

Policy 11

Policy and Procedures Regarding the Granting of Variances

The Board of Directors of Fairway Pines Estates Owners Association, Inc., a Colorado Nonprofit Corporation (the "**Association**"), hereby approves and adopts the following Resolution:

Resolved, that the following Policy of the Association related to Regarding the Granting of Variances is hereby adopted and ratified:

Authority

This Policy is adopted pursuant to Article VI, Sections 5 a. and 6 of the Covenants and Policy 1 of Fairway Pines Property Owners Association Policies and Procedures.

Policy

Article VI, Section 6 of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines (Declaration), favors the overall community interest when it authorizes the Board of Directors or its Architectural Control Committee (ARC) to grant variances from Article V provisions, but only if such variances "do not result in conditions which are inconsistent with the general concept, harmony and values within the Subdivision." Article IV, Section 3 requires the ARC, or the Board of Directors to create and publish "architectural standards and specifications" (Architectural Standards), which " shall govern all structures, improvements, commercial signs, and home identification devices proposed for any Lot." Architectural Standards published pursuant to this Policy also favors the community interest. Therefore, it is the policy of the Subdivision that the community interest is presumed to take precedence over an individual request for a variance, (individual interest), which may seek to deviate from the requirements of Article V or from the published Architectural Standards. The presumption of community interest, however, may be rebutted or overcome in the granting of a variance by the Board of Directors.

Procedure

Application for Variance (Article V or Architectural Standards). Variances to Article V and the Architectural Standards will be submitted to the ARC on a Variance Request Form. The ARC will make recommendations and forward them to the Board of Directors as follows.

- a. If a variance is unanimously recommended for approval by the ARC and a board member is present at the ARC meeting when the variance is requested, the board member **may** approve the variance request. The variance is still required to be documented in the minutes of the next board meeting.
- b. However, a final decision shall be made by the board of directors on denial. The variance is still required to be documented on a Variance Request Form and the ARC and the board member denying the variance will report the denied variance along with the justification at the next board meeting.
- c. If there is disagreement between the ARC and the attending board member, the variance will be reviewed at the next scheduled board meeting, or a board meeting called for that specific purpose, and the board will vote to approve or decline the variance request.

All variance requests, approved or declined, will be posted on the ARC page of the website. If the variance request is to be considered by the entire board of directors (BOD), the BOD will then consider

the request at the next scheduled board meeting or at a board meeting called for that specific purpose and the applicant will be so notified. The applicant or the ARC/BOD may request applicant attendance at the board meeting, and the ARC may decide the matter at that meeting or take the request under advisement pending further deliberations and/or acquisition of further information. Requests for variance must be decided by a quorum of BOD voting on the request, and the vote taken must be recorded in the minutes. The applicant will be notified by email or other written notice of the decision. The applicant may resubmit, at discretion of the Board of Directors, if there is a significant change in the justification for the variance. The decision of the Board of Directors will be final.

Community Interest Criteria

Community Interest shall be defined as any interest set forth in the Declaration, Policies and Procedures, By-Laws, and Architectural Standards as established for the benefit of the Subdivision as a whole for the uniform benefit of all the members of the Subdivision. The community interest shall include any member interest, other than the applicant, whose use and enjoyment of property may be impacted by the granting of a variance. The community interest shall include the providers and users of amenities. The community interest shall also include those interests set forth in provisions of federal, state, and local law, in so far as they can be known, which exist for the benefit and protection of all people within their jurisdictions.

Criteria. The following list of community interest factors are extracted from the various rules governing the Subdivision for the benefit of all and shall be weighed and considered by the ARC and board of directors when requested to grant a variance from the architectural rules, standards, and specifications. This list is not meant to be exhaustive, or fully inclusive, and if other community interest factors are identified in connection with a particular request for variance, the ARC and board of directors shall weigh and consider them in connection with any community interest or individual interest facts which are made known to the ARC and board of directors.

- a. Preservation of property values.
- b. Preservation of indigenous plant and animal life, natural resources, the environment, scenery, and aesthetics. Indigenous plants and trees are favored over empty spaces.
- c. Preservation of privacy.
- d. Preservation of views of landscapes.
- e. Preservation of the highest quality of architectural design and construction.
- f. Preservation of a balance between reasonable uniformity of architectural design and construction as well as reasonable creativity and diversity of architectural design and construction.
- g. Preservation of a harmonious relationship of buildings, landscape, topography, and overall community design.
- h. Preservation of the golf course and its users from adverse impacts due to construction, improvements, or other changes made to individual or commercial properties within the Subdivision. Such impacts include (but are not limited to) safety, visual, sound, and other aesthetic impacts. Requests for setback variances and landscape changes which may have an adverse impact on golf course use and enjoyment are considered requests for major variances.
- i. Promotion of fire safety. and other safety precautions for the prevention of injury to persons and damage to property.
- j. Promotion of compliance with laws pertaining to Planned Unit Developments, and all other laws.

- k. Promotion of the equal and uniform treatment of all members of the community, insofar as it is reasonable to do so, while at the same time being respectful of the need to accommodate reasonable differences.
- l. Preservation of the requirements of particular provisions of the Declaration, Architectural Standards, and other rules. A proposed variance governed by multiple rules or Architectural Standards should be more difficult to grant than a proposed variance governed by a single rule or standard.
- m. Variances from architectural standards and specifications should be more easily granted than variances from Article V of the Declaration.
- n. All rules are not of equal importance to the community interest. The significance of the rule impacted by the proposed variance should be weighed.
- o. Preservation of adjoining or nearby property interests, the interests of the developer, easement interests.
- p. Applicability, if any, of the reasonable or unreasonable conduct of the applicant. Seeking a variance for work or action already begun or undertaken by the applicant is discouraged, and such conduct must be considered. Repeated requests for variances by the same applicant is also a factor bearing on the community interest in uniform application of rules.

Amended December 7, 2023


Mike Jones (R, 2023 12:41 PST)

Mike Jones
Secretary

Fairway Pines Estates Owners Association (FPEOA)

REQUEST FOR VARIANCE

Ref: ARC Standards Section VI, Variances for These Standards

Ref: FPEOA Policy 11, Policy and Procedures Regarding the Granting of Variances

Architectural Review Committee (ARC)

Other (specify)

Lot No. and Address: _____

Owner(s): _____

Prepared/Submitted By _____ Date: _____

SUBJECT:..

DESCRIPTION OF VARIANCE, include supporting documents:

This VARIANCE is to request a variance from (specify completely):

- Notes: 1. Attach additional pages to Request if necessary.
2. See "Notes for Requesting a Variance" for additional information.

FPEOA USE: Received By/Date:

___ Initial Variance Assessment: Major Minor N/A By: _____

Comment:

Fairway Pines Estates Owners Association (FPEOA)

NOTES FOR REQUESTING A VARIANCE

1. Policy 11, "Policy and Procedures Regarding the Granting of Variances" is the principal governing document for a Request for Variance.
2. A Request for Variance shall be submitted to the FPEOA ARC Committee Chair or the FPEOA Board President and the Administrative Assistant for the ARC Committee or the Administrative Assistant for the Board. Submittals may be made via e-mail (preferred), US Postal Service, or hand-delivery. Current addresses and email contacts for respective FPEOA officials may be found on the FPEOA website at www.fairwaypinespoa.com. Follow-up phone notifications are encouraged.
3. A Request for Variance shall be submitted in a timely manner to allow the appropriate FPEOA Committee to process it. Normally a Request for Variance shall be submitted a minimum of 15 working days prior to a meeting which may be required to consider the Request for Variance, e.g., scheduled monthly ARC meeting, Board meeting, etc. A different notification and submittal period, other than 15 working days, may be specified by the leader of the appropriate FPEOA committee depending on the complexity of the Request for Variance and if it is assessed as a Major, Minor, or N/A (*NIA*- a change, but very minor in nature or may not be a variance).
4. In the description of the variance, it shall be completely described including what is being requested, why necessary, how the Variance would be accomplished, any documents to define and support the request, and arguments the Owner/Requestor wishes to be considered by the ARC and board of directors. Supporting documents, e.g. drawings, specifications, material samples, color board type information, etc., shall be included with the Variance submittal.
5. The Requestor shall indicate which ARC Standard or Association requirement is applicable to the Variance being requested; the Section, Paragraph, and/or Appendix. Specific text applying to the Variance shall be noted.
6. Request for Variance submittals which are judged to be incomplete, vague, confusing, or poorly prepared and presented may not be considered by the Association and its committees. These may be rejected without review or returned to the Requestor for rework and resubmittal.







Policy #11

Final Audit Report

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