

ISSUE #1

- (s) No Owner shall use a Garage for other than the parking of motor vehicles and boats, unless the Garage is enclosed so as not to be Visible from a Neighboring Lot and normally kept closed. No Owner shall use a Garage as a laundry or for storage purposes unless the Garage is enclosed.
- (t) No Owner shall violate or permit the violation on his Lot of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matter relating to the use and development of his Lot.
- (u) No Owner shall undertake an activity upon any Lot or in or about any Lot which would unreasonably disrupt or impair the privacy and quiet enjoyment of any other Lot or Owner thereof and no unlawful activity on any Lot.
- (v) No Owner shall construct any building or structure between the street boundary of the Lot and any applicable building setback line along such boundary; provided, however, that an Owner may construct walks, fences, walls, driveways and garbage receptacle enclosures if not otherwise in violation of any other restriction contained in this Declaration or in the Design Guidelines.
- (w) No Owner shall use any reflective finishes on exterior surfaces (other than non-mirrored glass). Exterior paint shall be either flat or semi-gloss. No gloss or reflective paint will be permitted on any exterior surfaces. The colors of all exterior surfaces shall contain at least seventy-five percent (75%) white pigment except for accent colors which can cover no more than five percent (5%) of any exterior elevation.
- (x) No Owner shall finish any roof with built-up tar and gravel, except that flat roofs may be finished with built-up tar and gravel in colors of dark brown to red-brown and gray to blue-gray.
- (y) No Owner shall construct a metal roof or install metal siding on a Residence, and no Owner may install liquid petroleum gas tanks on any Lot which are Visible from a Neighboring Lot.
- (z) No Owner shall install or maintain permanent exterior electric lighting without the prior approval of the Design Review Committee. No exterior lighting shall be installed that creates an annoyance or nuisance to other Lots. No Owner shall install or maintain any antenna which is Visible from a Neighboring Lot except that an Owner may install an antenna not exceeding ten (10) feet in height above normal grade area if such antenna is not visible from the adjacent street. Notwithstanding the foregoing and subject to any reasonable restrictions adopted by the Design Review Committee, the Design Review Committee may permit antennas that would not otherwise be permitted by this subsection (z) if the Design Review Committee is required to permit said antennas under the provisions of the Telecommunications Act of 1996 and/or regulations adopted by the Federal Communications Commission.
- (aa) All telephone and electric power lines, water pipe lines and all other conduits for utilities shall be installed underground when outside the walls of the Residence.
- (bb) No Owner other than Declarant or a Developer shall remove any tree within 25 feet of the property line of any Lot without the prior approval of the Design Review Committee.
- (cc) No Owner other than Declarant or Developer may plant trees within any setback area established in the Design Guidelines without the prior written approval of the Design Review Committee.
- (dd) No Owner may use second hand or used lumber or other material in any construction on any Lot.
- (ee) If due to the peculiar location, size or topography of a particular Lot, an Owner cannot reasonably build a Residence without violating a specific provision of this Section 5.02, the Board shall have the authority, with the prior written approval of the Design Review Committee, to grant a variance from such specific restriction permitting such Owner to proceed to build and occupy a Residence without regard to the specific restriction.
- (ff) The Association shall have the rights set forth in Section 7.05 with respect to each Lot.
- (gg) During the course of development and construction on any Lot, the terms of this Section 5.02 will be waived for Declarant and Developer to the extent necessary to permit construction of a Residence pursuant to plans approved by Declarant.
- (hh) The Design Review Committee may, in its reasonable discretion, and subject to the approval of the Board, adopt Design Review Committee Rules which take into consideration the differences between the Lots which contain single family dwellings, Lots which are condominium units, and Lots upon which are situated Apartment Buildings. The Design Review Committee may adopt rules that apply only to single family dwellings, to condominium units, and/or to Apartment Buildings or Rental Units so long as there is a rational and reasonable basis for said rules.

5.03 Private Area; Construction and Alteration of Improvements; Excavations.
No Owner may construct, reconstruct, refinish, alter or maintain any improvement upon, under or above any Lot of a Private Area or may make or create any Excavation or Fill thereon, or may make any change in the natural or existing surface drainage thereof, or may install any utility line (wire or conduit) thereon, except in compliance with the Design Review Committee Rules, the Design Guidelines set forth in Exhibit D, and all provisions of this section:

- (a) Except to the extent reasonably necessary for the construction, reconstruction or alteration of any such improvement for which the Owner has obtained approval from the Design Review Committee pursuant to this Section 5.03:
 - (1) No Owner shall conduct any Excavation or Fill which would be Visible from a Neighboring Lot; and
 - (2) No Owner shall install a power, telephone or other utility line (wire or conduit) on or under any Lot in a Private Area which would be Visible from a Neighboring Lot. The Association shall, in the event of any violation of the provisions of this subsection, restore such Private Area to its state existing immediately prior to such violation, including the

removal of any unauthorized power, telephone or other utility line. The Owner of the Lot shall reimburse the Association for all expenses incurred by the Association in performing any curative action under this subsection.

- (b) Any Owner proposing to construct, reconstruct, refinish or alter any part of the exterior of any improvement Visible from a Neighboring Lot, or to perform any other work which requires prior written approval of the Design Review Committee, shall apply to the Design Review Committee for approval in the following manner:
 - (1) In the case of Improvements having a cost exceeding \$25,000.00, (as this sum may be increased from time to time by the Design Review Committee, with the approval of the Board):
 - (i) The Owner shall submit to the Design Review Committee prior to construction, preliminary plans for the proposed Improvements, prepared by an Architect showing the Improvements in detail with dimensions. The Design Review Committee shall review and shall either approve or disapprove such preliminary plans in writing within sixty (60) days, after submission unless said time period is extended as hereinafter provided, and in the event of disapproval, shall state in writing the reasons for disapproval. If the Design Review Committee is unable to act on the plans within sixty (60) days, the Design Review Committee may either deny the application or extend the time for its response for a period of an additional thirty (30) days. If the time period is extended, the Design Review Committee shall make a reasonable effort to notify the Owner of its decision to extend the time for its response. The Design Review Committee's failure to approve or disapprove the preliminary plans within said sixty (60) day period or ninety (90) day period if the time period is extended shall be deemed approval.
 - (ii) Following approval of the preliminary plans, the Owner shall submit the final plans and specifications for the proposed Improvements to the Design Review Committee in duplicate, including where appropriate, a plot plan showing easements, set back and contour lines, the location of all existing and proposed Improvements, the proposed drainage plan, the proposed sanitary disposal facilities, the location of all existing trees having a height in excess of six-feet or a trunk measuring six-inches or more in any diameter at ground level and indicating which trees (if any) the Owner plans to remove, and the location of all proposed utility installations. The plans and specifications shall indicate all exterior materials, finishes and colors to be used. The Owner shall also indicate his proposed construction schedule, and shall pay a reasonable fee as established by the Design Review Committee for plan review and inspection. The Design Review Committee shall review and shall either approve or disapprove the final plans and specifications in writing within sixty (60) days after submission unless said time period is extended as hereinafter provided, and in the event of disapproval shall state in writing the reasons for disapproval. If the Design Review Committee is unable to act on the final plans within sixty (60) days, the Design Review Committee may either deny the application or extend the time for response for a period of an additional thirty (30) days. If the time period is extended, the Design Review Committee shall make a reasonable effort to notify the Owner of its decision to extend the time for its response. The Design Review Committee's failure to approve or disapprove the final plans within said sixty (60) day period or ninety (90) day period if the time period is extended shall be deemed approval. The Design Review Committee shall not disapprove any final plans and specifications on account of any matter previously presented and approved in the preliminary plans.
 - (2) In the case of exterior Improvements having a cost of \$25,000.00 or less (as this sum may be increased from time to time by the Design Review Committee, with the approval of the Board), the Owner shall submit to the Design Review Committee for approval prior to construction final plans and specifications for the proposed Improvements, including where appropriate a plot plan showing easements, set back and contour lines, the location of all existing and proposed Improvements, the proposed drainage plan, the proposed sanitary disposal facilities, the location of all existing trees having a height in excess of six feet or a trunk measuring six inches or more in any diameter at ground level and indicating which (if any) the Owner plans to remove, and the location of all proposed utility installations. The plans and specifications shall indicate all exterior materials, finishes and colors to be used. The Owner shall also indicate his proposed construction schedule, and shall pay a reasonable fee as established by the Design Review Committee for plan review and inspection. The Design Review Committee shall review and shall either approve or disapprove the final plans and specifications in writing within sixty (60) days after submission unless said time period is extended as hereinafter provided, and in the event of disapproval shall state in writing the reasons for disapproval. If the Design Review Committee is unable to act on the plans within sixty (60) days, the Design Review Committee may either deny the application or extend the time for its response for a period of an additional thirty (30) days. If the time period is extended, the Design Review Committee shall make a reasonable effort to notify the Owner of its decision to extend the time for its response. The Design Review Committee's failure to approve or disapprove within said sixty (60) day period or ninety (90) day period if the time period is extended shall be deemed approval.

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. c (p. 5): Blanket ban, sub-1-meter size cap, or prior approval requirement on satellite dishes or antennas is preempted by federal FCC OTARD regulations.

Statutory / Legal Reference: 47 C.F.R. § 1.4000 (FCC OTARD Rule)
Statutory Comparison: The FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, as expanded by the 2021 OTARD Report and Order, FCC 21-10) preempts community association restrictions that prohibit, charge application fees for, require prior architectural approval for, or impose sub-1-meter (39.37-inch) diameter caps on the installation, maintenance, or use of television broadcast antennas, direct-broadcast satellite dishes 1 meter or less in diameter, and fixed wireless broadband antennas (including hub and relay antennas) situated on property within the exclusive use or control of the owner/tenant.

CURRENT WORDING IN DOCUMENT:
Owner shall install or maintain any antenna which is Visible from a Neighboring Lot except that an Owner may install an antenna not exceeding ten (10) feet in height above normal grade area if such antenna is not visible from the adjacent street.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):
Provided that this restriction shall not prohibit or require prior approval for any owner or occupant installing an antenna, fixed wireless broadband hub/relay device, or satellite dish of one meter (39.37 inches) or less in diameter within areas under the owner's or occupant's exclusive use or control, in accordance with FCC OTARD regulations (47 C.F.R. § 1.4000).