

Heisler and Moats gave conflicting testimony at trial. Heisler said there was an agreement; Moats said there wasn't. I credit that Heisler subjectively believed Ryan Homes would convert the sales office back to garage space. I nevertheless find that Ryan Homes did not expressly agree to reconversion. The representatives seem to have relied at least in part on their different beliefs about custom in the industry, and the Ryan Homes representatives did not regard reconversion as automatic. Moats testified that Ryan Homes gives the homeowner the option of keeping the sales office as living space and that approximately ten to twelve model homes built by Ryan Homes in New Castle County have been conveyed to their purchasers without converting the sales office back to garage space. Additional support for the absence of an oral agreement comes from Heisler's correspondence beginning in November 2007, which did not assert the existence of a binding agreement, but rather asked what Ryan Homes planned to do with the model homes and referenced informal understandings based on the number of on-lot parking spaces. There was no meeting of the minds.

III. CONCLUSION

Judgment is entered in favor of the defendants. The parties will bear their own costs.