



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Brian P. Wolford
Interim Director

July 22, 2024

Complainant: Michele Hyde
Association: Overlook Foundation, Inc./Community Management Corporation
File Number: 2024-01930

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on or about March 1, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Michele Hyde ("Hyde" or "Complainant"). The Complainant initially submitted a complaint to the Overlook Foundation, Inc. Board of Directors ("Board") on December 31, 2023, and the Board issued a final decision on or about February 2, 2024. Therefore, the NFAD was timely filed and within the jurisdiction of this Office, which has been designated to review final adverse decisions and determine if the decisions conflict with laws or regulations governing common interest communities.

Issues to be Decided.

In the Complaint, Hyde raises one main issue: a homeowners' right to install electric vehicle charge stations and the Board's authority to prohibit such installation. As explained below, this Office finds, that the evidence before it is sufficient to conclude that the Board's action to deny the Complainant's request to install electric station on her property is contrary to the applicable law or regulation.

Factual Summary

Complainant's Contentions

Hyde alleges that the Board violates the applicable law in denying her request for electric vehicle charging stations permit. The Complainant states that in August of 2022, she submitted an initial request for electronic vehicle charging station, which was denied around August 22, 2022. The Complainant immediately appealed the denial to the Board, and, during the pendency of the appeal, there were multiple conversations/communications between the Complainant and members of the Board. She asserts that at some point, she was informed that the Board was actively seeking guidance about electric vehicle charging stations. In response to her August appeal, the Board informed the Complainant on September 21, 2022, that her charging station may

remain on her property while a plan to implement electric charging stations in the community is being researched and developed. (Pp 1-2 of the Exhibit A, Overlook Foundation, Inc., Complaint Form ("Complaint Form")).

Furthermore, the president of the homeowner association reached out to the Complainant regarding consulting an electrician about the specifics of the project. The Complainant met with the recommended electrician, who in turn asked the Complainant to provide her insurance coverage information, which she duly provided. The Complainant was also asked to submit a modification of the request, and she complied. Despite her compliance with the recommendations and modification requirements, the Board again denied her request on October 14, 2023. The Complainant tried to appeal the decision one more time to the Board, but she received an email on October 26, 2023, rehearsing the reasons the denial must remain in place. On December 31, 2023, the Complainant filed yet another internal appeal, and the Board issued a final adverse decision on February 2, 2024. The Complaint then filed the NFAD with this Office. (Pp. 2-5 of the Complaint Form).

Board's Responses

The Board, in its decision, states that it is not required by the governing statutes to approve an electric vehicle charging station that must extend electric cable across or under the common area of the Association. The Board claims that the applicable law allows it to prohibit or restrict the installation of electric vehicle charging stations on the common area, and that in this case, the Board has reasonable grounds to deny the right to extend electric wiring across or under the common area, to protect the safety of residents. (P. 1 of the Notice of Final Determination of Association Complaints, dated February 2, 2024).

In another finding, the Board points out that "it is true that the post-mounted charging station is installed on her private property, but it cannot be used on property owned by the lot owner, a stipulation of subparagraph A." The Board concludes that since the electric cable runs over the sidewalk, utility strip and the street, the electric vehicle charging station encroaches on the common area and as such, must be denied. Also, the Board states that once the Complaint provides the manufacturing information for the charging station, any required Fairfax County permits, as well as a plat showing that the charging station is indeed on her property, the charging station may remain on the Complaint's property while a plan to implement the installation of charging stations in the community is being researched and developed. (Pp. 3 and 5 of the Notice of Appeal Hearing Results, dated September 21, 2022).

The Board also claims that allowing the use of charging cable and cord protector across the sidewalk throughout the community would present a liability to the Association and impede/restrict the use of the sidewalk to other residents. The Board further states that even though the Complaint has not presumptively claimed a common parking space as her own, but it can present an appearance of the space being intended primarily for the Complaint's use. (P. 4 of the Notice of Appeal Hearing Results, dated September 21, 2022).

Authority

In accordance with its regulations, the Common Interest Community Ombudsman (CICO), as designee of the Agency Director, is responsible for determining whether a “final adverse decision may be in conflict with laws or regulations governing common interest communities.” (18 Va. Admin. Code (“VAC”) § 48-70-120) The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with §54.1-2354.4 of the Code of Virginia of 1950, as amended (“Va. Code”) and the Common Interest Community Ombudsman regulations (“Regulations”). A NFAD results from an association complaint submitted through an association complaint procedure. The association complaint must be submitted in accordance with the applicable association complaint procedure and, as very specifically set forth in the Regulations, “shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.”

Under the Regulations, “applicable laws and regulations” pertain solely to common interest community laws and regulations. Any complaint that does not concern common interest community laws or regulations is not appropriate for submission through the association complaint procedure, and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners’ Association Act, and the Virginia Real Estate Cooperative Act.

The only documents that will be considered when reviewing a NFAD, in accordance with Regulation 18 VAC 48-70-90, are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered. Further, this Determination is final and not subject to further review or appeal pursuant to Va. Code § 54.1-2354.4(C).

If, within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with Va. Code §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination

As described more fully below, the Office has determined, upon a review of the materials submitted with the NFAD, that the evidence before it is sufficient to conclude that the Board’s action to deny the Complaint’s request to install electric station on her property is contrary to the applicable law or regulation.

Homeowners’ right to install electric charge stations on their property:

The applicable law, §55.1-1823.1 of Code of Virginia, states in pertinent part:

Except to the extent that the declaration or other recorded governing document provides otherwise, no association shall prohibit any lot owner from installing an

electric vehicle charging station for the lot owner's personal use on the property owned by the lot owner. An association may establish reasonable restrictions concerning the number, the size, place and manner of the placement or installation of such electric vehicle charging station on the exterior of property owned by the lot owner. Va. Code §55.1-1823.1(A).

An association may prohibit or restrict the installation of electric vehicle charging stations on the common area within the development served by the association and may establish reasonable restrictions as to the number, size, place and manner of placement or installation of electric vehicle charging stations on the common area. Va. Code §55.1-1823.1(B).

Any lot owner installing an electric vehicle charging station shall indemnify and hold the association harmless from all liability, including reasonable attorney fees incurred by the association resulting from a claim, arising out of the installation, maintenance, operation, or use of such electric charging station. An association may require the lot owner to obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation, or use of the electric vehicle charging station and require the association to be included as the named insured on such policy. Va. Code §55.1-1823.1(C).

Pursuant to the above applicable law, unless the declaration or other recorded governing document provides otherwise, an association **shall not prohibit** any lot owner from installing an electric vehicle charging station on their property for the owner's personal use. Va. Code §55.1-1823.1 (A). (Emphasis added).

In this case, the Board did not point to any part of its declaration or other recorded governing documents that prohibits a lot owner from installing an electric vehicle charging station on the owner's property. Rather, the Board argues that Subsection B of the statute is more applicable to this matter. Subsection B of the Va Code §55.1-1823.1 does allow an association to prohibit or restrict the installation of electric vehicle charging stations **ONLY** on common area within the community served by the association. Va. Code §55.1-1823.1(B). (Emphasis added).

The Board acknowledges that the electric vehicle charging station is on the Complainant's private property but argues that electrical cord and cable encroaches on the common area of the development. The Board further argues that the use of charging cable and cord protector across the sidewalk **throughout the community** would present a liability to the Association and impede/restrict the use of the sidewalk to other residents. (Pp. 3 and 5 of the Notice of Appeal Hearing Results, dated September 21, 2022). (Emphasis added.). In this case, there is no evidence showing that the Complainant's charging cable and cord protector across the sidewalk go throughout the community, it only went as far as to the sidewalk, parking space or street in front of the Complainant's lot. P. 3 of the Notice of Appeal Hearing Results dated September 21, 2022).

More pertinently, the Board's concern about liability is addressed under Subsection C of the Code §55.1-1823.1, which mandated indemnification of the association, and authorizes the association to require that the lot owner obtains and maintains insurance covering claims and

defenses arising from the installation, maintenance, operation, or use of the electric vehicle charging station. The law further allows the association to require that it be included as a named insured on the policy. Va. Code §55.1-1823.1(C).

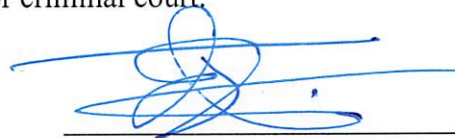
Additionally, it is reasonable to conclude that Subsection C of the applicable law, anticipated a situation where the electric vehicle charging station and its accessories such as cables or cords may not fit neatly within the boundary of a lot owner's property, and may go across the sidewalk or street adjacent to the owner's property; hence the need for indemnification and insurance policy. Va. Code §55.1-1823.1(C). Thus, the Board cannot prohibit the installation of the electric charging station under Subsection B of the applicable law because the installation is in the Complainant's property. Va. Code §55.1-1823.1(B). However, the Board may impose reasonable restrictions concerning the number, size, place and manner of installation of the electric vehicle charging station on the Complainant's property under Subsection A. Va. Code §55.1-1823.1(A).

Conclusion

Based upon the information in the record, including the original complaint, its accompanying documents, the Notice of Appeal Hearing Results, as well as the NFAD, this Office finds that the Board's outright prohibition against installing electric vehicle charging station on Complaint's property is contrary to the applicable law; absent a showing that the Association declaration or other recorded governing document forbids it; or that the charging station (not its accessories) is on the common area of the community. Code of Virginia §55.1-1823.1(C).

Decision

This Office, therefore, recommends that the Board refrain from prohibiting the Complaint from installing electric vehicle charging station on her property, however, the Board may impose reasonable restrictions as it seems fit.¹ If any party is dissatisfied with this determination, or part thereof, the party could seek remedies in civil or criminal court.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors
Overlook Foundation, Inc./Community Management Corporation

¹ Please note that this Determination did not address whether the Complainant should have sought and obtained approval before installing the electric vehicle charging station on her property, that issue was not before this Office.