

MARKUP #1 ->

Section 18. No excavated material shall be moved from the Subdivision without the written consent of the Declarant.

Section 19. Before the commencement of any construction on any lot, the building design, location, construction plans, and construction materials must be approved by the Architectural Review Committee which has been established by the Declarant.

Section 20. Only single family residences shall be constructed on lots 2 through 43 inclusive. The structures on lots 2 through 43 inclusive shall contain a minimum of 1,400 square feet of livable floor area exclusive of any garage, breezeway, or basement when the structure consists of one floor or shall contain a minimum of 1,700 square feet of livable floor area exclusive of any garage, breezeway or basement when the structure consists of two floors, a story and one-half, a bi-level, and a tri-level. Lots 2 through 43 inclusive shall also have constructed on them a minimum of a two-car attached garage.

ISSUE #1

Section 21. The installation or construction of any satellite dish or receiver and television or radio antenna or tower on any lot is prohibited without the written consent of the Declarant or Association.

Section 22. The installation or construction of any storage shed or detached building is prohibited without the written consent of the Declarant or Association.

Section 23. Without written permission of the Declarant or Association no clothes line, whether temporary or permanent, shall be used or installed in the yard or any other area outside the residence.

Section 24. No completely modular building shall be permissible; however, precut or preassembled components may be used

Section 25. Declarant or the transferees of Declarant shall undertake the work of developing all lots included within the Subdivision. The completion of that work, and the sale, rental, or other disposition of residential units is essential to the welfare of the Subdivision as an ongoing residential community. In order that such work may be completed and the Subdivision be established as a fully occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, Declarant's transferees, or the employees contractors of Declarant or Declarant's transferees or their representatives, whatever they determine may be reasonably necessary or advisable in connection with the completion of such work;

(b) Prevent Declarant, Declarant's transferees, or the employees, contractors, or sub-contractors of Declarant or Declarant's transferees from constructing and maintaining on any part of parts of the Subdivision property owned or controlled by Declarant, Declarant's transferees, or their representatives, such 'structures as may be reasonably necessary for the completion of such work, the establishment of the Subdivision as a residential community, and the disposition of lots by sale, lease or otherwise.

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 21. (p. 7): 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:

The installation or construction of any satellite dish or receiver and television or radio antenna or tower on any lot is prohibited without the written consent of the Declarant or Association.

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).