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Residents defend deed restrictions

Are they antiquated rules that hinder progress or essential ways to maintain a neighborhood's character?

By Kirsten Valle

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A sign leans against a storage shed behind a vacant house on Jefferson Drive. Jefferson Park residents sued to stop a developer from tearing down the house and building three on its lot. DAVIE HINSHAW – dhinshaw@charlotteobserver.com

When a high-end builder announced plans to build six homes on two lots in Jefferson Park, a southeast Charlotte neighborhood developed more than a half-century ago, some longtime residents were alarmed.

They protested, citing the possible effects on traffic, wildlife and their grassy subdivision's charm.

They took the battle to court – and now they've won.

Clashes like this one, between homeowners and developers over how old-line neighborhoods are redeveloped, are happening more often in Charlotte as the city grows and its oldest communities become prime targets for high-end, high-density developments, experts say.

Many of those disputes, lawyers and residents say, are over deed restrictions, the development rules put in place when tracts of land were subdivided, often decades or even centuries ago.

While no one has tracked the number of lawsuits related to deed restrictions – many are settled before they ever reach the courtroom – local attorneys say they're on the rise, especially in older neighborhoods such as Myers Park and Elizabeth.

At issue: whether deed restrictions, which apply to thousands of houses in the Charlotte area, are antiquated rules that hinder progress or essential to maintain neighborhoods' character.

In one of the latest examples, a Mecklenburg judge ruled in favor of residents of Jefferson Park, a subdivision off Sardis Road where many of the 70 homes are valued in the \$200,000s and \$300,000s. The judge upheld deed restrictions and stopped the builder from putting three houses on one of the lots in question. The ruling shows that courts continue to uphold deed restrictions, despite objections that they're outdated and hamper property values.

"It was a slam-dunk win," said John Buric, the Jefferson Park homeowners' attorney. "It means a lot for the serenity and peacefulness of the neighborhood. For these homeowners, this was a really big deal."

Deed restrictions can govern everything from the size of a structure to the building materials that can be used.

They're often stricter than zoning requirements and are meant to preserve the look and feel of a neighborhood. Even new homeowners are bound by the rules, which are contained in a property's deeds and titles.

Experts say most homes in the Charlotte area have deed restrictions. In newer communities, they often dictate not only the construction of the buildings but also the kinds of fences that can go up around them or the number of pets a homeowner can keep. Older neighborhoods sometimes have dated restrictions, no longer effective, prohibiting black residents, for example.

Builders and homeowners usually consult the rules – or turn to their neighborhood associations for help – before starting a construction project. Problems can arise when they don't.

"Virtually all the old neighborhoods have gone to battle over their restrictions," said Ken Davies, a Charlotte attorney who has dealt with a growing number of the cases. "As Charlotte grew and prospered, there was more pressure on neighborhoods. They had to resort to filing lawsuits to try to control the McMansions."

Deed restriction-related lawsuits began popping up in the mid-1990s in areas such as Myers Park and Elizabeth, where developers saw dollar signs in upscale infill projects, often tearing down old houses to make room for bigger ones, Davies said.

Proponents of the projects touted the resulting jump in property values. Others worried about the effect the developments could have on traffic, wildlife and the character of the neighborhoods.

In one of the higher-profile cases, about 30 Myers Park homeowners sued Jim Fagan in the late 1990s, arguing that his house violated the setback required by a 1936 deed restriction. In 1999, the radiologist signed an agreement that effectively forced him to tear down most of the 5,000-square-foot house he'd been building on Queens Road West.

Earlier this year, Myers Park homeowners filed a similar lawsuit against Gail Wilkins Freese. They say an addition to the interior designer's Queens Road West home violates a setback

required by a 1916 deed restriction, said Davies, who represents the homeowners.

Freese did not return phone calls to the Observer. Her attorney, Roy Michaux, said his client never received a copy of the deed restrictions. In addition, neighbors didn't raise the issue until the 2,800-square-foot garage and living area was a few weeks away from being completed. The case will go to trial in February 2009.

In court papers filed this spring, Freese said the addition doesn't clash with her neighborhood's character; rather, it improves it.

"It certainly will enhance it aesthetically," she said. "And to have a one-bedroom house increase to a three-, possibly four-bedroom house is of great value to the neighborhood."

Michaux said he understood the purpose of deed restrictions, but that they should be evaluated on a case-by-case basis.

"These restrictions were put on the property ... before you ever had any zoning," he said of Freese's case. "They are meant to protect neighbors, but it's hard to see that what she's done has adversely affected anyone else's property value."

In Jefferson Park, longtime residents filed their lawsuit in 2006 after John Sadri Custom Homes announced plans to build six high-end houses where two had stood.

They argued that the proposal violated restrictions that prohibited subdividing lots and building more than one house on each. Around that time, 50 or so neighbors planted the signs in their yards protesting the development.

The builder worked out an agreement with homeowners to build two houses on one of the lots, where no deed restrictions existed. The fate of the other had been in limbo until Aug. 14, when Superior Court Judge Richard Boner found that the restrictions were "in full force and effect."

Now, lot owner Donald Coholan, Sadri's father-in-law, and other defendants are considering an appeal, said their attorney, Pat Kelly.

For Jefferson Park residents, the ruling affirms their belief that a neighborhood's character is more important than its property values, said Fred Rice, 63, who has lived there a quarter-century and filed the suit on behalf of his neighbors.

"I could live in a neighborhood that has three houses per acre, but I moved here," he said. "My house is more than an investment. It's a home."

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