

Frequently Asked Questions Regarding the Association Governance

Q. What are the homeowner restrictions and where can I get a copy?

A. The restrictions are included as part of the Covenants that all homeowners signed at purchase, in one form or another. Copies of all dedicatory instrument, past and present can be found at www.quailcreekrockwall.org, under HOA Records; Governing Documents.

Q. What is a Covenant?

A. A Covenant is a promise. As with most legal terms, the word “covenant” is a Biblical term whereupon it reflects a one-sided promise that is irrespective of what others may do.

All of us, at the time that we transacted the purchase of our home or lot in Quail Creek, made a promise, or “covenant,” to live by certain standards. These standards originated on May 3, 1993 as simple deed restrictions. Then on July 12, 1999 the Development recorded with Rockwall County the first Declaration of Conditions, Covenants and Restrictions [CC&Rs], which have been revised & updated three more times before homeowners voted on the last, and most current set of CC&Rs and Bylaws. All versions, past and present, can also be viewed &/or downloaded on the Association’s website.

Q. Are the current CC&Rs valid & enforceable to all homeowners?

A. YES! This matter has been settled once and for all because at least sixty seven percent (67%) of Owners approved the amendments to the 2009 CC&Rs. The vote on these amendments came through a ballot initiative that began on January 10, 2015 and concluded on April 7, 2015 where 61 out of 69 homeowners participated. The homeowners were voting to amend the 2009 version of the CC&Rs, which had been under scrutiny because of how they had been amended previously. However, the very act of voting on the amendments by 61 out of 69 property owners (including 11 of the 12 from Phase 1) demonstrates that property owners recognized the 2009 document as legitimate, valid and enforceable. The overwhelming turnout has demonstrated that the 2009 version and all previous versions of the CC&Rs were also legitimate, valid & enforceable.

Q. Does one entrance require one set of restrictions?

A. No. An HOA with just one ingress/egress point is not limited to only one set of restrictions within the development. This means that Phase I and Phase II can continue to be governed by different sets of restrictions.

Q. Are variances permitted and who may grant a variance?

A. The original Deed Restrictions and all subsequent versions of the CC&Rs until the most current version allowed just one party, the Declarant (AKA Developer) to grant variances that may contradict the established restrictions. Prior to January 1, 2012, which is when dramatic changes were made to the state property code, these variances were not required to be recorded with the County, but only stay in the possession of the homeowners.

Q. What about the Architectural Review Committee (ARC)? Doesn't the CC&Rs grant this committee the right, "in its sole and absolute discretion" to grant a variance?

A. Not necessarily. The ARC, where its authority is strictly contained within the boundaries of construction of a structure or lot improvements, is allowed to make exceptions that deviate from the restrictions only when doing so is not inconsistent with the purpose of the CC&Rs for good cause or there is justification for allowing the deviation so as not to have a negative impact on the community.

Exceptions should only be granted when hardships exist, such as when the shape of a Lot makes it necessary to deviate from setback requirements.

Q. What variances were granted by the Declarant and remain in effect?

A. The Board has confirmed the following variances:

- 233 Pheasant Hill- The right granted exclusively to James & Cheryl Burzynski to store an RV on the property. This variance **DOES NOT** run with the land and is therefore NON TRANSFERABLE to a new owner.
- 257 Pheasant Hill- The right granted to build a wood fence around the perimeter of the back lot behind the house. This variance runs with the land until it is taken down, where a new wooden fence cannot take its place.
- 279 Partridge Dr- The right granted to install a metal roof on an outbuilding. This variance runs with the land.

Q. How do the variances granted by the Declarant meet the standards of good cause or justification?

A. They don't appear to meet that standard. The Board believes that the variances granted by the Declarant do not meet the good cause or justification standards, but the Board cannot establish legal grounds to disallow or invalidate these exceptions that have been in place for a number of years. However, the current ARC does affirm that all future requests for deviations to the CC&Rs shall be based on the good cause and/or justification standards.

Q. Can the Declarant continue to grant variances?

A. No. The latest amended CC&Rs remove all wording that relates to a "Declarant," who no longer exists because the Developer no longer has ownership of any Lot and thereby has lost all further rights and authority over the Development.

Q. Doesn't state laws establish that a variance for one equates to a variance to all?

A. No. Any variance granted to a single property owner neither invalidates the restrictions contained within the governing document(s) nor allows for any other owner to do likewise. Beginning January 1, 2012 forward, the law began requiring variances granted, be recorded with the county so that new homeowners can be made aware. This helps to avoid confusion about why a wooden fence was erected in a neighborhood, yet prohibits them.

Q. Can the QCHOA board grant a variance?

A. No. Nowhere in the governing documents, past or present, is there a provision for the Board to grant a variance.

Q. Since the last remaining Lot in the development is a very odd (pie shaped) property, should homeowners expect that exceptions that deviate from the restrictions be allowed for that builder?

A. It is very likely. One of the reasons that this Lot remains undeveloped is its shape, which may require creative architecture to ensure that a house will be consistent with the look of the neighborhood. However, homeowners should expect to see some exceptions, which may deviate from the restrictions that will allow for a home to be constructed. The ARC will also consult with the Lot's immediate neighbors for their input as plans for the home are under consideration.

Q. What if my neighbors do not object to my variance request?

A. It makes no difference, as there is no clause in the governing documents that allow for variances. However, even if there was a way for a Homeowner to be granted a variance, it is important to remember that your neighbor today does not equate to your neighbor tomorrow. While a restriction exception, or variance, may be okay your current neighbors, this does not mean that a new homeowner will have the same attitude.

Regrettably, the Owners of the homes that were granted variances by the Declarant, in accordance with the CC&Rs, have experienced very negative feedback from neighbors, even those who were not the owner of origin when the variance was granted.

These variances have also been the source of misunderstanding by homeowners who have wrongly criticized the Board for failing to enforce restrictions. These misunderstandings were the lynchpin which prompted a homeowner to threaten the Board with a lawsuit that resulted in a previous Board's decision to seek legal counsel regarding the legitimacy and validity of the Association's governing documents.

Q. What are homeowner options since variances cannot be granted?

A. Amend the CC&Rs. Any homeowner may propose an amendment to the CC&Rs during the Annual meeting in October. If the proposed amendment is approved by the members at the meeting, it will be placed on a ballot and put to a vote before the members in a 60-Day ballot initiative.

Accountability and Enforcement

Q. Does the Board hold homeowners accountable to the restrictions?

A. Yes. The Bylaws establish that among the duties and responsibilities of the Board include the sometimes-unwelcomed task of holding homeowners, who are in violation of the neighborhood restrictions, accountable to the promises made.

Q. How is the Board guided when enforcing the restrictions?

A. The Bylaws govern how the Board addresses violations and the *Fine & Enforcement Policy* establishes the process to enforce as well as the rights of a homeowner.

Q. What about homeowners who refuse to comply with restrictions or who continue to violate the restrictions?

A. The Board intends to act in good faith, in accordance with the state guidelines regarding enforcement which are reflected in the Bylaws & Policy, to ensure that homeowners are afforded every opportunity to be made aware of a violation as well as make allowances for homeowners who are acting in good faith to rectify a violation. The Board recognizes there exists a VERY small percentage of homeowners that may from time to time choose to ignore their promise and defy Board attempts to hold them accountable. The Board may exercise its options to carry fourth enforcement in accordance with the *Fine & Enforcement Policy*.

Q. Can the Board assess a fine for homeowners who fail to comply?

A. Yes.

Q. Are there limits to the amount that a homeowner can be fined for violating the restrictions?

A. Yes. The CC&Rs establish Article 7.15(a) limits the fine on a per violation basis to an amount not to exceed the then in effect annual Assessment dues. Once the cumulative fine for that violation has been met, no further financial remedy can be levied by the Association. For homeowners, this means that beginning January 1, 2015, the maximum that any homeowner may be fined is \$319 per violation, which is equal to the 2015 annual assessment.

Q. Beyond a fine, what other remedy can the Board pursue?

A. Once a homeowner has reached the maximum allowable fine amount and remains non-compliant, the *Fine and Enforcement Policy* dictates that the Association shall seek legal injunctive relief. If successful, the non-compliant homeowner shall be accountable to the court from that point forward, for as long as they own the property.

Q. How will the Board decide which homeowners they will file suit against for not complying with restrictions?

A. That decision rests solely with the non-compliant homeowner. The *Fine and Enforcement Policy* curtails the subjective nature of enforcement efforts. No more blaming the Board.

Q. Can the Association really afford the legal costs associated with seeking injunctive relief?

A. Yes. The Board is acting in good faith to ensure that the Association is likely to prevail when bringing a matter before a court. In all instances where the Association prevails in a court proceeding, the HOA shall, as a matter of filing, petition the court for the Association to be reimbursed for all court costs and attorney fees by the homeowner.

Q. How are violations identified?

A. The Board neither desires nor intends to frequently canvass the neighborhood searching out violations. However, it should be understood that homeowners who live along higher trafficked areas of the neighborhood, or in instances where violations may appear more prominently than others, are more likely to attract the attention of neighbors and the Board.

Q. Can someone from the Association come onto my lot to determine or verify a violation.

A. Not without your consent. However, a violation can be verified by observing from the vantage point of the street, common areas, or from a neighboring lot, should the owner of the neighboring lot grant consent to come onto their property.

Additionally, flying drones with cameras violate the privacy rights of homeowners and cannot be used to observe a violation.

Q. Can neighbors alert the Board of violations?

A. Absolutely. Neighbors are welcome to bring violations to the attention of the Board, and may do so anonymously, in accordance with a new policy that was adopted by unanimous consent at the October 14, 2014 Board meeting. However, pursuant to the policy, if you wish for the Board to report back to you about what, if any, action was taken regarding your violation concern then the Board must know your identity AND be able to confirm that you are a bona fide Member of the Association.

Q. Will the Board become the neighborhood Gestapo?

A. No! Just as the overwhelming majority of homeowners in Quail Creek simply want to live in peace, so too do the elected volunteers who serve on the Board. Rather than look upon them as the “neighborhood enforcers,” the Board is, in reality, the conscience of the membership regarded as duly elected fiduciary representatives of the Homeowners collective.

This means that the Board is most concerned with homeowners abiding by the spirit of the CC&Rs in good faith. Any homeowner may, at times, unintentionally, unknowingly, or just temporarily out of necessity, violate a covenant or two, which may, in keeping with the Board’s fiduciary duties, result in receiving a mailed notice of violation. When the Board sends an initial violation notice, it is simply a matter of building awareness. This is because there exists the presumption that homeowners who are out of compliance would want to be made aware so that they can rectify the situation on their own, without threat of action.

Therefore, when a homeowner is unable to rectify a violation in an expeditious manner, communicating with the Board is always best. This helps to satisfy concern by the Board and neighbors that the issue is temporary and that there is a timeline established to rectify the violation. It also helps to mitigate further action by the Board.

Q. How will members be kept up to date about the status of current Board actions regarding violations?

A. The Minutes of every Board meeting will include a summary report of any actions that were taken regarding violations, in a general sense (pursuant to Texas State Property Code) by violation. While the Board will continue logging in violation by homeowners, their identity will not be included in the Meeting Minutes or any other public notice. Once the new website is fully developed, a section will be created where Members may review the actions of the Board regarding violations.

Q. How can homeowners be assured that they are not being singled out or that certain violations aren't getting more attention than others?

A. The Board addresses violations as they are discovered, reported, and/or observed. That one homeowner or a certain violation receives more attention from the Board than others should only be the case when a certain violation is an ongoing, typical, or predominant. Homeowners who remain noncompliant to the restrictions over time can expect to receive more attention, notices, and or action than others whose violations are less frequent.

Q. Can a homeowner file legal action against a violator without the Board's consent?

A. Yes. This right is granted both by the CC&Rs as well as Texas State Property Code. However, the homeowners have elected the Board to act in good faith on behalf of all homeowners to provide that accountability when necessary to help mitigate conflict of neighbor vs. neighbor. The Board is committed to ensure that every homeowner is afforded due process before taking action that may include fines or filing for a court to make a judgment.

Q. Wouldn't it be better to hire a management company to hold homeowners accountable, not our fellow neighbors?

A. The current Board has not discussed this option.

There is established concern that a management company's primary purpose is to make money through monthly management fees and activities such as writing letters, not necessarily to be a good neighbor. For a company to make money in a neighborhood with just 69 lots, enforcement would likely be relentless with a representative driving through the neighborhood frequently, snapping pictures to support violation notices, where fines would be split between the company and the Association, plus the fees associated with letters, filings, etc.

The problem of a Board that is made up of fellow homeowners to hold neighbors accountable to their promises rests solely with those who are flagrant violators.