

34  
358

BOOK PAGE  
2157 0233

STATE OF NORTH CAROLINA : DECLARATION OF COVENANTS  
COUNTY OF NEW HANOVER : CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, in connection with the subdivision known as BAR HARBOR ESTATES in New Hanover County, North Carolina, does hereby place the following restrictions and covenants upon all of the lots in said subdivision, a map of which is recorded in Map Book 20, Page 14 of the New Hanover Registry.

1. **Definitions:** As used in this Declaration of Restrictions the following terms have the following definitions:

- (a) "BHHA" means Bar Harbor Homeowners Association.
- (b) "Record or Recording" refers to record or recording with the Register of Deeds for New Hanover County, North Carolina.
- (c) "Subdivision Property" means the land included within the exterior boundaries of the tract shown on the above map recorded in the New Hanover Registry.
- (d) "Residential Lots" or "lots" means those portions of the Subdivision Property specifically allocated, platted and/or recorded as lots for sale and/or use as single family residences.
- (e) "Restrictions" shall mean the restrictions and covenants set forth in this Declaration of Covenants, Conditions and Restrictions.

000034

RETURNED TO  
Candace Craig Miller  
256-2046

2. **Applicability:** These Restrictions shall apply to all of the Subdivision Property.
  
3. **Easement Appurtenant to Lots:** The owner(s) of each lot in the subdivision property shall have an easement appurtenant to said lot for ingress and egress over the streets shown on the aforesaid map, and for the use of the common area shown on said map, subject to such rules and regulations of the BHHOA, or agents thereof, as may be adopted from time to time, and as the same may be amended, from time to time, by vote of the owners of the majority of the lots in the Subdivision Property. Such rules and regulations shall have the same force and effect as these restrictions, and may be enforced in the same manner by BHHOA, or agents thereof, or owner of any lot.
  
4. **Building and Site Improvements:**
  - (a) No building, fence, house, wall or other structure shall be erected, placed or altered on any lot, nor shall the grade elevations or physical characteristics of any lot, or portion thereof, be altered in any way whatsoever, until the proposed building plans, specifications, exterior colors and finishes, site and grading plan (showing the proposed location of such building or structure, drives, parking areas and proposed alterations to the grade,

elevation or physical characteristics of the lot), and construction schedule shall have been approved in writing by BHHOA or agents thereof. Refusal or approval of such plans, location or specifications may be based by BHHOA or agents thereof upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of BHHOA or agents thereof, shall seem sufficient.

- (b) Since the establishment of standard inflexible building setback lines for the location of houses on lots tends to force construction of homes directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and vegetation, ecological and related considerations, BHHOA, or agents thereof, reserves the right to control and approve absolutely the site and location of any house or dwelling or other structure upon any lot.

5. **Approval of Plans:** In addition to the above requirements which are to be exercised by BHHOA, or agents thereof, in its discretion, the following mandatory requirements shall apply to all lots:

- (a) No house plans will be approved unless the proposed house will have a minimum of 2000 square feet of enclosed dwelling area. The term "enclosed dwelling area" as used in these minimum size requirements shall mean the total enclosed area within a dwelling;

provided, however, that such term does not include garages, terraces, decks, open porches, and like areas; provided further, that shed type porches, even though attached to the house, are specifically excluded from the definition of the aforesaid term "enclosed dwelling area."

- (b) All houses, dwellings, or other structures will be at least 40 feet from the street and at least 10 feet from the side lines of the lot. (In the case of a corner lot, where two sides of the lot abut the street, the shorter side abutting the street shall be considered as the front of the lot, and the longer side of the lot abutting the street shall be considered as a side line, for the purposes of this paragraph),
- (c) Each lot owner shall provide receptacles for garbage, in a screened area not generally visible from the street, or provide underground garbage receptacles or similar facilities.
- (d) Each lot owner shall provide space for off street parking for not less than three passenger automobiles prior to the occupancy of any dwelling constructed on a lot. Said parking areas and the driveways thereto shall be in accordance with the reasonable standards and constructed of concrete or asphalt.
- (e) No trees, exceeding three inches in diameter measured at one foot above the ground, bushes, shrubs, or other vegetation whatever, may be removed from any lot without prior written approval of

BHHOA, or agents thereof, based upon a site plan, landscaping plan or planting plan submitted to BHHOA, or agents thereof.

- (f) No structure, permitted to remain on any lot other than a detached single family dwelling not to exceed four (4) stories in height, and one or more small accessory buildings (which may include a detached private garage, but not garage apartments). Such accessory building may not be constructed prior to the construction of the main building. Provided further, neither the main building or such accessory buildings shall be used for any activity normally conducted as a business.
- (g) No domesticated animals shall be kept on any lot other than household pets.
- (h) All structures erected on any lot shall be of wood, stone, brick veneer, tile, stucco, concrete and stucco, or asphalt shingles.
- (i) Watercraft, and trailers necessary for their transportation, may be stored on a lot. Watercraft and trailers should be stored so as not to be viewable from the street in front of the house or offensive to neighbors. No trailer, motor home, tent, living quarters of any type, or other structure of a temporary character except watercraft as described above shall be placed upon any lot or common areas at any time, provided, however, that this prohibition shall not apply to shelters used by a contractor during the construction of a

main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the lot after completion of construction.

- (j) No fuel, or propane, tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within the main dwelling house, within an accessory building, within a screened area, or buried underground.
- (k) Prior to the occupancy of a residence on any lot, proper and suitable provisions shall be made for the disposal of sewage by means of the county sewage system and with the approval by appropriate state or county health authorities.

6. **Reservation of Easement:** BHHOA or agents thereof, reserves unto itself a perpetual, alienable and releasable easement and right, on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone, TV cable utility, gas, sewer, water or other public conveniences or utilities on, in or over the rear 10 feet of each lot, the front 10 feet of each lot, 10 feet along one side of each lot, all streets, and such other areas as are shown on the recorded subdivision maps. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make

any grading of the soil, or to take other similar action reasonably necessary in the opinion of BHHA or agents thereof, to provide economical and safe utility installation.

7. **Residential Use:** All lots shall be used for residential purposes exclusively. No home business or occupation shall be permitted.

8. **Maintenance:**

(a) It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on such lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

(b) No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the neighborhood. There shall not be maintained any plants or animals, or device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof.

9. **Signs:** No sign of any character shall be displayed on any lot except:
- (a) a temporary "FOR SALE" sign.
  - (b) a property or owner identification sign not exceeding a combined total of two (2) square feet.
10. **Subdividing:** No lot shall be subdivided, or its boundary lines changed except with the prior written consent of BHHOA or agents thereof. However, BHHOA or agents thereof, expressly reserves to itself, its successors or assigns the right to replat any two (2) or more lots shown on the recorded maps of the subdivision in order to create a modified building lot or lots; and to take such steps as are reasonably necessary to make such replatted lot suitable and fit as a building site, said steps include, but are not limited to, the relocation of easements, walkways and rights-of-way to conform to the new boundaries of the said replatted lots, provided that no lot originally shown on the recorded map is reduced by more than (20) percent from its original size, and provided further that this provision shall be subject to Paragraph Three (3) of these Restrictions.
11. **Covenants run with the land:** All covenants, restrictions and affirmative obligations set forth in these Restrictions shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns,

if any, of BHHOA or agents thereof, for a period of ten (10) years from the date hereof after which time all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the then owners of a majority has been recorded, agreeing to change said covenants in the whole or in part.

12. **Violations:** In the event of a violation or breach of any of these Restrictions by any lot owner, or agent of such owner, BHHOA or agents thereof, or the owner of any other part of the Property, or any of them jointly or severally shall have the right to proceed at law or equity to compel a compliance to the terms hereof or to prevent the violation or breach. In addition to the foregoing, BHHOA or agents thereof, shall have the right, whenever there shall have been built on any lot any structure which is in violation of these Restrictions, to issue notice to the owner of these violations. The property owner will be granted 30 days from notice to respond. The failure to enforce any right, reservations, restrictions, or condition contained in these Restrictions, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach, or as to a breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement.

13. **Invalidation:** The invalidation by any court, agency or legislation of any provision of these Restrictions shall in no way effect any of the other provisions of these Restrictions, but they shall remain in full force and effect.
  
14. **Absence of Dedication to Public Use:** Nothing in these Restrictions, nor in the recording of any plat or deed pursuant hereto, shall dedicate (or be deemed to dedicate) to public use common lands, docks, streets, roads and other grounds.
  
15. **Fences:** No fence shall be erected on any lot nearer the street than the rear or side line of the house erected on said lot. No new fence construction shall be of chain link. All new fence construction must meet County regulations and be approved by BHHOA or agents thereof before construction commences.
  
16. **Utility Contracts:** BHHOA, or agents thereof, reserves the right to subject any or all of the Subdivision Property to contracts for electric, telephone, cable TV and other utility services, for the installation of underground cables, wires, pipes or other necessary conduits for utilities, any of which may require an initial payment and continuing monthly payments for the use thereof by the owners, of residences on the lots.

17. **Homeowners Association:** The Homeowners Association shall be a corporation, in which all lot owners shall be members or shareholders, and lot owners shall be entitled to vote; provided, however, there shall only be one (1) vote allowed for each lot, and if there is more than one owner for each lot, said vote shall be divided proportionally among them, in proportion to the interest that each owns in the lot. The Homeowners Association shall elect its officers and conduct its business of protecting and caring for the common area in such a way that the assessments levied by it shall only be for the amounts necessary to cover the expenses of carrying out its responsibilities, including, but not limited to, street repair and maintenance, park and parking area maintenance and repair, dock repair and maintenance, replacement and construction of new docks, parking area, and park facilities, dredging of water access to dock areas, payment for utilities for the common areas, street lighting, and premiums for insurance on any part or all of the common area.
18. **Common Property:** The property set aside on the map of Bar Harbor above referred to for dock area, for park and parking area, and for rights-of-way in the residential area, shall be, subject to provisions of paragraph three of these Restrictions, subject to the rights of BHHOA, or agents thereof, under Paragraph 3.

19. **Assessments:**

2157

0244

(a) BHHDA, or agents thereof, hereby covenants and agrees for each lot in the Subdivision Property, and each owner of any lot, by accepting the deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Homeowners Association:

(1) Annual assessments or charges and

(2) Special assessments for capital improvements, and such assessments to be established and collected as hereinafter provided.

(b) Said annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on each lot and shall be a continuing lien upon the lot against which the assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person or persons who are the owner of such lot at the time the assessment became due and payable. The personal obligation for such delinquent assessments shall not pass to the successors in title of such owner(s) unless expressly assumed by such successors in title.

- (c) The amount of annual and capital assessments, if any, shall be decided by the Homeowners Association by vote of the owners of a majority of the lots in the Subdivision Property. For both annual and capital assessments, if any, each lot in the Subdivision Property must be assessed the same amount. The Homeowners Association, by a vote of the owners of a majority of the lots in the Subdivision Property, shall set the date during each year when the annual assessment shall become due and payable. Any assessment not paid within thirty (30) days after the same becomes due and payable shall bear interest at eight (8%) percent per annum. The Homeowners Association shall not be required to notify the owner of any lot that his assessment is due and payable, and each lot owner is hereby charged with notice of such assessment. The Homeowners Association may bring any action at law against the owner or owners of any lot for any assessments more than thirty (30) days past due, and may foreclose the lien on the lot for said assessment. No lot owner or owners shall be relieved from liability for payment of the assessments upon their lot by non-use of the common area, or abandonment of their lot.

BOOK PAGE

2157 0246  
IN WITNESS WHEREOF, BHHA, or agents thereof, has caused  
this instrument to be executed in its corporate name by its  
President, attested by its Secretary, and its corporate seal to be  
hereunto affixed, as of the day and year first above written.



BAR HARBOR HOMEOWNERS ASSOCIATION

By: John B. Colbeck  
President

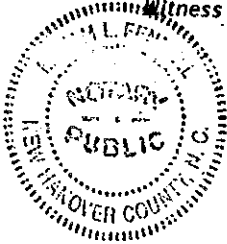
ATTEST: Candace Craig Miller  
Secretary

State of North Carolina  
County of New Hanover

BOOK PAGE  
2157 0247

This 25th day of March, 1997, personally appeared before me, Miriam L. Fennell, Notary Public for said County and State, who says that she is Candace Craig Miller Secretary of Bar Harbour Homeowners Association, and that the seal affixed to the foregoing instrument in writing is the seal of said association and that said writing was signed and sealed by her on behalf of said association by its authority duly given. And the said President ascknowledged the said writing to be the act and deed of said association.

Witness my hand and official seal, this 25th day of March, 1997.



*Miriam L. Fennell*  
Notary Public

My commission expires: April 30, 2001

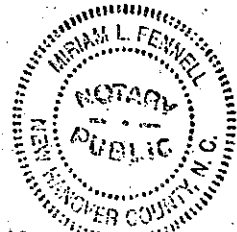
STATE OF NORTH CAROLINA  
New Hanover County  
The Foregoing/ Annexed Certificate(s) of

*Miriam L. Fennell*

Notary (Notaries) Public is/ are certified to be correct.

This the 25 day of Mar 19 97  
Mary Sue (Dot), Register of Deeds

by *Mary Sue (Dot)*  
Deputy/Assistant



'97 MAR 25 AM 10 34

RECORDED AND VERIFIED  
MARY SUE DOTTS  
REGISTER OF DEEDS  
NEW HANOVER CO. NC