

## ARTICLE VII BUILDING AND USE LIMITATIONS

Section 1. All lots not otherwise specifically designated upon a recorded plat or recorded Declaration by Developer shall be used for residential purposes only, and no business, commercial or manufacturing enterprise, shall be conducted on said premises. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling not exceeding two and one-half stories in height, and one private garage or boathouse, or combination garage and boathouse for family automobiles and boats. The outside finishing of all buildings must be completed within one (1) year after construction has started, and no asphalt shingles, imitation brick, building paper, insulation board and sheathing or similar non-exterior materials shall be used for the exterior finish of any such building, exterior finish shall be wood or asbestos shingles or siding, logs, brick, stone or concrete. Every dwelling house shall have not less than 600 square feet of enclosed living space exclusive of porches, breezeways, carports, patios, pool areas, garages and other accessory uses.

Section 2. No trailer, mobile home or similar type structure, basement, tent, shack, garage, barn or other outbuilding shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character or any building in the process of construction, be used as a residence. No signs of any nature not previously approved by the Architectural Control Committee shall be permitted on any lot. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. Noxious or poisonous weeds shall not be permitted to grow on any lot. The dumping or accumulation of trash or rubbish shall not be permitted on any lot. Trash, garbage or other waste shall not be kept except in a sanitary container. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and the design and location thereof shall require the prior approval of the Architectural Control Committee. Any condition in violation of or contrary to this

Section 2 is hereby declared to be a nuisance and the same may be abated, removed or otherwise corrected by the Architectural Control Committee without prior notice to the owner of the lot or lots involved. The same may be done at the expense of the Owner of the lot or charged to such Owner and such Owner shall have no cause for action or claim for damages arising from such abatement, removal or correction.

Section 3. BUILDING LOCATION. No building shall be located on any property nearer than 25 feet to the front property line or nearer than 20 feet to any side street line. No building shall be located nearer than 10 percent to the width of the property on which such building is to be placed to any sideline, except that a three foot minimum side yard shall be permitted for a garage or other permitted accessory building which is located toward the rear of the property. For the purposes of this Covenant, eaves, steps and open porches shall not be considered as a part of the building provided, however, that this shall not be construed to permit any portion of the building to encroach upon adjoining property.

Section 4. Easements are reserved along and within ten feet of lot lines of all original lots in the subdivision for the construction and perpetual maintenance of conduits, poles, wires and fixtures for electric light, telephones and other public and quasi-public utilities and drainage and to trim any trees which at any time may interfere or threaten to interfere with the maintenance of such lines with right of ingress to and egress from and across said premises to employees of said utilities. Said easement to also extend along any owner's side or rear property lines in cases of fractional lots. The person owning more than one lot may build on such lot line and the easement shall be inoperative as to said line provided that such building shall be placed thereon prior to the instigation of use of such easement for one of the foregoing purposes. It shall be considered a violation of the easement if wires or cables carried by such pole lines pass some portion of said properties not within the ten foot wide easement as long as such lines do not hinder the construction of buildings on the property. Each residence shall be provided with and maintain only inside toilets with septic tanks and drain fields or dry well installations meeting the requirements of the Minnesota State Board of Health. Any owner of real property in said plat of Sylvan Shores shall have the right to prosecute any proceedings in law or in equity against any person or persons violating or attempting to violate any covenant contained herein, either to prevent him or them from doing so or to recover damages or other dues for such violations. Invalidation of any one of these covenants by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

The provisions of this Article VII shall not apply to the Common Properties, nor to properties owned by the Developer.

**Comment [ad1]:** (Atty: March 12, 2015). My comment about the potential of combining two adjacent lots was for potential consideration and such combination is not available under provisions of the current declaration. It was offered as a suggestion. The attorney's comment that two lots across a road may constitute adjacent fails to follow the clear meaning of "adjacent", Again, web dictionary definition - next to or adjoining something else.

**Comment [ad2]:** (Atty: March 17, 2015) The word "residence" is found in Article VII, Sections 2 and 4. The dictionary definition of "residence" is the place in which one lives, a dwelling. "Residential" is an adjective meaning that relating to a residence (or a dwelling). I agree that any structure built on an association lot that is subject to the declaration, must be used for a non-commercial purpose that is, relating to the use of the residence. Anything relating to the use of a residence means for residential purposes. A structure to be constructed solely for residential use does not permit a non-commercial used garage to be constructed on a lot without the construction of a dwelling or residence. The controlling provision is also found in Article VII, Section 1: "No building shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling not ... 1) A garage, whether detached or an accessory structure, is included as a "building". 2) This would indicate that any current non-permitted structures are in violation of the restriction. 3) Single family dwelling would mean single family residence. Again, I reaffirm my opinion that the clear language prohibits any structure to be constructed on a lot unless the structure is a dwelling/residence. A garage may be constructed as an accessory use on a lot that has a dwelling but the garage cannot be the primary use.

**Comment [ad3]:** (Atty: March 12, 2015) I reaffirm that the Board/Committee have no authority to permit the development of a nonpermitted use, such as a detached garage/boathouse that is not an accessory use to a dwelling unit on the same lot.

**Comment [ad4]:** (Atty: March 12, 2015) I agree that no commercial activities are permitted. That restriction, however, does not make a garage a "residential purpose". The reading from paragraph 3 above would indicate that the garage is used for automobiles and boats.

**Comment [ad5]:** (Atty: March 17, 2015) A garage, whether detached or an accessory structure, is included as a "building".

**Comment [ad6]:** (Atty: May 29, 2015) this restrictive covenant can be reasonably interpreted to prohibit the construction of a garage on a lot which is not attached to, or an accessory of, a single family dwelling on the same lot.

First, the covenant only permits garages or boathouses that are attached to or an accessory of a single family dwelling. The provision "[n]o building shall be erected ... other than one single family dwelling ... and one private garage or boathouse" states that a garage is only permitted along with a dwelling. The use of the word "and" rather than "or" between the phrase pertaining to the dwelling and the phrase pertaining to the garage is conjunctive. Meaning, a dwelling and a garage is allowed, but a garage alone is not permitted. Second, a garage which is not attached to, or an accessory of, a dwelling is not for a residential purpose, but rather for the sole purpose of storing objects. This "residential purpose" provision is consistent with the analysis provided in the above paragraph.

**Comment [ad7]:** (Atty: Sept 10. Taken from 10/14/14 minutes). Even though this language seems relatively clear that the only buildings that can be built on Association lots are a house AND a garage or boathouse, the exceptions that have been allowed here have led to the current issue and an impression that the rule itself has become almost meaningless. The Board has allowed the following: 1. The construction of the structure at issue, essentially more of a storage shed than a garage for vehicles. 2. On a separate lot WITHOUT a residence, and 3. Its subsequent severance from the original owner and sale separate from that owners residence.

If the intent of the Declaration provision was to ensure that each lot contained one house AND (not or) one garage/boathouse which would run together for the purposes of ownership, we have created something of a Frankenstein's monster by permitting something other than a pure garage, on a lot without a residence, which can be separately purchased and sold. In Dec 2009, in a apparent effort to – at least in part – rectify this problem, the Board passed a resolution that requires property owners who intend to build a garage on a separate lot to have the properties joined at the County level. This motion however, related only to NEW garages and was not enacted as an Amendment to the Declaration. Amending the Declaration is controlled by Article IX and requires 67% of the owners."

**Comment [ad8]:** (Atty: March 12, 2015) I stated I read the "and" to be conjunctive, meaning that the dwelling together with a garage/boathouse is permitted. ... garage as an "accessory" structure. Web dictionary of "accessory" - a thing that can be added to something else in order to make it more useful, versatile, or attractive. ...

<p><b>Lot owned across road</b>  (Residence and garage or boathouse permitted. Garage only not permitted)</p>	<p><b>Lot owned across road</b>  (Residence and garage or boathouse permitted. Garage only not permitted)</p>	<p><b>Lot owned across road</b>  (Residence and garage or boathouse permitted. Garage only not permitted)</p>
<b>Road</b>		
<p><b>Adjacent owned Lot</b>  (Residence and garage or boathouse permitted. Garage only not permitted)</p>	<p><b>Primary Lot</b>  (Residence and garage or boathouse permitted)</p>	<p><b>Adjacent owned Lot</b>  (Residence and garage or boathouse permitted. Garage or boathouse only not permitted)</p>