



## DEED RESTRICTION COMMITTEE REPORT

*Shelly Immel, Chair*

**C**ongratulations to Linda Walke, the winner of our \$50 drawing for returning her survey by 10/20/99! Thanks to all of you who have sent us your survey responses! You make our task easier by responding and doing it promptly.

For the rest of you, it's not too late. We'd still like to hear from you. If you need another copy of the survey, you can download it if you're a member of the Garden Oaks list serv, or you can call our hotline (713-341-3737) to leave a message requesting another paper copy.

During December, we will focus on selecting an attorney to advise us on our options for creating a new enforcement organization and on the process to update our deed restrictions. Based on our initial consultations, we will form a more specific plan of action. We intend to present this at the January Civic Club meeting.

Other committee members and I will be at the December Civic Club meeting if you have questions or comments, or if you would like to volunteer to help out.

Now, here are the results of the 130 surveys we've received as of November 18<sup>th</sup>. (Due to the thickness of the stack of surveys, we overestimated the total number in the November Civic Club meeting. Apologies!) This number represents less than 10% of properties in Garden Oaks, so we obviously want responses from many more of you before we start writing proposed updates to our deed restrictions. But it's what we know so far, so we're passing on that information to you. And after all, if no one else sent in another survey, we would be forced to draft the updates with what we've got so far.

There was a clear majority response for all but 3 questions. The majority response is indicated by a ✓ and boldface type.

First, these were the questions with clear majority agreement.

1. **Front setbacks**  
 ✓ **63% No change.**  
 37% Relax by 5 feet.
2. **Side setbacks for houses**  
 ✓ **65% No change.**  
 23% Relax to 10 feet.  
 12% Relax to 7 feet.
3. **Garage apartments** are not dealt with clearly in the current deed restrictions. Proposal is to clarify language for each section.  
 12% No change.  
 12% Prohibit garage apartments.  
 ✓ **56% Allow garage apartments, but not renting.**  
 20% Allow garage apartments and allow renting.
4. **Temporary outbuildings** such as garden sheds are currently prohibited (although they exist widely in our neighborhood).  
 16% No change.  
 ✓ **84% Allow these within outbuilding setbacks.**

("Survey" continued on page 10)

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Guillaume "GEM" Murvan (Shepherd Park Plaza Resident)





("Survey" continued from page 9)

5. Proposal to clearly state that we allow ***maintenance on existing grandfathered violations*** (as opposed to upgrades, expansions, replacement with a new structure, which would still be prohibited).  
13% No change.  
✓ **87% Clearly allow maintenance.**
6. Proposal to ***grandfather all documented violations that exist when the deed restriction updates go into effect.*** To grandfather their violations, property owners would have to ***submit dated proof*** such as a current property survey (blue line drawing) to the enforcement organization. This would document that the violation existed prior to the effective date of the deed restriction updates, and avoid confusion about future enforcement. (The purpose of this proposal is to offer "amnesty" to encourage people with existing violations to support the new restrictions.)  
26% No change.  
✓ **74% Grandfather all documented violations when updated deed restrictions go into effect.**
7. Proposal to allow ***fences, walls, and/or hedges*** in front of the front setback line for houses for those homes with a side property line abutting certain very busy streets such as Yale and Shepherd.  
12% No change.  
24% Allow hedges for these specific homes.  
✓ **64% Allow hedges, wrought iron fences, and walls for these homes.**
8. Proposal to remove the clause restricting residents to using ***"attractive" paint colors*** and types of building material. The reason is that the attractiveness of a paint color and building materials is highly subjective, and therefore difficult to enforce consistently and fairly. Any restriction that is not clearly and consistently enforced becomes hard to enforce at all. We have never enforced this restriction. Therefore it weakens the whole document.  
29% No change.  
✓ **71% Remove restriction.**
9. Proposal to update our ***funding*** for enforcing the deed restrictions. Currently funding comes from a fee when a property is sold. The fee is 40 cents per lineal foot of the front property line, which is around \$30 for a standard lot. In June 1999 dollars, this would be equivalent to about ***\$4.60/ft. or about \$368 per closing.*** (Source: Bureau of Labor Statistics: [www.bls.gov/](http://www.bls.gov/)). The fee has not increased with inflation, so it doesn't cover the cost of enforcement anymore.  
24% No change.  
✓ **71% Make the fee a percentage (.2% - .75%) of property price collected at closing and paid by purchaser.**  
5% Eliminate fee at property sale. Instead create a

mandatory annual fee of \$50 - \$100 for all property owners.

11. The following general suggestions about the ***organization for enforcing the deed restrictions*** were supported by ***almost 100% of respondents.***  
Members will be volunteers. They will be openly nominated and elected, not appointed.  
Their names and phone numbers will be published in the *Gazette* so residents can contact them with questions and suggestions.  
They will report on their work regularly at Civic Club meetings and in the *Gazette*.  
The organization will have some level of liability protection (e.g., D&O / liability insurance).  
Meetings will be open to Garden Oaks property owners and residents.

There was a more even split in the responses to the following questions. These are the areas we will have to work on to reach consensus.

11. ***Side setbacks for outbuildings***  
✓ **42% No change.**  
36% Relax to 5 feet.  
22% Relax to 3 feet.
12. Proposal to add a requirement that a ***current survey*** (e.g., blue line drawing) be provided to the enforcement organization whenever a property changes hands. This is to document what violations existed at that time and are therefore grandfathered.  
24% No change.  
✓ **45% Add requirement.**  
31% Add requirement, but only if survey is also required by another party.
13. Proposal to allow ***rebuilding of grandfathered violations if destroyed.*** (Currently if a grandfathered violation is destroyed, it can not be rebuilt to match the violation. It must conform to restrictions.)  
✓ **52% No change.**  
48% Allow rebuilding of registered violations.

Thank you, and Happy Holidays!



TO: ALL GARDEN OAKS PROPERTY OWNERS  
FROM: DEED RESTRICTION COMMITTEE  
SUBJECT: SURVEY ON POSSIBLE DEED RESTRICTION CHANGES

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As detailed in articles in this month's *Gazette*, the Civic Club has formed a committee to determine how to create a new body with authority to enforce our deed restrictions, and to investigate what deed restrictions Garden Oaks property owners want to change--or not change--and how. We want to move ahead with both these goals simultaneously. So while we research the legal issues in creating a new body to enforce our restrictions, we have begun efforts to gather property owners' opinions on our current deed restrictions.

So far, we have created a list of possible changes to the deed restrictions. From this list, we created the attached 13-item survey. We are asking every property owner we can find to give us input on specific restrictions that could be changed. (We are asking property owners because they are the ones who will ultimately vote on accepting or rejecting updates to the deed restrictions.)

Our immediate goal is to gather the input of Garden Oaks property owners on the following survey items. These are some possible restriction changes which we expect people to have opinions about. In other words, this survey *doesn't* include legalistic issues like adding a severance clause, but it *does* include things like side setbacks. Our new restrictions should reflect the will of the majority of property owners, so here's your chance to tell us what you think. We will use your feedback to determine what changes to propose.

We're trying to move as quickly as possible to get a new enforcement agency and updated deed restrictions in place, so please return your completed survey by Oct. 20. As an incentive, **we'll enter your name in a drawing for a \$50 cash prize if you return your survey to us by Oct. 20!** To get your survey to us, you can:

- Mail it to: Garden Oaks Deed Restriction Committee  
807 West 41<sup>st</sup>  
Houston, TX 77018
- Email your response to [godeed@ev1.net](mailto:godeed@ev1.net).
- Or bring your survey to the Civic Club meeting at 7:00 PM on Tuesday, October 5, and give it to Shelly Immel, Shannon Thompson, or Christine Stevens.

As a last note, if you want to prevent our deed restrictions from lapsing due to lack of enforcement, **PLEASE CALL US TO VOLUNTEER** at (713) 341-3737. We welcome the help! Now, on with the survey...

## Garden Oaks Deed Restriction Survey

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Is your name on the property title of your Garden Oaks residence/ business lot? Do you own it?\* YES NO  
If "NO", how can we reach  
the property owner? \_\_\_\_\_

*\*We need to know this because only property owners can vote on the deed restriction updates.*

Your Name \_\_\_\_\_ Date \_\_\_\_\_  
Address/Street & Block\*\* \_\_\_\_\_  
Phone Number \_\_\_\_\_ I want to volunteer to help! YES NO

*\*\*We need to know your address or street and block number (e.g., 1200 block of West 38<sup>th</sup>) so we can tally survey results by section. Your name and phone number are optional.*

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Circle the response you agree with for each item below. To give us more detail, add your comments.

1. Restriction

The *front setback for houses* is currently:

- 50 feet in Sections 1, 2, and 3
- 40 feet in Sections 4 and 5

NOTE: As stated above, different setbacks may apply to houses on irregular lots.

Reason for possible change

Some residents have said that front yards are less important to people now than back yards. So when they remodel or build new homes, they'd rather build out farther in front and preserve their back yards. Other residents argue that the large front lawns are an important part of the character of the neighborhood.

*Circle the letter beside the option you favor:*

- a. Keep the restriction. Leave the front setback restriction as it is for houses in my section.
- b. Change the restriction. Relax the front setback for houses in my section by 5 feet. (That would be from 50 to 45 feet in Sections 1, 2, & 3, and from 40 to 35 feet in Sections 4 & 5.)

Comments:

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2. Restriction

The *side setback for houses* is currently:

- 15 feet in Sections 1, 2 & 3
- 10 feet in Sections 4 & 5

NOTE: As stated above, different setbacks may apply to houses on irregular lots.

Reason for possible change

Some residents have pointed out that current home designs for new construction often require more elevation footage than allowed by current house side setbacks. Relaxing the house side setback restriction would allow people choice of more floorplans for new construction and encourage remodel improvements. On the other hand, the distance between our homes is a unique feature of our neighborhood and allows greater privacy than in most other subdivisions.

*Circle the letter beside the option you favor:*

- a. Keep the restriction. Leave house side setbacks in my section as they are.
- b. Change the restriction. Relax house side setbacks in my section to 10 feet for all standard lots.
- c. Change the restriction. Relax house side setbacks in my section to 7 feet for all standard lots.

Comments:

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3. **Restriction**

The *side setback for outbuildings* (e.g., garages and carports) is currently:

- 10 feet in Sections 1, 2, & 3
- 10 feet in Sections 4 & 5 for corner lots
- 5 feet in Sections 4 & 5 for other lots

NOTE: Different setbacks may apply for irregular lots. In addition, owners of irregular lots may petition for an exception to the restriction. (Owners of regular-shaped lots do not have that option.)

*Circle the letter beside the option you favor:*

- a. Keep the restriction. Leave outbuilding side setbacks in my section as they are.
- b. Change the restriction. Relax outbuilding side setbacks in my section to 5 feet for all lots.
- c. Change the restriction. Relax outbuilding side setbacks in my section to 3 feet for all lots.

Comments:

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**Reason for possible change**

The vast majority of current violations and complaints deal with carports and garages. Relaxing the side restriction for outbuildings would not change the restriction for houses, but it would still give people more leeway on garages and carports.

NOTE: The City of Houston building code requires a 3-foot setback for combustible walls (e.g., wood frame).

4. **Restriction**

*Garage apartments* are not dealt with clearly in the current deed restrictions.

- Garage apartments are not explicitly mentioned at all for Section 1.
- Sections 2, 3, 4, & 5 don't allow garage apartments for rental purposes. All living quarters on the property other than in the main building must be for "servants."
- Sections 3, 4, & 5 state in another spot that only a detached single family dwelling with a one- or two- car garage can be erected. (This seems to conflict with the clause allowing servants' quarters.)

*Circle the letter beside the option you favor:*

- a. Do not change the restrictions.
- b. Change/clarify the restrictions. Prohibit garage apartments in my section.
- c. Change/clarify the restrictions. Allow garage apartments in my section, but *prohibit* renting them.
- d. Change/clarify the restriction. Allow garage apartments in my section, and *allow* renting them.

Comments:

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**Reason for possible change**

Some people would like the option of building/using a garage apartment for relatives (e.g., elderly parents, teenaged kids). Others would like the option to rent out garage apartments.

In any case, we should replace the current language with something clearer.

5. **Restriction**

Garden shed-type *temporary outbuildings* are prohibited under our current restrictions.

**Reason for possible change**

There are lots of these temporary buildings in the neighborhood. Most can't be seen from the street, so it's very hard to consistently monitor and enforce the restriction against them. If we're not going to enforce a restriction (or can't consistently enforce it, as in this case), it's better not to include it, because it weakens the document as a whole.

*Circle the letter beside the option you favor:*

- a. Keep the restriction. Continue to prohibit temporary outbuildings like garden sheds.
- b. Change the restriction. Allow garden shed-type temporary outbuildings, as long as they are within the side setbacks for outbuildings.

**Comments:**

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6. **Restriction**

Add a requirement that a *current survey* (e.g., blue line drawing) be provided to the enforcement organization whenever a property changes hands.

**Reason for possible change**

Under the current deed restrictions, if you purchase a property with a violation, you do *not* have to bring the property into conformance with the restrictions. It is grandfathered when it changes hands. There are many grandfathered violations in the neighborhood.

But it can be difficult to prove when a violation was erected (i.e., before or after you purchased your property). Requiring a copy of the survey when the property changes hands will help document whether the violation existed at the time of purchase.

*Circle the letter beside the option you favor:*

- a. Do not add this requirement.
- b. Add the requirement that a current survey (e.g., blue line drawing) be provided to the enforcement organization whenever a property changes hands.
- c. Add the requirement that a current survey (e.g., blue line drawing) be provided to the enforcement organization whenever a property changes hands, but *only if a survey is required at closing by another party*. (The lender requires a survey to finance a home purchase. Since there is no lender for a cash purchase, no survey is required. A survey can easily cost over \$350. Writing the requirement this way would mean we wouldn't require a cash buyer to pay for a survey just for our enforcement organization.)

**Comments:**

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7. Restriction

If a grandfathered violation is destroyed, by a hurricane for example, *it can not be rebuilt to match the original violation*. The new structure must conform to deed restrictions when it is rebuilt. Rebuilding it like the original would be considered a new violation.

Reason for possible change

Some people with grandfathered violations might want to see this change. We could add a clause allowing *registered* grandfathered violations to be rebuilt the way they were. However, *unregistered* violations that are destroyed would have to be rebuilt in conformance with the deed restrictions.

To register a grandfathered violation, the property owner would have to *submit dated proof* such as a current property survey (blue line drawing) to the enforcement organization.

NOTE: Just registering a violation wouldn't change its status to grandfathered. It would only document it. In other words, you couldn't create a violation and then grandfather it by sending a survey to the enforcement organization.

*Circle the letter beside the option you favor:*

- a. Keep the restriction as it is. Grandfathered violations, if destroyed, must conform to the deed restrictions when they are rebuilt.
- b. Change the restriction. Allow property owners to rebuild grandfathered violations to the way they were before they were destroyed. This option is available to property owners *only* if they registered the violation prior to the damage. If they did not register the violation, the rebuilt structure must conform to deed restrictions. To register a grandfathered violation, property owners must submit dated proof such as a current property survey (blue line drawing) to the enforcement organization.

Comments:

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8. Restriction

Performing *maintenance on existing grandfathered violations* is a gray area right now in our restrictions.

Reason for possible change

We could add a clause clarifying that maintenance to an existing grandfathered violation is acceptable (as opposed to upgrades, expansion, or replacement with a new structure, which would still be prohibited).

*Circle the letter beside the option you favor:*

- a. Keep the restriction as it is.
- b. Change the restriction. Specify that property owners can perform maintenance on grandfathered violations, but can not make improvements to them. (For example, this would allow someone to repair an aluminum support to a carport that is a grandfathered violation, but not to replace the aluminum with wood supports or replace the entire structure with a new structure.)

Comments:

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9. Issue

Some homeowners have violations of the deed restrictions that have not been grandfathered. In other words, they have active violations that they could be sued over. Some of these individuals might not want to vote for updated deed restrictions because they are afraid they will be required to bring their violations into compliance when the updated restrictions are passed.

Reason for possible change

To encourage all property owners to back the proposed updates, we could add a clause to *grandfather all documented violations that exist when the deed restriction updates go into effect*. To grandfather their violations, property owners would have to *submit dated proof* such as a current property survey (blue line drawing) to the enforcement organization. This would document that the violation existed prior to the effective date of the deed restriction updates, and avoid confusion about future enforcement.

*Circle the letter beside the option you favor:*

- a. Do not add a clause to grandfather all existing violations when the deed restriction updates go into effect.
- b. Add a clause to grandfather all violations that exist when the deed restriction updates go into effect. Require that property owners submit dated proof such as a current property survey (blue line drawing) to the enforcement organization in order to grandfather their violations.

Comments:

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10. Restriction

Fences, *walls, and hedges* are prohibited in front of the front setback line for houses.

Reason for possible change

Traffic has really picked up on Shepherd and Yale in the last 50 years. For homes with a side property line abutting these streets, this means less privacy. Allowing these property owners to install a hedge, wall, or wrought iron fence up to the front of the property line would provide more privacy to their property (and their neighbors' properties).

*Circle the letter beside the option you favor:*

- a. Keep the restriction as it is. Completely prohibit fences, walls, and hedges in front of the house front setback line on all properties.
- b. Change the restriction. Allow hedges in front of the house front setback line for properties with one side of the home abutting Shepherd or Yale.
- c. Change the restriction. Allow hedges, wrought iron fences, and walls (but no chain link fences) in front of the house front setback line for properties with one side of the home abutting Shepherd or Yale.

Comments:

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11. Restriction

There is a clause restricting residents to using "*attractive*" *paint colors* and types of building material.

Reason for possible change

The attractiveness of a paint color and building materials is highly subjective, and therefore difficult to enforce consistently and fairly. (For example, some people think fuchsia or turquoise would be unattractive for a house, while others think these colors are fine.) Any restriction that is not clearly and consistently enforced becomes hard to enforce at all. We have never enforced this restriction. Therefore it weakens the whole document.

*Circle the letter beside the option you favor:*

- a. Leave in the "attractiveness" requirement.
- b. Remove the "attractiveness" requirement.

Comments:

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12. Restriction

Our *funding* for enforcing the deed restrictions comes from a fee when a property is sold. The fee is 40 cents per lineal foot of the front property line, which is around \$30 for a standard lot.

In June 1999 dollars, this would be equivalent to about \$4.60/ft. or about \$368 per closing.  
(Source: Bureau of Labor Statistics: [www.bls.gov/](http://www.bls.gov/))

Reason for possible change

The fee has not increased with inflation, so it doesn't cover the cost of enforcement anymore.

We have two basic funding options:

- Continue to collect a one-time fee paid by the purchaser at closing and collected by the title company, but make it a **percentage of the sale price** instead of a fixed amount, so it can vary with the property value and with inflation. This will only apply to future home sales and therefore will not require additional fees from current homeowners.

*Or*

- Institute **mandatory annual assessments**. Each property owner would pay a set fee every year. (NOTE: Collection of mandatory fees is difficult to enforce and creates a larger administrative burden than one-time fees collected by the title company at closing. Also, mandatory fees may be possible only if we create a Property Owners Association. We don't know yet.)

*Circle the letter beside the option you favor:*

- a. Keep the restriction as it is. Keep it 40 cents per lineal foot of the front property line, collected at closing by the title company from the purchaser.
- b. Change the restriction. Make the fee a *percentage* based on property sale price, *collected at closing* by the title company from the purchaser. The percentage would be between .2% and .75%. (On a \$150,000 home sale, this would equal \$300 - \$1125 paid by the purchaser.)
- c. Change the restriction. Eliminate the fee at property sale. Instead, institute a **\$50 - \$100 annual mandatory fee** on all property owners.

12. Comments:

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13. Restriction

There are multiple clauses relating to the *organization for enforcing the deed restrictions*. These clauses are incomplete, which is part of the reason our old enforcing organization, the Board of Trustees, is now defunct. These clauses need to be replaced with a clear description of the structure of the enforcing organization, how people become members of that organization, how it is perpetuated, what powers it has (and doesn't have), etc.

Reason for change

The old Board of Trustees is defunct. The only way to enforce our deed restrictions right now is for neighbors to sue each other. If we do not create some sort of organization to enforce the restrictions, more and more violations will slip by, and the restrictions as a whole will eventually be waived.

We are researching the pros, cons, and legal requirements for creating a Property Owners Association versus creating a new Board of Trustees to enforce the deed restrictions. But whatever we call the enforcing organization we end up with, residents have voiced several suggestions about how that organization should be run. These are listed below.

*Circle the letter beside ALL the suggestions you favor. Add any other comments or suggestions you may have below.*

- a. Members will be volunteers. They will be openly nominated and elected, not appointed.
- b. Their names and phone numbers will be published in the *Gazette* so residents can contact them with questions and suggestions.
- c. They will report on their work regularly at Civic Club meetings and in the *Gazette*.
- d. The organization will have some level of liability protection (e.g., D&O / liability insurance).
- e. Meetings will be open to Garden Oaks property owners and residents.

Comments:

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**Do you have any other general comments or suggestions?**

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**THANK YOU for participating in this survey!** Please return your survey by Oct. 20 to:  
Garden Oaks Deed Restriction Committee / 807 West 41<sup>st</sup> / Houston, TX 77018