



May 8, 2020

Re: EASEMENTS – Scope, Restrictions and Uses

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An easement is a nonpossessory right to use and/or enter onto the real property of another without possessing it. An easement requires the existence of at least two parties. The “grantor” or party granting the easement (typically the owner of the real property) is referred to as the “servient estate”; as they suffer the burden of the easement. The “grantee” or party gaining the benefit of the easement is referred to as the “dominant estate”.

When Magnolia Ridge was planned and approved for construction, easement areas were expressly granted and incorporated into the final plats and, by reference, into the deed for each lot. The easement rights run with the land and are granted in perpetuity to local governments and public utilities. The scope of the easements is iterated in the Residential Declaration of Protective Covenants, Conditions and Restrictions at Article IX which provides: *“Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.”*

In general, the bounds of the easement areas are shown as dashed lines on the plats and further marked with a symbol comprised of the letter “B” with an “L” through it. The BL symbol is an acronym for Building Line, also known as a set-back line, and is the distance from the lot line beyond which a building is not allowed to extend.

Article IX further iterates certain use restrictions placed on lot owners as follows: *“Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements.”*

Article IX further provides: *“The easement area of each lot and all improvements in it shall be maintained continuously by the Owner, Lessee, Licensee or Occupant of such lot, except for those improvements for which a public authority or utility company is responsible.”*

In exercising its right of Architectural Control, the Association may advise the lot owner of any potential infringement on the rights of easement grantees arising from any

proposed or planned improvement. However, the Association can make no judgement as to whether those improvements interfere with the installation and maintenance of utilities. In matters of drainage channels or those requiring building permits, such as the placement of a fence of any kind, the Association defers to the City of Fayetteville.

Prior to constructing any improvements, it is the lot owner's sole responsibility to: (i) locate all utilities that may exist within the easement areas, and (ii) determine the location and flow of drainage channels. Applying for a building permit and/or submitting an Application for Architectural Plan Approval shall be prima facie evidence that the lot owner has performed such due diligence. Notwithstanding the Association's approval of Architectural Plans and/or reviews or permits by the proper authorities, the lot owner is solely responsible for damages to utilities, ensuring the flow of stormwater is not altered or interfered with in any way, and removing any improvement they installed and replacing same at their own cost; if that improvement obstructs the lawful access to or use of the easement area by the easement grantees.

In addition to public utility easements, there exist other easements granted exclusively to the Association and shown on plats of Magnolia Ridge:

- Sign Easement: Located on Lot 122 and granted to the Association for the express purpose of placing signage identifying the neighborhood;
- Landscape and Entrance Sign Easement: Located on Lots 115 and 58, and granted to the Association for the express purpose of placing signage identifying the neighborhood;
- Detention Basin Easement: Located on Lots 93, 94, 95 and 97, and granted to the Association for the express purpose of creating and maintaining Detention Basin No. 1;
- Detention Basin Easement: Located on Lots 19, 20, 21, 27, 28 and 29, and granted to the Association for the express purpose of creating and maintaining Detention Basin No. 2;
- Detention Basin Easement: Located on Lots 15 and 16, and granted to the Association for the express purpose of creating and maintaining Detention Basin No. 3;
- Detention Basin Easement: Located on Lots 54 and 55, and granted to the Association for the express purpose of creating and maintaining Detention Basin No. 4;

Maintenance of the sign areas and detention basins are the sole responsibility of the Association. Therefore, implicit in the creation of these easements is an easement of access over adjacent lands to reach any landlocked parcels by governmental agencies, the Association and its invitees. At each location this access is understood to be over the public utility easements created for that purpose on every adjacent lot.

The Association has no authority to revoke or terminate any recorded easement, or to grant a variance or otherwise release the lot owner from its grant of easements.

Magnolia Ridge Homeowners Association, Inc.
Office of the Directors