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Admitted only in DC and ME

December 6, 2010

Covenants Committee  
Belmont Community Association  
20071 Medalist Drive  
Ashburn, VA 20147

[www.belmonthoa.org](http://www.belmonthoa.org)

Tel.: 703.723.8300

***In re: 43883 Hibiscus Drive***

Ladies and Gentlemen:

I write to you on behalf of my client, Asim Aziz, of 43883 Hibiscus Drive. As is his right under 4 U.S.C. §5, he desires to display the American flag on a free-standing flagpole in his rear yard. His design review application accompanies this letter. Formerly a foreign national, Mr. Aziz is a citizen of the United States, and has been for many years. He has been a contractor to the Department of Defense, with a substantial amount of his work for the U.S. Navy, for over 11 years. He treasures his good fortune in being able to live under the protection of the American flag.

Mr. Aziz' pride in the American flag is real, though his request cannot be compared to the consideration rightly shown to Van T. Barfoot, of Sussex Square, Henrico County, VA. Last year, Barfoot faced a comparable design guideline dispute over his flagpole to display the American flag.

If you are unaware of the Barfoot matter, I attach a copy of a report on it by the Associated Press. In that situation, the White House called the homeowners' association request to remove a free-standing flagpole "silly." U.S. Senators Mark R. Warner and Jim Webb also joined the defense of the flagpole against the attack by the homeowner's association. Ultimately, the association allowed the flagpole. See **Exhibit 1**. There is also case law supporting Mr. Aziz position. See **Exhibit 2**.

**The Law Involved**

The relevant part of the Belmont Community Association Design Guidelines ("Guidelines"), at page 15, reads:

**FLAGPOLES. Permanent, free standing flagpoles are prohibited. Flagpole staffs which do not exceed six feet in length and are attached at an incline to the wall or pillar of the dwelling unit are permitted for single-family detached homes and do**

not require approval by the Covenants Committee. Flagpoles are prohibited for attached homes.

*Emphasis added.*

Nonetheless, Belmont Community Association must obey both federal and state law.

**Federal Law.** The relevant federal law was created by the Freedom to Display the American Flag Act of 2005, and reads:

**4 U.S.C. § 5: US Code - Section 5: Display and use of flag by civilians; codification of rules and customs; definition**

The following codification of existing rules and customs pertaining to the display and use of the flag of the United States of America is established for the use of such civilians or civilian groups or organizations as may not be required to conform with regulations promulgated by one or more executive departments of the Government of the United States. The flag of the United States for the purpose of this chapter shall be defined according to sections 1 and 2 of this title and Executive Order 10834 issued pursuant thereto.

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REFERENCES IN TEXT

Executive Order 10834, referred to in text, is set out as a note under section 1 of this title.

FREEDOM TO DISPLAY THE AMERICAN FLAG

Pub. L. 109-243, July 24, 2006, 120 Stat. 572, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Freedom to Display the American Flag Act of 2005'.

"SEC. 2. DEFINITIONS.

"For purposes of this Act -

"(1) the term 'flag of the United States' has the meaning given the term 'flag, standard, colors, or ensign' under section 3 of title 4, United States Code;

"(2) the terms 'condominium association' and 'cooperative association' have the meanings given such terms under section 604 of Public Law 96-399 (15 U.S.C. 3603);

"(3) the term 'residential real estate management association' has the meaning given such term under section 528 of the Internal Revenue Code of 1986 (26 U.S.C. 528); and

"(4) the term 'member' -

"(A) as used with respect to a condominium association, means an owner of a condominium unit (as defined under section 604 of Public Law 96-399 (15 U.S.C. 3603)) within such association;

"(B) as used with respect to a cooperative association, means a cooperative unit owner (as defined under section 604 of Public Law 96-399 (15 U.S.C. 3603)) within such association;

and

"(C) as used with respect to a residential real estate management association, means an owner of a residential property within a subdivision, development, or similar area subject to any policy or restriction adopted by such association.

"SEC. 3. RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES.

**"A condominium association**, cooperative association, or residential real estate management association **may not adopt or enforce any policy**, or enter into any agreement, **that would restrict or prevent a member of the association from displaying the flag of the United States on residential property within the association with respect to which such member has a separate ownership interest or a right to exclusive possession or use.**

"SEC. 4. LIMITATIONS.

"Nothing in this Act shall be considered to permit any display or use that is inconsistent with -

"(1) any provision of chapter 1 of title 4, United States Code, or any rule or custom pertaining to the proper display or use of the flag of the United States (as established pursuant to such chapter or any otherwise applicable provision of law); or

"(2) any reasonable restriction pertaining to the time, place, or manner of displaying the flag of the United States **necessary to protect a substantial interest of the condominium association**, cooperative association, or residential real estate management association."

*Emphasis added.*

Source: <http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t01t04+11986+1++%28%29%20%20AND%20%28%284%29%20ADJ%20USC%29%3ACITE%20AND%20%28USC%20w%2F10%20%285%29%29%3ACITE>

Or <http://codes.lp.findlaw.com/uscode/4/1/5/notes>

In introducing the act on January 4, 2005<sup>1</sup>, Rep. Roscoe Bartlett [MD-6] commented on the issue of protecting property values:

Mr. Speaker, it is hard for me to understand how a flag outside my condo could depreciate the value of my condo. I would just think that Americans flying flags should increase the value of whatever it flies on.

Statement of Rep. Bartlett 152 Cong. Rec. H4574-02, 2006 WL 1749721.

**Virginia Law.** The relevant Virginia law is:

**§ 55-513.1. Display of the flag of the United States; necessary supporting structures; affirmative defense.**

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<sup>1</sup> See <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR00042:@@R> (last visited Nov. 24, 2010). The Act was also co-sponsored by, among others, Rep. Jo Ann Davis [VA-1].

A. In accordance with the federal Freedom to Display the American Flag Act of 2005, no association shall prohibit any lot owner from displaying upon property to which the lot owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code, or any rule or custom pertaining to the proper display of the flag. **The association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property provided such restrictions are necessary to protect a substantial interest of the association.**

B. The association may restrict the display of such flag in the common areas.

C. In any action brought by the association under § 55-513 for violation of a flag restriction, **the association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the association.**

D. In any action brought by the association under § 55-513, the lot owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitations pertaining to the display of flags or any flagpole or similar structure necessary to display such flags was not contained in the disclosure packet required pursuant to § 55-509.5.

*Emphasis added.*

### **Discussion of the Law**

**Introduction.** Virginia law places greater burdens on the Association than does federal law with regard to restricting the display of the American flag. Federal law assures citizens the right to display the American flag and recognizes association interests. But Virginia law squarely places the burden on the association that seeks to restrict display of the American flag. The Association's guideline gives rise to several but readily resolvable issues:

- Is a ***ban*** on free-standing flagpoles "reasonable"?

*Comment:* If banning free-standing flagpoles is a reasonable restriction, why does the Association itself have five of them? One such flagpole is in front of the Civic Center at 20109 Boxwood Drive (just seven houses away), and it is taller (35.2') than the proposed flagpole (30'). One Association flagpole is in front of the Manor, and three are at the entry gate.

- Can the Association sustain its burden and prove that banning flagpoles entirely is a ***substantial*** interest of the Association?

*Comment:* What is the interest that the Association seeks to protect when there exist five flagpoles within the community, all taller than this proposed flagpole?

- Can the Association sustain its burden and prove that banning free-standing flagpoles entirely is *necessary* to protect an interest of the Association?

*Comment:* Whatever the interest, can it be protected by a measure less than a complete ban?

As a free-standing flagpole is already a primary feature of the Community House, the Manor and the entry gate, the burden of the Association on installation of free-standing flagpoles is not sustainable.

The issue is well analyzed in a law review article regarding the right to display the American flag: Elizabeth F. Grussenmeyer, *The Right to Display the American Flag in Common Interest Developments: Restrictions by Homeowners' Associations Not Tolerated*, 34 McGeorge L. Rev. 516 (2003). *Emphasis added.*

There is a 2009 litigated case from Georgia, with facts comparable to the situation presented here, involving a stand-alone flagpole. In that case, *Bridgemill Community Association v. Tripodo*, see **Exhibit 2**, the Court ruled against the association-plaintiff and for the homeowner-defendant, applying the Freedom to Display the American Flag Act, and refusing to enforce a covenant against erecting a flagpole, holding:

Plaintiff's Complaint and subsequent pleadings emphasize that the fines and request for injunction are based on the pole. However, **the flag and the instrument necessary for flying it are intertwined in the display of the flag**, and the Covenants require association pre-approval for both. Thus, Plaintiff attempts to enforce restrictions that prevent the display of the American flag.

*Footnote omitted. Emphasis supplied.*

**Discussion.** The essential issue before the Association is the extent to which its blanket restriction that prohibits all consideration of size, place, duration or manner of placement or display of the flag on a flagpole is supported by a substantial interest of the Association. Though the Guidelines state the rules, no substantial interest is stated, nor is any reason for the limitations of the Guidelines stated.

Furthermore, it should be noted that if one wishes to display a standard 3'x'5' flag, and the flag is limited to hanging on "(f)lagpole staffs which do not exceed six feet in length and are attached at an incline to the wall or pillar of the dwelling unit," then it becomes impossible to avoid violating the Flag Code when, in accordance with at 4 U.S.C. §7, a flag is flown at half-staff.

The flag shall be flown at half-staff 30 days from the death of the President or a former President; 10 days from the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice President, or the Governor of a State, territory, or possession; and on the day

of death and the following day for a Member of Congress. The flag shall be flown at half-staff on Peace Officers Memorial Day, unless that day is also Armed Forces Day. As used in this subsection -

(1) the term "half-staff" means the position of the flag when it is one-half the distance between the top and bottom of the staff;

A conflict arises with the Flag Code because, as the Guidelines limit the maximum staff of an angled flagpole to six feet, the standard 3'x5' flag would then be touching something beneath it, such as the shingling on the wall from which the staff is angled.

Sec. 8 Respect for flag

...

(b) The flag should never touch anything beneath it, . . .

### **Aesthetics**

The substantial interest of the Association in its Declaration purports to lie in aesthetic issues. "The primary purpose of design covenants is to maintain environmental and architectural design standards for the entire Community." Guidelines at 3.

The proper and lawful display of the American flag can never be unaesthetic. Furthermore, the proposed flagpole will be unobtrusive. It will not be in the front of the lot, but rather it will be in the rear yard, and it will not extend beyond the side plane of the house. The flagpole will not be visible from in front of the home. The peak of Applicant's roof is 33.6 feet above ground level, whereas the proposed flagpole, located behind the house, will be only 30 feet tall. At the top, the flagpole will be only 1 ½" O.D. The proposed flag will be 3'x5'. As much of his work has been for the United States Navy, the Applicant proposes to fly a flag that flew over the Navy Memorial on the 235<sup>th</sup> anniversary of the founding of the U.S. Navy. See **Exhibit 3**.

Neither the flagpole, nor the flag, will be visible from in front of Applicant's house. See **Exhibit 4**. There is no discernible aesthetic or visual impact that could reasonably be imputed to this proposed flagpole.

In an abundance of caution to avoid even the slightest conceivable perception of visual objection, Applicant's proposed flagpole will have the same appearance as the flagpole in front of the Association's Community House at 20109 Boxwood, just seven houses away, as well as all of the Association's other flagpoles. In fact, the proposed flagpole will not be as tall as the 35.2-foot flagpole in front of the Association's Community House.

For an example of the appearance of the proposed flagpole, see **Exhibit 5**, which also includes photos of five existing flagpoles at Belmont Country Club.

To the extent that there may be any concern about physical safety, to the property owner, or to the community, the flagpole was in large part selected because it has a wind

rating of 90 mph un-flagged, and 70 mph flagged. The weight of the pole is only 46 lbs. It is constructed of 6061-T6 extruded aluminum, and is sectional as follows: base plate -- aircraft grade 6061 T-6 aluminum, 3/8" thick; base tube -- 4 inch OD; section 1 -- 6 feet, 2 1/2" OD, 1/8 wall; section 2 -- 6 feet, 2 1/4" OD, 1/8" wall; section 3 -- 6 feet, 2" OD, 1/8" wall; section 4 -- 6 feet, 1 3/4" OD, 1/8" wall; section 5 -- 6 feet, 1 1/2" OD, 1/8" wall.

Local governments require building permits to assure safe construction. But Loudoun County, like so many other jurisdictions, does not require a building permit for a flagpole. Nonetheless, the proposed flagpole meets the requirements of EIA/TIA-222-F, the stringent industry standard for such structures. Under this standard, and in accordance with ASCE 7-88 (the standard promulgated by the American Society of Civil Engineers), the flagged rating of 70 mph matches the Loudoun County standard of a Basic Wind Speed of 70 mph. In short, this flagpole presents less risk to the homeowner and to the community during periods of high winds than do the homes in the community themselves.

### **Neighborhood Support**

The Applicant has provided detailed descriptions of the proposed flagpole for the display of the American flag to neighbors. Responses from the neighbors have varied from enthusiastic support to indifference. No neighbor has made known any opposition to the display of the American flag on a stand-alone flagpole. Generally speaking, the neighbors do not understand why the Association would want to prevent the display of the American flag on its own flag pole, especially when they are informed about federal and state law on the subject. **See Exhibit 6.**

### **Proposal Conclusion**

#### **The Applicant proposes to display the American flag.**

- A 30' flagpole of 6061-T6 aluminum, to hold a standard American U.S. flag, size: 3'x5'. This is the same size displayed by the Belmont Community Association. The flagpole tapers from 4" at the bottom to 1 1/2" O.D. at the top.
- Located in the Applicant's back yard, the flagpole and flag will not be visible from the street in front of the house.
- The flagpole and flag will stand lower than the ridgeline of the house.
- The flagpole will be plain aluminum (as is the flagpole at the Civic Center, and all other Association flagpoles).
- Flag: a 3'x'5' U.S. flag that flew over the Navy Memorial on the 235<sup>th</sup> Anniversary of the founding of the U.S. Navy. See **Exhibit 3.**
- Location: in the Applicant's backyard. See **Exhibit 4.**

**Request**

Asim Aziz respectfully requests that this Committee approve this proposal to erect a modest, free-standing flagpole, for display of the American flag, to a height (30') that is lower than his roof line.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fred Hopengarten', with a stylized flourish at the end.

Fred Hopengarten, Esq.  
Attorney for Asim Aziz

c: Mr. Asim Aziz

Attachments: Exhibits 1-6



## **Table of Exhibits**

**Exhibit 1 - Sussex Square Homeowners Association and Van T. Barfoot**

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**Exhibit 5 – Photos of Proposed and Existing Flagpoles in the Belmont Community**

**Exhibit 6 – Letters of Recommendation**

## **Exhibit 1 - Sussex Square Homeowners Association and Van T. Barfoot**

U.S.

### ***Virginia Veteran Wins Battle to Keep His Flagpole in Yard***

Published December 08, 2009

| **AP**

RICHMOND, Va. – A 90-year-old Medal of Honor recipient can keep his 21-foot flagpole in his front yard after a homeowner's association dropped its request to remove it, a spokesman for Democratic Virginia Sen. Mark Warner said Tuesday.

The Sussex Square homeowners' association likewise has agreed to drop threats to take legal action against retired Army Col. [Van](#) T. Barfoot, Warner spokesman Kevin Hall said.

The association had threatened to take Barfoot to court if he failed to remove the pole from his suburban Richmond home by Friday. It had said the pole violated the neighborhood's aesthetic guidelines.

Neither Barfoot's daughter, Margaret Nicholls, nor homeowners' president Glenn Wilson immediately returned telephone messages.

Dropping the issue effectively ends a request that White House press [secretary](#) Robert Gibbs on Monday called "silly."

Warner and Sen. Jim Webb, both Virginia Democrats, had rallied behind Barfoot, a World War II veteran.

In a letter last week, Webb urged the association to "consider the exceptional nature of Col. Barfoot's service when considering his pride and determination in honoring our flag."

Barfoot's fight also has lit up veterans bulletin boards and blog sites supporting him.

Barfoot won the Medal of Honor for actions while his platoon was under German assault near Carano, Italy, in May 1944. He was credited with standing up to three German tanks with a bazooka and stopping their advance.

He also won the Purple Heart and other decorations, and served in Korea and Vietnam before [retiring](#) from the service in 1974.

[SLIDESHOW: Medal of Honor Recipient Col. Van Barfoot](#)

Source:

<http://www.foxnews.com/us/2009/12/08/virginia-veteran-wins-battle-flagpole-yard/>

[Note: As a result of this controversy, the new Virginia statute, §55-513.1, affirming the right to display the American flag, was passed and signed into law.]

**Exhibit 2 – Bridgemill Community Association v. Tripodo**

**COPY  
TO  
ATTORNEY**

IN THE SUPERIOR COURT OF CHEROKEE COUNTY  
STATE OF GEORGIA

FILED IN OFFICE  
CLERK OF SUPERIOR COURT  
CHEROKEE COUNTY, GA  
2010 AUG 24 PM 1:39  
PATTY BAKER, CLERK

BRIDGEMILL COMMUNITY ASSOCIATION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	FILE NO. 09-CV-0876
	:	
RONALD J. TRIPODO and PATSY T. TRIPODO,	:	
	:	
Defendants.	:	

ORDER

The above matter has come before the Court on (1) Plaintiff's Motion to Strike Answer and for Entry of a Default Judgment and, in the Alternative, Motion for Summary Judgment; (2) Defendants' Motion to Determine Sufficiency of Service of Requests for Admission or, in the Alternative, Motion for Withdrawal of Admissions Pursuant to O.C.G.A. § 9-11-36(b) and Request to Open Time Period to Reply; and (3) Defendants' Motion for Declaratory Relief Under O.C.G.A. § 9-4-2(b) and for Summary Judgment to Non-Movant Sua Sponte. Having considered the pleadings, evidence<sup>1</sup>, and oral argument of counsel<sup>2</sup>, the Court finds as follows:

In June 2008, Defendants acquired their current property interest, which binds them under the Bridgemill Declaration of Covenants ("Covenants") that are enforced by Plaintiff. On February 27, 2009, Plaintiff filed this action for injunctive relief and damages due to the unauthorized construction of a flagpole, a violation of the Covenants.

<sup>1</sup> Unauthenticated items attached to pleadings were not properly submitted and were not considered.

<sup>2</sup> Oral Argument was held on May 12, 2010, after which requested supplemental briefs were submitted. Defendants filed their related Motion requesting declaratory and summary judgments on June 4, 2010. The parties stipulated to an extension for filing a response.

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***Plaintiff's Motion to Strike***

Plaintiff moves that Defendants' Answer be struck since an answer to a verified complaint should be verified by the party rather than the party's attorney. Plaintiff's Complaint was signed by its attorney on February 26, 2009. Among its attachments is a document titled "Verification" and dated February 19, 2009. Defendants' initial Answer was verified by their attorney. An Amended Answer, verified by Defendants, was subsequently filed.

Where the Plaintiff files a verified pleading, the Defendant shall verify any answer. O.C.G.A. § 9-10-111. "[F]ailure to verify a pleading is an amendable defect." Janet Ricker Builder, Inc. v. Gardner, 244 Ga. App. 753, 755 (2000). Because Defendants' Answer was amended to include their verification, Plaintiff's Motion to Strike Defendants' Answer and for Entry of a Default Judgment is **denied**.<sup>3</sup>

***Defendants' Motion for Withdrawal of Admissions***

Plaintiff's Request for Admissions was served May 12, 2009. No response was filed within 30 days, so the matters were deemed admitted by operation of law. O.C.G.A. § 9-11-36. Withdrawal of admission may be permitted "when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits." O.C.G.A. §9-11-36(b).

For the reasons discussed during oral argument, including that the merits will be subserved by the admission of liability but not by the admission of undisputed facts,

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<sup>3</sup> Plaintiff's agent purported to verify documents that did not yet exist. Where a Plaintiff's complaint is not properly verified, Defendants are not required to verify their answer. Ware v. Fidelity Acceptance Corp., 225 Ga. App. 41, 43 (1997).

Defendants' Motion to Withdraw Admissions is **denied in part**, paragraphs 1-56, and **granted in part**, paragraphs 57-59. Thus, Defendant Ronald Tripodo is deemed to have admitted to the authenticity of the exhibits attached to Plaintiff's Request for Admissions, to the applicability of the Covenants to the property, and to construction of the flagpole without the pre-approval required by the terms of the Covenants. However, Defendant Ronald Tripodo's liability and Plaintiff's reasonableness are not admitted.

*Plaintiff's Motion for Summary Judgment, Defendants' Motion for Summary Judgment, and Defendants' Motion for Declaratory Judgment*

The undisputed facts show that Defendants have constructed a flagpole in violation of the requirement in the Covenants that they obtain prior approval of any structure, and that is the basis for Plaintiff's Motion. Defendants argue that the Freedom to Display the American Flag Act of 2005 ("Act") prevents the full enforcement of the Covenants. 4 U.S.C.A. § 5. Plaintiff does not dispute the general validity of the law. However, it disagrees with its application to a flagpole, and it argues that the Covenants comply with the Act.

By accepting a deed, a grantee is bound by its covenants so long as they are clearly established and not contrary to public policy. A person may waive his constitutional and legal rights in exercising his freedom to contract. However, a court may interfere with a contract when it is prohibited by statute or public policy. See Bryan v. MBC Partners, L.P., 246 Ga. App. 549, 552-553 (2001) (holding homeowner waived right and recognizing exceptions to freedom to contract). Therefore, if the Act forbids the agreement to and enforcement of the Covenants, Defendants could not have waived

the rights protected by the Act, and Plaintiff could not obtain the relief requested.

The plain language of the Act prohibits the creation and enforcement of certain contracts. It states that a residential real estate management association “may not adopt or enforce any policy, or enter into any agreement, that would restrict or prevent a member of the association from displaying the flag of the United States on residential property within the association with respect to which such member has a separate ownership interest or a right to exclusive possession or use.” However, the Act is not to be interpreted to permit flag display inconsistent with “any reasonable restriction pertaining to the time, place, or manner of displaying the flag of the United States necessary to protect a substantial interest of the ... association.” 4 U.S.C.A. § 5.

Plaintiff is an association to which the Act applies, and Defendants, as property owners, are members. Plaintiff’s Complaint and subsequent pleadings emphasize that the fines and request for injunction are based on the pole. However, the flag and the instrument necessary for flying it are intertwined in the display of the flag, and the Covenants require association pre-approval for both.<sup>4</sup> Thus, Plaintiff attempts to enforce restrictions that prevent the display of the American flag.

The undisputed evidence shows that the pre-approval process is a purely arbitrary system with no specific time, place, or manner restrictions. Plaintiff is sole arbiter of construction or modification plans, and it may withhold approval for any reason. By applying broad, varying, and subjective considerations, Plaintiff imposes unreasonable

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<sup>4</sup> Sections 7.1, 7.2, and 8.19

restrictions that are not necessary for protecting its interests.<sup>5</sup> Thus, the Act prohibits the enforcement of the Covenants, and Plaintiff's Motion for Summary Judgment is denied.

Plaintiff responded to Defendants' Motion, submitted an affidavit, and did not request additional oral argument. Despite Defendants' incongruous Motion requesting sua sponte action and Defendants' failure to comply with U.S.C.R. 6.5, summary judgment may be granted sua sponte for a non-movant where, as here, the issues are the same as those in the movant's motion. Covington v. Countryside Investment Company, Inc., 263 Ga. 125 (1993). Therefore, Summary Judgment is favor of Defendants is granted.

In view of the above, including the Court's finding that the Covenants cannot be enforced to prevent the display to the American flag, it is unnecessary for the Court to consider the additional request of the Defendants for a declaratory judgment, and the additional defenses averred in Defendants' Answer need not be reached.<sup>6</sup>

***Defendants' Request for Attorney's Fees***

Defendants seek fees under to O.C.G.A. § 13-6-11 but has not specially plead in accordance with the statute. A claim for attorney's fees under O.C.G.A. § 13-6-11 will not lie when general damages are not awarded. Dowdell v. Krystal Co., 291 Ga. App. 469 (2008).

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<sup>5</sup> The Court does not find state action in the instant case, but the reasoning of First Amendment cases is instructive due to similar language in the Act and First Amendment case law. A regulation that can be arbitrarily applied is inconsistent with a valid time, place, and manner regulation because such discretion has the potential for suppressing expression. Forsyth County, Georgia v. Nationalist Movement, 505 U.S. 123, 130-131 (1992).

Prior restraints without procedural safeguards on broad discretion are highly disfavored. See Freedman v. Maryland, 380 U.S. 51 (1965).

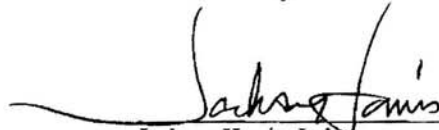
<sup>6</sup> Those defenses include the following: (1) the Covenants are so vague and indefinite as to be void, under the standard set forth in Winslette v. Keeler, 220 Ga. 100 (1964), (2) selective enforcement, and (3) violation of the Defendants' rights under the U.S. and Georgia Constitutions.

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The Defendants do not set forth a claim for attorney's fees pursuant to O.C.G.A. § 9-15-14, but even if the claim could be construed as such, it would fail for lack of evidence. See Lurry v. McCants, 302 Ga. App. 184 (2010).<sup>7</sup>

Thus, Defendants' request for fees is **denied**.

SO ORDERED, this 23 day of August, 2010.

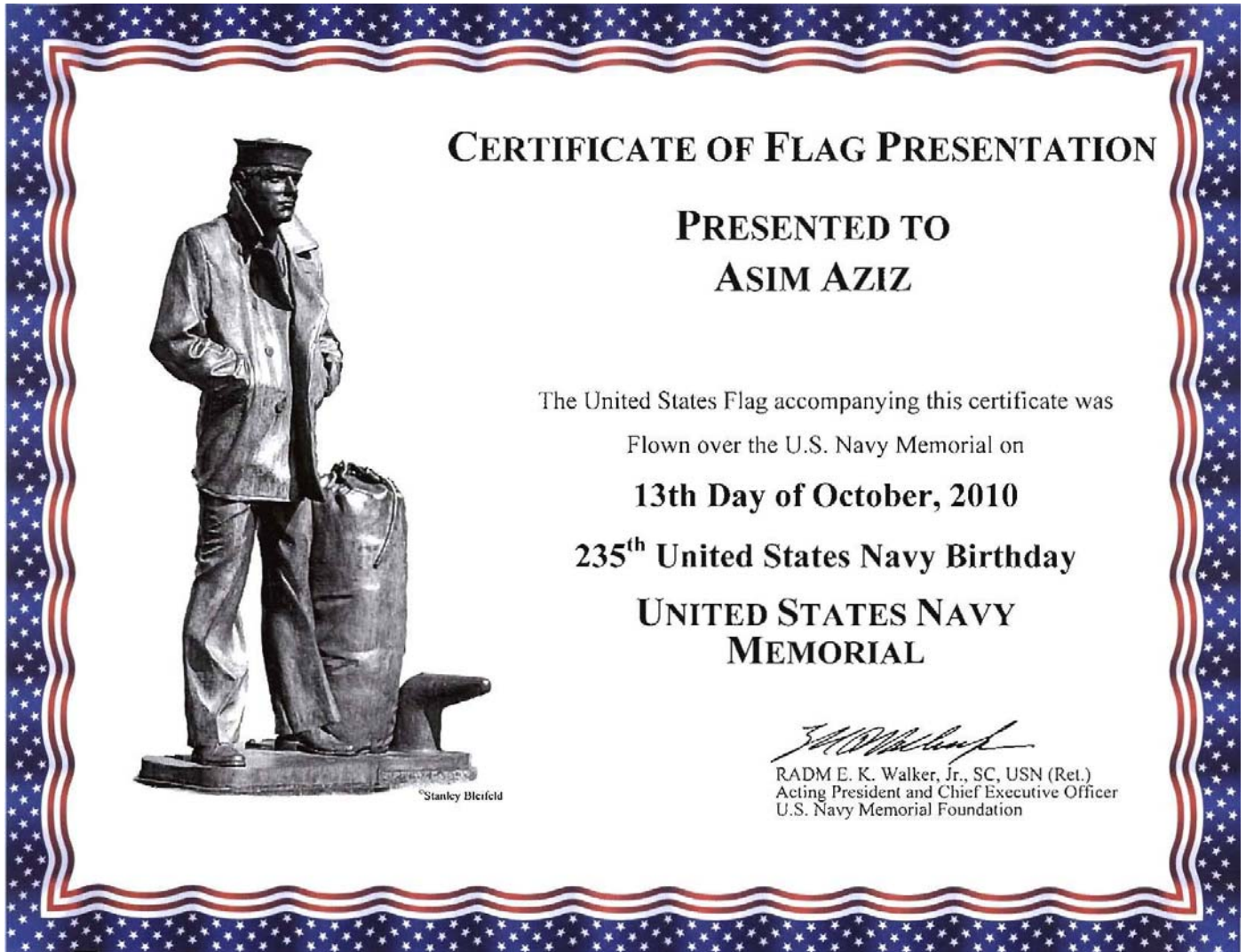
  
Jackson Harris, Judge  
Superior Court of Cherokee County  
Blue Ridge Judicial Circuit

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<sup>7</sup> Lurry concerns O.C.G.A. § 19-9-3, but the "reasonableness" language also appears in O.C.G.A. § 9-15-14.



**Exhibit 3 – The Flag Proposed**



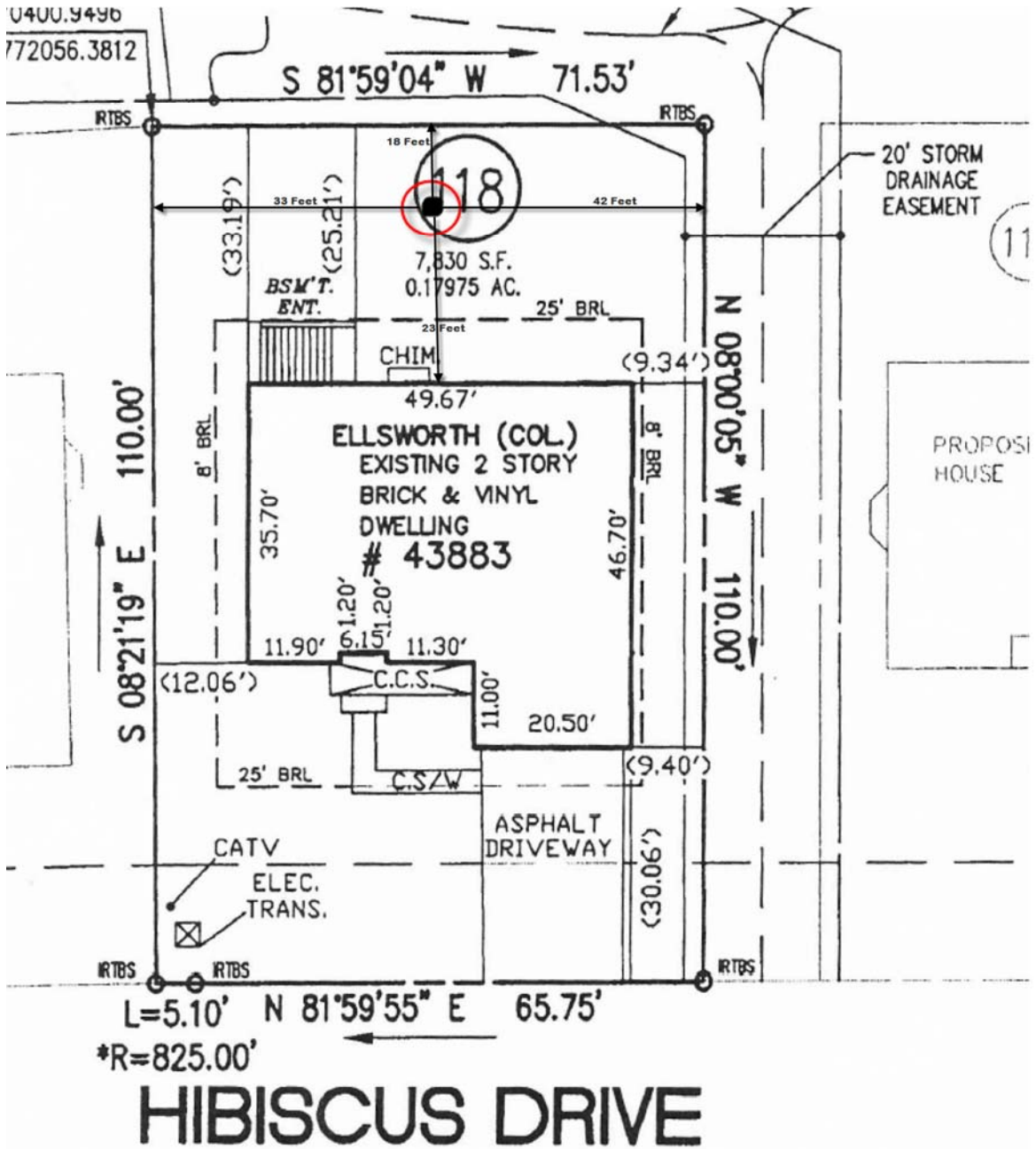
**Exhibit 4 –Photosimulation and Plot Plan**



**Exhibit 4-1: Photosimulation of Proposed Flagpole in Backyard  
Height of Flagpole: 30'. Height of Roof: 33.6'**

*[Not to scale. Does not show tapering. The flagpole will be 4" O.D. at the base, tapering to 1 ½" at the top. The flagpole will not extend beyond the side plane of the house, nor will it be visible above the house from the street. The proposed flag size, 3'x5', appears to be the same as, or smaller than the flags flown from free-standing flagpoles at the Civic Center, the Manor, and the entry gate.]*

Exhibit 4-2: Plot Plan with Proposed Location





**Exhibit 5 – Photos of Proposed and Existing Flagpoles in the Belmont Community**



**Exhibit 5-1: Manufacturer’s Photo of Proposed Flagpole, with 3’x5’ Flag**



**Exhibit 5-2: Photo of Flagpole at Civic Center (Height: 35.2’)**



**Exhibit 5-3: Photo of Flagpole at the Manor**



**Exhibit 5-4: Photo of Flagpoles at the Entry Gate**

**Exhibit 6 – Letters of Recommendation**

November 26, 2010

Covenants Committee  
Belmont Community Association  
20071 Medalist Drive  
Ashburn, VA 20147

To Whom It May Concern:

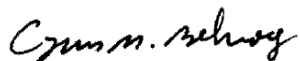
I live on the road which leads directly to the home of my neighbor, Asim Aziz, of 43883 Hibiscus Drive.

He has presented to me his plans to install a flagpole in his back yard. I have reviewed those plans thoroughly and find every reason to encourage the committee to approve the proposal. As the flag will be below the ridge pole of his home, it may be hard, or even impossible, to see from Arborvitae Drive.

As a local government employee, it is my view that no barriers should prevent anyone's intent to honor the flag of the United States by hoisting on a flag pole in one's own yard, yet for all the world to admire. I hope that you, and others, share my view.

I therefore encourage the approval of Mr. Aziz's application.

Sincerely,



Cyrus M. Behrooz  
43860 Arborvitae Drive  
Ashburn, VA 20147

November 27, 2010

Covenants Committee  
Belmont Community Association  
20071 Medalist Drive  
Ashburn, VA 20147

To Whom It May Concern:

My immediate next door neighbor is Asim Aziz, of 43883 Hibiscus Drive.

He has presented to me his plans to install a flagpole in his back yard. I have reviewed those plans thoroughly and find every reason to encourage the committee to approve the proposal.

As a long-time resident of this area, it is my view that no barrier should prevent anyone from displaying the American flag on a flag pole in his own yard. I hope that you, and others, share my view.

My wife and I join together in encouraging the application of Mr. Aziz.

Sincerely,



Ron Barrow  
43887 Hibiscus Drive

C: Asim Aziz