

BOOK 680 PAGE 565

VANCE COUNTY, N.C.
FILED FOR RECORD

AUG 9 1 58 PM '91

PREPARED BY: STAINBACK & SATTERWHITE - Michael E. Satterwhite
SARAH M. MALE
REGISTER OF DEEDS

STATE OF NORTH CAROLINA

RESTRICTIVE COVENANTS FOR FERNWOOD

COUNTY OF VANCE

WHEREAS, Nelms & Stark Properties, Inc. is the owner in fee simple of the following described lots or parcels of land located in Henderson Township, Vance County, North Carolina, and more particularly described as follows:

Fourteen (14) lots, being numbered Lots 1 through 14 as surveyed by John L. Hamme, Civil Engineer and Land Surveyor, adjoining Fernwood Drive and Fernwood Way as shown on plat entitled "Plat of Survey of Fernwood" dated January 10, 1991, as recorded in Plat Book "U", Page 941, Vance County Registry, specifically excluding the remainder of Tract 1 containing 24.532 acres and all of Tract 2 as appear in that certain deed to Nelms & Stark Properties, Inc. as appears in Book 663, Page 270, Vance County Registry.

WHEREAS, Nelms & Stark Properties, Inc. herein referred to as the developer, for the purpose of creating and maintaining a quiet, restful and desirable development and for the protection of owners who build or buy homes in said above-described development does hereby covenant to and with the present and future owners of said lots as follows:

1. The above-described lots shall be used for single-family residential purposes only; no dwelling may be erected, altered, placed or permitted to remain on any lot other than one single-family dwelling (and garage) not to exceed two stories in height, exclusive of basement and/or attic.

2. No lot shall be subdivided without the written consent of the developer or its successors, assigns or legal agent, except that two lot owners may subdivide a lot lying between them, but only one single-family residence shall be built on the combined original lot and the subdivided portion of any lot; provided, further, that adjoining lot owners may adjust the common boundary line by the sale or exchange of the property between such owners, so long as such sale or exchange conforms in all respect with the zoning ordinances of the City of Henderson and/or the County of Vance, North Carolina, and all other provisions of these restrictive covenants.

3. No dwelling shall be hereafter erected, altered or placed on any lot closer than 35 feet to the front property line, 35 feet to any side street line and 25 feet from an interior or rear property line; the developer reserves the right to grant, in writing, a variance or waiver of up to 20% of an applicable setback requirement, should the developer in its sole discretion deem the same to be advisable.

4. No dwelling, building, structure, outbuilding, fence, wall, or improvement of any nature whatsoever (except for interior alterations to existing structures not affecting the external structure or appearance of any improvement on any portion of the lot) shall be constructed on any lot unless and until the plans for such construction shall have been approved in writing by the developer or its successors, assigns or legal agents. The plans submitted to the developer for approval shall include:

- (a) the construction plans and specifications including all exterior colors and proposed landscaping (specifically including any clearing and/or tree removal) and grading; and
- (b) a plat showing the location of all proposed improvements.

The developer's approval required hereinabove is a continuing approval in regards to all future alterations including exterior colors.

5. No plans for a dwelling shall be approved unless the living area of such dwelling, exclusive of one story, open porches and garages shall exceed 2,200 square feet, measured from outside wall lines.

6. No dwelling, building, structure, outbuilding or other improvements shall be constructed on any lot except by conventional construction, and no single or doublewide mobile homes or dwelling of modular construction shall be erected on any lot; provided, however, a precut dwelling and/or building may be erected upon a lot with the approval, in writing, of the developer or its successors, assigns or legal agent.

7. Approval of the plans by the developer shall be based upon compliance with the provisions of these restrictions, quality of workmanship and materials, harmony of external design with surrounding structures, location of improvements with respect to topography and finished grade elevation, the effect of the construction on the outlook

from surrounding lots, the effect of the proposed construction on the natural tree growth and vegetation, and all other factors which in the sole opinion of the developer shall affect the desirability or suitability of the proposed improvement.

8. No animals, livestock (including pet pigs), or poultry of any kind shall be raised or bred on any lot except for dogs, cats, or other household pets which may be kept provided they are not kept, bred, or maintained for any commercial purpose and provided they do not become a nuisance or annoyance to the other lot owners.

9. No part of any lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste, and the same shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No accumulation of trash, garbage, rubbish or waste shall be permitted, and all lots shall be kept in an orderly and sanitary condition at all times.

10. No grass or weeds shall be allowed to grow taller than six inches.

11. No automobile or equipment that is inoperable will be allowed to remain on any lot and/or street for more than fifteen days.

12. No billboard or signs (except those suitable for sale of lot) shall be permitted or maintained on any lot.

13. No lot owner shall drive or park or permit any other person to drive or park any heavy equipment (including tractor trailers and trucks in excess of one ton), three wheelers, four wheelers or dirt bikes on Fernwood Drive and/or Fernwood Way except moving vans and/or construction vehicles, which may be driven or parked on Fernwood Drive and/or Fernwood Way for the temporary purpose of moving a lot owner in or out of a dwelling constructed on a lot, and/or for the construction of improvements.

14. Unless approved by the developer or its successors, assigns or legal agent, no antenna, aerial, satellite dish or other device shall be erected or placed on any lot or house.

15. All driveways on any lot are to be paved with concrete, asphalt or comparable paving materials.

16. All utilities serving an individual lot shall be run underground at the expense of each individual lot owner.

17. **ENFORCEMENT:** Enforcement shall be by proceeding at law or in equity, either to restrain violation or to recover damages against any covenant or restriction set forth herein. Failure to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce the same.

18. **SEVERABILITY:** Invalidity of any of the provisions hereof by judgment or court order shall in no way affect any of the other provisions which shall remain in full force or effect.

19. **DURATION:** These provisions are to run with the lots and shall be binding on all parties owning the lots and all persons claiming under them for a period of 30 years from the date these restrictions are recorded, after which said time, said covenants shall be automatically extended for additional periods of 10 years each, unless an instrument signed by three-fourths of the then owners of the similarly restricted lots has been recorded in which it is agreed otherwise.

20. **UTILITIES:** The conveyance of all lots is made and accepted subject to any easements and/or rights of way that may have been granted for power, lights, telephone lines, drainage facilities, water facilities and/or sewage facilities, or as shown on the recorded plat of Fernwood.

21. **HOMEOWNERS' ASSOCIATION:** The private roads within said restricted property (including a 10-foot private access right of way adjoining the property of Henderson Country Club) as shown on the survey hereinabove referenced are presently private roads, and the maintenance of the same shall be the responsibility of the developer and the individual lot owners until such time as seven lots have been sold. During this initial period, the cost of road maintenance shall be prorated among the developer and the individual lot owners on a prorata basis, i.e., if one lot is sold, the developer shall be responsible for 13/14th's of the road maintenance, and the individual lot owner shall be responsible for 1/14th's and as each individual lot is sold, each individual lot owner shall be responsible for 1/14th's of the road maintenance, thus, reducing the responsibility of the developer. The developer shall arrange for road

maintenance until such time as the seventh lot has been sold. At such time as the seventh lot is sold, the roads will be maintained on the same prorata basis by a corporate owners' association to be formed by the individual lot owners, said corporate association to be known as "Fernwood Property Owners' Association, Inc." The developer and individual lot owners shall automatically become a member of the association, and there shall be one vote assigned to the owner of each of the fourteen lots of the subdivision in the business matters of the association. Annually, the association shall elect a board of directors, who in turn shall elect a president and secretary/treasurer who shall be charged with the responsibility of assessing what and when maintenance is necessary to the roads, and for arranging for said maintenance to be completed. The cost of said maintenance shall be prorated among the developer and individual lot owners as specified hereinabove, and the failure of the developer and/or any individual lot owner to pay his/her prorated share of the road maintenance cost shall be grounds for the association to place a lien against the property of the developer or the non-paying lot owner for the developer's and/or non-paying lot owner's prorata share of the road maintenance.

In addition, the cost of street lighting and maintenance of signs and natural areas shall be prorated between the developer and the individual lot owners on the same basis as hereinabove specified for road maintenance until such time as seven lots have been sold. At such time as the seventh lot is sold, the cost of street lighting and maintenance of signs and natural areas shall be prorated among the members of "Fernwood Property Owners' Association, Inc." (i.e. the developer and individual lots owners) upon the same basis as hereinbefore set out for road maintenance. The failure of the developer and/or and individual lot owner to pay his/her prorated share of the cost of street lighting shall be grounds for the association to place a lien against the lot of the developer and/or non-paying lot owner for said developer's and/or non-paying lot owner's prorata share of the cost of street lighting and maintenance of signs and natural areas.

The developer reserves the right, but shall not be obligated to, subject other property within that certain 24.532 acres as appears in that

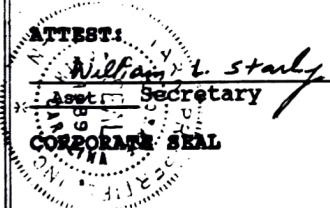
certain deed to Nelms & Stark Properties, Inc. as appears in Book 663, Page 270, Vance County Registry, to the terms and conditions of Paragraph 21, HOMEOWNERS' ASSOCIATION. Should the developer elect to subject another lot or parcel of land to the terms and conditions of this paragraph, then in that event, the owner of said lot or parcel of land shall become a member of "Fernwood Property Owners' Association, Inc." and shall become responsible for a prorata share of the cost of road maintenance, street lighting and maintenance of signs and/or natural areas (i.e. If one additional lot or parcel of land is made subject to the terms and conditions of Paragraph 21, the owner's responsibility shall be for a 1/15th share of the cost and if two lots or parcels of land are made subject to the terms and conditions of Paragraph 21, the owners' responsibility shall be for a 1/16th share, etc., thus, reducing the responsibility of the other lot owners).

IN WITNESS WHEREOF, the developer has caused this instrument to be signed in its corporate name by its duly authorized officers, and its seal to be affixed hereto by authority of its Board of Directors, this 9th day of August, 1991.

NELMS & STARK PROPERTIES, INC.

BY: *John H. Nelms*

President

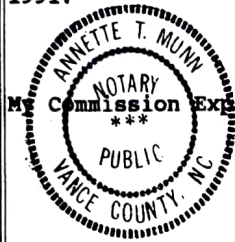


STATE OF NORTH CAROLINA

COUNTY OF VANCE

I, a Notary Public of the county and state aforesaid, certify that William L. Stark, Jr. personally came before me this day and acknowledged that he is Assistant Secretary of WELMS & STARK PROPERTIES, INC., North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Assistant Secretary.

WITNESS my hand and official stamp or seal this 9th day of August, 1991.



Annette T. Munn
NOTARY PUBLIC

My Commission Expires: 10-5-94

STATE OF NORTH CAROLINA, VANCE COUNTY

The foregoing certificate of Annette T. Munn, Notary Public of Vance County, N.C., is certified to be correct. This instrument was presented for registration and recorded in this office in Book 680, Page 565.

This 9 day of August 1991, at 1:58 o'clock P.M.

SARAH H. HALE, REGISTER OF DEEDS

BY: Rebecca W. Davis
Deputy