

Proposed Changes to the February 18 FCF Discussion Draft
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Fishing Creek Farm Homeowners Association

Note: All references, including line and page numbers, are to the February 18 Clean Version of the Draft Covenants

Note: These proposed changes do not reflect any stylistic and non-substantive changes recommended by the Board’s outside counsel, Sara Arthur.

Article I: Definitions

Article II: Property Rights

Comment: In Section 2 (Delegation of Use), it was recommended that the term “contract purchasers” be eliminated as the term is no longer relevant.

Recommendation: In Section 2, line 3, eliminate the term “contract purchasers.”

Article III: Membership and Voting Rights

Article IV: Covenant for Maintenance Assessments

Section 3. Reserves for Replacements

Comment #1: The current draft states that the Board may invest reserve funds in “investment grade securities.” A recommendation was made to clarify that this language applies only to fixed income securities that are investment grade.

Recommendation: In Section 3, line 7, insert the term” fixed income” after “investment grade” and before “securities.”

Comment #2: In Section 3 (Reserves for Replacements), concerns were raised by multiple homeowners about two issues. First, whether the Board is required to obtain competitive bidding for large contracts or projects. And, second, whether there should be a homeowner consultation process before large expenditures are made from a reserve fund by the Board.

Recommendation: Insert the following new sentence in Section 3 on page 8, line 7 (after the sentence that ends with “necessary or appropriate”): “Any expenditure of twenty-five percent (25%) or more of the monetary balance in a replacement reserve fund shall be subject to competitive bidding and only be disbursed after consultation with Owners during a special meeting of the Association called for this purpose.”

Note: As of November 18, 2022, the FCF replacement reserve fund has a balance of approximately \$300,000.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association

Comment: The Maryland Homeowners Association Act permits the Board to impose a late charge for assessments that remain unpaid more than fifteen (15) days after the due date. Additionally, the Act authorizes a late charge that can be either \$15 or one-tenth of the total amount of any delinquent assessment, whichever is greater. The Act also limits the grace period to fifteen (15) days, in contrast to the current version of the Covenants, which permits a thirty (30) day grace period.

Recommendation: To conform the grace period and late charge language with the Maryland Homeowners Association Act, substitute the following paragraph in place of existing Section 9:

“Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within fifteen (15) calendar days after the due date shall bear interest from the due date until paid at the maximum amount permitted by Maryland law. Additionally, if any assessment is payable in more than one (1) installment, and any installment is not paid within fifteen (15) calendar days of the due date, the Board of Directors, at its discretion, may accelerate any remaining installments which may be due for the fiscal year, making the remaining balance due, payable, and collectable immediately. The Board of Directors may also impose a late charge, pursuant to the Maryland Homeowners Association Act, of \$15 or one-tenth of the total amount of any delinquent assessment or installment, whichever is greater, provided the charge may not be imposed more than once for the same delinquent payment and may be imposed only if the delinquency has continued for at least fifteen (15) calendar days.”

Article V: Architectural Control

Section 1. Review of Committee

Comment #1: Concern was raised about the insertion of the term “landscaping plan,” as expanding the Board’s authority over landscaping issues. A recommendation was made to retain the status quo regarding the oversight of landscaping on Owner Lots. Specific landscaping

issues should be addressed in the Board-approved Design and Development Guidelines document.

Recommendation: Eliminate the phrase “or landscaping plan, as set forth below,” from Section 1, lines 1-2.

Comment #2: It has been established that repairs and replacements of existing structures do not require Architecture Committee (AC) and/or Board approval, as an “in kind” repair or replacement. It was suggested that only “material” changes or alterations be subject to AC and Board approval. This “in kind” standard should be clarified in the Covenants.

Recommendation: In Section 1 (Review of Committee), line 3, insert “of a material nature” after “... change or alteration therein ...”

Comment #3: The current Covenants require that the AC be composed of three or more persons appointed by the Board. The 2/18 draft eliminate this requirement of 3 or more persons on this Committee. Several homeowners requested that it be reinstated.

Recommendation: The phrase “composed of three (3) or more persons” will be reinstated in the next draft of the Covenants.

Section 2. Use Restrictions and Owner Responsibilities

Comment #1: A homeowner suggested that the site and location of a structure may also be subject to County permit approvals, as appropriate.

Recommendation: In Section 2, Paragraph 2, line 6, insert the phrase “subject to County permit approvals, as appropriate.”

Comment #2: In Section 2, Paragraph 2, it was noted that only the Board (and not the AC) has final approval authority for the structures and other uses/activities included in this Paragraph. These respective roles should be clarified in the Covenants.

Recommendation: Eliminate the phrase “by the AC” at the end of the first sentence of Paragraph 2, line 3. In the second sentence of Paragraph 2, replace “the AC” with the following phrase “the Board, after consultation with the AC,”. In the third sentence, replace “the AC” with the following phrase “the Board, after consultation with the AC,”.

Comment #3: In Section 2, Paragraph 3, it was pointed out that the use of the word “certain” is confusing in reference to “no-impact home-based businesses,” a term defined in the Maryland Homeowners Association Act.

Recommendation: In Paragraph 3, line 3, delete the word “certain” before “no-impact home-based businesses.”

Comment #4: In Section 2, Paragraph 3a, it was pointed out that taking out the word “excessive” from the current Covenants would cause a violation to occur if a single business client of a homeowner was to visit that homeowner’s residence. It was also noted that the current language appears to prohibit a personal assistant to a homeowner from coming to a residence for work purposes.

Recommendation: Substitute the following paragraph in place of the existing Paragraph 3a:

“a. A portion of a dwelling used for office purposes shall be considered a residential use provided the person using the office space lives in the dwelling as Owner or resident, permits no more than one (1) employee to work on the premises, and ensures that such use does not generate excessive commercial or business activity to and from the premises, as may be determined by the Board of Directors of the Association.”

Comment #5: In Paragraph 3d, the current draft limits rentals to no more than 3 times a year and all rentals must be at least a week in duration. A homeowner objected to this restriction and advocated that Paragraph 3d be eliminated entirely. Other homeowners favored it.

Recommendation: [to be discussed further with the FCFHOA members]

Comment #6: In Paragraph 3e, concerns were raised regarding the regulation of trees and plantings, when they are deemed to be a de facto fence. In particular, a recommendation was made that there should not be any new requirements regarding trees and plantings in the amended Covenants.

Recommendation: In Paragraph 3e, line 6, eliminate the phrase “including trees, plantings,”.

Comment #7: In Paragraph 3e, a concern was expressed that an invisible fence used to confine pets should be expressly permitted in the Covenants.

Recommendation: In Paragraph 3e, lines 9-10, the beginning of the second to last sentence should read: “This section should not preclude an invisible fence for the confinement of pets, or a fence required by law”

Comment #8: In Paragraph 3e, several homeowners advocated for a “good cause” exception to the prohibition on fences in lots that are adjacent to the water.

Recommendation: The Board opposes this recommendation. The fence prohibition on waterfront lots in the current Covenants has always been interpreted as including lots adjacent to Common Areas on the water. It has also been Board policy to enforce this prohibition for more than 25 years. A “good cause” exception or waiver will add subjectivity to this standard and will alter the long-standing expectations of the substantial majority of homeowners with waterfront lots. Any exception granted will also alter the expectations of future homeowners for any Lot granted such an exception or waiver.

Comment #9: Section 2, Paragraph 7 prohibits homeowners from having more than “two (2) dogs, cats or other household animals.” This provision has never been enforced and the only remaining concern in the neighborhood should be the establishment of a kennel. A recommendation was made to eliminate the limitation of 2 dogs or cats per residence.

Recommendation: In Paragraph 7, line 2, eliminate the phrase “not more than (2)” On line 3, add the phrase “or in a kennel on a Lot” after the term “commercial purpose.”

Comment #10: In Paragraph 7, a homeowner suggested that the language referencing household animals should acknowledge that a number of homeowners already have invisible fences to contain their pets.

Recommendation: In Paragraph 7, insert the subordinate clause “or contained by an invisible fence,” in line 4, in between “... must be secured” and “by leash or lead”

Comment #11: In Paragraph 8, several homeowners have noted that many residences have security alarm company signs and these small signs should be expressly permitted in the Covenants.

Recommendation: Revise Paragraph 8d to read: “Signs erected by realtors, builders, contractors, and security alarm companies on Lots in the community provided said signs are in conformance with written designed standards approved by the Board.”

Comment #12: In Paragraph 8, several homeowners have expressed concerns that graduation and birthday signs be permitted on Lots, on a temporary basis.

Recommendation: In Paragraph 8, add a new subparagraph e that states:

“e. Temporary signs celebrating graduations, birthdays, and other milestones.”

Comment #13: In Paragraph 9, the prohibition on tents is too broad and could be interpreted to include temporary party tents, either on a Lot or within the Common Areas.

Recommendation: In Paragraph 9, line 8, insert the following sentence at the end of the Paragraph: “Temporary party tents may be erected immediately prior to an event taking place on a Lot, or in the Common Area with Board approval, and shall be removed promptly after such event takes place.”

Comment #14: In Section 2, Paragraph 10, a proposed change in the February 18 draft would provide the Board with the authority to grant a “good cause” exception for a specific vehicle that is not in compliance with these vehicle prohibitions. Concern was expressed that this expansion of Board authority was too broad and a “good cause” exception is subjective.

Recommendation: In Paragraph 10, eliminate the proposed sentence that reads: “The Board in its discretion may grant an exception for a specific vehicle for good cause shown, provided that any such exception shall be in writing.”

Comment #15: Section 2, Paragraph 14 implies that only a 2-car garage may be included in the construction of a dwelling. Since the neighborhood has a number of 3-car garages attached to dwellings, a recommendation was made to clarify this language.

Recommendation: In Paragraph 14, lines 1-2, insert the phrase “at a minimum” after “shall include” and before “two (2) car enclosed garage.”

Comment #16: In Paragraph 17, the current draft of the Covenants permits satellite reception dishes or antennae as long as they are permitted by federal, state and local laws. A homeowner has suggested that the Covenants also establish a size limitation. Since the standard satellite dish size is around 20”, the suggestion is to limit satellite dish size to 24”.

Recommendation, in Paragraph 17, line 3, add the phrase “and not to exceed 24” in diameter” at the end of the second sentence.

Comment #17: In Paragraph 25, it was suggested that any Board approvals of the (1) Design and Development Guidelines and (2) Application and Review Procedures be accomplished with a super majority vote, *i.e.*, at least 4 out of 5 votes in favor (instead a simple majority vote, which would be a minimum of 3 out of 5 votes in favor).

Recommendation: The Board disagreed with this suggestion and believes that there is no need to have a super majority requirement for this type of approval, especially since the Board usually looks for and achieves a consensus on almost all of its decisions as a normal practice. Additionally, these Guidelines and Procedures may need ongoing amendments and clarifications over time and should be handled in the same manner as other decisions by the Board.

Article VI: Exterior Maintenance

Comment #1: In Section 4 (Free Movement of Breezes Within the Common Area), it was recommended to add “recreational use” after the word “views.” It was also recommended that the Board have the right, but not the obligation, to remove trees or shrubbery in the Common Areas and not just trim them.

Recommendation: In Section 4, line 2 insert the phrase “and recreational use” after the word “views.” In Section 4, line 5, insert the words “remove or” after “to” and before “trim.”

Comment #2: A homeowner has suggested that this section be clarified to include appropriate governmental approvals.

Recommendation: In Section 4, line 5, insert “subject to appropriate governmental approvals” after “the obligation” and “to trim”

Article VII: Environmental Protection

Article VIII: General Provisions

Comment: Section 1 (Enforcement) provides the Board with specific authority to impose fines for violations of the Covenants and the rules and regulations of the Association. Several Owners objected to this proposed expansion of the Board’s sanctioning authority.

Recommendation: The Board continues to support this language, although fines would only be imposed for minor infractions, would establish an amount for each infraction, and would be described in a Board-approved schedule of fines. The initial schedule of fines would only be approved and implemented after public notice and comments from interested Owners.