

Foothills Clusters Homeowners Association Architectural Control Committee Guidelines



Photo Courtesy Ron Steffens

These ACC Guidelines provide value to the Foothills Clusters community by helping to keep ACC decision making consistent, transparent, and efficient for all applicants when implementing the criteria laid out in the CC&R's. The ACC Guidelines can be used by homeowners, architects, and builders as a valuable time-saving reference tool when developing plans for submittal to the ACC. The ACC Guidelines are intended as a tool of transparency to assist the ACC in providing fair and consistent application reviews all while minimizing time-consuming revisions and corrections to plans by homeowners and architects. Thus far the ACC Guidelines have been a great value to the community and we, the ACC, hope that this revision enhances these benefits to the Foothills Clusters long into the future.

2024 Architectural Control Committee

Gregory Piraino, Chair

Donn Stoltzfus, Member

David Kalish, Member

Special appreciation to Aletha Kalish Board President, the 2024 Board, and contributing homeowners



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RE: Foothills Clusters Architectural Control Committee Guidelines V1.1

Dear Members:

Our office represents The Foothills Clusters Homeowners Association (“Association”). At the request of the Board of Directors, we assisted the Association with drafting revisions to the Foothills Clusters Architectural Control Committee Guidelines (“Guidelines”), which were last revised on March 8, 2022. The Board has asked us to present this letter to provide additional context for these latest revisions.

The recorded Amendment to Declaration of Covenants, Conditions and Restrictions Clusters Association (“CC&Rs”), which governs all property in The Foothills Clusters, at Article V, establishes the Association’s Architectural Control Committee (“ACC”) and gives the ACC broad discretion to review owners’ plans for improvements to their lots and other exterior modifications. Specifically, the ACC must evaluate the “nature, kind, shape, height, materials, and location” of proposed projects for “harmony of external design and location in relation to surrounding structures and topography” before allowing owners to proceed. The CC&Rs do not define these terms or offer any other guidance beyond that.

It is well-settled, and even codified, in Arizona that design review committees, like the ACC, must exercise this broad authority “reasonably.” *See* A.R.S. § 33-1817(B)(3). The Guidelines are therefore designed to guide the ACC, as the committee members change over time, toward an application of the criteria in Article V of the CC&Rs in a manner that is fair to homeowners, consistent, and in keeping with both the unique natural setting of The Foothills Clusters and the common architectural aesthetics of your homes. The Guidelines also provide owners with notice of how they can expect the ACC to apply its discretion to avoid surprise after investing in a design.

The Association informed us that recently there has been confusion about the nature and purpose of the Guidelines and how they are used in the design review process. To this end, we assisted the Board with revising the Guidelines to more clearly explain the manner in which they implement the criteria in the CC&Rs, the reasoning behind them, and how they guide the ACC and homeowners in developing plans for projects that are in keeping with the CC&Rs and the character of the neighborhood. We believe these changes will be instrumental in getting all those who participate in the design review process on the same page and will lead to more consistent results that protect the expectations and property values of everyone who resides in The Foothills Clusters.

Best regards,
Smith & Wamsley, PLLC

Sean K. Moynihan, Esq.,
For the Firm

Foothills Clusters Architectural Control Committee Guidelines V1.1 2/5/2024

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Document History:

V1.1 replaces ACC Guidelines V1.0 originally released 3/8/2022



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Introduction

Article V of the Foothills Clusters HOA Covenants, Conditions and Restrictions (CC&R's) authorizes the Board of Directors to establish an Architectural Control Committee (ACC) to act on its behalf to enforce the CC&R's with regard to buildings and their maintenance.

The CC&R's give the Board of Directors and the ACC broad authority to review all development plans to ensure they "...have been submitted and approved in writing as to harmony of external design and location in relation to surrounding structures and topography..." and to specifically evaluate the "nature, kind, shape, height, materials, and location" of any proposed projects and verify that the projects otherwise comply with the governing documents. Accordingly, the Association has developed these guidelines for its exercise of this broad discretion in reviewing development plans so as to maintain the community's consistent aesthetic in keeping with its setting in the Catalina Foothills.

Note that the existence of prior violations or exceptions does not mean that such development is universally acceptable. Each application is judged independently for consistency with the foregoing criteria provided in the CC&Rs and according to the following Guidelines for the exercise of the ACC's discretion according to those criteria.

The attached guidelines represent the ACC standards for some, but not all, of the factors it considers when reviewing proposed development. Homeowners are also encouraged to read and be familiar with the CC&R's before planning any external changes to their property.

When an Architectural Change Application is Required

- With few exceptions all exterior maintenance, changes and additions require prior approval by the ACC before beginning work.
- Changes Requiring Approval Include, But Are Not Limited To:
 - Re-roofing
 - Roof changes
 - Additions, buildings, covered patios, carports, etc.
 - Walls and fences, front or back
 - Driveway recoating, replacing with new material, increasing size
 - Painting exterior of home, out buildings, garage door, etc.
 - Swimming pool addition
- Changes Not Requiring Approval Include:
 - Replacing windows or doors of the same size
 - Repainting using the same color
 - Common minor repairs performed using the same materials as existing
 - Repairs of gutters
 - Repairs of roofing using the same color (other than white elastomeric coatings which should be recoated in tan)
 - Touchup painting using same color
 - Repairs to fences, walls, outbuildings, pools, and pergolas with materials to match existing
 - Repair of driveway potholes with the same materials
 - Repair of walkways with the same materials
 - Resealing of asphalt driveways
- The CC&R's state explicitly that approval be granted by the ACC BEFORE beginning construction or maintenance. To begin work without written approval is a violation of our CC&Rs and could result in fines and corrective action.



How to Submit an Architectural Change Application

- Obtain the relevant application from a committee member or download it from the web site.
- Complete the application with supporting documents, including, but not limited to, the manufacturer's name and product code for any materials or paint colors that are proposed be used for the project as well as professionally prepared plans of proposed new construction which match the application. The ACC may accept non-professionally prepared plans for certain minor projects, at the ACC's sole discretion. Most contractors, architects, and freelance designers have the capability to produce clear and legible plans which accurately characterize your proposed work. Refer to the ACC web page for a list of information which should be clearly shown on your plans as well as examples of plans for several common types of improvements. Contact the ACC Chair if you have any questions when filling out the application.
- Present your project to surrounding neighbors to make them aware of the project and give them the opportunity to raise concerns with the ACC. Neighbors DO NOT have the power to approve or disapprove a project.
- If the location of the change borders on a Common Area, approval by the Master Association is required. Homeowner shall contact the Master Association representative directly via email using the FCHOA website which lists the current representative. Application for Major Work includes a location for signature by the Master Association representative.
- Submit the application to the ACC and please put your property address in the subject line of all emails. We strongly encourage all applicants to submit their applications electronically as PDF files and/or JPEG photos via email to the ACC contact email as published on the FCHOA website. If you prefer to submit an application physically please contact the ACC to make arrangements. If you submit an application via email but do not receive confirmation of receipt via email from the ACC Chair within a few days, check the email address closely and re-send the email, or, contact the ACC Chair again to request a confirmation email. Applications sent without confirmation of receipt emails do not constitute having been successfully submitted and were likely not received by the ACC.
- The committee reviews the application. The ACC may require further information and/or a site visit by members of the committee in order to review the application.
- If a Pima County building permit is required for the project, the application can be submitted with or without the required building permit. The requirements of the CC&R's and the ACC are often more restrictive than those of Pima County. We recommend applicants obtain ACC approval prior to County permits.
- The requirements of the CC&R's and ACC are independent from those of the county. Owners are solely responsible for ensuring they comply with any county regulations and codes. The ACC does not review plans for compliance with those requirements.
- Receipt of a Pima County building permit does not require that the ACC approve an application.
- Approval of an application by the ACC does not guarantee that the project will receive a permit from Pima County.
- The ACC decides outcome or, in some cases, may present the application to the full board for approval/disapproval at the next regularly scheduled HOA board meeting.
- If the board or committee fails to approve or disapprove the application within 30 days of receiving a complete application, then the application is considered legally approved.
- It is possible for the committee to disapprove an application if more time is required to review the application. The application can be resubmitted at any time.
- The ACC notifies applicant of the outcome.
- If approved, on project completion, the ACC may inspect the completed work on site to ensure all aspects match their description in the application.
- The ACC places a letter of completion in the hard file system for that property.

Structure Additions, Modifications or Home Replacements**Background**

The guidelines are designed to preserve a compatible and consistent aesthetic throughout the community that fits within its natural desert setting, in keeping with the ACC's responsibility to review owner's plans for harmony of design with surrounding homes, and in particular, the nature, kind, shape, materials, and location of proposed improvements to a lot. See Article V of the CC&Rs.

Standard

- Additions and modifications should use the same or matching material as the main house such as slump block or stucco. There may be cases where the board will approve other materials if it determines the other materials are in keeping with the surrounding characteristics of the neighborhood.
- Additions and modifications should color match the main house as closely as possible.
- Additions and modifications should feature an architectural style compatible with existing house and surrounding neighborhood.
- Home Replacements: If the original home is to be demolished, the replacement home's materials may be slump block, stucco or the board may approve other materials if it determines the other materials are in keeping with the surrounding characteristics of the neighborhood. Style and architecture of replacement homes should be compatible with the surrounding neighborhood. In order to be approved by the FCHOA and the ACC, the replacement home's nature, kind, shape, materials, and location must be consistent with the CC&R's as interpreted and implemented by the current ACC Guidelines.
- No significant negative impact to neighbors (e.g. window imposing on privacy).
- Note that the ACC may try to mitigate blockage of neighbors' views of mountains or city, but it cannot protect such views.
- No "temporary" structures in front (i.e., parking shade, etc.).

Maximum Lot Coverage

Standard

- To preserve the harmony of design and location relative to surrounding structures and topography, as well as the natural desert setting of the homes, lot coverage is limited and expected to be consistent with the other lots in the neighborhood. As a general estimation, projects that maintain a lot coverage of roughly 30% or less are more likely to satisfy these criteria and receive approval.
- Included in Lot Coverage: Home area under roof, shade structures, covered porches, covered patios, garages, carports, covered breezeways, guest homes, studios, storage buildings, outbuildings, pergolas, gazebos, and shade structures constructed of hard materials (wood, metal, masonry).
- Excluded from Lot Coverage: Driveways, sidewalks, uncovered patios, uncovered porches, uncovered decks, pool surrounds, sail shades, fabric shades, mesh cloth shades, and shade structures constructed of cloth or mesh materials.

Background

It is a goal of the Committee to prevent over-development, over-building, and crowding of structures in the Foothills Clusters. Substantial un-built and natural space shall be maintained around homes by limiting lot coverage. As an example, for a one-third acre lot:

1 acre (43,560 sf) x 0.33 = lot size of 14,373 sf x 0.30 = 4,312 sf maximum coverage.



Location of New Structures

Standard

- To preserve the harmony of design and location of improvements on the lots in manner that preserves the existing natural buffer between homes and between homes and common areas, and the aesthetics of the natural desert setting of the community, acceptable building areas are limited. Specifically, the ACC expects owners to refrain from siting construction in the following areas on the lot:
 - 10' from side property lines
 - 25' from front property lines
 - 25' from rear property lines
- For properties abutting Common Areas at the side, the ACC may approve construction up to 5' from the side property line abutting the Common Area, and, for properties abutting Common Areas at the rear, the ACC may approve construction up to 15' from the rear property line abutting the Common Area, subject to the ACC's evaluation of the aesthetic considerations summarized above and below.
- For properties on cul-de-sacs, the ACC may approve construction up to 20' from the front property line as long as off-street outdoor parking (not in a garage) is maintained for at least two cars, subject to the ACC's evaluation of the aesthetic considerations summarized above and below.
- These location guidelines apply to homes, garages, carports, shade structures and outbuildings.
- For simple freestanding shade structures located within the backyard, the ACC expects owners to refrain from siting them within 10' along contiguous property lines.
- These location guidelines do not apply to patios, driveways, sidewalks, or parking areas.
- These location guidelines do not apply to walls and fences for side yards or back yards.
- Walls and fences proposed for front yards forward of the face of the home will be considered individually by the ACC.

Background

The ACC location guidelines are in keeping with both the original Foothills Clusters design plan and are similar to present day Pima County CR-1 and CR-2 regulations.

A key characteristic and feature of the Foothills Clusters neighborhood is the abundance of trees and natural desert foliage that form the natural buffers around its homes.

The ACC's goal is to retain the Foothills Clusters' naturally treed and suburban character and to balance a feeling of community and privacy among neighbors.

The Committee's guidance by CC&R Article 5 of maintaining "harmony of external design and location in relation to surrounding structures and topography" includes maintaining adequate space for privacy and abundant natural desert growth, especially in front and side yards, and to keep homes located away from common areas

Maximum Building Height

Standard

- Proposed modifications to the original build, new builds, guest houses, garages, outbuildings and accessory structures will have a maximum build height of no greater than 15'0" from the original finished floor.
- Simple freestanding shade structures within the backyard will have a maximum build height of 10'-12', dependent on individual lot topography.
- Maximum structure height shall be defined as the highest part of the structure (excluding a fireplace chimney) above the original main home's finished floor.
- Structure height is measured from the original finished floor to the roof peak on a gabled roof or to the highest parapet wall on a flat-roofed house.
- Lots may not be supplemented with fill to raise the finished floor and effectively raise the proposed new finished structures height above the original structure's roof peak. For example: if a project proposes either new construction or to fully or partially demolish an existing structure and to supplement or add fill to the site to raise the finished floor by 2' then the maximum finished structure's height shall be reduced to a maximum of 13' above finished floor.
- Any proposed accessory structures which substantially block views from neighboring primary residences are discouraged by the Committee.
- Roof decks could be approved in some situations, depending on the specific setting and details

Background

The ACC's responsibility is to review proposed external structure changes so as to ensure "harmony of external design and location in relation to surrounding structures and topography," and owners must specifically obtain the ACC's approval for the height of proposed improvements. (CC&R Article 5)

The height of most structures in the Foothills Clusters are originally 14' to 15' above the finished floor. The evaluation of "harmony of external design" includes maintaining home and accessory structure heights at or near original Clusters levels and specifically at a maximum building height of 15' above the original finished floor. This requirement maintains the overall character and appearance of the development and eliminates competition in building heights and obstruction of views among neighbors.

Fireplace and Stove Chimney Height

Standard

- Fireplace flues and chimneys shall extend above the roof no higher than 18' AFF to the elevation of the flue's outlet and no higher than 20' AFF overall to the top of the chimney's cap or fan if so equipped.

Background

Pursuant to Article V, the ACC is specifically tasked with reviewing the height of proposed improvements, which include chimneys and flues.



Roof Materials

Standard

Tan or darker colors can be approved in keeping with the general color palette of the homes in the community as well as its natural desert setting.

- White or near-white roofs are not allowed per the CC&R's
- Tan elastomeric roof coating materials are commonly available and have been accepted by the ACC
- Tan elastomeric roof coating materials are available which are high performance, energy efficient, and with 10-year or longer warranties. The Cool Roof Rating Council lists numerous high performance tan roof coatings.

Standard community roofing materials are: asphalt shingles, tan continuous fluid-applied elastomeric membrane coatings, tan or darker painted standing metal seam roofing, clay tiles, ceramic tiles, slate tiles, concrete tiles, solar tiles, synthetic tiles, and composite tiles.

- Unfinished metal roofing, including bare metal or galvanized metal corrugated panels are unlikely to be approved to maintain harmony with the overwhelmingly prevailing materials used for roofs throughout the community identified above and the natural desert setting of the homes. Bare rusted metal roofing on sheds or shade covers as accents may be approved.
- Asphalt roll roofing left bare and without foam or a tan elastomeric coating is not approved.

Background

Color and materials of roof must be approved by the committee to ensure a harmony of external design consistent with the overall character of the community and the surrounding natural environment.



Walls and Fences

Standard

- Street-facing walls facing any street, including all cul-de-sacs, Evans Mountain Rd or Ventana Canyon.
 - Material must be same as main house – almost always slump block. See Art. VII, Section 11 of the CC&Rs.
 - Color should match the main house color as closely as possible.
 - There may be cases where the board will approve other materials, such as matching stucco along with the original slump block, if it determines the materials are in keeping with the surrounding characteristics of the neighborhood.
 - Wrought iron fencing at sides of house visible and facing the street is typically acceptable
- Non-street-facing walls and fences:
 - Generally approvable, based on specifics for proposed project:
 - Slump block to match house
 - Stucco-covered block
 - Wrought iron
 - Smooth-sided cement block (“CMU” type of blocks) colored or painted to match house
 - Wood in some situations
 - No chain-link fencing or similar
 - No ranch fencing, wire fencing, chicken wire, barbed wire, or similar
 - No bare grey CMU block

Background

The CC&R’s use the term “Patio walls” to refer to all walls and fences on a property, excluding walls that act as the side of an enclosed structure. The foregoing guidelines are designed to preserve a compatible and consistent aesthetic throughout the community that fits within its natural desert setting.

Driveways

All changes in size or location of driveways must be approved by the committee.

Standard

- Generally approvable materials:
 - Asphalt & resealing of existing asphalt
 - Concrete
 - Pavers
 - Gravel or decomposed granite of a size or installed at such a slope so as not to wash down into the streets.
Note: In some cases, a qualified design specialist, such as an architect, landscape architect, or civil engineer, may be required by the ACC to be paid and furnished by the homeowner to provide an assurance to the community that the installed materials will not wash down into community streets and become a nuisance.
- Generally not approvable due to the prevailing appearance of and materials used throughout the community:
 - Dirt
 - Gravel or decomposed granite with a likelihood of washing down into the street during heavy rains.



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