

Kirby Grange

BOOK 823 PAGE 777

NORTH CAROLINA
BEAUFORT COUNTY

THIS DECLARATION OF RESTRICTIVE COVENANTS, made this the 16 day of May, 1983, by William B. Midyette, Jr., and wife, Margaret A. Midyette, Dorothy M. Tankard and husband, John A. Tankard, Elizabeth M. Hodges and husband, Edward Hodges, owners of the property hereafter restricted, hereinafter called Declarants:

WITNESSETH:

THAT WHEREAS, the Declarants are the owners of certain real property described in Article I of this Declaration and are desirous of subjecting said real property to the protective and restrictive covenants hereinafter set forth, each and all of which are for the benefit of such property and for each owner thereof, and shall inure to the benefit of and pass and run with said property, and each and every lot or parcel thereof, and shall apply to bind the successors and assigns in interest and any owner thereof.

NOW THEREFORE, the Declarants hereby declare that the real property described in and referred to in Article I hereof is and shall be held, transferred, sold, and conveyed subject to the protective covenants set forth below:

ARTICLE I.

The real property which is and shall be held, transferred, sold, and conveyed subject to the restrictive covenants set forth in the various Articles of this Declaration is located in Bath Township, Beaufort County, North Carolina, and is more particularly described as follows:

TRACT ONE:

Being all of Lots 15, 16, and 17, as shown on that map entitled, "Property of W. B. Midyette" of record in the Beaufort County Registry in Map Book 20, at Page 62, which map is hereby incorporated by reference for a full and complete description hereof.

TRACT TWO:

Beginning at the Southeast corner of Lot No. 17 as shown on map entitled "Property of W. B. Midyette" of record in said Register's Office in Map Book 20, at Page 62 and running with the Southern line of said Lot South 72 degrees West 200 feet to Fulton's Gut; thence along the Eastern shore of said Gut Southwardly to a large branch emptying into the same, and continuing Eastwardly along the North shore of said branch to its intersection by a small branch and with said small branch Eastwardly to its intersection with the

Western line of N.C. Highway 92; thence Northwardly with the Western line of said Highway to the Northern line of Kirby Grange Avenue as shown on map entitled "Lot Stake Out for W. B. Midyette, Sr." of record in said Register's Office in Map book 20, at Page 21, and running thence Westwardly and Southwardly with the Northern line of said Avenue as shown on said map and the map of record in Map Book 20, at Page 62 to the point of beginning. Reference is hereby made to the SECOND TRACT contained in that Deed, in Book 707, Page 69.

SAVING AND EXCEPTING THEREFROM, all those lots which border N.C. Highway 92, and more particularly described as Lots 29, 30, 31, 32, 33, 34, and 35 on that map entitled "Proposed Lots, Kirby Grange Development", dated April 28, 1983, by R. Waters, R.L.S. which map is hereby incorporated by reference for a more complete description thereof.

No property other than that described above shall be deemed subject to this Declaration, except as hereinafter set forth, unless specifically made subject thereto by the voluntary act of the owners and Declarants, and Declarants may, from time to time, subject additional real property to the protective covenants and restrictions herein set forth by appropriate reference hereto.

ARTICLE II

The real property described in Article I hereof, (hereinafter called lot or lots as applicable) is subjected to the protective and restrictive covenants hereby declared in order to provide enforceable standards for improvement and development whereby aesthetics, living conditions, and property values may be enhanced.

ARTICLE III

No lot or parcel shall be used except for residential purposes, with the exception of that "Community Access Area" which is described in Article XIII below, and those areas dedicated as road rights of way to and from the various lots. No building shall be erected, altered, placed, or permitted to remain on any lot other than one attached single family dwelling with or without a basement, being not more than three (3) stories in height and a private garage, attached or detached, for the use only of the occupants of said dwelling.

ARTICLE IV

No structure, other than a fence or a bulkhead may be built within ten (10) feet from either lot sideline, or within thirty-five (35) feet of any road or mean high water mark, upon any lot or parcel.

ARTICLE V

No single story residential structure which has an area of less than 1,500 square feet exclusive of porchs, breezeways, steps, and garages, shall be erected or placed or permitted to remain on any lot, and no story and one-half or two story and one-half, or three story residential structure which has a ground floor area of less than 1,000 square feet, exclusive of porchs, breezeways, steps, and garages, shall be erected or placed or permitted to remain on any lot.

ARTICLE VI

No lot or lots shall be sub-divided into parcel or parcels, unless they be bought or sold for the purpose of enlarging a lot which shall then be improved with a single family dwelling or which shall already have been improved with a single family dwelling.

ARTICLE VII

No lot or lots or part thereof shall be used as rights of way providing ingress and egress, over, across, from, or into the property from any direction whatsoever, or from outside adjoining property without the written consent of Declarants. Declarants do reserve the right to specify certain areas as recreational areas and also reserve the right to locate such rights of way for roads for ingress and egress as may be necessary to uniformly sub-divide the property described in Article I above.

ARTICLE VIII

No trade, commerce, or other activity which may be considered a nuisance to the neighborhood shall be carried on upon any lot. No trade materials or inventories may be stored upon any lot, and no tractor-trailer type trucks, house trailer, (other than camping trailers) or mobile home may be stored or regularly parked on any lot. No sign or billboard of any kind shall be erected or allowed to remain on any lot other than a "For Sale" or "For Rent" sign.

ARTICLE IX

No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn, or other out-building shall be used on any lot at any time as a residence, either temporarily or permanently.

ARTICLE X

No pier, boathouse, walkway, veranda, porch, or other structure shall be constructed upon any lot that will unreasonably obstruct the view of Fulton's Gut or Back Creek by any adjoining or other land owner. In addition, no such structure shall in any way obstruct Fulton's Gut so as to exclude access to any other land owner's property by water.

ARTICLE XI

No animals or poultry of any kind, other than a reasonable number of house pets shall be maintained on any lot subject to this Declaration.

ARTICLE XII

Easements for installation and maintenance of utilities and drainage facilities are reserved measuring five (5) feet in width over side lot lines and ten (10) feet in width over lot lines abutting roads of each building lot. Declarants reserve the right to waive or change provisions in whole or in part by separate recorded instrument.

ARTICLE XIII

There shall be a lot or parcel known as "The Community Access Area", which is more particularly described as follows:

Being that parcel of property described in that survey made by R. Waters, R.L.S., on the 27th day of April, 1983, and being located at a point of beginning which is 1,821 feet to the center line of N.C. Highway 92 along the run of Kirby Grange Avenue, thence North 36 degrees, 50 minutes West 95.47 feet to an existing iron pipe, thence South 70 degrees, 16 minutes West 180.62 feet to an existing iron post, thence South 47 degrees, 01 minutes East 97.24 feet, thence North 71 degrees, 57 minutes East 164.10 feet to the point of beginning, said survey being attached hereto and incorporated by reference for a more complete description.

The use of said "Community Access Area" shall be exclusively restricted to the owners and their families only. "The Community Access Area" is strictly private in nature, and is exclusively for the loading and unloading of boats and other marine vessels owned by the lot owners. No parking shall be allowed or permitted in "The Community Access Area", or the field behind said "Community Access Area". There shall be no swimming from the pier located at the ramp at "The Community Access Area", and picnicing, sun bathing, and loud or boisterous conduct shall not be allowed. "The Community Access Area" is

for the purpose of loading and unloading boats only, and there shall be no boat left tied to the pier for any longer length of time than is necessary to load or unload said boat. Each owner of the lot, by the acceptance of his Deed, hereby releases the Declarants from any responsibility and liability arising from any accident or personal injury caused by any means whatsoever, to any person, guest, automobile, boat, or other object whatsoever, as a result of the use of said "Community Access Area".

The owners of the lots restricted herein will be deeded an undivided interest in "The Community Access Area", along with the Deed to their individual lot. By acceptance of this Deed, the owners hereby agree to not sell, convey, or alienate this undivided interest in said "Community Access Area", without also conveying their principle lot. It is the intent of this paragraph that the two (2) interests shall never be severed, one from the other, but shall remain together for so long as these restrictions are in full force and effect.

The upkeep, maintenance, and payment of taxes, for the "Community Access Area" shall be the responsibility of the owners of the lots as deeded to them by the Declarants, on the basis of each owner's percentage of ownership in "The Community Access Area".

ARTICLE XIV

Fuel tanks shall be installed underground or concealed in the basement of the dwelling of any lot. Outdoor garbage cans on lot shall be equipped with a suitable top and shall be either concealed in an underground receptacle or concealed with plantings, or screen walls, or screen fences.

ARTICLE XV

All electrical and telephone services from distribution system to residences shall be underground with the cost for such underground service being shared by lot owner and utility company in conformity with existing utility company's policy, and no overhead wiring insofar as electrical, telephone, and other wire using utility services are concerned shall be permitted on any lot.

ARTICLE XVI

All costs and expenses of upkeep and maintenance of any areas declared by Declarants to be road rights of way shall be born by the

lot owners in the subdivision, on a prorata basis, unless the majority of the lot owners agree to allow the North Carolina Department of Transportation to take over the upkeep and maintenance of the roads.

ARTICLE XVII

Invalidation of any one of these covenants by Court Order or otherwise shall in no way effect any of the other provisions herein, which shall remain in full force and effect.

ARTICLE XVIII

These covenants are to run with the land and shall be binding on all parties and all persons claiming unto them until January 1, 2000, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of a majority of the then owners of the lots described in Article I hereof, it is agreed to change said covenants in whole or in part.

ARTICLE XIX

If the parties hereto, or any of them, or their heirs, successors, or assigns, shall violate, or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning lots described in Article I above, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, including seeking temporary and permanent injunctions, and recovering damages or other dues for such violation.

IN TESTIMONY WHEREOF, the Declarants have hereunto set their hands and seals, this the day and year first above written.

William B. Midyette Jr. (SEAL)
WILLIAM B. MIDYETTE, JR.

Margaret A. Midyette (SEAL)
MARGARET A. MIDYETTE

Dorothy M. Tankard (SEAL)
DOROTHY M. TANKARD

John A. Tankard (SEAL)
JOHN A. TANKARD

Elizabeth M. Hodges (SEAL)
ELIZABETH M. HODGES

Edward Hodges (SEAL)
EDWARD HODGES

NORTH CAROLINA
BEAUFORT COUNTY

I, Joan J. Chrismon, a Notary Public in and for the County and State aforesaid, do hereby certify that WILLIAM B. MIDYETTE and wife, MARGARET A. MIDYETTE, this day personally appeared before