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VIA E-MAIL AND U.S.P.S.

Overlook at Greenbrier Property Owners' Assoc., Inc.
Scott R. Lutz, Treasurer
16604 Ferrier Court
Leesburg, VA 20176

Dear Scott:

This memorandum is intended to address questions and concerns raised relating to Article VIII, the RESIDENTIAL AND AREA USE, section of Declaration of Reservations and Restrictive Covenants for Overlook at Greenbrier properties.

I will address the issues in the order in which they were presented in your correspondence to me.

1. What is the minimum square footage relating to building a residential building?

Article VIII of the Declaration of Reservations and Restrictive Covenants for Overlook at Greenbrier contains the following language:

"With the exception of structures existing as of the date hereof, no residence shall be erected, constructed, maintained, used or permitted to remain on any Lot other than one (1) single-family dwelling containing not less than one thousand square feet minimum total area, exclusive of porch, decking, basement and garage or outbuilding."

It is clear from the language in this provision, that porches, decking, basements, garages or outbuildings are not considered in the one thousand square foot minimum calculation. I met, at length, with Ashley Carr, the Greenbrier County Building Inspector, to discuss the guidelines and standards used by his office in approving construction. Based upon the 2009 International Building Code, occupiable spaces and inhabitable spaces must have a ceiling height of not less than seven feet six inches, however bathrooms, toilet rooms, kitchens, storage rooms and laundry rooms are permitted to have a ceiling height of not less than seven feet. However, if any room in a building has a sloped ceiling, the prescribed ceiling height for the room is required to be one half of the area thereof. Any portion of the room measuring less than five feet from the finished floor to the ceiling shall not be included in any computation of minimum area thereof.

In summary, it appears that a loft area may be included in the square foot calculation if it meets the ceiling height requirements, however, any portion of the room which measures less than five feet from the finished floor to the ceiling may not be included in the minimum area computation.

It should also be noted that the International Building Code provides that an area accessible only by ladder may not be used as a bedroom or sleeping space. It may be used for storage but not as a sleeping space. Any sleeping space must be accessed by stairs or a corridor and have a window or another door as an alternate fire exit.

There is no county definition for "residential living space". The county Building Permit Office relies on the International Residential Code which simply refers to dwellings. The county Building Inspector takes the position that if someone is going to live in a structure, either temporarily or permanently, it is considered a dwelling, however I do not believe that this position is codified anywhere.

2. May someone build an outbuilding before building the residential structure?

Article VIII, paragraph c, addresses improvements and construction for the maintenance of animals. This section specifically provides that "No such improvements shall precede the construction of the dwelling."

It is clear from this provision that the dwelling or residential structure must be constructed prior to the construction of any other improvement or outbuilding.

3. What if there were multiple residential structures (each less than one thousand square feet, but collectively more than one thousand square feet) connected by a breezeway?

There does not appear to be a clear cut answer to this inquiry, although the treatment by the Greenbrier County Building Inspector and the Greenbrier County Assessor's Tax Office is consistent, in that both offices have classified the improvements on Lot 91 as a single residential unit rather than two separate residential units. Both the Building Inspector and the Assessor's Office view the structures connected by a roof constitute one residential unit rather than multiple residential units. Likewise, both offices opined that if the roof section between the cabins did not exist, they would treat it as two separate units. The Building Inspector based his opinion, in part, on the fact that the structures were connected by combustible material (the wood frame and trusses beneath the metal roof) which would make it possible for fire to spread from one unit to the other.

Both the Building Inspector and the Assessor's Office advised that the key factor in their determination that this property was a single residential structure was based upon the use which was being made by the improvements. If one portion or unit was used as a residence and the other portion

or unit was used as a rental property, an office or business property, or was owned by someone else, any of those uses would result in a change in classification of the property from a single residential unit, but so long as both units were being used by the property owners for residential purposes, it is considered a single residential structure by these offices.

I have examined the Assessor's records and the building permit for Lot 91. The square footage on the building permit is proposed to be one thousand forty eight (1,048) square feet and the square footage shown on the Assessor's residential review document is shown as one thousand two hundred eighty eight (1,288) square feet. According to the Assessor's Office, this difference is explained by the feature in their computer program which calculates square footage and automatically includes a calculation for the square footage of the loft for tax purposes. This calculation is somewhat inconsistent with the International Building Code which excludes loft space from calculation unless it has a seven foot six inch ceiling. In any event, both the building permit and the residential review document prepared by the Assessor's Office reflect that the total square footage of this residential dwelling exceeds one thousand (1,000) square feet.

4. **May someone, with multiple contiguous Lots, build a residential building on one Lot and an outbuilding on another Lot?**

Article I, paragraph d(d) defines a Lot as "any numbered tract or plot of land, except a common area as shown upon any recorded subdivision plat of The Properties".

Article VIII requires that "all Lots shall be used for residential and recreational purposes only" and that "No residence shall be erected, constructed, maintained, used or permitted to remain on any Lot other than one (1) single-family dwelling containing not less than one thousand square feet minimum total area, exclusive of porch, decking, basement and garage or outbuilding". Paragraph c of this Article relates to improvements on the property which are not dwellings and specifically provides that "No such improvements shall precede the construction of the dwelling."

It seems clear from a reading of these sections from the Declaration of Reservations and Restrictive Covenants, that the residence must be constructed before any other improvement can be constructed on any Lot. A Lot is defined by the map or plat referred to in the deed vesting any property owner with ownership of that particular property. Consequently, I am of the opinion that absent some variance granted by the Property Owners' Association, no outbuilding can be constructed on any Lot unless there has previously been a residence constructed on that Lot.

Based upon the definition of a Lot in the Declaration, it makes no difference whether a property owner has multiple Lots combined for real estate tax purposes with the county. The Restrictive Covenants apply to Lots as defined with reference to recorded plats and there is no provision in the Declaration of Reservations and Restrictive Covenants for the modification of that definition should Lots be consolidated for tax purposes.

5. May an outbuilding serve as both a residence and a garage?

It may be possible for an improvement to serve both as a residence and a garage, provided that the residential component meets the requirements of Article VIII of the Declaration and that there is no commercial use of the garage portion of the improvement which would violate Article VIII of the Declaration. The garage could not be used for any commercial purpose unless it was an in-home occupation without signs or advertisements thereof, and also provided that such in-home occupational use does not create a nuisance for other Lot owners with traffic, noise, smell, or other negative impact.

It would be necessary for the property owner to identify that portion of the improvement which constitutes a residence for both building permit and tax assessment purposes, as the building requirements for a residence and the tax rate for a residence are different from the building requirements and tax rates for non-residential or commercial applications.

The lack of architectural guidelines and an architectural review board within the Property Owners' Association create substantial limitations on the Property Owners' Association's ability to exercise much control over the design and construction of residences and other improvements on the Lots within the development. It is my belief that this is a circumstance of design by the developer, WV Hunter, LLC, because it is consistent with the monetary limitation imposed on the Property Owners' Association's ability to increase annual assessments for road maintenance and maintenance of common areas. With the exception of prohibiting trailers and requiring that a residence containing at least one thousand (1,000) square feet is constructed before any other outbuilding or improvement on the property, there is not much basis for the Property Owners' Association to exercise some control over construction which would provide some consistency among the homes constructed in the development. It seems that the developer intended to limit the Property Owners' Association's ability to control construction and assessments within the development.

That said, the Owner Responsibility Policy, adopted by the Property Owners' Association in July of this year, does establish a notification process which requires that individual property owners notify the Property Owners' Association prior to commencing construction. This notice provision does not restrict or modify an individual property owner's right to construct improvement on the property, however it does provide a means whereby the Property Owners' Association is made aware of construction to be commenced on individual lots.

Additionally, and equally importantly, the Owner Responsibility Policy provides specific information and guidelines relating to the property owner's obligation as set forth in the Declaration as it relates to the duty to maintain the construction site during construction as well as addressing property owner's potential liability for roadway damage or "serious roadway wear" caused by construction vehicles working on an individual lot owner's property.

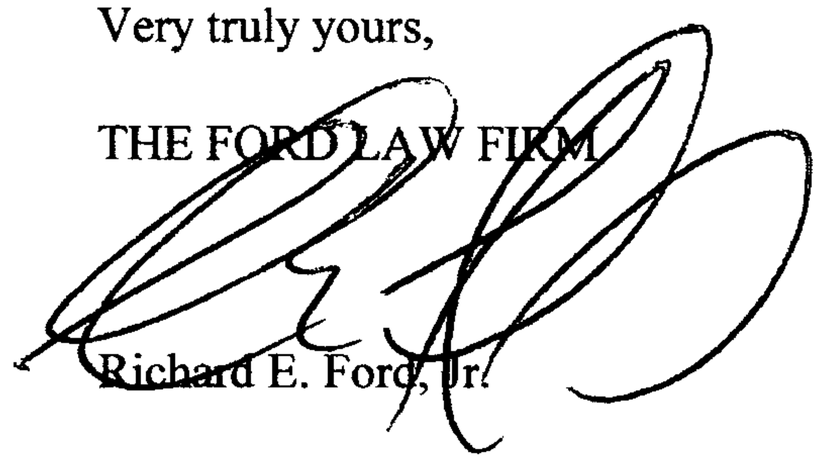
The Owner Responsibility Policy should be very helpful to property owners within the development because it establishes clear guidelines as to the extent of each property owner's duties, particularly as those duties relate to the maintenance and appearance of the property during the

construction phase and any potential liability for damage to roads within the development caused by construction vehicles engaged in work on any individual property owner's lot. The guidelines are consistent with the Declaration of Reservations and Restrictive Covenants for the development and address many specific areas and issues which fall within the broader parameters the property owner's duties has set forth in the Declaration.

I hope this information will be of assistance to the Property Owners' Association. Should you have any question or need additional information, please do not hesitate to let me know.

Very truly yours,

THE FORD LAW FIRM



Richard E. Ford, Jr.

REFjr/mmr

Enclosures

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