prepared for the BPRA Governing Documents Committee
by Elliot Chabot, Chair
January 2024

# Comparison of the Land Use Covenants for the Properties within Strathmore at Bel Pre

When Strathmore at Bel Pre was being built, the developer chose to divide the community into 22 "sections". Maps of the sections can be found in the StrathmoreBelPre.org website.[1]

Instead of issuing a master land use covenant – specifying how homeowners were to maintain their property – the developer (originally, Levitt & Sons) issued a series of covenants, each applying to a single section.[2] No land use covenants were recorded for Sections 11 to 20 or for Section 22. Section 11 is Strathmore Elementary School and Strathmore Local Park.[3] Section 12 was developed as the townhomes on St. Helen Circle and Trillium Terrace and they are governed separately from the rest of Strathmore Bel Pre under the covenants of the Strathmore at Bel Pre Homeowners Association.[4] All of the homes in Sections 13 to 20 and 22

[1] The December 15, 1970, issue of *The Bugle* reports that, at that time, Levitt was contemplating 21 sections (with 750 homes). The BPRA Board meeting minutes of November 8, 1984, indicate that 26 sections (with 900 households) had been contemplated by Levitt & Sons at one point.

Both of these plans are within the guidance provided by the Federal Housing Administration in its *Planned-Unit Development with a Homes Association*, U.S. Government Printing Office, Washington, DC, 1964 § 4.32 (p. 20):

> There is no specific limitation on the size of a planned-unit and its homes association. Usually it should not exceed about a thousand living units. The many advantages of having the common areas owned and maintained by a homes association responsive to its membership, as compared to public ownership, are apt to be lost when an association greatly exceeds this number. An extremely large association itself is likely to take on the aspect of a cumbersome and unresponsive large bureaucratic organization. Associations of a few hundred living units, moreover, are large enough to support most common facilities, but not so large as to bring problems of communication and association vitality.

[2] In the case of Section 7, two covenants were issued. One applies to all of the homes within Section 7 except 3101, 3105, 3019, and 3113 Birchtree Lane. The other applies only to those four properties.

[3] Deed of June 26, 1967, recorded in the Montgomery County Land Records on July 10, 1967, at Liber 3637, Folios 197 to 200; and Deed of December 28, 1970, recorded January 6, 1971, at Liber 4032, Folios 452 to 453.

[4] The covenants for the Strathmore at Bel Pre townhomes on St. Helen Circle and Trillium Terrace can be found in the Montgomery County Land records at:

- Covenant of October 5, 1998, recorded October 7, 1998, Liber 16320, Folios 482 to 535.
- Covenant of August 12, 1999, recorded August 16, 1999, Liber 17406, Folios 001 to 005.
- Covenant of February 2, 2000, recorded February 17, 2000, Liber 17883, Folios 714 to 716.0

Strathmore at Bel Pre Section 12 was previously part of Gate of Heaven Cemetery (along with Strathmore at Bel Pre Section 21) and is shown on Levitt & Sons' 1968 map of Strathmore at Bel Pre as "Proposed Church Site." In the mid-1970s, the Roman Catholic Archdiocese of Washington sold the Section 12 property to the Greek Orthodox Community of Saints Constantine and Helen, which planned to construct a center for that community on the site. The center was not built, however, and the land was subsequently sold to Bel Pre Towns, LLC which built the townhomes that are now on the site.

For more background information, see (all from *The Bugle* unless otherwise indicated):

- Rosalie Valley, "Letters," November 1976, p. 7.
- Bill Grosse, "President's Corner," October 1983, p. 4.

are located south of the Matthew Henson Greenway and many are within the Bel Pre Recreational Association, but none of them have recorded land use covenants that apply to their properties.[5]

- "Community Affairs," September 1985, p. 6.
- Shira Oler, "Community Affairs," November 1985, p. 6.
- Ron Burrell, "President's Corner," January 1986, p. 3.
- Shira Oler, "Community Affairs: External Affairs Update," March 1987, p. 3.
- "Community Affairs," June 1987, pp. 9-10.
- "Community Affairs," April 1989, p. 3.
- "Greek Orthodox Church Property," July 1991, p. 4.
- Joe Fry, "Zoning Updates," April 1992, p. 3.
- Arlene Thorne, "Draft Master Plan Approved," March 1993, pp. 1 & 3.
- Al Ritter, "Civic Association Recommends Changes in Master Plan," May 1993, pp. 1 & 3.
- Arlene Thorne, "Master Plan Update," December 1993, p. 3.
- Al Ritter, "More New Houses Coming to Bel Pre Road," September 1994, pp. 1 & 3.
- "BPRA/SBPCA Annual Meetings Scheduled for November 21," November 1994, p. 1.
- "Civic Association Testifies re: Proposed Development of 'Strathmore at Bel Pre,'" January 1995, pp. 1 & 3.
- Anita Fannning, "SBPCA Board Minutes," March 1995, pp. 3-4.
- Anita Fannning, "SBPCA Board Minutes," April 1995, pp. 3-4.
- Anita Fannning, "SBPCA Board Minutes," May 1995, pp. 3-4.
- "Monitoring Strathmore Mews Development," June 1995, p. 6.
- Anita Fannning, "SBPCA Board Minutes," July 1995, p. 3.
- Anita Fannning, "SBPCA Board Minutes," August 1995, p. 3.
- Anita Fannning, "SBPCA Board Minutes," October 1995, pp. 3-4.
- "'Strathmore Mews' Development Hits a Snag," November 1996, p. 3.
- Michael J. Grady, "Pool Renovations Approved: Mike Grady Presents SBPCA Annual Report 'Civic Association Will Continue,'" December 1996, pp. 1 & 3.
- John Kramer, "Greek Orthodox Church Property Update," March 1997, p. 4.
- "News Affecting Our Community," September 1997, pp. 9-10.
- "News Affecting Our Community," June 1998, p. 9.
- "SBPCA Special Meeting Scheduled on 'Garden Park at Bel Pre' Landscaping Plan," June 1999. p. 1.
- "Townhouse Developer Explains Landscaping Plans," September 1999, p. 1.
- Deeds of:
    - March 10, 1975, recorded October 3, 1975, at Liber 4698, Folios 114 to 117
    - September 10, 1975, recorded October 3, 1975, at Liber 4698, Folios 114 to 116
    - February 4, 1977, recorded February 18, 1977, at Liber 4909, Folios 614 to 616
    - May 19, 1997, recorded July 2, 1997, Liber 14909, Folios 600 to 603
- Eric W. Felter, map of Strathmore at Bel Pre, Levitt & Sons, Wheaton, MD, 1968.

[5] The Levitt & Sons homes built in these sections were marketed by Levitt as Parc Bel Pre, rather than as part of Strathmore at Bel Pre, though they were platted as sections of Strathmore at Bel Pre. Because of Levitt & Sons' branding, the Strathmore Bel Pre Civic Association, in 1971, amended its By-Laws to specify that it covered both communities — "Strathmore at Bel Pre and Parc Bel Pre" (by 1987, the "Parc Bel Pre" name had fallen out of community use to the extent that the Civic Association changed their By-Laws back to just "Strathmore Bel Pre"). Levitt & Sons also placed a large "Parc Bel Pre" sign at the intersection of Hathaway Drive and Layhill Road. The sign remained there until 1981, when it was replaced by a "Strathmore Village" sign installed by Ward Development Company (one of the developers

The land use covenants apply only to eleven Sections of Strathmore Bel Pre – Sections 1 to 10 and 21:

- North of the Matthew Henson Greenway, that encompasses all of the Strathmore Bel Pre detached single family homes (i.e., Sections 2 to 10 and 21);
- South of the Henson Greenway, that encompasses only Section 1, which consists of the homes on Bingham Court, Rockview Court, and 13414-13424 Hathaway Drive. The model homes for Strathmore at Bel Pre were located in Section 1.

While the Land Use Covenants apply to these eleven sections of Strathmore Bel Pre, there are differences from Section to Section. The following comparison shows the provisions in each of the Land Use Covenants and indicates which restriction applies to which Section.

## Executive Summary

- None of the rules apply to Sections 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, or 22.
- The townhomes that make up Section 12 have their own rules.

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that succeeded Levitt & Sons). In 2001, the Strathmore Bel Pre Civic Association installed a new sign in its place inscribed “Strathmore at Bel Pre”.

That Levitt & Sons chose to use what is now the Mathew Henson Greenway as a divider between separate communities is not a surprise. At the time that Levitt & Sons was developing these homes, what is now the Matthew Henson Greenway — a county public park — was the right-of-way for the Outer Beltway. In 1974, the land was redesigned as the right-of-way for the Rockville Freeway; and subsequently as the right-of-way for Alignment Alternative F of the InterCounty Connector. It was not until 1994 that the land was designated as public parkland. For more information on the right-of-way, see the following documents from the Maryland-National Capital Park and Planning Commission:

- Master Plan for Kensington-Wheaton, Planning Area VII, 1959.
- Master Plan: Upper Northwest Branch Watershed, April 26, 1961.
- Master Plan for Aspen Hill, December 1970.
- Rockville Facility: Staff Report on Issues and Opportunities, June 1987.
- Aspen Hill Master Plan, April 1994 (see especially, pp. 55-59).

Levitt & Sons may also have hoped to purchase the financially-strapped Merlands Country Club — located by the southwest side of the Levitt property — and use that (or part of it) as the common area for Parc Bel Pre. For more information on the country club, see:

- *Montgomery County v. Merlands Club*, 202 Md. 279, 96 A.2d 261 (1953).
- *Messall v. Merlands Club*, 233 Md. 29, 194 A.2d 793 (1963).
- *Merlands Club v. Messall*, 238 Md. 359, 208 A.2d 687 (1965).
- *Messall v. Merlands Club*, 244 Md. 18, 222 A.2d 627 (1966), *cert. denied*, 386 U.S. 1009, 87 S.Ct. 1349, 18 L.Ed.2d 1435 (1967).
- Sally Mackenzie, “Where Have They Gone?” Montgomery County Swim League blog, July 23, 2008.

- For the rules dealing with use only for residential purposes; height limits; size of garage or carport; types of vehicles permitted; and detached structures:
    - One set of rules applies to Sections 2, 3, 4, 5 6, and 7
    - A different set of rules applies to Sections 1, 8, 9, 10, and 21
- For the rules dealing with fences:
    - One set of rules applies to Sections 2, 3, 4, 5, 6, 7, 8, 10, and 21
    - A different set of rules applies to Section 9
    - A different set of rules applies to Section 1
- For the rules dealing with residential and non-residential uses:
    - One set of rules applies to Sections 2, 3, 4, 5, 6, 7, 8 and 10
    - A different set of rules applies to Section 1
    - A different set of rules applies to Section 9
    - A different set of rules applies to Section 21
- For the rules dealing with signs:
    - One set of rules applies to Sections 2, 3, 4, and 5
    - A different set of rules applies to Sections 1, 6, 7, 8, 9, 10, and 21
- For the rules dealing with the cost and size of dwellings:
    - One set of rules applies to Sections 2, 3, 4, 5, 6, and 7
    - No similar rules apply to Sections 1, 8, 9, 10, or 21
- For the rules dealing with protective screening:
    - One set of rules applies to Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, and 21
    - No similar rules apply to Section 1
- The rules dealing with additions projecting beyond front wall; swimming pools permitted only in rear yard; communication towers; architecture, materials, and colors; drilling and mining; animals; garbage and rubbish; sewage; water supply; laundry; easements; lawn

mowing; violations; enforcement; severability; and amendments apply to the eleven Sections that have land use covenants.

Sections 2, 3, 4, and 5 have identical land use covenants.

Sections 6 and 7 have identical land use covenants.

Section 1 has its own land use covenants.

Section 8 has its own land use covenants.

Section 9 has its own land use covenants.

Section 10 has its own land use covenants.

Section 21 has its own land use covenants.

These are the twelve Strathmore at Bel Pre Land Use Covenants:

| Land Use Covenant Date of Covenant | Date Covenant Recorded in Land Records | Liber and Folio designation in Land Records | Portion of Strathmore at Bel Pre Covered by the Covenant |
|---|---|---|---|
| August 19, 1968 | August 22, 1968 | Liber 3781, Folios 342 to 348 | SBP Section 2 |
| September 5, 1968 | September 13, 1968 | Liber 3789, Folios 104 to 110 | SBP Section 3 |
| January 7, 1969 | January 13, 1969 | Liber 3824, Folios 112 to 118 | SBP Section 4, except the BPRA recreational facilities on Bethpage Lane |
| June 6, 1969 | June 19, 1969 | Liber 3871, Folios 108 to 114 | SBP Section 5, except Bel Pre Elementary School and Bel Pre Neighborhood Park |
| June 28, 1969 | August 1, 1969 | Liber 3887, Folios 892 to 898 | SBP Section 6 |
| November 7, 1969 | November 12, 1969 | Liber 3918, Folios 266 to 272 | SBP Section 7, except 3101, 3105, 3109, and 3113 Birchtree Lane |
| July 6, 1970 | July 15, 1970 | Liber 3980, Folios 108 to 114 | 3101, 3105, 3109, and 3113 Birchtree Lane |
| November 3, 1970 | November 13, 1970 | Liber 4017, Folios 835 to 839 | SBP Section 8 except "Outlot A" [6] |
| November 4, 1970 | November 13, 1970 | Liber 4017, Folios 825 to 829 | SBP Section 9 |
| November 4, 1970 | November 13, 1970 | Liber 4017, Folios 830 to 834 | SBP Section 10 |
| October 1, 1971 | December 29, 1971 | Liber 4165, Folios 841 to 847 | SBP Section 1 |
| April 17, 1972 | May 24, 1972 | Liber 4217, Folios 093 to 097 | SBP Section 21, except Beret Neighborhood Conservation Area |

[6] A portion of what became 3205 Bustelton Lane was originally designated as being "Outlot A" of SBP Section 8 (Montgomery County Plat Book 86, Plat No. 9054, recorded September 27, 1968). The entire 3205 Bustelton Lane property was subsequently included in SBP Section 21 (Plat Book 90, Plat No. 9744, recorded December 4, 1970).

# Item-by-Item comparison of Strathmore at Bel Pre Land Use Covenants

## 1. Use only for residential purposes; single-family dwellings; height limit; size of garage or carport; types of vehicles permitted; detached garages, carports, and buildings

**Applies to SBP Sections 2, 3, 4, 5, 6, 7:**

¶ 1(a). "No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling, not exceeding 2½ stories in height and a private garage or carport for not more than 3 cars. No motor vehicle other than of a private passenger type shall be garaged or stored in any garage or carport or on any lot, nor shall any boat be stored out of doors on any lot. No detached garage, carport or accessory building may be erected or permitted to remain on any lot."

**Applies to SBP Sections 1, 8, 9, 10, and 21:**

¶ 1(a) is the same as ¶ 1(a) of SBP Section 2, except the last sentence ("No detached garage . . . on any lot.") is not included.

**Notes:**

**Levitt & Sons' commentary –** their undated[7] "To Preserve Property Values in Strathmore in Bel Pre" publication (pp. 1 and 3) states that:

> No detached garage, carport, or accessory building may be erected.
>
> . . .
>
> No truck, trailer, or other commercial vehicle may be garaged or parked on the property, except for the temporary servicing of the premises.

[7] "To Preserve Property Values in Strathmore in Bel Pre" is the 4-page "Covenants and Restrictions" chapter of the 3-ring binder *Home-Owner's Portfolio* issued by Levitt & Sons for new home-buyers in Strathmore at Bel Pre. Though it does not contain a publication date, the contents point to a probable 1968 date of publication. The contents are consistent with the Land Use Covenants for Strathmore at Bel Pre Sections 2 (recorded August 22, 1968) through 5 (recorded June 19, 1969). The text dealing with signs is not consistent with the later Land Use Covenants, starting with Strathmore at Bel Pre Section 6 (recorded August 1, 1969). The lack of any references to Parc Bel Pre also points to the publication pre-dating 1972 and was not likely distributed in any of the Levitt & Sons properties south of what is now the Matthew Henson Greenway (other than Strathmore Bel Pre Section 1, where the original model homes were located).

A copy of "To Preserve Property Values in Strathmore in Bel Pre" was reprinted as attachment #2 of the BPRA Board of Trustees minutes of January 28, 2008.

**Accessory buildings –** For information on the County requirements concerning detached garages, barns, gazebos, pool houses, and similar structures, see the Montgomery County Department of Permitting Services' Residential Accessory Structures Permit & Inspection Process webpage.[8]

**Beall Family Cemetery –** The Beall Family Cemetery[9] is a small property between 14121 and 14125 Beechvue Lane within Section 10 of Strathmore at Bel Pre. The cemetery is listed in the Maryland-National Capital Park and Planning Commission's 1976 *Locational Atlas and Index of Historic Sites in Montgomery County Maryland* as historic resource 27/15. The 1991 inventory of the property by the Maryland Historic Trust notes that there are 7 memorial stones in the cemetery, representing 14 graves. The dated grave stones mark burials from 1831 to 1893.[10]

In 1994, the Montgomery County Council adopted the Aspen Hill Master Plan, which added the Beall Family Cemetery to the Montgomery County Master Plan for Historic Preservation.[11] Montgomery County's Historic Preservation Ordinance (Montgomery County Code chapter 24A) prohibits making any substantial change (either deliberately or by neglect) to the exterior of any property listed in the Historic Preservation Master Plan (or to the property's environmental setting) without a review by the Montgomery County Historic Preservation Commission and the issuance of a historic area work permit.[12]

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[8] The Maryland Court of Appeals (now the Maryland Supreme Court), in *Colandrea v. Wilde Lake Community Association*, 361 Md. 371, 761 A.2d 899 (2000), footnote 2, notes that:

> Generally, when property is subject to both zoning and other governmental restrictions, and conditions created by real property covenants, that property must satisfy the most restrictive of the regulations or conditions.

The exception to this rule is when a statute clearly states that it is intended to prevail in the event of a conflict. For example, Montgomery County Fire Safety Code § 22-98, provides that "A person must not make or enforce any deed restriction, covenant, rule, or regulation, or take any other action, that would require the owner of any building to install any roof material that does not have a class A rating, or an equivalent rating that indicates the highest level of fire protection, issued by a nationally recognized independent testing organization."

[9] "Beall" is pronounced "Bell", as in "Bel Pre" – the Beall family's farm. The Beall family originally settled in Bel Pre in 1740. Clement Beall was Montgomery County's first Sheriff (serving from 1777 to 1780). Brooke Beall was Montgomery County's first Clerk of the Court (serving from 1777 to 1795) and was succeeded by his son Upton Beall, who served from 1795 to 1827.

[10] The December 1959 issue of *The Maryland and Delaware Genealogist* ("Beall Cemetery, Montgomery County, Maryland" by Mr. and Mrs. Stout Lillard, p. 47) lists at least one additional grave from 1886.

[11] See pages 142 and 160-161 of the Aspen Hill Master Plan.

[12] For further information on the Beall Family Cemetery and the Beall family, see:

- Cook, Eleanor M., and Diane D. Broadhurst, "The Four Beall Women and Their Slaves," *Montgomery County Story*, February 2002, pp. 213-224.
- Cook, Eleanor M. V., "Brooke Beall, First Clerk of the Court of Montgomery County," *Montgomery County Story*, November 1989, pp. 83-92.

**Decks –** For information on the County requirements concerning decks, see the Montgomery County Department of Permitting Services' Decks Permit & Inspection Process webpage.

**Group homes –** See the **Individuals with Disabilities and Group Homes** note in item 5, below.

**Height limits –** All the lots within the BPRA have been zoned by the Montgomery County Council as either R-90 or R-200.[13] Sections 4.4.7 and 4.4.8 of the Montgomery County Zoning Ordinance set the maximum building heights permitted in these two zones. For more information about Montgomery County requirements and restrictions, contact the Montgomery County Department of Permitting services.

**Parking on public streets –** The Montgomery County Commission on Common Ownership Communities, in *Hunting Woods Homeowners Association v. Muravchik*, CCOC case no. 534-G (July 10, 2002), held that were a covenant restricts the parking of particular kinds of vehicles


- Fanning, Anita, "SBPCA Board Minutes," *The Bugle*, August 1995, p. 3.
- Farquhar, Roger Brooke, *Old Homes and History of Montgomery County, Maryland*, American History Research Associates, Brookeville, MD, 1981 (3rd edition).
- Hopkins, G.M., *Atlas of Fifteen Miles Around Washington including the County of Montgomery Maryland*, F. Bourquin's Steam Lithographic Press Philadelphia, Pa, 1879, reprinted by the Montgomery County Historical Society, Rockville, MD, 1975.
- Malloy, Mary Gurdon, et al, *Abstracts of Wills, Montgomery County, Maryland 1826-1875*, Family Line Publications, Silver Spring, MD, 1987.
- McGuckian, Eileen S., *Rockville: Portrait of a City*, Hillsboro Press, Franklin, TN, 2001.
- McMaster, Richard K., and Ray Eldon Hiebert, *A Grateful Remembrance: The Story of Montgomery County, Maryland*, Montgomery County Government and Montgomery County Historical Society, Rockville, MD, 1976.
- Montgomery County Historical Society archive (Shaw Collection) catalog nos. 045-009A and 045-009B (1910 and 1889 photos of Bel Pre Farm).
- Moore, Jay, "Beall Cemetery Update," *The Bugle*, April 1993, p. 4.
- Page, Chester H., and Thomas F. Parker. *The Link*, Layhill Alliance, Silver Spring, MD, 1987.
- Plumb, Robert C., "Montgomery County in the 'Second American Revolution,'" *Montgomery County Story*, Summer 2014, pp. 1-9 (see especially footnote 32).
- Wright, F. Edward, *Maryland Militia War of 1812, vol. 7 (Montgomery County)*, Family Line Publications, Silver Spring, MD, 1986.
- "Beall Cemetery Recommended for Historic Preservation," *The Bugle*, March 1993, p. 4.
- "Civic Association Testifies re: Proposed Development of 'Strathmore at Bel Pre,'" *The Bugle*, January 1995, pp. 1 & 3.
- "Master Plan," *The Bugle*, January 1992, pp. 3-4.
- Deed of December 13, 1917, recorded in the Montgomery County Land Records on the same day at Liber 268, Folios 417 to 419.
- Deed of September 10, 1975, recorded in the Montgomery County Land records on October 3, 1975, at Liber 4698, Folios 114 to 116.


[13] In 1964, at the request of Levitt & Sons, all of the residential lots that are now within the BPRA were rezoned by the Montgomery County Council as either R-90 or R-150. This zoning was affirmed by the 1970 Master Plan for the Aspen Hill and Vicinity Planning Area, the 1989 Master Plan for the Communities of Kensington-Wheaton, and the 1994 Aspen Hill Master Plan. In 2014, as part of the comprehensive revision of the Montgomery County Zoning Ordinance, the County Council eliminated the R-150 zone and rezoned all R-150 properties as R-200.

"upon any property within the Property," the restriction applies only to parking on members' properties, not to parking on public streets.

**Private passenger vehicles –** The Montgomery County Commission on Common Ownership Communities, in *Whetstone Homes Corp. v. Hight-Walker*, CCOC case no. 21-06 (November 28, 2006), provided guidance on the changing nature of what constitutes a private passenger vehicle and looked particularly a how pick-up trucks may or may not qualify as private passenger vehicles.[14]

**Retaining Walls –** For information on the County requirements concerning retaining walls, see the Montgomery County Department of Permitting Services' Residential Retaining Wall Permit & Inspection Process webpage.

**Sheds –** For information on the County requirements concerning sheds, see the Montgomery County Department of Permitting Services' Residential Sheds Permits & Inspection Process webpage. See also the **Structures** note in item 5, below.

**Single-family –** The Maryland Court of Special Appeals (now the Appelate Court of Maryland), in the case of *South Kaywood Community Association v. Long*, 208 Md. App. 135, 56 A.3d 265 (2012), ruled that, in the absence of a definition in the covenant, "single family" is ambiguous and is not limited to persons related by blood, marriage, or adoption. The case involved a home that was rented by three undergraduate students who were not related by blood, marriage, or adoption and a restrictive covenant recorded in the land records that provided that homes within that subdivision were to each be used "solely as a single family residence". As was the case with the South Kaywood Community Association, the Land Use Covenants for Strathmore at Bel Pre do not define "single-family".[15]

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[14] *Whetstone Homes Corp. v. Hight-Walker*, CCOC case no. 21-06 (November 28, 2006), p. 5 notes that:

> The profile of an uncapped pick-up truck is reasonably distinct from the other large vehicles, many of them on truck chassis, which have become popular private passenger vehicles. However, when a cap is placed over the truck bed the profile becomes quite similar to a number of other large vehicles. During the time since this regulation was originally adopted [prior to 1989] the size, shape and profile of popular private passenger vehicles has changed considerably. The record in the Court of Special Appeals includes an impassioned plea by the attorney for Eastgate [Homes Corp. in *Montgomery Village Foundation v. Ellis*, Civil No. 203418], John McCabe, who also represented Whetstone in this proceeding, on behalf of his client, about the distinctiveness of a pickup truck, capped or uncapped; but with regard to a capped pick-up truck not everyone is so discerning.

[15] **Historical note**: Prior to the Maryland Court of Special Appeals decision in *South Kaywood Community Association*, the Montgomery County Commission on Common Ownership Communities ruled in *Doral Homeowners Association v. Motalib*, CCOC case no. 592-G (June 12, 2003) that the existence of an accessory apartment violated a covenant that "no building shall be erected, altered, placed or permitted to remain on any such Lot other than one used as a single family dwelling."

See also the **Rentals** note in item 5, below.

**Subdivision of lots and the prohibition on having more than one detached single-family dwelling on each lot –** The Maryland Court of Appeals (now the Maryland Supreme Court) decision in *Belleview Construction Co. v. Rugby Hall Community Association*, 321 Md. 152, 582 A.2d 493 (1990), dealt with a covenant that read "only one single family dwelling . . . shall be erected on each lot". After the covenant was recorded in the land records and the lot in question was sold by the developer, the owner of the lot subdivided the lot into 2 lots. The court ruled that the covenant applied to the land encompassed by the original covenant and therefore if a single-family home existed on one of the 2 newly subdivided lots, a second single-family home could not be built on the other lot. Subdividing a lot into more than one lot cannot be used to overcome a covenant that put numerical limits on the original lot. A "lot" for purposes of the covenant, is a lot as platted by the developer who wrote the covenants.

## 2. Additions projecting beyond front wall

**Applies to SBP Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 21:**

¶ 1(b). "An attached addition to the dwelling may be erected but only on the condition that it shall not project beyond the front wall of the dwelling or structure as originally erected by the Company and upon the further conditions set forth in Paragraph 2 hereof."

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (pp. 1-2) states that:

> You may add an attached room or garage to your home, either at the side or at the rear, if it conforms in architecture, material, and color to the original dwelling and to the requirements of your local zoning ordinance.
>
> Additions must not be made to the front of the dwelling. . . .
>
> It is recommended that you consult a qualified architect so that your addition will be of good design and compatible with the architectural character of the community.
>
> It would also be wise to consult the local building inspector before you proceed with any work other than painting, to be certain of your compliance with all applicable ordinances. It may be necessary for you to obtain a building permit.

**Individuals with Disabilities and Group homes –** See the **Individuals with Disabilities and Group Homes** note in item 5, below.

### 3. Swimming pools permitted only in rear yard

**Applies to SBP Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 21:**

¶ 1(c). "Private swimming pools may be constructed or erected provided they are situated in the rear yard only."

**Notes:**

Montgomery County requirements for private swimming pools can be found at Montgomery County Code chapter 51 and Montgomery County Code of Regulations chapter 51. For additional information, see the Licensing Services – Permits – Swimming Pools webpage of the Montgomery County Department of Health and Human Services.

### 4. Fences – Generally

**see also item 15 (Fences – Fabricated or Growing), below**

**Applies to SBP Sections 1, 2, 3, 4, 5, 6, 7, 8, 10, and 21:**

¶ 1(d). "No fabricated fence may be erected on any corner lot. On any other lot, a fabricated fence may be erected but only in the rear yard and only on the condition that it shall not exceed forty-two (42) inches in height, except that the fences required around private rear yard swimming pools shall conform to all requirements of local ordinances. In no case, however, shall stockade or snow fences, collapsible or folding-type fences, fences constructed of wire measuring less than No. 11 gauge in cross-sectional area or other temporary type fences be permitted on any lot."

**Applies to SBP Section 9:**

¶ 1(d) is the same as ¶ 1(d) of SBP Section 1, except in the last sentence ", collapsible or folding-type fences, fences" is not included, so that the last sentence reads:

> In no case, however, shall stockade or snow fences constructed of wire measuring less than No. 11 gauge in cross-sectional area or other temporary type fences be permitted on any lot.

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 2) states that:

> This community has been designed to create and preserve an atmosphere of spaciousness and open countryside. Since fencing along the front or at the sides of your property would spoil this effect, and might cause property values to decline, no fences are permitted except in the rear yard.

> On corner lots, no fabricated fences are permitted. Fences in the rear yard may be fabricated fences, not more than 3½ feet in height, except for fences around rear yard swimming pools, which are regulated by local ordinance.
>
> Temporary fences such as snow fences, collapsible or folding type fences, and fences constructed of wire measuring less than No. 11 in cross sectional area, are prohibited. Stockade fences are also prohibited.

**Fences around private swimming pools –** Section 51-16(a)(1) of the Montgomery County Code provides that:

> The fence or wall enclosing a private swimming pool must be:
>
> (1) At least 5 feet high

**Individuals with Disabilities and Group Homes –** The Fair Housing Act prohibits using a covenant to prevent a person with disabilities from living in a home. If the limitations on fences would have the effect of preventing a home from being used by a person with disabilities or as a group home for persons with disabilities, then the Fair Housing Act prohibits enforcement of the covenant in that situation. For more information, see the **Individuals with Disabilities and Group Homes** note in item 5, below.

## 5. Residential and non-residential uses

**Applies to SBP Sections 2, 3, 4, 5, 6, 7, 8, and 10:**

¶ 1(e). "No dwelling or any part thereof shall be used for any purpose except as a private dwelling for one family or as a professional office of a physician, dentist, chiropractor, chiropodist, optometrist, attorney, accountant, architect or engineer; nor shall any business of any kind be constructed therein. No business or trade of any kind or noxious or offensive activity shall be carried on upon any lot, within or without the dwelling, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No trailer, tent, shack or other structure shall be located, erected or used on any lot, temporarily or permanently."

**Applies to SBP Section 9:**

¶ 1(e) is the same as ¶ 1(e) of SBP Section 2, except "be constructed therein. No business or trade of any kind" is not included, so that the paragraph reads:

> No dwelling or any part thereof shall be used for any purpose except as a private dwelling for one family or as a professional office of a physician, dentist, chiropractor, chiropodist, optometrist, attorney, accountant, architect or engineer; nor shall any business of any kind or noxious or offensive activity shall be carried on upon any lot, within or without the dwelling, nor shall anything be done thereon which may be or

become an annoyance or nuisance to the neighborhood. No trailer, tent, shack or other structure shall be located, erected or used on any lot, temporarily or permanently.

**Applies to SBP Section 1:**

¶ 1(e) is the same as ¶ 1(e) of SBP Section 2, except the following sentence is added to the end of the paragraph:

> Notwithstanding the foregoing, nothing within this Declaration shall be construed to prohibit use by the Company, its successors and assigns, of any lot or dwelling on a temporary basis as a model sales or construction office.

**Applies to SBP Section 21:**

¶ 1(e) is the same as ¶ 1(e) of SBP Section 2, except the following clause is added to the end of the last sentence ", except by Company during the construction phase of development of the land", so that the sentence reads:

> No trailer, tent, shack or other structure shall be located, erected or used on any lot, temporarily or permanently, except by Company during the construction phase of development of the land.

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 3) states that:

> The residential sections of this community must remain residential, and no more than one family may occupy a house. If you are a physician, dentist, chiropodist, chiropractor, optometrist, attorney, accountant, architect, or engineer, you may have a professional office in your residence, subject to local ordinance. But no commercial occupations or business activities of any kind are permitted.

**Composting** – The Maryland Homeowners Association Act § 11B-111.9(b) provides that:

> A recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a homeowners association may not prohibit or unreasonably restrict a lot owner from:
>
> (1) Composting organic waste materials for the lot owner's personal or household use, provided that the lot owner:
>
> (i) Owns or has the right to exclusive use of the area where the composting is conducted; and
>
> (ii) Observes all laws, ordinances, and regulations of the State and local jurisdiction that pertain to composting; or

(2) Contracting with a private entity to collect organic waste materials from the lot owner for composting at a composting facility.

Section 11B-111.9(c) of the Act further provides that:

> A recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a homeowners association that unreasonably impedes the ability of a private entity to access the common elements for the purpose of collecting organic waste materials from a lot owner shall be interpreted as a restriction on the lot owner's right to contract for private composting services under subsection (b)(2) of this section.

**Electric Vehicle Charging Equipment** – The Maryland Homeowners Association Act § 11B-111.8(b)(2) provides that:

> A recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a homeowners association is void and unenforceable if the covenant, restriction, or provision:
>
> . . .
>
> (2) Effectively prohibits or unreasonably restricts the installation or use of electric vehicle recharging equipment in a lot owner's deeded parking space or a parking space that is specifically designated for use by a particular owner.

**Family Day Care Homes and No-impact Home-based Businesses** – The Maryland Homeowners Association Act § 11B-111.1(c)(1) provides that:

> . . . a recorded covenant or restriction, a provision in a declaration, or a provision of the bylaws or rules of a homeowners association that prohibits or restricts commercial or business activity in general, but does not expressly apply to family child care homes or no-impact home-based businesses,[16] may not be construed to prohibit or restrict:
>
> (i) The establishment and operation of family child care homes or no-impact home-based businesses; or

[16] Section 11B-111.1(a)(4) defines a "no-impact home-based business" as a business that:

(i) Is consistent with the residential character of the dwelling unit;
(ii) Is subordinate to the use of the dwelling unit for residential purposes and requires no external modifications that detract from the residential appearance of the dwelling unit;
(iii) Uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors or that causes an increase of common expenses that can be solely and directly attributable to a no-impact home-based business; and
(iv) Does not involve use, storage, or disposal of any grouping or classification of materials that the United States Secretary of Transportation or the State or any local governing body designates as a hazardous material.

(ii) Use of the roads, sidewalks, and other common areas of the homeowners association by users of the family child care home.

Section 11B-111.1(d) of the Act provides an exception that allows an HOA to expressly prohibit the use of a residence as a family child care home or no-impact home-based business, but this

> may not be enforced unless it is approved by a simple majority of the total eligible voters of the homeowners association, not including the developer, under the voting procedures contained in the declaration or bylaws of the homeowners association.

The Attorney General of Maryland has issued a formal opinion (76 Opp. Att'y Gen. 90 to 94 [1991], May 7, 1997) that this section means that half of the total membership must vote in favor. The Montgomery County Commission on Common Ownership Communities reached the same conclusion in *Livingstone v. Parkside Community Association*, CCOC case No. 23-08 (2011), pp. 5 and 10.

For additional information concerning Montgomery County and Maryland regulations on child care centers, see the Child Care Business Starter Kit webpage in the Montgomery County Government's Montgomery County Business Portal; and the Maryland Department of Education, Division of Early Childhood's Child Care Providers webpage.

**Individuals with Disabilities and Group Homes –** The Fair Housing Act (42 U.S.C. § 3601, et seq.) prohibits the use of land covenants (or other instruments) that would have the effect of preventing persons with disabilities from living in a home or would prevent a home from being used as a group home for persons with disabilities.[17] It also makes it unlawful to refuse

[17] The Maryland Court of Appeals *now the Maryland Supreme Court), in *Colandrea v. Wilde Lake Community Association, Inc.*, 361 Md. 371, 761 A.2d 899 (2000), held that the Fair Housing Act does not prevent a land use covenant from blocking a particular group home where both the language of the covenant and the actual application of the covenant within that community:

- does not target group homes;
- evaluates group homes by the same criteria that other proposed uses are judged; and
- provides a realistic path where group homes can be in compliance with the covenants.

Unlike the Strathmore at Bel Pre Land Use Covenants, the text of the Wilde Lake Community Association covenants specifically empowered the HOA's Architecture Committee to authorize "profession or home industry" uses on lots in the community. In evaluating requests to authorize "profession or home industry" use (including group homes), Wilde Lake's Architectural Committee looked at issues of "trash, noise, parking, traffic, sewerage and health concerns." Most significantly, the Committee had authorized 4 of the 6 group homes that applied for authorization. The court also noted that the U.S. Department of Housing and Urban development had investigated the specifics of the Wilde Lake Community Association situation and had concluded that "reasonable cause does not exist to believe that a discriminatory housing practice has occurred."

> to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modification may be necessary to allow such person full enjoyment of the premises

(42 U.S.C. § 3604(f)(3)(A)). A person with a disability is defined by § 802(h) of the Act (42 U.S.C. § 3602(h)) to include a person with "a physical or mental impairment which substantially limits one or more major life activities". The regulations issued pursuant to the Act (24 C.F.R. § 100.201) define "physical or mental impairment" to include:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hem and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

The Montgomery County County Attorney's Opinion/Advice of Counsel of January 24, 2003 (Group Homes and the Fair Housing Amendments Act) (pp. 4, 5, & 7, footnote renumbered) notes that:

> There is some suggestion in the case law, particularly in *Potomac Group Homes Corp. v. Montgomery County*, [823 F. Supp. 1285 (D. Md. 1993),] that because the vast majority of group homes in Montgomery County house individuals with disability, any regulation of group homes generally could be considered facially discriminatory, despite the fact that it would also affect some group homes that do not house individuals with disabilities. . . . It appears that most group homes in Montgomery County house individuals with developmental disabilities, mental illnesses, terminal illnesses, drug or alcohol addictions, or individuals that are elderly, all of whom are considered "handicapped" under the FHAA. In *Potomac Group Homes Corp.*, the County argued that the neighborhood notification requirement was not discriminatory because in addition to applying to group homes for individuals with disabilities, it also applied to group homes for disadvantaged youth. The United States District Court for the District of Maryland rejected this argument, "[t]he fact that the notice regulation 'may also incidentally catch in its net some group homes that serve individuals without handicaps does not vitiate the facial invalidity of the rule which clearly restricts the housing choices of people based upon their handicaps.'" *Potomac Group Homes, Corp.* 823 F. Supp. at 1296, n. 9 (citing *Horizon House Developmental Servs., Inc.*, 804 F. Supp. at 694). Therefore, it appears that an ordinance in Montgomery County that explicitly seeks to

regulate the locations of "group homes" generally will likely be seen as facially discriminatory as it explicitly affects the housing choices of individuals with disabilities. . . .

. . .

Similarly, in *Horizon House Development Servs, Inc. v. Township of Upper Southampton* [804 F. Supp. 683 (E.D. Pa. 1992), ***aff'd without opinion***, 995 F.2d 217 (3d Cir. 1993)] the Defendant argued that the purpose of the requirement that group homes in the Township not be located within 100 feet of each other was to prevent the "clustering" of people with disabilities, and to promote their "integration" into the community. 804 F. Supp. at 694. The Court found that those reasons were not legitimate nor adequate to sustain the facially discriminatory spacing requirement:

> By its terms, the distance requirement disadvantages a class of people protected by the FHAA by indefinitely limiting access to that class to housing, by setting an upper limit or cap or quota on the person of[18] persons with handicap who may live in the Township. The Township has not advance [sic] sufficient evidence in support of their reasoning behind the ordinance and has not advanced a legitimate purpose for the ordinance, as well meaning as it may be thought.

. . .

In 1991, based on an opinion issued by the Maryland Attorney General, the Maryland Legislature repealed an ordinance that authorized the Department of Health and Mental Hygiene to adopt regulations to govern the siting of State-funded community residences for "special populations" and that required the regulations to include specific distance and density limits for these community residences.[19] The Maryland Attorney General advised that although the law was enacted with the good intention of increasing housing opportunities for special populations, it was nonetheless discriminatory. 74 Opinions of the Attorney General of Maryland 164 (August 7, 1989). Specifically, the Attorney General advised that the density and distance limits would "make unavailable or deny" housing to people with disabilities and constituted "terms" or "conditions" that discriminated against individuals with disabilities by limiting their ability to live in

[18] So in County Attorney's Opinion. Probably should have been "or".

[19] Specifically, the ordinance required the adoption of regulations that 1) required a four percent limit on the number of people served in community residences in relation to the total population of the area; 2) required the number of community residences in a building with multifamily dwelling units not to exceed the greater of ten percent or 2 units; 3) required the number of community residences in single family attached dwelling units between two intersecting streets, or between an intersecting street and a dead end, not to exceed two units with a minimum distance of 200 feet between the community residences, and 4) limited the distance between single family detached dwelling units serving special populations in accordance with the general population.

> residences of their choice, in violation of the FHAA. 74 Opinions of the Attorney General of Maryland at 173.

**Nuisances –** Several states have held that "an annoyance or nuisance to the neighborhood" is too vague to be enforceable.[20] The Maryland courts, however, in *RDC Melaine Drive, LLC v. Eppard*, Md. Ct. Sp. App. case no. 1146 (2020), ***aff'd*** Md. case no. 48 (2021), rejected this and ruled that "an annoyance or nuisance to the neighborhood" is sufficiently clear to be enforceable.

In *MacArthur Park Homeowners Association v. Steinhardt*, CCOC case no. 362-G (February 12, 1998), p. 8, the Montgomery County Commission on Common Ownership Communities held that:

> Finally, we also recognize the relevance to this case of the provisions of Article XII (a) of the Declaration which prohibit "noxious or offensive" activity and activity that becomes an "annoyance or nuisance to the neighborhood or other members."
>
> . . .
>
> While we acknowledge that Article XII requires subjective conclusions concerning the point at which certain activity reaches the level an actionable "nuisance" or "annoyance" under the Declaration, we can appreciate that the use of patios for basketball could constitute a nuisance (eg., an unreasonable interference with the use and enjoyment of one person's property due to the use by another of his or her property) or annoyance. While certain activity in a single family community of detached homes may be perfectly acceptable in that community, the same activity might be unacceptable in a community of attached townhouses.

In *Johnson v. The Hallowell Homeowners Association, Inc.*, CCOC case no. 46-06 (July 2, 2007), p. 11, the Montgomery County Commission on Common Ownership Communities noted that:

> [There is a] legal threshold of a nuisance established in Maryland case law. In *Slaird v. Klewers*, 260 Md. 2, 271 A.2d 345 (1970), the Maryland Court of Appeals held that in assessing the impact of noise, the court must evaluate whether the nuisance:
>
> > Will or does create such a condition of things as in the judgment of reasonable men is naturally productive of actual physical discomfort to a person of ordinary sensibilities, tastes, and habits, such as in view of the circumstances of the case is unreasonably and in derogation of the rights of the party …(citations omitted) subject to the qualification that it is not every inconvenience that will call forth the restraining power of a court. The injury must be of the property as a dwelling and

[20] See, e.g., *Steiner v. Windrow Estates Home Owners' Association,* 713 S.E.2d 518 (N.C. App. 2011).

> seriously interfere with the ordinary comfort and enjoyment of it. (citations omitted). *Slaird*, 260 Md. at 9, 271 A.2d at 348.

**One Family –** See the **Single-family** note in item 1, above.

**Portable Basketball Apparatus –** Maryland Real Property Code § 2-124(b) — dealing with restrictions contained in deeds; declarations; contracts; homeowner association bylaws or rules; security instruments; and other instruments affecting the transfer, sale, or other interest in real property — provides that:

> (1) A restriction on use regarding land use may not impose or act to impose an unreasonable limitation on the location and use of a portable basketball apparatus, provided that the property owner owns or has the right to exclusive use of the area in which placement and use of the portable basketball apparatus is to occur.
>
> (2) For purposes of paragraph (1) of this subsection, an unreasonable limitation includes a limitation that:
>
> (i) Significantly increases the cost of using a portable basketball apparatus; or
>
> (ii) Significantly decreases the ability to use a portable basketball apparatus as designed and intended.[21]

**Rentals –** Renting a home does not convert it into a business. Paragraph 1(g) of the Land Use Covenants that apply to Strathmore at Bel Pre Sections 1, 6 to 10, and 21 (and Article VI, §§ 1-3 of the BPRA By-Laws), expect that some properties in the community will be rentals.[22]

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[21] For information on the background of this statute, see:

- Baker, Jeff, "New law aims to keep hoops up, community tensions down," *Washington Post*, November 29, 2021, p. B3 (reprinted from *Baltimore Sun*, November 25, 2021).
- McDaniels, Andrea K., "Baltimore County homeowners' association orders kids' basketball hoops removed; parents suspect discrimination," *Baltimore Sun*, March 23, 2021.
- Rockel, Eric, "President's Message," *GTCC: The Greater Timonium Community Council [Newsletter]*, vol. XIII, issue 3, May 2021, pp. 1-2.

[22] Paragraph 1(g) of the Land Use Covenants for Strathmore at Bel Pre Sections 1, 6 to 10, and 21 provide that:

> . . . the owner of any lot may place a sign not larger than ten (10) inches by fifteen (15) inches thereon, bearing the words "For Sale" or "To Rent" together with the name and address of the person to whom inquiries regarding the sale or rent of such property are to be addressed. . . .

Article VI, §§ 1-3 of the BPRA By-Laws provide that:

> Section 1. Any member may share his right of use and enjoyment in the Common Areas with the members of his family who reside in his household upon the Properties or alternatively, transfer those rights to any of his tenants who reside upon the Properties. Such member shall notify the Secretary of the Association in writing of the name of any such person and of the relationship of the member to such person.

In *Lowden v. Bosley*, 395 Md. 58, 909 A.2d 261 (2006), the Maryland Court of Appeals (now the Maryland Supreme Court) held that the existence of a covenant that "All lots shall be used for single family residential purposes only" does not, in and of itself, prohibit the owners of homes on those lots from renting their homes to residential tenants on a short-term basis.[23] For more information on the single-family restriction, see the **Single-family** note in item 1, above.

**Sidewalk snow removal –** Montgomery County Code § 49-17 provides that the owner and renter (if any) of each residential property is responsible (with certain exceptions) for removing the snow and ice on any public sidewalk adjacent to the property, within 24 hours of the precipitation. For more information, see the Montgomery County Government's Safe Sidewalks webpage.

**Structures –** The Montgomery County Commission on Common Ownership Communities, in *Bluefeld v. Fallstone Homeowners Association*, CCOC case no. 424-0, August 16, 1999, pp.6-7, discusses at some length what constitutes a structure.

The Maryland Court of Special Appeals (now the Appellate Court of Maryland) held in *Chestnut Real Estate Partnership v. Huber*, that the construction of a garden shed on a property violated a covenant that stated that "no buildings nor structures" could be built on the property.

For more information, see the **Sheds** note in item 1, above.

**Swings –** in 1993 the Maryland Commission on Human Relations (now the Maryland Commission on Civil Rights) took the position that in an HOA community where there are no swings in the common area, it is a fair housing violation for the HOA to refuse to permit a homeowner to install a swing set on the homeowner's backyard. Section 804(b) of the Fair Housing Act (42 U.S.C. § 3604(b)) makes it unlawful "To discriminate against any person in the terms, conditions, or privileges of sale of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . familial status".[24] Likewise, Maryland's

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Section 2. The obligation of the member with regard to annual assessments may not be transferred to any tenants.

Section 3. The Trustees of the Association shall be empowered to establish definitions of members of a family and/or tenants who reside upon the Properties. The Trustees shall be empowered to establish categories for guest admission to the Common Areas and facilities.

[23] The covenants in the *Lowden* case also provided that (emphasis added) "Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to Common Areas and facilities to members of his family, *his tenants* or contract purchasers who resides on a Lot."

[24] Section 802(k) of the Fair Housing Act (42 U.S.C. § 3602(k)) defines "familial status" as follows:

> "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with-
>
> (1) a parent or another person having legal custody of such individual or individuals; or
>
> (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

discrimination in housing law (Md. State Government Code § 20-705(2)) also provides that a person may not "discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental of a dwelling, because of . . . familial status".[25]

**Montgomery County requirements –** In addition to any other requirements, Montgomery County requires permits for various home occupations. For more information, see the Montgomery County Department of Permitting Services' Home Occupation Registration webpage.

## 6. Communication towers

**Applies to SBP Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 21:**

¶ 1(f). "No radio, television or similar tower shall be erected on any lot or attached to any dwelling, except that a radio or television antenna may be attached to any dwelling provided it (1) does not project more than ten (10) feet above the roof of the dwelling as originally erected, and (2) is connected to the roof only by a single tubular support."

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 2) states that:

> You may attach a radio or television antenna to your roof provided it is not more than ten feet high and is connected only by a single tubular support. Radio and television towers, whether or not attached to the dwelling, are absolutely prohibited.

**FCC Rule –** The Over-the-Air Reception Devices Rule issued by the Federal Communications Commission (47 CFR § 1.4000; authorized by § 207 of the Telecommunications Act of 1997, 47 U.S.C. § 303 nt., Pub. L. 104-104) substantially limits state and local laws, covenants, and homeowners' association rules that impair the installation,

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> The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

[25] Md. State Government Code § 701(e) defines "familial status" as follows:

> (1) "Familial status" means the status of one or more minors who are domiciled with:
>
> (i) a parent or other person having legal custody of the minor; or
>
> (ii) the designee of a parent or other person having legal custody of the minor with the written permission of the parent or other person.
>
> (2) "Familial status" includes the status of being:
>
> (i) a pregnant woman; or
>
> (ii) an individual who is in the process of securing legal custody of a minor.

maintenance, or use of television antennas, antennas (1 meter or less in diameter) for direct broadcast satellite services, and various other antennas 1 meter or less in diameter.[26] For more information (including the full text of FCC Orders and Declaratory Rules under the Rule), see the FCC's Over-the-Air Reception Devices Rule webpage.[27]

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[26] The Over-the-Air Reception Devices Rules provides in 47 CFR § 1.4000(a)(1), (3) that:

> (1) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulations, or any private covenant, contract provision, lease provision, homeowners' association rule or similar restriction, on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property that impairs the installation, maintenance, or use of:
>
> (i) An antenna that is:
>
> (A) Used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, including a hub or relay antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services, and
>
> (B) One meter or less in diameter or is located in Alaska;
>
> (ii) An antenna that is:
>
> (A) Used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, including a hub or relay antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services, and
>
> (B) That is one meter or less in diameter or diagonal measurement;
>
> (iii) An antenna that is used to receive television broadcast signals; or
>
> (iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section; is prohibited to the extent it so impairs, subject to paragraph (b) of this section.
>
> . . .
>
> (3) For purposes of this section, a law, regulation, or restriction impairs installation, maintenance, or use of an antenna if it:
>
> (i) Unreasonably delays or prevents installation, maintenance, or use;
>
> (ii) Unreasonably increases the cost of installation, maintenance, or use; or
>
> (iii) Precludes reception or transmission of an acceptable quality signal.

[27] **Historical note:** Evan McKenzie, in *Beyond Priovatopia: Rethinking Residential Private Government*, Urban Institute Press, Washington, DC, 2011, p. 97, provides the following background on why many homeowners' association communities have covenants restricting television antennas and satellite dishes:

> Examples of federal regulatory policy [concerning homeowners' associations] are few. One example addressed a dispute between satellite television companies and cable television providers. The satellite companies complained that developers were entering into deals with cable companies, who would wire the development for cable at no charge if the developer would draft a covenant banning all types of television antennas. The ban on antennas would

## 7. Signs

**Applies to SBP Sections 2, 3, 4, and 5:**

¶ 1(g). "No signs whatsoever shall be displayed on any lot, except a family or professional name plate, a name and address plate, or an address plate. Such plates must be approved by the Company as to size, form and location."

**Applies to SBP Sections 1, 6, 7, 8, 9, 10, and 21:**

¶ 1(g). "No signs of any kind or character shall be exhibited, displayed, or placed upon any portion of the above described premises, except that the owner of any lot may place a sign not larger than ten (10) inches by fifteen (15) inches thereon, bearing the words 'For Sale 'or 'To Rent 'together with the name and address of the person to whom inquiries regarding the sale or rent of such property are to be addressed. The owner or occupant of such premises may also place one sign upon the premises upon which is inscribed the name and profession of the occupant of the premises, but no such sign shall be larger than six (6) inches by twelve (12) inches."

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 3) states that: "No signs are permitted on any lot except name plates giving family or professional name and/or address. Such plates must be approved by the Company as to size, form, and location."

**BPRA Signs –** Since 2018, the BPRA has embraced the practice found in many HOA communities of regularly posting yard signs throughout the community reminding homeowners to pay their annual assessments. Since 2017, the BPRA has also posted yard signs urging residents to attend BlocktoberFest. Since 2014, the Strathmore Bel Pre Civic Association has posted signs urging residents to attend the Summer Entertainment Series (and since 2023, Spring Thing), which are both sponsored jointly by the BPRA and the Civic Association.

**Discriminatory application of sign rules** – Section 804(b) of the Fair Housing Act (42 U.S.C. § 3604(b)) makes it unlawful "To discriminate against any person in the terms,

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then be interpreted to include satellite dishes. The effect of these deals was to create an artificial cable television monopoly in the new neighborhoods.

Congress addressed this in the Telecommunications Act of 1996 (section 207), where the Federal Communications Commission (FCC) was instructed to draft regulations that would prohibit HOAs from unreasonably impairing the ability of residents to install small satellite dish antennas for television reception. The FCC enacted that rule (Title 17 of the Code of Federal Regulations, section 1.4000) on October 14, 1966.

conditions, or privileges of sale of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."

**Political signs -** Maryland Homeowners Association Act § 11B-111.2 provides:

> **Candidate sign defined**
> (a) In this section, "candidate sign" means a sign on behalf of a candidate for public office or a slate of candidates for public office.
>
> **Display of candidate signs or signs relating to propositions**
> (b) Except as provided in subsection (c) of this section, a recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a homeowners association may not restrict or prohibit the display of:
> (1) A candidate sign; or
> (2) A sign that advertises the support or defeat of any question submitted to the voters in accordance with the Election Law Article.
>
> **Restrictions to display of candidate signs or signs relating to propositions**
> (c) A recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a homeowners association may restrict the display of a candidate sign or a sign that advertises the support or defeat of any proposition:
> (1) In the common areas;
> (2) In accordance with provisions of federal, State, and local law; or
> (3) If a limitation to the time period during which signs may be displayed is not specified by a law of the jurisdiction in which the homeowners association is located, to a time period not less than:
> (i) 30 days before the primary election, general election, or vote on the proposition; and
> (ii) 7 days after the primary election, general election, or vote on the proposition.

**U.S. Flag –** Section 3 of the Freedom to Display the American Flag Act of 2005 (4 U.S.C. § 5 nt., Pub. L. 109-243, 12 Stat. 572) provides that:

> A condominium association, cooperative association, or residential real estate management association may not adopt or enforce any policy, or enter into any agreement, that would restrict or prevent a member of the association from displaying the flag of the United States on residential property within the association with respect to which such member has a separate ownership interest or a right to exclusive possession or use.

Section 4(2) of the 2005 Act does, however, provide that:

> Nothing in this Act shall be considered to permit any display or use that is inconsistent with—
>
> (2) any reasonable restriction pertaining to the time, place, or manner of displaying the flag of the United States necessary to protect a substantial interest of the condominium association, cooperative association, or residential real estate management association.

Maryland also has a statute concerning display of the U.S. Flag. Maryland Real Property Code § 14-128(b)-(d) provides that:

> **(b) Homeowner or tenant may not be prohibited from displaying flag. –** Regardless of the terms of any contract, deed, covenant, restriction, instrument, declaration, rule, bylaw, lease agreement, rental agreement, or any other document concerning the display of flags or decorations by a homeowner or tenant on residential property, a homeowner or tenant may not be prohibited from displaying on the premises of the property in which the homeowner or tenant is entitled to reside one portable, removable flag of the United States in a respectful manner, consistent with 4 U.S.C. §§ 4 through 10, as amended, and subject to reasonable rules and regulations adopted pursuant to subsection (d) of this section.
>
> **(c) Terms of contract may not prohibit display of flag. –** The terms of any contract, deed, covenant, restriction, instrument, declaration, rule, bylaw, lease agreement, rental agreement, or any other document concerning the display of flags or decorations by a homeowner or tenant on residential property may not prohibit or unduly restrict the right of a homeowner or tenant to display on the premises of the property in which the homeowner or tenant is entitled to reside one portable, removable flag of the United States in a respectful manner, consistent with 4 U.S.C. §§ 4 through 10, as amended, and subject to reasonable rules and regulations adopted under subsection (d) of this section.
>
> **(d) Rules and regulations. –**
>
> > **(1)** Subject to paragraph (2) of this subsection, the board of directors of a condominium, homeowners association, or housing cooperative, or a landlord may adopt reasonable rules and regulations regarding the placement and manner of display of the flag of the United States and a flagpole used to display the flag of the United States on the premises of the property in which the homeowner or tenant is entitled to reside.
> >
> > **(2)** Before adopting any rules or regulations under paragraph (1) of this subsection, the board of directors of the condominium, homeowners association, or housing cooperative, or the landlord shall:
> >
> > > **(i)** Hold an open meeting on the proposed rules and regulations for the purpose of providing affected homeowners and tenants an opportunity to be heard; and
> > >
> > > **(ii)** Provide advance notice of the time and place of the open meeting by publishing the notice in a community newsletter, on a community bulletin board, by means provided in the documents governing the condominium, homeowners association, or housing cooperative, or in the lease, or by other means reasonably calculated to inform the affected homeowners and tenants.

**Montgomery County Sign Ordinance –** Separate and apart from the Strathmore at Bel Pre Land Use Covenants, Montgomery County has its own sign ordinance. The Montgomery County sign ordinance can be found at Division 67 of the Montgomery County Zoning Ordinance.

## 8. Architecture, materials, and colors

**Applies to SBP Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 21:**

¶ 2. "No building, structure, dwelling, garage, carport or breezeway shall be erected, or shall any alteration or addition to or repainting of the exterior thereof be made, unless it shall conform in architecture, material and color to the dwelling as originally constructed by the Company."

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (pp. 1-2) states that:

> The exterior design, materials, and color of each house has been carefully selected for pleasing and harmonious variety in your neighborhood. If you wish to make alterations or additions to the exterior of your home, or to repaint the exterior, such changes must conform in architecture, material, and color to the original dwelling, as must any breezeway, carport, or other structure in connection with such dwelling.
>
> . . . .
>
> It would also be wise to consult the local building inspector before you proceed with any work other than painting, to be certain of your compliance with all applicable ordinances. It may be necessary for you to obtain a building permit.

**Driveways --** For information on the County requirements concerning driveway construction and repair, see the Montgomery County Department of Permitting Services' Driveway Permits Permit & Inspection Process webpage.

**Individuals with Disabilities and Group Homes –** The Fair Housing Act prohibits using a covenant to prevent a person with disabilities from living in a home. If requiring that the architecture, material, and color to the dwelling be as originally constructed by Levitt & Sons would have the effect of preventing a home from being used by a person with disabilities or as a group home for persons with disabilities, then the Fair Housing Act prohibits enforcement of the covenant in that situation. For more information, see the **Individuals with Disabilities and Group Homes** note in item 5, above.

**Interior alterations visible through windows –** The Montgomery County Commission on Common Ownership Communities, in *Fizyta v. Quince Haven Homeowners Association*, CCOC case no. 473-O (November 29, 2000) and *D'Aoust v. Quince Haven Homeowners Association*, CCOC case no. 470-O (November 15, 2000, *corrected* January 12, 2001), ruled on the meaning

of a covenant similar to the language in ¶ 2 of the Strathmore at Bel Pre Land Use Covenants.[28] In the *Fizyta* case, the Commission ruled (p. 3, Conclusion of Law 1) that the language of the covenant does not cover changes in the interior of the home, even though those changes are visible through windows. In this particular case, the issue was the removal of window mullions - where the mullions were not on the exterior of the windows, and therefore not within the reach of the covenant as written. The Commission noted that some homes in the community were built without window mullions and that the homeowners' association had "introduced no evidence to establish that mullions in the windows of colonial style homes are such an essential architectural characteristic of those homes and have such a relationship to the general plan or scheme of development of the community".

Likewise, in the *D'Aoust case*, the Commission ruled that the same covenant language did not apply to stained glass treatment panels installed on the interior of windows — even though they were visible through a window and created "the visual effect of stained glass windows".

**Roof materials -** Montgomery County Fire Safety Code § 22-98(a) provides that:

> A person must not make or enforce any deed restriction, covenant, rule, or regulation, or take any other action, that would require the owner of any building to install any roof material that does not have a class A rating, or an equivalent rating that indicates the highest level of fire protection, issued by a nationally recognized independent testing organization.

Section 22-98(b)(1) of the Code defines a homeowners' association as a "person" for purposes of the law. For more information on the implementation of § 22-98, see *Baroni v. Avenel Community Association*, CCOC case no. 55-11 (December 5, 2014); and Montgomery County Department of Permitting Services' Code Interpretation/Policy FPCC 19-2018 (November 6, 2018).

**Satellite dishes –** See the **FCC Rule** note in item 6, above.

**Solar panels and other renewable energy devices** – Maryland Real Property Code § 2-119(b) – dealing with restrictions contained in covenants, homeowner association governing documents, or other instruments – provides that:

> (1) A restriction on use regarding land use may not impose or act to impose unreasonable limitations on the installation of a solar collector system on the roof or exterior walls of improvements, provided that the property owner owns or has the right to exclusive use of the roof or exterior walls.

[28] The covenant in the *Fizyta* and *D'Aoust* cases, provided, in relevant part, that:

> No building, fence, wall, mailbox or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including change in color) . . .

(2) For purposes of paragraph (1) of this subsection, an unreasonable limitation includes a limitation that:
(i) Significantly increases the cost of the solar collector system; or
(ii) Significantly decreases the efficiency of the solar collector system.

Montgomery County Code § 40-3A – dealing with devices that create, convert, or actively use solar, wind, and geothermal energy – provides that:

> A person must not create or enforce any deed restriction, covenant, rule, or regulation, or take any other action, which would prohibit the owner of any building from installing a renewable energy device.

For additional information on Montgomery County rules concerning solar panels, see the Montgomery County Department of Permitting Services' Residential Photovoltaic (Solar) Permits & Inspection Process webpage.

## 9. Cost and size of dwelling

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

¶ 3. "No dwelling shall be erected on any lot at a cost less than $20,000 based upon cost levels prevailing on the date this Declaration is recorded. It being the intent and purpose of this covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same as or better than that which can be produced on the date this Declaration is recorded at the minimum cost stated therein for the minimum permitted dwelling size. The ground floor area of the main structure, exclusive of one-story open porches, garages and carports, shall not be less than 1,600 square feet for a one-story dwelling, nor less than 950 square feet for a dwelling of more than one story."

The Declarations were recorded on the following dates:

- SBP Section 2 – August 22, 1968
- SBP Section 3 – September 13, 1968
- SBP Section 4 – January 13, 1969
- SBP Section 5 – June 19, 1969
- SBP Section 6 – August 1, 1969
- SBP Section 7 (except 3101, 3105, 3019, and 3113 Birchtree Lane) – November 12, 1969
- 3101, 3105, 3019, and 3113 Birchtree Lane – July 15, 1970

$20,000 (in 1969 dollars) is the equivalent of $141,814.17 (in 2020 dollars).

**Applies to SBP Sections 1, 8, 9, 10 and 21:**

No similar provision.

## 10. Drilling and Mining

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

¶ 4. "No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any lot."

**Applies to SBP Sections 1, 8, 9, 10 and 21:**

¶ 3 is the same as ¶ 4 of SBP Section 2.

**Notes:**

All the lots within the BPRA have been zoned by the Montgomery County Council as either R-90 or R-200.[29] Sections 3.1.6 and 3.6.5 of the Montgomery County Zoning Ordinance prohibit any "use that extracts rocks, minerals, and other natural resources from the ground" within those zones, unless there is a recommendation for that use in the applicable master plan. Neither of the two master plans adopted by the Montgomery County Council for Strathmore at Bel Pre (the Aspen Hill Master Plan approved and adopted in 1994, and the Kensington-Wheaton Master Plan approved and adopted in 1989) recommend any of those uses within Strathmore at Bel Pre.

Additional restrictions on mineral extraction in Montgomery County are set out in Chapter 38 of the Montgomery County Code, including the notice requirements in § 38-5(c)(3).

## 11. Animals

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

¶ 5. "No animals, livestock, or poultry of any kind shall be raised, bred, or kept in any house or on any lot, except that not more than two (2) dogs, cats or other domesticated household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose."

[29] See footnote 13, above.

**Applies to SBP Sections 1, 8, 9, 10 and 21:**

¶ 4 is the same as ¶ 5 of SBP Section 2.

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 3) states that: "You may not keep more than two domesticated household pets (dogs, cats, etc.). No commercial breeding of such pets is allowed, nor is harboring of livestock permitted."

**Chickens —** For information on the County requirements concerning chickens in residential areas, see the Montgomery County Department of Permitting Services' Backyard Chickens webpage.

## 12. Garbage and Rubbish

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

¶ 6. "Garbage or rubbish shall not be dumped or allowed to remain on any lot. If contained in a closed metal receptacle, it may be placed outside the dwelling for collection, in accordance with the regulations of the collecting agency."

**Applies to SBP Sections 1, 8, 9, 10 and 21:**

¶ 5 is the same as ¶ 6 of SBP Section 2.

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 3) states that: "When you put out your garbage or rubbish for collection, make sure it is in a tightly closed metal container."

**Montgomery County ordinance –** Montgomery County Code § 48-10 provides that:

> It shall be unlawful for any person to dispose of, dump, deposit or leave any solid waste within the county, on public or private property, except at a solid waste acceptance facility approved under this chapter, provided that, with written permission of the owner, clean fill may be deposited upon private property.

## 13. Sewage

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

¶ 7. "No cesspool, septic tank or other individual or privately-owned sewage disposal system shall be installed or permitted on any lot."

**Applies to SBP Sections 1, 8, 9, 10 and 21:**

¶ 6 is the same as ¶ 7 of SBP Section 2.

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 4) states that:

> Individual sewage disposal systems and water supply systems such as water wells, cesspools, septic tanks, etc., are not allowed; they could constitute a public health menace and might interfere with existing public facilities.

**Montgomery County ordinances –** Restrictions on individual sewage systems are set out in Chapter 27A of the Montgomery County Code and Chapter 27A of the Code of Montgomery County Regulations.

## 14. Water Supply

**Applies to SBP Sections 2, 3, 4, 5, 6, 7:**

¶ 8. "No water well or other individual or privately-owned water supply system shall be installed or permitted on any lot."

**Applies to SBP Sections 1, 8, 9, 10 and 21:**

¶ 7 is the same as ¶ 8 of SBP Section 2.

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 4) states that:

> Individual sewage disposal systems and water supply systems such as water wells, cesspools, septic tanks, etc., are not allowed; they could constitute a public health menace and might interfere with existing public facilities.

**Montgomery County ordinances –** Restrictions on water supply systems are set out in Chapter 27A of the Montgomery County Code and Chapter 27A of the Code of Montgomery County Regulations.

## 15. Fences – Fabricated or Growing

**see also item 4 (Fences – Generally), above**

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

¶ 9. "Fabricated fences are prohibited on any part of the lot except as set out in Paragraph 1(d). Shrub or other growing fences may be planted but shall not be permitted to grow to a height exceeding forty-two (42) inches, except as expressly provided for in Paragraph 11 relating to protective screening."

**Applies to SBP Sections 8, 9, 10, and 21:**

¶ 8 is the same as ¶ 9 of SBP Section 2, except the reference to Paragraph 11 is replaced with a reference to Paragraph 10.

**Applies to SBP Section 1:**

¶ 8 is the same as ¶ 9 of SBP Section 2, except that ", except as expressly provided for in Paragraph 11 relating to protective screening" is not included, so that the paragraph reads:

> Fabricated fences are prohibited on any part of the lot except as set out in Paragraph 1(d). Shrub or other growing fences may be planted but shall not be permitted to grow to a height exceeding forty-two (42) inches.

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (pp. 2 and 4) states that:

> Hedges, shrubs, and other growing fences may be planted on any part of any lot, as long as they are not permitted to grow higher than 3½ feet.
>
> . . .
>
> If your property backs on a road, your lot may be deeper than the standard lot to allow room for special landscaping to protect your privacy from passing automobiles and pedestrians. You must – and we're sure you'll want to – take care of this landscaping. With reasonable attention it will soon grow thick and high enough to give you complete privacy. This is the one and only place where shrub fencing is permitted to grow higher than three feet.[30]

[30] The "three feet" reference is probably an error and probably should have been 3½ feet (42 inches). In the August 1971 issue of *The Bugle* ("Covenants & Restrictions," p. 7), Ralph Buck notes that:

**Individuals with Disabilities and Group Homes –** The Fair Housing Act prohibits using a covenant to prevent a person with disabilities from living in a home. If the limitations on fences would have the effect of preventing a home from being used by a person with disabilities or as a group home for persons with disabilities, then the Fair Housing Act prohibits enforcement of the covenant in that situation. For more information, see the **Individuals with Disabilities and Group Homes** note in item 5, above.

**Montgomery County ordinances –** Montgomery County Zoning Ordinance § 6.4.3(C) limits the height and location of fences in residential zones. All the lots within the BPRA have been zoned by the Montgomery County Council as either R-90 or R-200.[31] For more information on Montgomery County rules concerning fences, see the Montgomery County Department of Permitting Services' Residential Fence Permit & Inspection Process webpage.

## 16. Laundry

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

¶ 10. "All laundry poles and lines outside of houses are prohibited except that one portable laundry dryer, not more than seven (7) feet high may be used in the rear yard of each house on days other than Sundays and legal holidays; and such dryer shall be removed from the outside when not in actual use."

**Applies to SBP Sections 1, 8, 9, 10 and 21:**

¶ 9 is the same as ¶ 10 of SBP Section 2.

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 3) states that:

> Laundry may be hung only in the rear yard, on a portable type dryer which must be taken down when not actually in use. Old-fashioned clotheslines strung across the lawn or house look messy and are prohibited. And please don't leave laundry hanging out on Sundays and holidays, when you and your neighbors are most likely to be relaxing outdoors.

---

> Unless you are already an experienced home buyer, the first exposure to covenants and restrictions which apply to your home was possibly when you leafed through the Levitt and Sons' Homeowner's Portfolio. In the Portfolio are outlined the various restrictions concerning what you may do within and around your home, as well as portions of the philosophy behind the covenants. *The precise legal wording of these enforceable restrictions do not always agree with the Portfolio summaries.* [emphasis added]

[31] See footnote 13, above.

**Maryland Law -** Maryland Real Property Code § 14-130(c)-(e) provides:

> **Documents concerning installation or use of clotheslines**
>
> (c) A contract, deed, covenant, restriction, instrument, declaration, rule, bylaw, lease agreement, rental agreement, or any other document concerning the installation or use of clotheslines on single-family property may not prohibit a homeowner or tenant from installing or using clotheslines on single-family property.
>
> **Homeowners or tenants not prohibited from installing or using clotheslines**
>
> (d) Notwithstanding any other provision of law or the terms of any contract, deed, covenant, restriction, instrument, declaration, rule, bylaw, lease agreement, rental agreement, or any other document concerning the installation or use of clotheslines on single-family property, a homeowner or tenant may not be prohibited from installing or using clotheslines on single-family property.
>
> **Restrictions relating to dimensions and placement of clotheslines**
>
> (e) This section does not prohibit reasonable restrictions on:
>
> (1) The dimensions, placement, or appearance of clotheslines for the purpose of protecting aesthetic values;
>
> (2) The placement of clotheslines for the purpose of protecting persons or property in the event of fire or other emergencies.

Subsection (f) sets out notice requirements that must be met before adopting "any restriction concerning the installation or use of clotheslines on single-family property". Subsection (a)(2)(i)(B) defines "single-family property" as including all homes covered by the Maryland Homeowners Association Act, and therefore all homes within the BPRA.

**Sunday prohibition –** Until the practice was outlawed, Levitt & Sons refused to sell homes to Jewish families. Montgomery County law prohibited the practice starting in 1967.[32] The practice has been prohibited nation-wide since 1968.[33] The prohibition on drying laundry outside on Sundays is a remnant of Levitt & Sons' (and other developers') efforts to make Jewish families (and others who do not celebrate the Sabbath on Sundays) less welcome.

## 17. Protective Screening

**Applies to SBP Sections 2, 4, 5, 6, and 7:**

¶ 11. "(a) Protective screening areas are established on all corner lots in an area beginning approximately ten (10) feet back from the intersection of the two street lines. Planting shall be maintained throughout the entire length of such screening area by the owner of the lot, at his own expense, so as to form an effective screen for the protection of the residential area. No building or structure shall be placed or permitted in such screening area, nor shall vehicular

[32] Montgomery County Ordinance 6-42. Now Montgomery County Code § 27-12.
[33] Fair Housing Act, 42 U.S.C. § 3604.

access be permitted over such area, other than for the purpose of installing, maintaining or utilizing the easements referred to in Paragraph 12.

"(b) Wherever in any such screening area on any lot, the Company has planted or may hereafter plant screening material, the owner shall maintain such material intact and shall not remove any part thereof or add to the same. If any such planting dies or is destroyed, the owner shall forthwith replace the same with planting of the same kind and size." [struck-through text has been omitted]

**Applies to SBP Section 3:**

¶ 11 is the same as ¶ 11 of SBP Section 2, except the first sentence of subparagraph (a) reads:

> Protective screening areas are established as follows:
>
> Area Block Lot
>
> and on all corner lots in an area beginning approximately ten (10) feet back from the intersection of the two street lines.

**Applies to SBP Sections 8, 9, 10 and 21:**

¶ 10 is the same as ¶ 11 of SBP Section 2, except the reference at the end of subparagraph (a) to Paragraph 12 is replaced with a reference to Paragraph 11.

**Applies to SBP Section 1:**

No similar provision.

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 4) states that:

> Corner plantings which have been installed by the Company are to be maintained by the homeowner. If the original plants should die, they are to be replaced at the homeowners' expense with plants of the same kind and size.

**Low-Impact Landscaping –** see the **Low-Impact Landscaping** note in item 19, below.

## 18. Easements

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

¶ 12. "(a) Perpetual easements for the installation, construction, reconstruction, maintenance, repair, operation and inspection of sewer, water and drainage facilities, for the

benefit of the adjoining land owners and/or the company, authority, commission, municipality or other agency supplying sewer, water and/or drainage facilities, are reserved as shown on the aforesaid subdivision plat. No building, fences or structures shall be erected nor any paving laid within the easement areas occupied by such facilities. No trees or shrubs shall be planted in the easement areas and no excavation or filling shall be done in the easement areas without the written consent of the company, authority, commission, municipality or other agency supplying sewer, water and/or drainage facilities for said subdivision.

"(b) The Company, its successors and assigns, shall at all times have the right of ingress and egress over said easements and a right-of-way for the purpose of installing, constructing, reconstructing, maintaining, repairing, operating and inspecting any sewer, water and/or drainage facilities within said easement and right-of-way areas, along the lines designated for such purpose on said subdivision plat and shall also have a right-of-way in general in and over each lot for access to such easement areas and the sewer, water and/or drainage facilities located therein and for installing, operating, maintaining, repairing, inspecting and reading any meters appurtenant to such facilities. The Company, its successors and assigns, and any party for whose benefit the within stated provisions concerning sewer, water and drainage easements are made, shall have the right to do whatever may be requisite for the enjoyment of the rights herein granted, including the right of clearing said easement areas of timber, trees or shrubs, or any building, fence, structure or paving erected on or laid within the easement areas, and no charge, claim or demand may be made against such parties for any or all activities in the exercise of their rights herein granted. The provisions of the within Declaration concerning violations, enforcement and severability are hereby made a part of these provisions for perpetual sewer, water and drainage easements; and notwithstanding any change which may be made with respect to any other provisions of the within Declaration, the aforesaid provisions incorporated in these provisions shall be perpetual and run with and bind the land forever.

"(c) Perpetual easements and rights-of-way are also reserved in general in and over each lot for the installation, construction, reconstruction, maintenance, repair, operation and inspection of electric, gas and telephone facilities and for reading any meters appurtenant thereto."

**Applies to SBP Section 1:**

¶ 10 is the same as ¶ 12 of SBP Section 2.

**Applies to SBP Sections 8, 9, 10 and 21:**

¶ 11 is the same as ¶ 12 of SBP Section 2.

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 4) states that:

> Easements for utilities may have been reserved on your lot. Within any such easement area, you may not erect any building, structure, or fence, nor excavate, fill, or install

pavement. If you do, you run the risk of having to remove any such improvement, thereby losing your entire investment and paying all costs of removal as well.

**Applicability to other SBP Sections –** While SBP Sections 13 to 20 and 22 are not covered by the Land Use Covenants, there are easements recorded in the Montgomery County Land Records that provide the public utilities with authority similar to the authority granted in ¶ 12 of the SBP Section 2 Land Use Covenant.[34]

**Montgomery County ordinances –** Section 6.4.3(C)(2)(c) of the Montgomery County Zoning Ordinance provides that "A wall or fence must not be located within any required drainage, utility or similar easement, unless approved by the agency with jurisdiction over the easement."

## 19. Lawn Mowing

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

¶ 13. "Lawns shall be mowed and weeds removed at least once a week between April 15th and November 15th of each year."

**Applies to SBP Section 1:**

¶ 11 is the same as ¶ 13 of SBP Section 2.

**Applies to SBP Sections 8, 9, 10 and 21:**

¶ 12 is the same as ¶ 13 of SBP Section 2.

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 4) states that:

> A lot of thought, work, and money have gone into the preparation of your lawn. It will flourish if you take care of it, but it will quickly grow wild and unkempt if you don't. Nothing makes a lawn – and a neighborhood – and a community – look shabbier than uncut grass and unsightly weeds. Lawns must therefore be mowed and weeds removed at least once a week between April 15 and November 15.

[34] See, e.g., the May 22, 1986, Utility Easement between Fairfield Homes and PEPCO, recorded in the Montgomery County Land Records on May 29, 1986, at Liber 7136, Folios 344 to 348, covering 13408, 13410, 13412, and 13414 Rippling Brook Drive, in Strathmore at Bel Pre Section 17.

**Low-Impact Landscaping –** Maryland Real Property Code § 2-125(b) – dealing with restrictions contained in covenants, homeowner association bylaws and rules, and other instruments – provides that :

**(1)** A restriction on use regarding land use may not impose or act to impose unreasonable limitations on low-impact landscaping, provided that the property owner:

(i) Owns or has the right to exclusive use of the property; and

(ii) Maintains and regularly tends to the low-impact landscaping.

2. For purposes of paragraph (1) of this subsection, an unreasonable limitation includes a limitation that:

a. Significantly increases the cost of low-impact landscaping;

b. Significantly decreases the efficiency of low-impact landscaping; or

c. Requires cultivated vegetation to consist in whole or part of turf grass.

Section 2-125(a)(2) provides that:

(i) "Low-impact landscaping" means landscaping techniques that conserve water, lower maintenance costs, provide pollution prevention, and create habitat for wildlife.

(ii) "Low-impact landscaping" includes:

1. Bi-habitat gardens and other features designed to attract wildlife;

2. Pollinator gardens and other features designed to attract pollinator species;

3. Rain gardens and other features that use natural biological principles to return rainwater to the soil and to filter rainwater of excess nutrients;

4. Xeriscaping and other forms of landscaping or gardening that reduce or eliminate the need for supplemental water from irrigation.

## 20. Violations

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

¶ 14. "Violation of any covenant or restriction may be remedied by the Company, and the expenses thereof shall be chargeable to the then owner of the lot and be payable forthwith upon demand. The foregoing shall be alternative or in addition to the enforcement provisions of Paragraph 15."

**Applies to SBP Section 1:**

¶ 12 is the same as ¶ 14 of SBP Section 2, except the reference to Paragraph 15 is replaced with a reference to Paragraph 14.

**Applies to SBP Sections 8, 9, 10 and 21:**

¶ 13 is the same as ¶ 14 of SBP Section 2, except the reference to Paragraph 15 is replaced with a reference to Paragraph 14.

## 21. Enforcement

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

¶ 15. "Enforcement shall be by proceeding at law or in equity, brought by the Company, its successors and assigns, or by the owner of any lot, against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages or both."

**Applies to SBP Section 1:**

¶ 13 is the same as ¶ 15 of SBP Section 2.

**Applies to SBP Sections 8, 9, 10 and 21:**

¶ 14 is the same as ¶ 15 of SBP Section 2.

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 4) states that:

> You and other property owners in your section have the right to take legal steps to enforce these restrictions, eliminate violations by others, and thereby preserve the value of your property.

## 22. Severability

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

¶ 16. “Invalidation of any of the aforesaid covenants and restrictions by judgment or court order shall in no wise affect any of the other covenants which shall remain in full force and effect.”

**Applies to SBP Section 1:**

¶ 14 is the same as ¶ 16 of SBP Section 2.

**Applies to SBP Sections 8, 9, 10 and 21:**

¶ 15 is the same as ¶ 16 of SBP Section 2.

## 23. Amendments

**Applies to SBP Sections 2, 3, 4, 5, 6, and 7:**

[Preamble] “(a) the following covenants and restrictions which shall run with the land for a period of thirty (30) years from the date hereof, after which time they shall be automatically extended for successive periods of ten (10) years each unless an instrument, signed by the then owners of a majority of all the lots shown on the aforesaid map, agreeing to change such covenants and restrictions in whole or in part shall have been recorded;

“(b) the easements referred to in Paragraph 12 hereof, and which shall be perpetual in duration and run with and bind forever the land and the owner thereof, itself, himself, themselves and their heirs, successors and assigns.”

**Applies to SBP Sections 1, 8, 9, 10 and 21:**

Same as SBP Section 2, except the reference in subparagraph (b) to Paragraph 12 became a reference to Paragraph 11.

**Covenant dates referenced in subparagraph (a):**

- SBP Section 1 – October 1, 1971
- SBP Section 2 – August 19, 1968
- SBP Section 3 – September 5, 1968
- SBP Section 4 – January 7, 1969
- SBP Section 5 – June 6, 1969
- SBP Section 6 – July 28, 1969
- SBP Section 7 (except 3101, 3105, 3019, and 3113 Birchtree Lane) – November 7, 1969
- 3101, 3105, 3019, and 3113 Birchtree Lane – July 6, 1970
- SBP Section 8 – November 3, 1970

- SBP Sections 9 and 10 – November 4, 1970
- SBP Section 21 – April 17, 1972

**Notes:**

**Alternative method of amending the covenants –** Section 11B-116(c) of the Maryland Homeowners Association Act provides that:

> Notwithstanding the provisions of a governing document, a homeowners association may amend the governing document by the affirmative vote of lot owners in good standing having at least 60% of the votes in the development, or by a lower percentage if required in the governing document. [35]

**Exempting particular properties –** The Maryland Court of Appeals (now the Maryland Supreme Court), in *Walton v. Jaskiewicz*, 317 Md. 264, 563 A.2d 382 (1989), held that an amendment cannot be used to exempt a particular property from the application of a covenant. In the *Walton* case, the homeowners in a community amended their covenants (using the amendment process set out in their covenants) to exempt one particular lot from a restriction on subdividing the property. The court invalidated the amendment, saying that amendments to covenants must apply to all properties within the coverage of the original covenant.

## 24. Purpose

**Applies to SBP Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 21:**

Second WHEREAS clause "it is the Company's intention that the aforesaid land shall be developed as a planned suburban residential community".

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[35] Section 11B-116 was adopted by the Maryland General Assembly in 2008. The statute's enactment appears to have been anticipated about 25 years earlier by Robert C. Ellickson in "A Reply to Michelman and Frug," *University of Pennsylvania Law Review*, vol. 130, no. 6 (June 1982), p. 1604, footnote 5:

> Because human foresight is imperfect, as time passes, a private association's constitutional arrangements are likely to become more and more ill-suited to the land area within its jurisdiction. As a result, state-imposed rules terminating or modifying the original private arrangements become ever more inevitable.

For background information specifically on § 11B-116, see:

- Maryland Task Force on Common Ownership Communities. *Final Report*, State of Maryland, 2006, p. 21; and
- *Fiscal and Policy Note (revised): SB 101,* Department of Legislative Services, Maryland General Assembly, March 25, 2008.

**Notes:**

**Levitt & Sons' commentary –** their undated "To Preserve Property Values in Strathmore in Bel Pre" publication (p. 1) states that:

> Every fine residential comity must have restrictions on property uses to insure maintenance of its high standards. By observing these restrictions, homeowners not only derive greater pleasure from their community; they also may expect their homes to enjoy any prevalent increase in property values.

Here is a summary of the main restrictions in they comity. Please note that their sole purpose is to protect you and your neighbors from practices that would be detrimental to your property. It is therefore to your advantage to comply in all respects with these restrictions, and you should insist that your neighbors do likewise.