Bay Breeze Point (BBP)
Homeowner's Association
Board of Directors Resolution # 120814-1

RE: Clarification of Article VII, Section 7.1.(e) of Declaration of Covenants, Restrictions, Reservations and Easements of Bay Breeze Point

Background: Regarding size of single-family dwellings within BBP, the above referenced section states: "not to exceed three (3) stories in height". This restriction has raised questions within BBP about its interpretation and application to BBP homes.

Discussion: The BBP Board of Directors (BOD), over the past 10 years, has attempted to enforce the approved "HOA Governing Documents" to the best of its ability using fair and equitable approaches. Attempts to enforce Section 7.1.(e) have resulted in formal legal actions with resulting "deed restrictions" placed on several homes. The wording within these approved "deed restrictions" was adopted as a BBP clarification to Section 7.1.(e). Recently, several homes were identified as not in compliance with Section 7.1.(e) and BOD adopted clarifications and were therefore considered in violation of "BBP HOA Governing Documents". Attempts to clarify these situations with the City of Norfolk has discovered the following:

- Two homes in question did not have building permits or documentation of inspections on their attic conversions to habitable space -- this generated a safety concern for the BOD.
- No real definition of habitable attic vs. fourth story has been provided -- in fact, the BOD was told: "...is based upon the owner or architect decision..." and "...the definition of Story is VERY liberal..." and "...all attics can be habitable attics unless they are a story..." with "...Story is defined as between one floor level and another OR roof above..."

BOD members met with Norfolk officials several times and have exchanged numerous emails but to date no real answers have been provided, including concerns with the potential safety issues that might be created by lack of building permits and/or inspections during the attic conversions. When Norfolk officials were questioned about these safety concerns, the official suggested we enter a "Norfolk Cares" request, which was done. This "Norfolk Cares" request was subsequently closed with comments such as: "...the inspector issued a uniform notice of violation to correct the conditions..." and then followed this up with "...closing the case -- the inspection of the violations were corrected..." and "...no response from owner - fourth level deck was allowed by code...". It should be noted at no time did Norfolk inspectors evaluate the actual attic conversions to address BOD safety concerns. When BOD officials highlighted this to Norfolk officials, the BOD was told: "Section 108 of the Code requires permits -- Maybe" and "...allow me to *modify* any part of the Code that I decide..." and "...the section allows me to require or not require permits for anything..."

Bay Breeze Point (BBP)
Homeowner's Association
Board of Directors Resolution # 120814-1

As a result, the BOD is without an accurate definition of fourth story and habitable attic based on the conflicting information provided by Norfolk officials. Given the lack of reliable information from Norfolk officials, the BOD has been pursuing other resources to resolve the situation, e.g., International Residential Code (IBC) 2006/2009/2012, Virginia Uniform Statewide Building Code (USBC), Norfolk Codes. This research has produced the following information:

- Currently, attics are referred to as "habitable attics" whether finished or unfinished. However, habitable space has constraints, e.g. to be considered a habitable level the space must be not less than seven (7) feet between the floor and collar ties.

- A house can have as many as five (5) floors and still be referred to as a three (3) story house if the house has: a basement, three main floors, and a habitable attic.

- Habitable attics require hardwired smoke detectors and at least one emergency egress, but sprinkler systems are not required for most residential houses.

Research into this issue has identified new/amended building codes and information that was not available when BBP approved its "governing documents" and subsequent attempts to enforce these documents. Hence, the BOD has decided to add clarifying information to Section 7.1.(e) that includes current building guidance while treating HOA members as fairly as possible.

BOD Guidance: Using the authorities granted by the "Declaration of Covenants, Restrictions, Reservations and Easements of Bay Breeze Point", the BOD endorses the following clarifications to Article VII, Section 7.1.(e):

When reviewing the "not to exceed three (3) stories height" portion of Section 7.1.(e), the HOA will consider all current information available from IBC, USBC, and Norfolk Code to determine compliance.

The BOD will use this resolution to reevaluate existing homes deemed to be in violation of "HOA governing documents". This reevaluation should place emphasis of ensuring the safety of our community.

This resolution was approved on December 8, 2014 and is effective immediately.

Jim Casey
President