

North Springfield Covenants and Zoning Rules

I have done some research in the Fairfax County Land Records office and the library concerning restrictive covenants in North Springfield and concerning various zoning regulations which may be of interest. I have summarized the results below. The footnotes are for further research, if necessary. I am not rendering any opinion about the enforceability of the restrictive covenants. Rather, I set forth the general rules and point out some features of the actual covenants which may be of interest.

What are the Restrictive Covenants?

I think I have unraveled the mystery of the various versions of restrictive covenants which are floating about. It turns out that there are at least two, and possibly three, each of which applies to different parts of the neighborhood.

From my review of the land records, it appears that North Springfield was owned and developed by three separate (but possibly related) groups. The area from Leesville Blvd. north to Chatham Street was originally owned by C&J Corp. C&J filed nine different plats for different portions of this area, from November 1954 through January 1957. C&J then filed a restrictive covenant for sections 1 through 5 (not including section 2A) on July 15, 1955. A copy of this covenant is attached as tab A. I believe this covenant was recorded before any of the lots were sold, but I have not yet verified this. This would be an important fact in verifying the enforceability. The plats for sections 6 through 8 and 2A were filed later, and each contains a provision subjecting those sections to the same covenant.

The northerly portion of the neighborhood appears to have been owned by O&F Corp., which recorded separate plats for sections 9-13. None of the plats contain any reference to restrictive covenants. O&F Corp. conveyed section 10 to Avondale Park Inc. in July 1955. Evidently, sections 9, 11, 12 and 13 were also conveyed to other companies at some point. All these companies together filed a restrictive covenant for sections 9-13 on January 26, 1956. A copy of this covenant is attached under tab B. I searched back through the grantor indexes under the name Avondale Park, and I did not see any conveyances of individual lots before the restrictive covenant was recorded. A great many lots were conveyed very soon thereafter, however. Certain portions of the general area from Jervis to Chatham were excluded from sections 9-13, and separate plats were filed for these areas as sections 15 and 16. The areas so covered consist essentially of Heming Ave., from Jervis to Chatham, and three or four lots on each cross street on either side of Heming. A separate document was later filed making these sections subject to the same restrictive covenant as applies to sections 9-13.

The area south of the Beltway was owned by Edward R. Carr, Inc. who recorded plats for sections 21-26. These plats generally do contain references to covenants, either filed with the plats or elsewhere.

Altogether, I have found five covenants so far. For convenience sake, I have labeled them as follows: A, B, C, C1, C2. These letters correspond to the attached tab at which the covenants can be found. The following is a summary of which covenants apply to which areas.

COVENANT	AREA	SECTIONS	PLAT LOCATION
A (deed book 1332, page 548)	All of Leesville Blvd., and the entire area north to Chatham St., including all cross-streets; Dunston & Axton Streets west of Heming to Juliet St., all of Long Pine Dr and connecting streets except those areas described in C1 and C2, below, Easton Drive from Chatham north, except the end nearest Braddock Rd, and Atlee Place along the creek, and the portion of Atlee between Aldrich and Lehigh La. including both cross streets.	1-8, 14, 14B,C, 18, 21	Deed book 1241/p. 1 1299/270, 1299/278, 1331/122, 1356/213, 1417/315, 1471/214, 1524/194, 1636/393, 1486/201, 1510/157, 1576/118, 1394/89, 1596/472, 1626/575, 1656/321, 1665/532, 1675/532, 1690/562
B (deed book 1403, p. 159)	The area from Braddock Rd. to the north side of Elgar St., from Ferrdale to Heming except for Heming Ave and the 3 or 4 lots on each cross street above Heming	9-13, 15, 16	1433/166, 1434/369, 1433/166, 1434/369 (for sections 15 and 16 see also 1445/143)
C (deed book 1665, p. 465)	Braddock to Dunston, from Heming to Ravensworth, except for the 3-4 lots on each cross street closest to Heming, which are in section 16	17, 17A,B	1628/368, 1714/354, 1777/410
C1 (deed book 1858, p. 441)	Long Pine Dr., from Anola Ct to Webbwood Ct, including both, Queensberry from Heming to Viceroy, Viceroy Ct, Bellington Ave, Bellington Ct., Heming from Leesville Blvd to Lake Accotink Park (not including the newer area beyond the park)	22, 22A, 23-25	1858/438, 1916/28, 1891/152, 1997/512, 2081/611, 2111/198
C2 (deed book 1997, p. 515)	Long Pine Dr. from Dreyfus to Guy Pl., including both	23A	1997/512
No covenant	Atlee Pl from Easton to Denison, across from the creek	14D,E,G	1671/598, 1751/52, 1988/231
No covenant	Flag Run Dr., and the portion of Viceroy St near the intersection	26	2179/519

All the covenants are quite similar, and in fact many of the paragraphs are identical. Oddly enough, however, some of the most important paragraphs for our purposes differ subtly. In particular, the provisions governing fences, sheds, garages, and parking differ from covenant to covenant. All of the covenants provide that they will run with the land for 25 years, with automatic renewal for 10 year periods, unless the majority of lot owners agree to a change in a recorded instrument. We should be in the middle of the second 10 year renewal on all of the covenants. The provisions of each are summarized in the

following table

COVENANT	FENCES	SHEDS AND GARAGES	TRUCKS
A	wood or masonry, 42 inch height restriction, 50% open, not allowed in front of house, no mention of corner lots	no building nearer than 30 feet to front lot line or 8 feet to interior lot line no temporary structure to be used as residence garage for no more than 2 cars	no mention
B	wood or metal, 48 inch height restriction, 50% open, rear yard only, but on corner lots, rear yard includes both street frontages	no metal garages no temporary structures as residences, no building closer than 8 feet to interior lot line garage for not more than 2 cars	no mention
C	wood or metal, 48 inch height restriction, 50% open, rear yard only, but on corner lots, rear yard includes both street frontages	no building nearer than 30 feet to front lot line or 8 feet to interior lot line, no metal garages, no temporary structures as dwellings garage for not more than 2 cars	no mention
C1	wood or masonry, 42 inch height restriction, 50% open, not allowed in front of house, no mention of corner lots	no building nearer than 30 feet to front lot line or 10 feet to interior lot line, no metal garages garage for not more than 2 cars	no mention
C2	wood or masonry, 42 inch height restriction, 50% open, not allowed in front of house, no mention of corner lots	no temporary structures as dwellings, no building nearer than 30 feet to front lot line or 8 feet to side lot line, garages for no more than 2 cars	no trucks or trailers stored or parked on any lots

General Rules Regarding Restrictive Covenants

Generally, a restrictive covenant (often called an equitable servitude) is valid if it applies to all lots in a subdivision as part of a uniform plan, and reasonable employments of such restrictions will be enforced.¹ A uniform plan exists when the restrictions are included in the plat, and are recorded before any of the lots in the subdivision are conveyed.⁷ The important thing is that all lots are treated alike, and that everyone who owns land in the subdivision has some sort of notice of the restrictions. The covenants are said to "run with the land", so long as they "touch and concern" the land. If they do, and if the landowners have notice of the restrictions, the restrictions can be valid. One has notice of a restriction if it is recorded in one's chain of title. It is not essential that the landowner actually know of the provisions of the covenant.

The courts don't really like these covenants, so they will construe them strictly against the person trying to enforce them, if they are ambiguous.⁸ The residents of a subdivision may also lose their right to enforce a restrictive covenant if they waive it or acquiesce in

violations. In other words, one might well have trouble enforcing a covenant today against one property owner if he sat by for years allowing other property owners to violate the covenant in the same way.¹⁰ Delay in enforcing alone may be fatal, although a brief delay is probably not enough.¹¹ It is possible to formally amend or terminate a covenant, but all of the affected parties must agree.¹²

Generally, any person in the subdivision may enforce a covenant, but that person usually must be subject to the same covenant. Where there are different sections in a subdivision that were developed at different times, a person in one section may not sue a person in another section to enforce a covenant.¹³ Often in the cases, it is the Homeowner's Association which enforces the covenant, but it is not clear whether this is because the covenants expressly authorize them to do so. It is not entirely clear to me whether the Civic Association could sue to enforce these covenants. The covenants themselves speak only of enforcement by lot owners.¹⁴

Fairfax County Zoning and Health & Safety Codes

I researched the provisions of the Fairfax County Code relating to the following topics: density of occupation, parking, property maintenance (grass, etc.) and fences. Most of the pertinent provisions are attached, but I include brief summaries below.

Density

Density of occupation is defined in the Fairfax County Code in terms of number of units or persons per acre.¹⁵ An R-3 zone, for example, would allow 3 single family dwelling units per acre. A single family dwelling unit is subject to some rather open-ended occupancy restrictions. One unit may be occupied by 1 family with no more than 2 boarders. One family is defined as 1 person or 2 or more persons related by blood or marriage and any number of children, or 4 persons not related, or 2 single parents with a total of no more than 6 children.¹⁶ The possible problem appears to be in the first portion of the definition--there seems to be no limit on the number of adults sharing the dwelling, so long as they are related by blood. Of course, if they are unrelated, the number is limited to 4.

Parking

Parking is covered generally by Article 11 of the Fairfax County Zoning Code. Among the provisions of Article 11 is a regulation requiring a minimum of 2 off street parking places to be provided for every single family detached dwelling.¹⁷ This is the only pertinent provision I found in Article 11, and even that may not apply, as the Article only applies to construction after its enactment.

Inoperative motor vehicles, trailers and semitrailers are covered by Chapter 110 of the Fairfax County Code.¹⁸ Among other things, the chapter provides that such vehicles must be kept in a fully enclosed building or structure or completely screened from view.¹⁹ The chapter also sets forth a procedure for enforcement.

Parking is mentioned in Article 10 of the Fairfax County Zoning Code, which covers accessory uses. Section 10-102-16 provides that the parking of one commercial vehicle per dwelling unit is a permitted accessory use in any R. district.²⁰ This does not

include garbage trucks, tractor-trailers, wreckers, construction equipment or dump trucks.

Finally, parking is governed by section 82-5-7 of the Fairfax County Code, which prohibits the parking of any trucks or commercial vehicles on the roads and streets of residential districts.²¹

Fences and Sheds

Fences and sheds are included in the definition of accessory uses under Article 10 of the Fairfax County Zoning Code (see tab F). Both are permitted subject to certain restrictions set out in the Article. Fences in rear yards may not exceed 7 feet, and fences in front yards may not exceed 4 feet. One item of note--I searched for provisions regarding fencing requirements for properties with swimming pools, and I found none for private property. Public swimming pools must be surrounded by fences, but I could find no such requirement for any type of private pool, hot tub, etc.

Grass

Chapter 119 of the Fairfax County Code covers grass and lawns, and includes the provision limiting grass height in residential areas to 12 inches.²²

Miscellaneous Provisions Regarding Hazards and Nuisances

Chapter 46 of the Fairfax County Code provides a procedure for abatement of menaces to health and safety. Menaces are broadly defined as conditions which might endanger the health or safety of the public, and are specifically defined to include such things as improper trash or refuse disposal, rodent or insect infestations, accumulation of water, open excavations, trees in danger of falling, and other conditions.²³

Chapter 3 of the Fairfax County Building Maintenance Code governs minimum conditions and responsibilities for maintenance of structures and exterior property, and includes a definition of public nuisance. Included in the definition are such things as uncontrolled growth of weeds, overcrowded structures, fire hazards, nuisances attractive to children and the like.²⁴

Both of these provisions could be used in an attempt to remedy specific situations which are not governed by the other statutes described above, so long as the situation fits within the definition of menace or nuisance.