Ocean Hill Covenants, Interpretations & Precedents as Guidelines for Compliance Review

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Addendum for Covenant 15 approved by Board 7-14-16

Purpose: In 2004 Covenant compliance review and approval of plans for construction or alterations on owners' properties in Ocean Hill Section 1 became the responsibility of the Ocean Hill 1 Property Owners Association (the Association) when owners transferred this authority from the developer. Since that time the Association has worked with over 35 owners to review their plans for new construction or alterations to ensure compliance with the Declaration of Restrictive Covenants for Ocean Hill. In many cases the original plans would have been in violation of the Covenants, so the Association worked with the owner to find compliant solutions that would serve the original need. During these reviews the Association's Board and Covenant Compliance Review committee members discussed the Covenants at length and developed an understanding of what is and what is not compliant.

The purpose of this document is to provide owners, Board members and Covenant Compliance Committee members with a historical perspective of how the Covenants have been interpreted by the Association and to list some of the precedents where these interpretations have been applied. This should help owners better understand how to adapt their construction or alteration plans to meet Covenant requirements, help ensure that the requirements are applied fairly and consistently, and help the approval process proceed smoothly. We also note the precedents established in North Carolina court interpretations of language in other subdivisions' covenants that is similar to the language in our Covenants.

This document also discusses the Board's consensus views of the meaning of certain Covenant provisions that have not been the subject of prior interpretations and for which there is therefore no precedent. In those cases, the Board's views are set forth here to provide owners with a guide to possible future interpretations. However, the Board will approach unprecedented covenant interpretations on a case-by-case basis and without any predetermined conclusion as to the meaning of the particular provisions that are at issue.

Note: This memo may be updated periodically and owners are urged to read the current version posted on the Association's website before submitting an application for approval of a construction, remodeling or alteration project on their property.

Organization of this Document: For each Covenant requirement the exact language of the requirement is reproduced with a reference to the County records where it may be found. Then we provide the Association's historical interpretation of the requirement (or the Board's consensus as to the meaning of certain Covenant provisions for which there has been no precedent) at a level of detail to guide a property owner, the Board and Covenant Compliance Review Committee members to reach agreement. Lastly, notable precedents are listed where the particular Covenant requirement was applied in accordance with the interpretation.

General Definitions:

> **Association**: Ocean Hill 1 Property Owners Association, Inc. ("OH1POA"), a North Carolina nonprofit corporation established in 1990 to represent property owner interests.

Association's Construction or Alteration Approval Authority: The Association is the legal successor to the developer and must approve in advance all construction, alterations or additions on all lots within the subdivision as specified in the Declaration of Restrictive Covenants for Ocean Hill Section 1.

Association Property: This is the real property privately owned by the Association on behalf of all lot owners. It consists of all streets in the subdivision (which by legal definition have widths of 60 feet, except for larger widths in cul-de-sacs), and includes all (1) paved roads (approximately 18 feet in width, wider in cul-de-sacs), (2) unpaved road shoulders (extending approximately 21 feet from either edge of the pavement where they abut individual owners' lots), (3) three unpaved road stubs at Coral, Pacific and Tasman and (4) three beach accesses that are 60 feet wide and extend to the mean high tide line on the public beach).

Building: A roofed structure enclosed on four sides.

Declaration of Restrictive Covenants ("Covenants"): Restrictive Covenants create private rights to use, or limit the use, of real property and are legally binding requirements for each lot in a subdivision. For Ocean Hill owners, they are contained in the Declaration of Restrictive Covenants and all amendments thereto, as recorded with the Currituck County Register of Deeds. Their purpose is to protect the rights and property values of all owners in a community bound by the Covenants.

Structure: Used as a general term for the house, decks, walkways, stairs, gazebos, pools, permanent fences, driveways, parking areas and other constructed items on an owner's lot. This term does not include trees or plants, pervious landscaping materials, or subsurface installations (such as wells or septic).

A Note Concerning Existing Covenant Deviations:

Within the subdivision there are structures that currently deviate from the current Covenants. These deviations could exist for a number of reasons. The deviation may be a legal exception approved by the original developer and recorded with the County. It may be because of inadequate review and approval by the developer (1982-2004) or by OH1POA (2004-present), or it may be because the structure complied with the Covenants at the time of construction but the applicable Covenant provision may have since been amended. Or, the deviation may be because the owner at the time of the construction went ahead without review or approval.

It is not the policy of the Association to require any changes to non-compliant structures that existed on November 1, 2012. However, when an owner applies for approval to replace or make significant alterations to a non-compliant structure, the following guidelines shall apply:

> Deeded Covenant Exceptions: There are two known lots (28,56) in the subdivision whose owners sought and received approval from the developer in the form of a deeded Covenant exception that has been recorded with the County. These Covenant exceptions are legal, permanent and transferable to subsequent owners. Owners of any other lots who may have this type of exception should provide the Board for our records with a written copy of the recorded deed exception.

Other Covenant Deviations: If an owner can provide evidence that a currently non-compliant structure was compliant with the Covenants in effect at the time of construction, or that the as-built structure was approved by the developer, or by the Association; then the structure may be replaced without change. If there is no evidence of prior approval, or it cannot be established that the structure was compliant when constructed, the owner may perform normal maintenance and repair of the current structure, but will be required to bring the structure into compliance at the time of a request for approval of its replacement or significant alteration.

Covenant 1: Residential use only, one single family home with attached two-car garage per lot; special provisions for owners of two contiguous lots

Exact Language: *First: All lots in Ocean Hill, Section I shall be used for residential purposes only. No building shall be erected or placed or permitted to remain on any lot other than one detached single family dwelling not to exceed 2 1/2 stories in height and a private garage for not more than two cars; provided, however, where two or more contiguous lots are owned by the same person, firm or corporation, a dwelling and private garage, as herein provided, may be erected on one or more of the lots and on another contiguous lot there may be erected a detached private garage for not more than two cars in substitution for the attached garage on the principal lot, or a studio for the practice of the arts, such as but not limited to photography, painting, sculpturing, etc. or a horticultural green house for plants and flowers. Book 157 pages 143-147 registered Aug 29, 1978*

Historic Interpretation:
"Used for residential purposes only" is interpreted to mean occupied by an owner or rented to tenants for non-commercial use. Commercial use of homes for other than such rentals is prohibited. In J.T. Hobby v. Family Homes of Wake Co., 274 S.E.2d 174 (NC Sup. Ct. 1981), the court considered the status of a group living facility (whose occupants were not related to each other) under language that is identical to OH1's Covenant. It noted that "boarding houses", i.e. housing provided to "independent persons who share only the place where they sleep and take their meals" had been "widely held to violate restrictive covenants requiring that real property be utilized for residential purposes only." Accordingly, the Board believes that, based on the court's language, the term "residential use" would exclude use as a boarding house or a bed and breakfast facility.

"Single family dwelling" is a deemed by the courts to impose a *structural* and not a *use* requirement, and that the term refers to a structure that in its "appearance or its character is . . . that of a dwelling which would be utilized by . . . a typical American suburban family." (See the Hobby case, above.) The Board views this provision as excluding building configurations that would create a duplex structure providing separate residences, even if under a single roof.

"One detached single family dwelling per lot" - Only one building per lot is permitted that may include an attached garage for no more than two cars. Any other free-standing building on a single lot that could be used as a dwelling is prohibited. Gazebos with a roof, but open on at least three sides, have not been considered as a dwelling and thus allowed. Small storage sheds and small structures to cover pool equipment have been allowed.

"Attached garage" has been interpreted to mean that the garage shares a common wall on at least one level with the residential area and that passage is enabled directly into the residential space from the garage.

"Owner of two or more contiguous lots" may build a home on one lot without an attached garage and on the adjoining lot have a detached garage or an art studio or greenhouse for private use. No commercial business may be conducted from either lot.

The Covenant's building height restriction of 2 ½ stories has historically been considered to be met if the building meets the County's 35 foot height restriction.

Notable Precedents:

Lot 59 – 2009 – owner wished to build a pool cabana detached from the house. Approved was a freestanding roofed gazebo structure open on three sides.

Lot 44 - 2010 – owner requested a detached workroom – request denied. Worked with owner to incorporate as attached to the outer wall, with ingress and egress on at least one level connected with the living space.

Lot 54 - 2011 – owner requested a two-story addition connected to the current dwelling only by decking. This was regarded as essentially creating a second, detached dwelling, and the request was denied. Worked with the owner to connect the structures at one level directly with the new living space.

Lot 102 - 2012 – requested approval for a detached garage – request denied. Worked with owner to incorporate garage area directly attached to the outer wall, with ingress and egress under the residence to the living space.

Covenant 2: Approval of plans by the Association required before start of work

Exact Language: *Second: The design, materials, construction and location on each lot of any home, residence, commercial structure or other permitted building or buildings or the alteration or addition thereto, before the beginning of work thereon, shall be submitted to the Ocean Hill 1 Property Owners Association Inc. for approval and its approval shall be a condition precedent to the beginning of work on the structure. Book 776 page 520, recorded 18 May 2004*

Historic Interpretation:
The information required for a Covenant compliance review must be sufficient to determine compliance with all Covenants. The specific data required depends on the scope and location of the project. Thus, the Association requires owners to notify the Board of any planned new construction or exterior alterations or additions of any structure on a lot, including driveways and parking areas. Pools, decks, walkways, stairs, gazebos, fences (other than sand fences), parking areas and driveways are considered as subject to this Covenant's prior approval requirement. The review process can be initiated by a phone call or email to a Board member. This Covenant requires submission of the design, materials, construction and location on each lot of any new structure, or alteration or addition to any existing structures. Construction may

begin only after the Association Board notifies the owner of approval following completion of the review process.

Examples of exterior work that does not require approval are painting, replacing house siding or windows, replacing the roofing materials or repairing existing fences or decking. However, if the planned remodeling or repairs will change the footprint of the structure or change its permeability (example: adding a deck, replacing a gravel walkway with a concrete one, …), or add a bedroom then the Association needs to review and approve the plans, but if it is a major project it is a good idea to inform a Board member in the event there are questions from other owners.

Notable Precedents:

Lot 35 - 2009 – New construction; full set of plans provided - The driveway and parking area would have funneled storm water runoff to Association Property. Worked with owner to create model driveway that used grading and pervious materials to significantly reduce water flow.

Lot 39 - 2012 – New construction project to replace home destroyed by fire; full set of plans provided – there was an existing ocean-side swimming pool and deck that were in violation of the Covenant 3 side setback requirement. Owner wished to rebuild the pool area in the same footprint as the non-compliant deck. This was denied. New pool and decking were approved that satisfied the setback requirements for side lots.

Lot 33 - 2013 – New owner, without prior approval, began expansion of paved parking area on his property and expansion of driveway width that crossed Association Property. Forms to lay the concrete within Association Property were removed by the Association, and owner was contacted. Although no official request for approval was received, parking expansion (that had already been completed) was deemed not to add to storm water load, so no action was taken other than to inform owner of the requirement to obtain Board approval for all exterior alterations.

Lot 23 – 2010 – Owner received permission to enclose an already roofed screen porch. No change in footprint.

A Note Concerning Zoning Requirements

Owners should note that the Covenants supplement County zoning regulations but do not supplant them. Each owner is responsible for obtaining all County permits for an intended project.

Covenant 3: Above ground structures must be set back from property lines

Exact Language: *Third: No building or structure, including porches, shall be erected on lots in Section I Ocean Hill nearer than 20 (twenty) feet to the front or side street line nor nearer than 15 feet to any interior site lot line, nor nearer than 30 feet to the rear lot line; provided, however, corner set backs shall be as shown on said plat. Book 157 pages 143-147, registered Aug 29, 1978*

Historic Interpretation:
The Association has applied this setback requirement only to above ground structures, including but not limited to the house, attached garage, porches, stairs, and elevated decks. The setback measurement is to be made at the point of closest approach to the property line of the vertical surface of a structure. These must be no closer than 15 feet of side lots, and 20 feet of street side of lot and 30 feet of the rear lot line. Note that properties that abut a beach access must respect the 20-feet side setback, since the beach accesses are plated as streets.

Driveways and parking areas are not considered to be subject to this setback requirement. The location, materials and extent of driveways and parking areas are considered by the Association when evaluating their contribution to storm water flow to Association Property under Covenant 10.

Fences, jetties or bulkheads are also not considered to be subject to this setback requirement. Covenant 12 requires separate Association approval for fences, jetties or bulkheads.

Notable Precedents:

Lot 67 - 2013 – new construction. Plans submitted by builder encroached on west side setback and proposed 24 foot wide paved drive through Association owned property. Plans changed to respect 15 foot setback for the pool and deck, and reduce the width of the paved driveway through Association owned property to 12 foot.

Lot 56 – 1985 – Developer approved a Covenant exemption for “porch and stairs” to extend five feet beyond the 15 foot side lot line to within ten feet of the east lot line that otherwise would not have been permitted. This confirms that porches and stairs are subject to setback constraints.

Multiple lots – review of the County GIS information and on-site measurements indicates that about half of our paved driveways encroach on the 15 foot side lot setback. Driveways are structures that by their very design cannot comply with the front lot setback requirements. The Association has not required driveways to comply with side lot requirements either.

Covenant 4: No trailer, tent or temporary buildings allowed

Exact Language: Fourth: *No trailer, tent, shack or other temporary building shall be erected or placed on any lot within the subdivision. Book 157 pages 143-147, registered Aug 29, 1978*

Historic Interpretation:
The term "trailer" has been interpreted to also include recreational vehicles (RV's), campers and other types of vehicles that can be used as housing. These are not permitted to be left on the property overnight. Owners may request to have construction trailers remain on property overnight during approved construction projects as long as they are not used for habitation and removed upon project completion.

Notable Precedents:

Lot 52 - 2007 – Renter parked RV in driveway, attached with electricity and water. Rental company and owner were advised that this is in violation of Covenants. RV was removed.

Lot 101 - 2013 – Camper trailer parked in owner driveway for several weeks during late fall. Owner was contacted and removed it.

Covenant 5: Minimum dwelling size of 1,000 square feet

Exact Language: Fifth: *No single-family dwelling shall be constructed on residential lots in section I Ocean Hill containing less than 1000 square feet of livable floor space. There shall be excluded from the above calculation all wall space, garages, breezeways, unfinished attics and porches even though the breezeway and porches are enclosed. Book 157 pages 143-147, registered Aug 29, 1978*

Historic Interpretation:
The 1,000 square feet minimum is to be measured from plans of only the heated and cooled living space, excluding garage space.

Notable Precedents: None

Covenant 6: No subdivision of a lot

Exact Language: Sixth**:** *No lot in said Subdivision shall be re-subdivided or divided so as to form a lot having less area than contained in the original lot, but it is contemplated that Purchasers may purchase one or more lots or portions thereof, provided such lot so assembled shall not be of less area than either of the original lots forming a part thereof. Book 157 pages 143-147, registered Aug 29, 1978*

Historic Interpretation:
The intent is to retain the open subdivision of approximately half-acre lots. There has not yet been a request for changes to the existing plat boundaries. Such a re-subdivision would require County as well as Association approval.

Notable Precedents:

Pre-2000 – Owner of Lot 13 requested permission to subdivide the lot for two residences. Request denied.

Covenant 7: Only a single, small sign allowed

Exact Language: Seventh: *No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet advertising the property for sale or rent. Book 776 page 520 …, recorded 18 May 2004*

Historic Interpretation:
This has been interpreted to allow permanent signs such as the name of the home attached to the structure, plus a rental company information sign and/or a For Sale sign. The rental and For Sale signs should not exceed a total of five square feet. Temporary small signs for service or construction contractors have been permitted, but only while they are actually servicing the property.

Notable Precedents: None

Covenant 8: No animals except for household pets

Exact Language: Eighth: *No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial purposes. Book 157 pages 143-147, registered Aug 29, 1978*

Historic Interpretation:
There have been no formal complaints of potential violations of this covenant.

Notable Precedents: None.

Covenant 9: Trash, garbage and waste kept in sanitary containers

Exact Language: *Ninth: No lot shall be used or maintained as a dumping ground for rubbage* [sic]. *All trash, garbage or other waste shall be kept in sanitary containers and all incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Book 157 pages 143-147, registered Aug 29, 1978*

Historic Interpretation:
Sanitary containers are considered to be those with a closed lid. Open bins for construction trash are to be used only on a temporary basis and only for dry construction trash. These are to be removed immediately upon completion of the project. Owners are responsible for cleanup of any debris or trash not properly contained.

Notable Precedents: Almost all major construction or renovation projects have used some type of open container for construction debris disposal. Owners have been asked to have their contractor pick up trash and debris that has been blown onto adjacent properties.

Covenant 10: No noxious or offensive activity; storm water runoff to Association Property interpreted as nuisance

Exact Language: *Tenth: No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Book 157 pages 143-147, registered Aug 29, 1978*

Historic Interpretation:
This is a broad category of restriction that may apply in many situations that are too numerous to itemize and that will depend upon the circumstances of each particular case. The legal term "nuisance" has been defined in case law as a "civil wrong" that "is the unreasonable, unwarranted, or unlawful use of one's property in a manner that substantially interferes with the enjoyment or use of another individual's property, without an actual trespass or physical invasion of the land." Pendergrast v. Aiken, 293 N.C. 201, 236 S.E.2d 787 (Sup. Ct. 1977).

In the past, nuisance complaints have been received by the Association from owners for:

- loud noise due to exterior mounted speakers or rowdy behavior;
- illegal parking due to overflow parking at events held at owner homes;
- illegal parking due to inadequate parking space on an owner's lot for their guests
- trash and recycling cans habitually left on the street for days after scheduled pickups.

Storm Water Runoff as a Nuisance

Changes to a property that increase the storm water flow to an adjoining property may be deemed to constitute a nuisance under North Carolina law. The Currituck County Attorney has issued an advisory opinion that confirms this conclusion:

"The determination of what is an unreasonable discharge of surface water onto the property of another and whether the discharge of surface water causes substantial damage is a private nuisance action between the property owners in dispute. The reasonableness of surface water discharge onto the property of another is a question of fact to be determined in an individual case. Based on the facts of a given case, reasonableness is determined by considering the

extent and character of the harm to the property owner receiving the surface water versus the purpose for the surface water discharge and the social value attached to the purpose for the surface water discharge, among other things. Even if the discharge of surface water onto the property of another is found to be reasonable, the party responsible for the surface water discharge may be liable for damages if the resulting interference with another's use and enjoyment of land is greater than reasonable to bear under the circumstances without compensation."

The storm water management improvements made by the Association have not eliminated flooding of our roads and shoulders. To reduce the possibility of nuisance issues arising under North Carolina law, the Association applies this legal standard for the authority to review changes to the surface area and slope of impervious surfaces like roofs, driveways and parking areas as part of our Covenant Compliance Review. Increasing storm water flow to the Association Property causes damage to the road pavement and road shoulders that is a cost to all owners. This scrutiny of storm water runoff has become especially important since the Association has recently spent over $400,000 to re-pave the roads and re-grade the road shoulders to NC DOT standards. Our entire common plan of storm water improvement received permits under Section .1003(b) of the NC DENR Stormwater rules. Therefore, any "future development or changes to the proposed development, including but not limited to, the locations of the built-upon area and construction of additional built-upon area, may require approval or a Stormwater Management permit application and permit issuance from the Division of Water Quality prior to any construction."

Accordingly, the Association considers any construction or alteration on an owner's property that increases storm water runoff to the Association Property to be, in and of itself, unreasonable and unwarranted, and therefore to constitute a nuisance in violation of Covenant 10. Changes to an owner's property that increase water flow to the street are deemed unwarranted in light of the fact that mitigation of excess flow by owners in their construction or alteration plans can be cost-neutral, such as by adjusting the slope of the impervious surface to channel water toward sand absorbing areas inside the owner's property, and/ or by replacing portions of impervious surface draining to Association Property with gravel to absorb water and help divert flow to the side rather than toward the roadway or shoulders. For these reasons, the Association requires that the installation or alteration of impervious surfaces on an owner's property be reviewed to ensure that storm water flow to Association Property is minimized.

Our Covenant Compliance Review policy requires us to send copies of the proposal to adjacent property owners and give these owners a chance to comment and share any concerns to the Committee or the Board before votes on the proposal.

For example: if additional roof area is added we would expect to see that the runoff from the new area does not drain to the street, but to a pervious area of the owner's property. This could be accomplished through a change in direction the roof angle, or the creation of a pervious storm water holding area (such as a rain garden) to capture the additional water before it can drain to the street over existing impervious surfaces.

For example: if a driveway or parking area on an owner's lot is to be widened we would expect that any portion of the widened area that drains across the existing driveway to the street be constructed with pervious materials, or that the new area be graded away from the street, or to the side of the lot, onto a pervious area of the owner's property.

Note: An undeveloped lot is assumed to currently contribute no water runoff to Association Property under normal rain events. Homes constructed on undeveloped lots thus should be designed to retain all storm water runoff on the owner's property for a normal rain event. At present this is a County requirement so we rely on the County to make this determination during their permitting process.

The Association's Covenant Compliance Review Process now also includes notification of neighboring property owners of requests for approval of construction or alteration of structures, including driveways and parking areas. If a neighbor believes that runoff to their property from a neighbor's proposed project constitutes a nuisance then they should lodge a protest with the Covenant Compliance Committee who will attempt to negotiate an acceptable solution.

Notable Precedents:

2007 – Lot 36 revised driveway plans to address storm water concerns

2009 – Lot 35 parking and driveway revisions utilized slope contouring, gravel and turf-stone absorbing surfaces to mitigate storm water runoff to Association Property.

2012 – Lot 39 adjusted parking and driveway locations, slopes and materials to mitigate storm water flow to Association Property.

2014 – Lot 67 New construction. Adjusted parking and driveway locations, slopes and materials to mitigate flow to Association Property.

Covenant 11: No outside toilets, all toilets connected to sanitary system

Exact Language*: Eleventh: No outside toilet shall be erected on said property and all toilets shall be connected with approved sanitary sewerage system. Book 157 pages 143-147, registered Aug 29, 1978*

Historic Interpretation:
All toilets must be enclosed with four walls and a ceiling within, underneath or directly attached to the main house structure. All toilets must be connected to the septic system. Outside hose connections, sinks or showers are not part of this restriction.

Notable Precedents:

Lot 73 - 2012 – applied for permission to build a pool gazebo that included an outside toilet – approval denied. Worked with owner to approve a detached gazebo with storage closets that could be converted to a toilet if a Covenant change is approved by the owners.

Covenant 12: No fences without the Association prior approval

Exact Language: *Twelfth: No jetty or fence of any type shall be erected or placed upon said lot except with the prior written approval of Ocean Hill 1 Property Owners Association, Inc. and all bulkheads must be of a type approved by the Ocean Hill I Property Owners Association Inc. and the Ocean Hill I Property Owners Association Inc's written approval shall be given prior to the beginning of construction of any bulkhead. Book 776 page 520 …, recorded 18 May 2004*

Historic Interpretation:
Property fences, pool fences, retaining walls and any other type of permanent fence or bulkhead or jetty require prior approval. Sand fencing does not require approval. Given the general nature of fencing to define property boundaries, deter trespassing and other purposes, it is not considered to be subject to the setback requirements of Covenant 3. However, in granting approvals the Association has considered the impact of proposed fencing on sight lines of other Ocean Hill owners and concerns of neighboring property owners. The Association has given blanket approval to owners of lots bordering the outside of our subdivision to construct a fence along their border with neighboring subdivisions as a deterrent to trespassing. Note: Ocean front property owners also require CAMA approval for any bulkhead or jetty on their lot.

Notable Precedents:

2002 – Due to issues with trespassing across private lots from neighboring subdivisions, owners voted at the 2002 annual meeting to give approval for affected owners to install a fence along the community border to deter trespassing.

2013 – Due to recurring issues with trespassing across private lots from neighboring subdivisions, owners voted at the 2013 spring meeting to allow Lots 59, 58, 54. 53, 44 to construct fencing along the western border with VOH.

Supplement to the Document titled "Ocean Hill Covenant Interpretations and Precedents For Compliance Review" Adopted by the Board on 7/14/16

These interpretations were independently reviewed by attorneys Hadler and Hobbs with both written opinions supporting these interpretations.
Following receipt of these opinions the Board voted July 14, 2016, to approve the following interpretations and append to our Covenant Interpretations document.

Introduction

Ocean Hill subdivision original covenants were recorded in 1978. In 1990 OH1POA was formed to represent owners and assumed responsibility for Covenant Compliance Review. In 2014 OH1POA published a "Covenant Interpretations and Precedents" document in order to provide written guidelines for the Board, the Covenant Compliance Committee and OH1 owners to ensure consistent Covenant compliance review. The objective of these guidelines is to ensure that the review process:

- Is reasonable and consistent with applicable precedents
- Uses objective evaluation criteria as much as possible
- Uses an evaluation process within the capabilities of volunteer owners
- Imposes minimal additional burdens on owners seeking reviews

These guidelines should help owners better understand how to adapt their construction or alteration plans to meet Covenant requirements, help ensure that the requirements are applied fairly and consistently, and help the approval process proceed smoothly. Consistent with these objectives are the Interpretations for the recently adopted Covenant 15 set forth below.

COVENANT FIFTEENTH

Size and Use Restrictions for Lots in Subdivision

Covenant 15 restricts the square footage of houses and the number of bedrooms, as well as commercial uses in our residential subdivision. For this reason, in accordance with the general requirements for construction plan approval required under original Covenant 2, owners will now need to advise the Covenant Compliance Committee not only of exterior remodeling plans, but also of any interior remodeling plans, prior to the beginning of any work on the structure. Paragraphs (a) and (b) of Covenant 15 are applicable to future Covenant Compliance Reviews of proposed new construction or remodeling. Paragraph (c) restricts commercial usage of a property. Paragraph (d) establishes the initial baseline house size and configuration protecting current configurations.

The exact text of each paragraph of Covenant 15 is set forth in italics below, followed by the Board's interpretations thereof.

15(a) Dwelling Maximum Square Footage.

Exact Language: *Subject to paragraph 15(d) of this Covenant Fifteenth, the maximum enclosed square footage of the dwelling on a lot shall not exceed 5,400 square feet of heated and/or air conditioned living space, excluding open or screened porches. Book 1360 pg 272-275, recorded 7 April 2016*

Interpretation: This paragraph addresses future situations where an owner requests approval for new construction, or an expansion of their existing house. The enclosed square footage of heated/ cooled living space is an objective measure written on the plans in all building permit applications to the County for new construction and remodeling. In Currituck County the square footage is determined from measurements of exterior wall dimensions. An owner must also submit these plans for Covenant Compliance Committee review and approval by the Board prior to any construction. An owner is permitted to add square footage up to the 5,400 SF limit.

Once plans have been approved by the Board and the County, owners must provide the Board with a copy of the approved building permit for Association records. The historic record of approved building permits and attached plans are available from the County. The County Tax Department documents the square footage of all existing houses in their formal Property Record Card available online. The initial baseline for each existing dwelling is *the Currituck County Tax Department's Property Record Card* as of April 7, 2016.

15(b) Dwellings Not to Exceed Eight Bedrooms.

Exact Language: *Subject to paragraph 15(d) of this Covenant Fifteenth, no dwelling on a lot shall have more than eight (8) bedrooms. The term "bedroom" is defined as "a room that is designated, or actually used on a regular basis, or advertised, for sleeping." Book 1360 pg 272-275, recorded 7 April 2016*

Interpretation: This paragraph addresses future situations where an owner requests new construction, or an expansion of their existing house. Applications for new construction or remodeling should be provided to the Covenant Compliance Committee prior to any construction along with a copy of the building plans intended to be submitted to the County for approval. The County requires written designation of rooms intended for use as bedrooms in order for the building and health department inspectors to confirm compliance with applicable codes. An owner is permitted to add bedrooms to a maximum of eight bedrooms.

Once plans have been approved by the Board and the County, owners must provide the Board with a copy of the approved building permit for Association records. The historic record of approved building permits and attached plans are available from the County. The County Tax Department documents the number of bedrooms of all existing houses in their formal Property Record Card available online. The initial baseline for each existing dwelling is *the Currituck County Tax Department's Property Record Card* as of April 7, 2016.

Covenant paragraph 15(b) sets out certain criteria to be considered in the future compliance review of whether or not a room is deemed to be a "bedroom" under the Covenant and thus used to assess the total number of bedrooms in a house. These are interpreted as follows:

Criteria	Interpretation
"Room"	An interior segment of a house enclosed on all sides with walls, with a door providing access to the rest of the interior.
"Designated"	Designated as a bedroom in writing on the plans approved for building permits for construction projects and the total number recorded in the County Tax Department's Property Record Card.
"Advertised"	The total number of rooms "advertised for sleeping" is the total number of bedrooms listed in published rental websites or other advertisements for home rentals. This is usually a search criteria on websites.
"Actually used on a regular basis for sleeping"	The terms "designated" and "advertised" as defined above are objective measures of bedrooms determined from independent public sources. The term "actually used on a regular basis . . . for sleeping" is less objective and has been included to cover cases where an owner might try to circumvent the bedroom limitation by not requesting pre-approval for changes as required by the Association, whether or not a building permit was obtained. In consideration of the privacy rights of owners and the limitations of volunteer owners who serve on the Board or Covenant Compliance Committee, this term is interpreted as follows: A room is not considered a bedroom under paragraph b) if its primary purpose is as a family room, living room, media room, game room, office, den, playroom, laundry room, etc., even if an owner choses to supplement the furniture with a convertible couch, sofa-bed, fully reclining chair, futon couch or other multi-use furniture, that might be suitable for occasional use by overnight guests. A room not designated as a bedroom on building plans, nor specifically advertised as a bedroom would only be considered a bedroom if its primary purpose and actual use has been for nightly sleeping on a daily basis over an extended period. This would need to be confirmed with objective data that would be reviewed by the Board for their determination after discussions with the owner. Conversely, a room designated on plans as a bedroom, but not advertised as a bedroom, nor used on a regular basis for sleeping, is still considered a bedroom for purposes of determining the total number of bedrooms in a house.

15(c) Commercial Use Restrictions.

Exact Language: *This paragraph supplements and clarifies Covenant First, which requires that lots shall be "used for residential purposes only." No lot or dwelling may be used for any commercial or business purpose or activity, except that (i) the entire dwelling (except for private areas reserved for owner storage and inaccessible to renters) may be rented to vacationers or other tenants for their non-commercial use and (ii) a dwelling may be used as a home office, if it does not involve visitation of the lot or dwelling by clients, customers, employees or other members of the public. Book 1360 pg 272-275, recorded 7 April 2016*

Interpretation: Potential violations of this paragraph could come to the attention of the Board only through direct advertisement by an owner of prohibited commercial activities, or by neighboring property owners reporting suspected prohibited commercial activity around the home as observed over a period of time. Commercial activity does not include the visitation of the home by commercial personnel or vehicles as required for the maintenance of the property, or to carry out approved construction and remodeling projects. If the Board is notified of a suspected violation it will contact the owner to discuss.

15(d) Grandfathering

Exact Language: *This Covenant Fifteenth in 15(a) and 15(b) above imposes maximum size and other restrictions on new construction or alterations of dwellings within the subdivision. Any dwelling that does not exceed such restrictions as of the date the amendment adopting this Covenant Fifteenth is recorded ("Recordation Date") may be expanded within the limits imposed by these Covenants, including this Covenant Fifteenth. Notwithstanding any such restrictions, all existing dwellings within the subdivision that could be deemed not to be in compliance with such restrictions may continue to be maintained at the size and configuration as set forth in the Currituck County Tax Department's Property Record Card for the applicable lot as of the Recordation Date. In addition, in the case of a dwelling that is partially or totally damaged or destroyed as a result of a fire, storm, flood or other natural disaster, the same may be repaired or replaced to a size and configuration that does not exceed the greater of (i) those that would be allowed under the restrictions set forth in this Covenant Fifteenth or (ii) those that existed as set forth in the Currituck County Tax Department's Property Record Card for the applicable lot as of the Recordation Date. Book 1360 pg 272-275, recorded 7 April 2016*

Interpretation: All houses in the subdivision may be maintained in their current configuration. For reference purposes the structural size and configuration of each house as of the Recordation Date are as stated in the Currituck County Tax department Property Record Card. This information is used as a baseline by the Board for review of future requests for construction or remodeling. Any lot or home less than the Covenant 15 limits on number of bedrooms and/ or square footage may be developed, expanded or rebuilt to these limits.

Any house whose County Tax Department Property Record Card (PRC), as of the filing date, shows it to exceed either 8 bedrooms or 5,400 SF, is grandfathered. That is, in addition to maintenance in its current configuration, if a "grandfathered" house is partially or totally damaged or destroyed as noted above, it may be repaired or replaced to the limits for bedrooms and square footage as listed in the PRC for such house as of the filing date. All owners have been notified of the six homes that are currently in this category. Recognizing that there may have been a clerical error in the recordation of the tax information, owners were notified on April 23, 2016, that they have until July 23, 2016, to work with the County building inspectors and Tax

department to confirm the error, correct the record and notify the Board.

For the record and to establish the baseline for future remodeling requests the square footage, number of bedrooms and other data from the County Tax Records is posted on our website. House size and/ or number of bedrooms that exceed the 8 bedroom, 5,400 SF limits, and thus qualify for grandfathering, are highlighted in bold. The lot numbers and street addresses of these houses have been sent to all owners to notify them that if they feel this tax data is in error they need to contact the County for a review of their prior building permits and a re-assessment of their house. When the Tax Department record has been corrected the owner should notify the Board prior to July 23, 2016, and after confirmation the grandfathered list posted on the website will be updated. Below is a table of the only homes to be grandfathered under this covenant.

Parcel ID	Lot	address	Built	#Brs	SF
114C00000240001	24	1221 ATLANTIC AVE	2003	**10**	**5,470**
114C00000390001	39	1251 ATLANTIC AVE	2012	**10**	5,000
114C00000350001	35	1243 ATLANTIC AVE	2010	**9**	3,720
114C00000380001	38	1249 ATLANTIC AVE	2000	**9**	5,392
114C00000790001	79	1201 CORAL LN	2003	**9**	4,847
114C00000360001	36	1245 ATLANTIC AVE	2007	8	**5,818**

Example Covenant 15 Applications

To help the Covenant Compliance Committee and owners better understand how the limitations imposed by Covenant 15, as interpreted above, are to be used in determining Covenant Compliance, the Board offers these examples of how it would be applied in various situations.

Example 1. An owner has received building permits and constructed their house with more than 8 bedrooms, or more than 5,400 SF as of 4/7/16, but the correct number does not appear in the Tax Property Record and they wish to be entitled to the grandfather exclusion.

As advised in the 4/23/16 email owners should immediately notify the County Planning and Permitting Department and the Tax Department and ask them to correct the Property Tax Record for their property. Then the owner should supply the Board with the appropriate approved building permits, or other verifiable documentation, dated prior to 4/7/16 and the revised Tax Property Record Card. These documents must be submitted to the Board by July 23, 2016. That house will then qualify for the grandfather exclusion as noted in paragraph 15(d) of the Covenant.

Example 2. An owner is currently advertising their house for rent with more than 8 bedrooms, and/or more than 5,400 SF, but these numbers exceed the number(s) listed in the Tax Property Record, and they wish to be entitled to the grandfather exclusion.

If the house was originally permitted and constructed above the new limits, the owners must follow the procedures noted in Example 1 above to update the Tax Record and then notify the Board before July 23, 2016, in order for the house to be grandfathered. If this is not the case, then the owner is required to advertise their home at no more than the Covenant limits. No changes in the house are required.

Example 3. An owner has a home that is advertised with 8 or fewer bedrooms, but has one or more additional rooms whose primary purpose is not as a bedroom, but which may contain a day bed, sleep sofa or similar multi-use furniture. They wish assurances that they will be able to continue use and advertising of this multi-use extra sleeping capacity.

As long as the primary use of a room is not for nightly sleeping over an extended period -- such as a family room, living room, media room, game room, office, den, playroom, laundry room, storage room, etc*, --- the presence of multi-use furniture does not make it a bedroom. The owner may continue to advertise the presence of multi-use furniture in the house. However, if at some time in the future the room's configuration is changed into a bedroom as its primary purpose, and that extra bedroom causes the house to exceed the 8-bedroom limit, this house would become non-compliant.*

Example 4. An owner with 7 bedrooms on the Tax Records and in their advertising has two other living/game rooms that have sofa-beds or similar multi-use furniture. They wish to convert one of these existing rooms to a bedroom and add a new game/ living

room within the 5,400 SF limit. The new room will also have multi-use furniture to accommodate occasional overflow sleeping.

The owner's request for this change would be approved.

Example 5. An owner with 7 bedrooms on the Tax Records and in their advertising has two other living/game rooms that have sofa-beds or similar multi-use furniture. They wish to add a new bedroom within the 5,400 SF limit without changing the multi-use furniture arrangements in the two other living/game rooms.

The owner's request for this change would be approved.

Example 6. An owner has a house with 5,200 SF of heated/cooled space according to the County Tax Record. The owner wishes to enclose an additional 500 SF area under the house as climate controlled space.

The application for this change would have to be denied unless the total climate controlled area can be kept less than the 5,400 SF limit.

Example 7. An owner has a house with 5,200 SF of heated/cooled space according to the County Tax Record. The owner wishes to enclose an additional 500 SF area under the house as unheated / uncooled space, for example as a garage or workroom.

The application for this change would have to be approved since the total heated/ cooled square footage would not change.

Example 8. An owner has a house that is compliant in its structural size and configuration at 8 or less bedrooms and 5,400 SF or less. Thus it is not a "grandfathered" house. It is brought to the attention of the Board that the house is being advertised at greater than 8 bedrooms and/or greater than 5,400 SF.

Upon review of the documentary evidence and discussions with the homeowner, and upon determination of non-compliance, the owner will be asked to correct their advertising to no more than the Covenant limits.

Example 9. An owner whose house is grandfathered at greater than eight bedrooms and/or 5,400 SF wishes to remodel. What are the restrictions?

If a house is less than 5,400 SF but greater than 8 bedrooms, the owner may expand their square footage to that limit, but cannot add bedrooms. If a house is above 5,400 SF, but less than eight bedrooms they may not add square footage, but they may remodel to the eight bedroom limit.

Example 10. May a "grandfathered" house be advertised at the grandfathered limits as noted on its Tax Department Property Record Card as of the Covenant 15 April 7, 2016 filing date?

Yes.

Example 11. May a "grandfathered" house be advertised at above the grandfathered limits as noted on its Tax Department Property Record Card as of the Covenant 15 April 7, 2016 filing date?

No.