

Roseheart Homeowners Association

“Guide to Architectural Control”

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INTRODUCTION

Roseheart is a "planned unit development" – essentially, a cross between a conventional residential subdivision and a condominium.

One distinguishing feature of a planned unit development is the existence of a homeowners association that owns and manages certain property (the streets and various landscaped areas) as the common property of all the homeowners. All homeowners are required to be members of this association and to pay a mandatory quarterly assessment for their proportionate share of the common expenses.

Another basic feature of a PUD is a system of architectural control to govern the improvements that individual homeowners may make to the exterior of their homes and lots. This architectural control system supplements the requirements of city zoning and other codes, and it is administered by a committee of the homeowners association. These restrictions are necessary for two basic reasons: (1) the subdivision was originally designed with a certain deliberate uniformity of style, and (2) the small lot size and high density of housing in the neighborhood magnifies the impact that one homeowner's ill-conceived "improvement" can have on every other resident's property.

The structure, functions and powers of the homeowners association are set out in deed restrictions (formally called the "Declaration of Covenants, Conditions and Restrictions") that are attached to each homeowner's property deed in the records of the County Clerk. Unfortunately, this document is written in an extreme form of "legalese" that can make it difficult to interpret in practice. Also, it is just human nature to file away such a ponderous document (along with all the other material which you received from a title company at closing) and forget about it.

Therefore the purpose of this *Guide* is to explain the requirements and procedures of the architectural control process in Roseheart as clearly and simply as possible. It attempts to answer the most common questions that a homeowner may have about (1) whether or not some home improvement project is actually subject to the requirements for approval and (2), if it is, what policy determines whether or not a particular plan will be approved. It is organized by the subject areas that have come up most frequently, and it concludes with an explanation of procedures. Please review the Table of Contents to be sure you don't overlook something that applies to a project you may have in mind.

Obviously, it is impossible to anticipate every conceivable question in this *Guide*. So, if you have questions, *ask*. Ask any Committee or Board member. In many cases, Association Management Services can also assist you by explaining the process, interpreting the provisions of the Declaration, and advising you on the standing policy of the Board.

REQUIREMENTS AND POLICIES

Scope of Architectural Control

In general, the architectural control provisions of the covenants (Article VIII of the Declaration of Covenants, Conditions and Restrictions) apply to any *exterior changes* to a house. This *includes* changes to driveways, landscape retaining walls, and other significant features of the lot surrounding the house.

- Therefore any work which you do on the interior of your home is not subject to any review whatsoever by the homeowners association. Interior renovation is governed only by city building codes and other legal requirements of general application.
- Architectural control also does not apply to routine maintenance and repairs, as long as you do not change the color or other significant features of the work. What constitutes "routine maintenance" and what is considered a significant change is discussed in specific cases below.
- Note that architectural control is *not* limited only to changes that are visible from the street in front of the house. The architectural control process is designed to protect you from what your next-door neighbors and the people behind the back fence might do, too.

Materials of Construction

In order to preserve the basic architectural harmony of the neighborhood, ordinarily the fundamental nature of the materials of exterior home construction may not be changed. That is, brick facades must remain brick, stucco must remain stucco, the roof must remain composition shingles, etc.

Paint Colors

Any change in the color of the exterior of a house must be approved in advance by the Architectural Control Committee.

- Clearly, it is impossible to express a precise verbal definition of the range or mix of colors that the Committee will approve or disapprove. This decision inevitably must be made on a case-by-case basis. It includes consideration of the colors of adjacent houses, and of how one element of a house (for example, the painted wood) relates to others (for example, the stucco) that the homeowner may or may not wish to change at the same time.
- Colors that are applied as accents to a very limited area (for example, the front door) are generally allowed in a much wider range than the colors that will be approved for a large area or the whole house. This policy is designed to allow for some individualizing of each house without disrupting the harmony of the entire neighborhood.
- As a rough guide, a walking tour of the neighborhood should give you some "feel" for the colors and combinations that the Committee has approved in the past. However, be aware that combinations "count" as well as the individual colors in isolation.

- Merely repainting a house in the original color (or a color that has previously been approved *for that particular house*) does not require any approval. This is routine maintenance, and not a matter of architectural control.
- In determining the "original color," the Committee understands that you probably do not have a record of the brand or precise specification of the colors used by the original builder. Therefore the Committee follows a "rule of reason" on this matter: if the color is close enough that no one will notice the change (except that the work has been freshly repainted), it is considered to be the original. If there is any doubt, you should obtain the Committee's approval prior to proceeding.

Roof Shingles

The color and materials of roof shingles are subject to architectural control in the same way as any other part of the house.

- Therefore if you plan on re-roofing with anything other than the original shingles, you should get approval before you sign the contract.
- The Committee recognizes that the original shingles that were used by Sitterle Homes in the construction of the first houses may possibly no longer be available, and therefore they could not be matched exactly. Thus, you could expect the Committee to approve a reasonably similar color without difficulty.

Easement Restrictions

As a rough definition, an easement is a right that is granted to someone else to use part of your property for some particular limited purpose. It is shown on the subdivision plat and recorded in the deed records.

The majority of the homes in Roseheart are restricted by a utility easement. City Public Service, Southwestern Bell Telephone, and Time Warner Cable all have the right to use this part of your lot for their utility lines, and to do whatever work they need to in order to maintain their equipment.

The property survey that you received from the title company at closing should show any easements that exist on your lot. The Declaration of Covenants, Conditions and Restrictions explicitly prohibits the homeowners association from making any change in the location or width of the easements that are recorded as part of the subdivision plat.

- Therefore the Architectural Control Committee generally has no choice but to disapprove of any permanent structure of any kind that you may want to build in one of these easements. This policy is for your own protection, since the utility agency will demolish or remove any permanent obstruction that blocks access to their facilities, and they will not either restore it or compensate you for it.
- Sometimes it is possible, however, to obtain consent from the utilities for them to relocate their equipment at your expense. In this case, the Committee will consider a project on its merits, the same as it would any other project outside of an easement. Before you submit

your plans to the Committee, though, you must first obtain a written statement from all of the utilities involved, to the effect that they have reviewed scale drawings of your plans and that they have no objection to the proposal. Copies of these statements will be required for the association's files.

- For the protection of all the homeowners in the neighborhood, the homeowners association will file a formal complaint with the appropriate agencies against any homeowner who builds a permanent improvement in an easement without these required approvals.

Building Setbacks

Throughout San Antonio, building setbacks are required by the City's Unified Development Code. Generally, they require above-ground structures to be set back a certain minimum distance from the front, side and rear property lines. These requirements are designed to ensure adequate light and air circulation, and to reduce the danger that a fire that starts in one building will spread to an adjacent building. The restrictions apply to building extensions such as patio covers and balconies, as well as to the main body of the house itself.

In general, the front setback is 10 feet from the curb and the rear setback is 20 feet from the rear property line. On the side, the situation is more complicated, because Roseheart was built under a special provision of the Unified Development Code which is known as a "zero lot line" configuration. This allowed the homes to be built directly on the property line on one side in exchange for the builder doubling the normal 5-foot minimum side yard setback, to 10 feet on the opposite side. There are also specific minimum distances between buildings and special limits on projections from a building such as eaves and patio covers. (All of these setbacks overlap with any easements that may also be located in the same areas.) Again, these are City legal requirements, and so it is not within the power of the homeowners association to change them.

- In recognition of these legal requirements, the Architectural Control Committee will not approve the plans for any room extension or any other kind of above-ground structure that is permanently attached to a house (such as a patio cover or balcony) if the project appears to encroach on these required setbacks. Before the Committee will consider such plans, you must submit proof (that is, a City building permit) that the proposal complies with city code requirements.
- To simplify administration, however, the requirement that you obtain the building permit first, before submitting plans to the Architectural Control Committee, does not apply to ground level patios and open air decks, unless they are also in an easement.
- Note that the blank wall on the zero-lot-line side of your house is intended to serve the function of a firewall. Therefore no windows or other breaks can be allowed in that wall.
- For the protection of all the homeowners in the neighborhood, the association will file a formal complaint with the City against any owner who builds in apparent violation of these city code requirements.

Room Enclosures

Because of the closeness of one house to another in Roseheart, the design of room enclosures is a particularly sensitive issue of architectural control. Therefore plans for patio room enclosures, room extensions, and similar projects always must be approved by the Architectural Control Committee.

- As far as practical, room extensions and patio enclosures must be designed to look like they were part of the original construction of the house. This includes the materials used as well as their colors and textures.
- Conversion of a garage into useable living space is strictly prohibited per the use restrictions, and cannot be approved by the ACC.
- The Committee cannot approve vague, hand-drawn amateur sketches for these projects. While a full-blown detailed architectural rendering is not necessarily required in every case, all plans must be drawn to scale and they must include sufficient detail for the Committee to know what it is being asked to approve.

Decks, Patio Covers, Carports and Other Structures

Virtually *any* improvement on the lot surrounding your house is subject to approval under the architectural control provisions of the Declaration. Structures such as those mentioned above are quickly reviewed and turned around. As a practical matter the homeowners association has no intention or desire to interfere with any homeowner's privacy or peaceful use of their property, but does review these items to ensure their compliance with the covenants.

- Because of the likely detrimental effect on the appearance of the neighborhood, carport structures will not be allowed.

Fences

The application of architectural control to fences generally depends on whether the work qualifies as routine maintenance and repairs, or whether it involves a real change in the appearance of the house.

- Thus, you do not need any approval to repair or replace any part of your wrought iron fence, as long as it remains (1) a black wrought iron six or eight-foot fence and (2) in the original location..
- Moving the location of the front fence is problematic because of the way it could disrupt the appearance of the neighborhood. Therefore the Committee will not approve extending the front fence forward of the front wall line of the main structure.
- The height of fences is limited to six feet by the City of San Antonio's Unified Development Code (zoning ordinance), unless the property owner obtains a variance from the Zoning Board of Adjustment. This is a city legal restriction that the homeowners association does not have the power to waive.

- In order to preserve the harmony of the neighborhood, fences must be painted black.

Landscaping

Any permanent structure of any kind (including retaining walls and in-ground planters) that is proposed on your lot, including those located in a utility easement or a sewer/drainage easement is subject to the policy above on easements. Landscaping requirements are further outlined in ARTICLE VII, Section 2.9 of the Declaration.

- The Committee will not approve retaining walls, raised planters or other permanent structures that may restrict the flow of runoff in a drainage easement without prior written approval by the San Antonio Water System and the Drainage Engineering Division of the city Public Works Department. The association will take action against any homeowner who builds such a project without these approvals.
- In landscaping your front yard, you should be aware that the San Antonio Water System has a five-foot easement for the water line that extends across the front of your lot in that area.

Pavement Surfaces

In order to preserve reasonable harmony in the appearance of the neighborhood, as a general rule all driveways and sidewalks in front of the front fence should be surfaced in pebble finish concrete.

House Numbers

House numbers identifying the address of each house must be placed as close as possible to the front entry. The size, color and material of the numbers must be compatible with the design and color of the house. It is a matter of public safety in emergencies, as well as a basic courtesy to visitors, that the house numbers can always be found in a predictable location.

- From time to time, various firms solicit homeowners with an offer to professionally stencil house numbers on the curb. This is prohibited in Roseheart and anyone contracting to have this work completed, will be asked to promptly remove the stenciling.

Burglar Bars

A proliferation of burglar bars in different styles on various homes throughout the subdivision could become a serious detriment to the architectural integrity of the neighborhood.

Therefore the Committee will not approve the installation of burglar bars on the outside of a house.

Antennas and Satellite Dishes

Originally, the Declaration (§8.1.7) strictly prohibited outside antennas of any kind without the prior written approval of the Architectural Control Committee. However, the federal Telecommunications Act of 1996 has partly pre-empted this provision in the covenants and limited the restrictions that the homeowners association can enforce. The ACC will review requests antennas and satellite dishes under the following policies.

- No part of any TV antenna, "wireless cable" receiver or satellite dish may be located (1) overhanging a lot line, (2) forward of the front fence line, or (3) above the top of the roof line.
- Satellite dishes larger than one meter in diameter are not allowed.
- Ham radio antennas and similar structures are not allowed.
- No approval is required to have any kind of antenna installed in the attic.

Exterior Lighting

Each house also has unique styles of light fixtures above one end of the garage door, at the front door, and on the side or rear patio. Because these fixtures are unique to each house, the Committee generally regards their replacement as a matter of routine maintenance as long as the new fixture is generally similar in type and not grossly out of character with the lights on other homes.

- However, mercury vapor, halogen, fluorescent and similar "security lights" are potentially garish intrusions on the appearance of the neighborhood. Therefore they are not allowed where they would cast any light in front of a house or to the side of a house that does not face a zero-lot-line wall next door.
- Spotlights and yard floodlights must be aimed so they do not cause a hazard to drivers or a nuisance to adjacent homeowners.

Common Area

The Roseheart Homeowners Association owns the areas beyond lot boundaries. These commonly owned areas are not to be construed as extensions of the boundaries of the deeded area of the homeowner lots. Individual homeowners have no rights to make any improvements to or use these areas. This includes, but is not limited to, the following: clearing brush, planting of trees, planting shrubs, placing or storing anything in common area, etc. The Architectural Control Committee (ACC) must approve in advance and in writing any and all actions to these common areas that change the natural state. In General, stepping stones or natural stone may be approved by the ACC upon application.

PROCEDURES

Approval Procedures

The Architectural Control Committee consists of three homeowners who are appointed each year by the Board of Directors and who are responsible to the Board for implementing these policies. The Committee has a simple one-page form that is used to describe your plans and obtain the Committee's approval. A copy is contained at the end of this document. Additional copies are available from Management and/or from the members of the Architectural Control Committee.

Please attach to this form whatever additional material is appropriate to fully document your plan for the association's files (for example, a sample paint chip, or drawings as required). Submit this form and any attachments to the management company upon completion.

Because of the variable need for Committee action, the Committee does not have any regular meeting schedule. Instead, the Committee simply meets as necessary. As a rule, you should expect the Committee to be able to respond to any request for approval within two weeks or less. Please note however, that the committee is granted thirty days to review a request per the covenants.

Please do not try to pressure the Committee by claiming "but I've already signed the contract, and the contractor is coming tomorrow morning." You may be subject to legal action that will force you to tear down or undo any work that is done without the required approval.

Most often, the Committee is able to approve a homeowner's request without a formal meeting with the homeowner. However, if the Committee has questions or concerns about a proposal, the Committee chair will contact you to try to arrange a meeting time that is mutually convenient for everyone. As much as possible, the Committee meetings are informal conferences among neighbors. If there are problems with any aspect of your proposal, the Committee tries to work out a consensus on the issue.

A copy of the signed approval form and attachments will be returned to you after the Committee's action. The original, along with a copy of whatever attachments are needed, will be retained in the association's permanent files. Management will make the additional copies as necessary.

Approval Criteria

The Committee tries to be reasonable, but inevitably it must exercise some collective human judgment. Often this involves consideration of the precedent which one proposal might set, as well as the merits of an individual case in isolation. The Committee must balance its view of the long run best interest of the community as a whole against an individual homeowner's understandable desire to do as he or she pleases. This balancing is inherent in the nature of a planned unit development.

One purpose of this document is to explain some of the policies that the Committee follows on issues that are left to the Committee's discretion by the Declaration. These policies have been adopted by the Board of Directors, and the Board has directed the Committee to implement them.

Appeals

If you are dissatisfied with a decision by the Committee, you may appeal the Committee's action to the Board of Directors. A phone call to management is all that is necessary to initiate this.

The issue will be placed on the agenda and the Board will consider your case at its next regular meeting. A special Board meeting can also be called, if there is sufficient reason, or if the next regular meeting date has not been set.

Reasonable grounds for an appeal would be if you think that the Committee has been arbitrary, inconsistent or discriminatory, that it has misinterpreted some provision of the Declaration, or that it has misapplied a standing policy of the Board as explained in this Guide.

- However, you should not expect the Board to simply second-guess the Committee on matters of discretion or legitimate esthetic judgment. The Declaration clearly gives this discretion to the Committee. The Board will not undermine the entire process by overruling the Committee members on such an issue.

In any case, you should not proceed with any project that has been disapproved by the Committee, even pending appeal.

- Proceeding in defiance of the Committee may be taken as demonstrated contempt for the entire architectural control process. Appropriate legal action may be taken to enforce the process if necessary.

Enforcement

Enforcement action taken against a homeowner is considered a last resort. However, you should not risk testing the Board's determination to enforce the architectural control provisions of the Declaration. This is an essential function of the homeowners association, for the protection and benefit of all the homeowners in the neighborhood.

If you start on a project that requires approval under the Declaration without getting this approval in advance, you will be asked informally to stop and to submit your plans to the Architectural Control Committee before proceeding any further.

- While the association will always try to handle this situation in as friendly and non-confrontational a manner as possible, the integrity of the architectural control process is a serious matter. Therefore, if you proceed in defiance of this request, you may wind up on the receiving end of a court injunction demanding that the work be stopped immediately.

If you complete a project before the association can react to unapproved work in progress, you will be asked to go back and submit the project for approval anyway, just as if you had not already done the work.

- Again, the association will try to handle this situation in as informal a manner as possible, with a presumption that the lack of prior approval was an innocent violation, and that you simply did not know the approval was required. However, *if you intend for this to be a strategy to evade architectural control, consider this*: the result of a civil lawsuit could force you to tear down or undo any work that is not approved.

In addition to the remedies provided in the Declaration, involving legal action by the association, unapproved work may also put you in violation of city ordinances or other legal requirements. These include the zoning ordinance, the building code, and the rights of various utilities in easements.

In that case, the association (or even any homeowner) may file a complaint against you with the appropriate agency. Enforcement then is in the hands of that agency, and their bureaucratic processes may not be as informal, friendly and neighborly as the homeowners association.