



DESIGN REVIEW PROCESS

Turtleback Mountain Resort

All neighborhood areas within Turtleback Mountain Resort are governed by the Declaration of Restrictive Covenants. These Covenants are regulated by the Turtleback Owners Association through the Architectural Review Committee, which will utilize the Design Guidelines in order to ensure the quality of the environment.

Enforcement of architectural and landscaping design standards, buffering and screening requirements and overall maintenance requirements are the responsibility of the Association. The City of Elephant Butte has no responsibility for the enforcement of any of the standards or requirements.

Zoning/Building permits for structures to be sited within Turtleback Mountain Resort will require a signature of approval from the Architectural Review Committee. The City will not process a request for a Zoning/Building permit without this signature unless the Review Committee fails to respond within 30 days of a request for review. The City will contact the Review Committee to determine that a request for review was made.

The Design Review Process was developed to provide adequate checkpoints throughout the design and development phases, so that time and money are not wasted on plans and designs which do not adhere to Design Guidelines or to the overall design principles of Turtleback Mountain Resort. This process is a proven and streamlined one and will not result in delays, provided each Owner, architect and builder performs in the spirit with which the Design Guidelines are intended, namely, a site-sensitive approach to the development of each Lot within this unique community.

To that end, plans and specifications shall be submitted to the Review Committee in accordance with the following conference and submittal requirements and review procedures.

1. Pre-Design Conference

Prior to creating detailed plans for any proposed improvement, it is suggested that the Owner and/or his architect meet with a representative of the Review Committee to discuss proposed plans and to resolve any questions regarding building requirements at Turtleback Mountain Resort. This informal review is to offer guidance prior to creating detailed drawings, and should occur on site whenever possible.

2. Design Submittal

When the preliminary design is complete, plans that are submitted must include all of the following exhibits; no review will commence until the submittal is complete:

1. Site plan (scale at 1" = 10' or 1" = 8') showing the entire property, location of the setbacks, the proposed residence, all ancillary buildings, the driveway, all utility sources and connections, and site walls.
2. Survey (scale 1" = 10' or 1" = 8') by a registered land surveyor or licensed civil engineer showing Lot boundaries and dimensions, topography (2 foot contours or less), major terrain features and edge of pavement and utility locations.
3. Floor Plans (scale 1/4" or 1/8" = 1') showing proposed finished floor elevations.
4. All exterior elevations (scale 1/4" or 1/8" = 1') showing building heights, roof lines, and an indication of all exterior materials and colors.
5. A material and color board with paint chips and literature depicting or describing all exterior materials.
6. A complete landscape plan (scale 1" = 8' or 10') showing size and type of all proposed plants, irrigation system, all decorative materials, borders and ornamentation.
7. Construction staging plan identifying the location of staging areas and identifying construction material storage areas, dumpster, contractor parking and portable toilet location, construction signage location and general construction schedule.
8. On-site staking of all building corners and other improvements, if requested by the Review Committee.
9. A design review fee in the amount of \$250.00. A submittal will not be reviewed unless this fee has been paid.
10. The Construction Compliance Deposit required under the Construction Regulations.
11. A letter from the Association stating that all Association dues, fees and other charges have been paid. The Review Committee shall not take any action on a submittal if any amounts are delinquent.

This submittal shall consist of one set of prints which shall be retained by the Review Committee.

3. Deferral of Material or Color Selection

An applicant may wish to delay the confirmation of final landscaping intentions and final color, stonework or other material selections until some point in time after the start of construction in order to better visualize landscape considerations, or to test an assortment of potential colors with actual materials intended for use. The Review Committee will cooperate with the applicant in this regard, provided that no landscape work may be started, nor color or material applied, until such time as the Review Committee has had the opportunity to review and consent to the final selections. We advise that the re-submittal should occur before the placement of any orders for materials. This deferral in no way eliminates the need

to provide a preliminary indication of the applicant's intentions as required by the preliminary design submittal.

4. Design Review

The Review Committee will meet to review the submittal and will respond in writing within 10 days after their meeting, barring unavoidable delays, but no later than 30 days after the effective date of submittal. Results of reviews will not be discussed over the telephone by members of the Review Committee with an Owner, or his architect or builder, and no Owner, architect or builder shall have the right to attend any meeting of the Review Committee unless specifically permitted by the Review Committee. Any response an Owner may wish to make regarding the results of the design review must be addressed to the Review Committee in writing.

5. Re-Submittal of Plans

In the event of any disapproval by the Review Committee of a submittal, a resubmission of plans must follow the same procedure as an original submittal. The Review Committee may assess an additional design review fee upon subsequent submittals which diverge substantially from previously reviewed applications for the same site, whether previously approved or denied.

6. Pre-Construction Conference

Prior to commencing construction, the builder must meet with a representative of the Review Committee to review construction procedures and coordinate his activities in Turtleback Mountain Resort.

7. Commencement of Construction and Timely Completion

Upon receipt of final approval from the Review Committee, and having satisfied all applicable City of Elephant Butte and State of New Mexico permitting processes, the Owner shall satisfy all conditions of approval and commence the construction of any work pursuant to the approved plans within one year from the date of such approval. If the Owner fails to begin construction within this time period, any approval given shall be automatically revoked. The Owner shall complete the construction of any improvement of his Lot within the designated Completion Period for his neighborhood after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to labor strikes, fires, national emergencies or natural calamities. If the Owner fails to comply with this schedule, or if the diligent and earnest pursuit of the completion of the improvement ceases, or is abandoned for a period of one calendar month, the Review Committee may, upon the passage of sixty days after written notification to the Owner, proceed to have the exterior of the improvement completed in accordance with the approved plans, or remove the improvement and restore the Lot to its pre-construction condition to the greatest degree possible. All costs relating to the completion or removal shall be borne and reimbursed to the Review Committee by the Owner, to be secured by a continuing lien on the Lot.

8. Inspections of Work In Progress

The Review Committee may inspect all work in progress and give notice of noncompliance. Absence of such inspection or notification during the construction period does not constitute an approval by the Review Committee of work in progress or compliance with the Design Guidelines.

9. Subsequent Changes, Remodels or Additions

Additional construction or other improvements to a residence or Lot, or changes during construction or after completion of an approved structure, including landscaping and color modification, must be submitted to the Review Committee for approval prior to making such changes or additions. The review fee for any change, remodel, or addition will be a minimum of \$50.00. A greater fee may be imposed by the Review Committee depending upon the degree the proposed changes vary from previously reviewed applications and the review efforts required. This includes any color modifications to the structure. To receive a review of any change, a submittal must be made outlining the intended improvement. All drawings must be professional quality with sufficient design detail.

10. Final Release

Upon completion of any residence or other improvement, the Owner shall give written notice of completion to the Review Committee. Within 30 days of such notification, a representative of the Review Committee may inspect the residence or other improvements for compliance. If all improvements comply with the Design Guidelines, the Review Committee may issue a written approval to the Owner, constituting a final release of the improvements by the Review Committee, which release is to be issued within 30 days of the final inspection.

If it is found that the work was not done in strict compliance with the approved plans or any portion of the Design Guidelines, the Review Committee may issue a written notice of noncompliance to the Owner, specifying the particulars of noncompliance, which notice is to be issued within 30 days of the final inspection.

The Owner shall have 30 days from the date of notice of noncompliance within which to remedy the non-complying portions of his improvement. If by the end of this time period the Owner has failed to remedy the noncompliance, the Review Committee may take action to remove the non-complying improvements or the imposition of a fine.

The Construction Compliance Deposit will be returned, less any outstanding violation fines, once a final release has been issued indicating all improvements, landscaping and paving are completed in conformance with the approved plans.

If the Review Committee fails to issue a final release, and also fails to issue a notice of noncompliance to the Owner, within three months of the Review Committee's receipt of the Owner's written notice of completion, the completed improvements shall be deemed to be in compliance with plans as approved by the Review Committee, and in compliance with the Design Guidelines.

11. Non-Waiver

The approval by the Review Committee of any plans, drawings, or specifications for any work done or proposed shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing or specification subsequently or additionally submitted for approval. Failure to enforce any provision of the Design Guidelines shall not constitute a waiver of same.

12. Right of Waiver or Variance

The Review Committee reserves the right to waive or vary any of the procedures or standards set forth in the Design Review Process or the Construction Regulations at its discretion, for good cause shown. Upon submission of a written narrative request for a variance or waiver of one or more provisions of the Architectural or Landscaping Guidelines, the Review Committee may, from time to time, with the approval of the Board, permit Owners to construct, erect, or install improvements which are in variance with said Guidelines. No

member of the Review Committee shall be liable to an Owner or other person for any claims, causes of actions, or damages arising out of the granting or denial of any variance request by an Owner or his agent. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Review Committee's right to strictly enforce the Design Guidelines against any other Owner. Each such written request must identify and set forth in narrative detail the specific guideline or standard from which a variance is sought, describe in detail the exact nature of the variance sought. Any grant of variance by the Review Committee must be in writing and must identify in narrative detail both the standard from which a variance is being sought and the specific variance being granted.

13. Exemptions

Re-painting or re-staining associated with the prudent maintenance of an existing residence does not require subsequent approval by the Review Committee, provided the paint stain colors are substantially identical to those initially approved by the Review Committee for application to the residence.

14. Limitation of Review

Plans and specification shall be approved by the Review Committee as to style, exterior design appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances. By approving such plans and specifications neither the Review Committee, the members or agents thereof, the Association, the Board of Directors nor the Declarant assumes any liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications. Approval of plans and specifications by the Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

15. Delegation of Authority

The Review Committee may delegate its design and plan review responsibilities to one or more of its members, acting as a subcommittee of the Review Committee, and/or professional design consultants retained by the Review Committee on behalf of the Association. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Review Committee.

16. Duties

It shall be the duty of the Review Committee to perform those duties specified in the Declaration and these Design Guidelines, to consider and act upon such proposals or plans related to the construction of improvements within Turtleback Mountain Resort as are submitted pursuant to the Declaration and these Design Guidelines, to enforce the architectural provisions of the Declaration and these Design Guidelines, and to amend these Design Guidelines whenever, and in a manner, deemed appropriate by the Review Committee.

17. Review Committee Address

The address of the Review Board shall be the address established for giving notice to the Association, unless otherwise specified by the Review Committee. Such address shall be the place for the submittal of plans and specifications and the place where the current Design Guidelines shall be kept.

The present address for Review Committee is:

Turtleback Mountain Resort
Design Review Committee
120 Stagecoach Drive
Post Office Box 990
Elephant Butte NM 87935

18. Meetings

The Review Committee shall convene monthly or as necessary to properly perform its duty. The vote of a majority of the members shall constitute an act by the Committee. The Review Committee shall keep on file all submittals and copies of all written responses to Owners to serve as record of all actions taken.

19. Compensation

Unless authorized by the Board, the members of the Review Committee shall not receive any compensation for services rendered. However, a professional design consultant, retained to advise and assist the Review Committee, and who is also serving as an appointed member of the Review Committee as well, may be paid such compensation as the Board determines. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of their duties. Professional consultants or representatives of the Review Committee retained for assistance in the review process shall be paid such compensation as the Review Committee, with Board approval, determines.

20. Amendment of Design Guidelines

The Review Committee may recommend amendments or revisions to any portion of these design guidelines. All such amendments or revisions shall be approved pursuant to paragraph 8.2 of the Declarations. Each Owner is responsible for obtaining from the Review Committee a copy of the most recently revised Design Guidelines.

21. Non-Liability

Plans and specifications shall be approved by the Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications, neither the Review Committee, the members or agents thereof, the Association, the Board of Directors of the Association, nor the Declarant assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. Neither the Review Committee, any member or agent thereof, the Association, the Board of Directors of the Association, nor the Declarant shall be liable to any Owner or other person for any damage, loss or prejudice suffered or claimed on account of:

1. The approval or disapproval of any plans, drawings and specifications, whether or not defective;
2. The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

3. The development or manner of development of any property within Turtleback Mountain Resort; or,
4. The execution and filing of a compliance or non-compliance certificate pursuant to these Design Guidelines, whether or not the facts therein are correct; provided, however, that such action, with the actual knowledge possessed by him, was taken in good faith.

Every Owner or other person, by submission of plans and specifications to the Review Committee for approval, agrees that he will not bring any action or suit against the Review Committee, any of its members or agents, the Association, the Board of Directors of the Association, or the Declarant, regarding any action taken by or on behalf of the Review Committee. Approval by the Review Committee of plans and specifications by or on behalf of the Review Committee, or of the construction of any improvement at Turtleback Mountain Resort, refers only to these Design Guidelines, and in no way implies, and shall not be deemed to be a representation or warranty that the submitted plans or specifications for the improvement comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

22. Enforcement

The Review Committee may, at any time, inspect a Lot or improvement and, upon discovering a violation of the Design Guidelines, provide a written notice of noncompliance to the Owner. This notice shall include a reasonable time limit within which to correct the violation. If an Owner fails to comply within this time period, the Review Committee or its authorized agents may enter the Lot and correct the violation at the expense of the Owner of such Lot; said expense to be secured by a lien upon such Lot enforceable in accordance with the Declaration.

In the event of any violation of the Design Guidelines, the Review Committee may, at its sole discretion, impose a punitive fine pursuant to the fine structure approved by the Association.

23. Severability

If any provision of these Design Guidelines, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of these Design Guidelines, and of the application of any such provision, section, sentence, clause, phrase or work in any other circumstances, shall not be affected thereby, and the remainder of these Design Guidelines shall be construed as if such invalid section were never included therein.

24. Owners Maintenance Obligation

The adoption of these Design Guidelines, including the standards and procedures for architectural approval, shall not be construed as changing any rights, obligations or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in the Declaration or the rules and regulations of the Association.