

SOUTHAMPTON PLACE RESTRICTIONS SUMMARY

A. Introduction

The pace of redevelopment in recent years, which includes a trend to construction of larger, taller, and more complex structures, has given rise to questions that cannot be answered by examining the face of Southampton's 1923 restrictions. Consequently, evaluation of proposed construction in some cases has required significant legal and factual research, analysis, and litigation before Texas courts. Among other things, we have evaluated the general plan and scheme of the subdivision; the text of the 1923 restrictive covenants; historic practice interpreting both the general plan and specific restrictive covenants; trial and appeals court decisions, which include many cases brought by Southampton; and, statutes passed by the legislature since 1923. The pace of change continues to pose unanticipated questions. However, based on issues presented to date, the following summary reflects the Legal Committee's current interpretation. This summary is subject to review and revision from time to time, which revisions will be posted in the form of an updated summary on the Southampton Civic Club website.

B. Setback Lines

1. On Rice Boulevard "no portion of the building," which includes porches, balconies and any other permanent part of the building, "shall be within forty (40) feet of the front line of the property, nor within twenty (20) feet of property lines on the side street or adjacent lots" on Rice Boulevard. No exceptions have been recognized for porches or other constructed elements that are part of the building, other than overhanging roof eaves.
2. On Sunset Boulevard, no portion of the building shall be within 30 feet of the front property line, within 7 1/2 feet of side property lines, or within 15 feet of side street property lines. No exceptions have been recognized for porches or other constructed elements that are part of the building, other than *portes-cochères* not adjacent to a side street.
3. No portion of dwellings on Bolsover, Dunstan, Tangleby, Quenby, Robinhood, and Albans are to be built within 25 feet of front property lines, 6 feet of side property lines, and 10 feet of side street property lines on corner lots.
4. No portion of the dwellings on Wroxton and Bissonnet are to be built within 25 feet of front property lines, within 5 feet of side property lines, or within 10 feet of side street property lines on corner lots.
5. Garages of houses on corner lots must meet the same minimum setback from the side street as the dwelling. However, detached garages not located on side streets have not been treated as being part of the "dwelling," and therefore have not been considered subject to side setbacks. On the other hand, garages that are attached or integrated into the main house are considered part of the dwelling and must conform to the same side setbacks as the rest of the dwelling. Attached roofed spaces used for parking automobiles, whether configured with or without doors, are considered attached garages, and are therefore subject to the same setback as the dwelling. "*Portes-cochères*," where allowed, are one lane wide, contain no living space above, and cover a short segment of a

driveway that otherwise leads to a rear garage or parking area. A *porte-cochère* is not a carport or a parking place for cars; rather, a permitted *porte-cochère* is a structure defined historically as being no larger than needed to afford covered entry to the house from a car in the driveway.

6. Within the setbacks from front and side streets, no structures are allowed other than walls, fences, gates, and grade-level facilities such as walks, drives, pools, or ponds. Carports, *portes-cochères*, garages, guest cabins, summerhouses, screened enclosures, gazebos, storage sheds, obtrusive mechanical equipment, and similar construction may only be placed behind the minimum setback lines adjoining front or side streets. Unobtrusive mechanical equipment such as air conditioning compressors may be placed in side setbacks.
7. Three foot setbacks at the rear of all lots are required to comply with the requirement to keep rear easement/rights of way clear of obstructions.

C. Other Restrictions

1. Houses on corner lots are required to locate their front entrance upon the east-west street and not on the side (north-south) street.
2. Houses on Rice Boulevard are required to have “masonry walls,” which includes traditional hard Portland cement stucco walls, but excludes such synthetic “stucco” finishes such as those composed of “Exterior Insulation and Finish Systems” (EIFS) material.
3. Dwellings throughout Southampton Place are restricted to two stories, a restriction which has always included bona fide “2-½ story” residences that include some stairway-accessible finished rooms at the attic level. A house will be considered conforming to this 2-½ story standard so long as:
 - a. rooms located in the attic are contained within a roof structure of normal configuration and pitch and which are lit solely by skylights or by windows located in bona fide dormers* or gables;
 - b. the roof structure intersects the cornice at or below the level of the second story ceilings;
 - c. the highest ridge line of the roof (not counting chimneys, antennas, vent stacks, etc.) does not exceed 35 feet above the typical and prevailing grade of lots in the immediate area; and
 - d. houses with flat roofs over the second story by definition have no functional attic space within which a “half story” can be constructed. However, so long as the overall design is of a character comparable to that of a conventional half-story, small covered structures above the second story that contain no living space, such as skylights, lanterns, mechanical equipment enclosures, or stairway access ways to the roof, may be permissible.
4. Bona fide eaves of houses are not included in setback calculations. The size of eaves depends on the architectural style of the house, but eaves extending more than 18 inches are questionable. Additionally, on streets platted for standard lots (all streets other than Rice and Sunset) small open front porches and the bases of chimneys of moderate dimension also have not been considered as being limited by the setbacks. The space within false chimneys placed for symmetry with a functioning chimney may not be used

for any interior purpose, such as closets or cabinetry, but may be used for ventilation equipment, pipes, plumbing vents, ductwork or as a passage for other mechanical, electrical, or electronic systems.

5. The deed restrictions exclude the use of any lot or any part thereof for business or commercial purposes. This restriction does not preclude the reasonable use of a home office or studio to engage in literary, scholarly, artistic, professional, or similar activities, including work utilizing Internet and telephone connections. These are considered an aspect of residential use. On the other hand, activities such as those in which clients, customers, or employees physically come to the residence would be inconsistent with residential use and therefore would constitute a prohibited business use.
6. Houses in Southampton may only be occupied as single-family residences. No house may be used for student housing, for communal housing, or as a rooming house.
7. Garage apartments may not be occupied by anyone if the owner is receiving compensation for the occupancy, other than direct household services. Members of a resident's family and bona fide guests may occupy the apartment rent-free, while babysitters, caretakers, and other domestic help may occupy the apartment, so long the owner receives no consideration other than household services in exchange for the use of the garage apartment. Should complaints be received, owners and apartment occupants may be asked to execute sworn affidavits and furnish other proof that the owner is not receiving compensation, such as rent, for the apartment. When the owner is unable to demonstrate a clear personal or employment relationship with the occupant, the arrangement will be presumed to be a rental and steps will be taken to initiate formal restrictions enforcement.
8. Townhouses, duplexes, apartment houses, and other forms of multiple housing are not permitted anywhere in the subdivision.
9. Lots may not be subdivided in such a way as would result, after subdivision, in any lot being smaller in width or depth than a standard lot on the street in question.
10. A significant number of miscellaneous restrictions also apply, almost all of which appear to represent routine or "boilerplate" provisions used in deed restrictions of a century ago. Those interested should consult the full restrictions text, but examples include prohibitions against maintaining any saloon, tuberculosis hospital, mental asylum, cemetery, crematory, reform school, slaughterhouse, tannery, or other obnoxious land uses. The restrictions also include a null and void racial exclusion covenant long ago held unconstitutional by the U.S. Supreme Court.

D. Alley Easements

1. All lots have a 3-foot strip that serves as a utility easement and public right of way across the rear property line. This strip should be kept absolutely clear of fences, storage sheds, trash holders, woody vegetative growth, and other obstructions. These combined-use easements are very different from the usual rear-lot "utility" easement normally used in areas of Houston that do not have alleys, because Southampton's easements refer both to placement of utilities and to the provision of right of way to permit passage of garbage trucks and other large vehicles. Judicial precedent also has established the easement as an integral part of the subdivision deed restrictions. This right of way is reserved for municipal purposes, including garbage collection and utility vehicle access, and new

permanent improvements that will interfere with this right of way will not be permitted. This is a change from past practice, effective, December 4, 2007.

2. For new construction, minimal encroachments, such as low curbs (up to six inches high, enclosing no more than 24 inches of the 36-inch easement) and low, minor landscaping such as ground covers that will not interfere with the passage of large trucks, may be permitted.
 - a. If you construct any other encroachment without prior clearance from the Civic Club, you may later be compelled to demolish or remove it from the easement.
 - b. Please note that woody plants and vines such as hedges, trees, climbing roses, etc., as well as tall non-woody vegetation such as banana plants, canna lilies, etc. can be almost as permanent and obstructive to garbage trucks as walls and buildings when planted in the three-foot strip.
 - c. Structures made of concrete, wood or other rigid materials in the easement that are presumed to obstruct the right of way include: fences; walls; retaining walls; curbs higher than six inches; planters; garbage can holders; sheds; bins; bollards or barriers; steel or wooden poles; basketball goal poles; basketball backboards facing the alley; air conditioning or swimming pool machinery and other mechanical equipment; and any other fixed, durable physical object.
 - d. Eaves of houses at the first floor level should be as high as possible and of minimal overhang to avoid being hit by garbage trucks and other tall vehicles using the alley.
 3. Encroachments existing as of December 4, 2007 need not be removed. However, when existing encroachments are replaced in the course of renovation or remodeling, clearance from the Civic Club should be obtained, as in the case of new construction. This rule includes replacement of existing encroaching fences, walls, and other structures, which will be evaluated on a case-by-case basis to take into account existing immovable improvements, large and valuable trees, costly decorative “hardscaping,” and similar factors. Encroachments that cross the property line into the 8-foot center alleyway strip, however, must be removed whenever discovered, regardless of the date of encroachment.
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* Dormers are considered relatively small subordinate structures in a roof. Examples of designs that are too substantial at the third level to qualify as a half-story include large, high-ceilinged attic spaces made possible by use of extremely large dormers. Most obviously violative are multiple, large shed dormers having very low pitched roofs. A true shed dormer should intersect the roof below the ridge; it should have a pitch of 4:12 or steeper; and it must have three exterior walls (a “face” and two “cheek” walls) that are offset substantially from the raking edges of the roof and the façade below. The dormers, taken together, should be subordinate in aggregate appearance to the rest of the roof. Whether the attic level is a half story, or more than a half story, is somewhat subjective: would an average Southampton resident, upon viewing the house from all sides, recognize it as a two-story house with several attic rooms, and not as a de facto three-story house?

Summary current as of June 17, 2009

CONSTRUCTION WORK AND POWER LINE SAFETY

Contractors working in Southampton near power lines must work with CenterPoint Energy to ensure proper safety clearances. Construction near the "primary" 7200 volt primary lines at the top of the utility poles running along the alleys in Southampton is extremely dangerous. Accidental contact with this kind of power line usually results in death or disabling bodily injuries to workers. At least two deaths have occurred in Southampton through such contact. To enforce safety rules, Texas law forbids approaching within six feet of such lines when energized, as prescribed in the following state statute:

Chapter 752, Texas Health and Safety Code
[High Voltage Overhead Lines](#)

RESTRICTIONS ENFORCEMENT

If you suspect a violation, please contact the Southampton office at 713-523-7422 (info@southamptoncivicclub.org or legal@southamptoncivicclub.org).

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P.O. Box 540331 | Houston, TX 77254-0331 | Tel. 713-523-7422 |
info@southamptoncivicclub.org