

**Sunset Creek  
Homeowner Association  
Architectural Review  
Committee (ARC)**



Neighbors,

For those of who missed the HOA Annual Meeting on January 20, 2021, you missed the exciting roll-out of the new-and-improved Architectural Review Committee (ARC) Application Form.

The new ARC Application has been uploaded to the Sunset Creek website and the CAS website. Going forward, you must use the new form; applications submitted on prior editions will be returned. (It is also attached to this email.)

We know the new ARC Application Form may seem cumbersome, however each requirement is responding to issues or concerns that have arisen over the years. If you have any questions, always feel free to reach out to an ARC member.

It cannot be emphasized enough the importance of following the Covenants with regard to the commencement of construction of exterior changes prior to ARC review and approval. Either everyone in the community follows the guidelines set out in the Covenants, or any one homeowner can unilaterally decide to not follow the guidelines set out in the Covenants because they can successfully argue that the ARC is estopped from enforcing the Covenants because of its prior inconsistency in enforcement of the Covenants.

Please remember - the rules apply to everyone, or they apply to no one. It is rare the ARC denies an Application – rather we find is we are able to contribute to both the "harmonious relationship" of the built environment in the 'hood and the "harmonious relationships" of our neighbors. We are looking for a "win-win" for everyone.

If you have any questions, please do not hesitate to reach out to an ARC member. And, if you have a project in the future in which there is a tight turnaround time for ARC approval, although we ask for a 10 to 14 days to review an application, we can usually expedite an application's review when requested.

Yours,

Sunset Creek Architectural Review Committee  
JoAnna Barnes, Chair  
Leslie Lotina, Member  
Joseph Tart, Member

## When Do You Need to Submit an ARC Application?

The Covenants provide:

“No Building, fence, wall, residence or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration to any existing structure be made, as, for example, changing its exterior paint color, nor shall any landscaping or re-landscaping of any lot be commenced until the plans and specifications showing the nature, kind, shape, height, material, color and location of the same shall have been submitted to and approved in writing by Declarant.”

You need to submit an ARC Application any time you plan any exterior work (including landscaping or fencing) that will change or alter the appearance of your property.

This includes when you plan to remove a tree, large shrub, or hedge. Unless a tree is dying or diseased, if it is over 4 inches in diameter, then an ARC Application is required. Years ago the ARC discouraged removing any trees, however as the neighborhood has aged, this approach has changed since many trees are overgrown for their space or reaching the end of their natural lives.

If you plan to have a storage pod in your driveway for more than seven (7) days, then you need to submit an application to the ARC.

You do **not** need to submit an ARC Application in the following scenarios:

- You are replacing your roof with the same materials and color.
- You are re-painting the exterior of your house or fence the same color.
- You are doing repairs to the exterior of your house or property which do not alter the appearance.
- A tree is dead or badly diseased.
- Maintenance pruning of trees and shrubs. (However, if the pruning is more of a buzz cut versus a bang trim, then submit an ARC Application.)
- A tree or condition exists on your property that is an imminent danger (although submit an ARC Application after so the ARC records reflect that this change on your property was approved).

If you are doing work that does not require ARC review and approval, please, please, please – let your neighbors know so the ARC is not flooded with calls and emails from your not-informed neighbors.

### **You cannot commence construction without ARC Approval**

The Covenants provide:

“The commencement of clearing, landscaping or construction of any sort prior to the time Declarant issues its approval for same shall be deemed a violation of this Declaration and subject the offending party to damages, either in law or in equity, which damages may be monetary or may result in the offending party removing, at his sole expenses, the violation; provided, however, that this paragraph shall not apply to repair work done on any existing structure, which repair, consistent with restoring the structure to its original condition.”

[The ARC is the successor to the Declarant in these sections of the Covenants.]

The Covenants require approval by the ARC prior to the commencement of **any** work. It is irrelevant if a homeowner has already contracted for specific work or purchased materials specific to the construction prior to the ARC review and approval: a homeowner contracts or purchases prior to ARC approval at his or her own risk.

Of course, if work is required for safety reasons or to protect a property from damage, then a homeowner should proceed with this work and then submit an ARC Application as soon as possible. Additionally, most of the ARC's work is now done electronically and ARC Applications can usually be reviewed within a few days of submission. And, in the rare case a homeowner has an unexpected change in the scheduling of the work, the ARC has been able to move very quickly on Applications.

## **How does the ARC decide if it will approve an Application?**

The Covenants provide the guidelines for the standard the ARC must use when reviewing an Application:

“[The ARC] will approve only those plans, specifications and site locations which, in its sole opinion and discretion, will best maintain a harmonious relationship among all structures within SUNSET CREEK, its topography, its vegetation, and its overall community design.”

## **Does the ARC consider “why” a homeowner is wants to change or alter his or her property?**

No, the ARC does not consider “why” a homeowner wants to change his or her property.

In general the reasons the homeowner desires to make any changes are irrelevant. A reason that may be relevant includes changes that are proposed in order to comply with current fire and safety standards. Additionally, a homeowner may desire to make changes to provide disability accessibility such as a ramp or the widening of an exterior doorway. The HOA is not subject to the Americans with Disabilities Act but likely the ARC would want to conform to the spirit of this law.

The ARC will only consider how the change or alteration will change the appearance to your property, or how such a physical change or alteration may affect the health and safety of your neighbors and the community.

## **Alterations to Stormwater Management**

It has become obvious to many Sunset Creek homeowners that the stormwater management system constructed by the original developer is inadequate to handle the heavy rain events that are becoming common. Thus many homeowners are doing work to mitigate the impact of water run off on his or her property.

Any change or alteration to the current stormwater management system on your property, or change that re-directs the current flow of rainwater requires an ARC Application.

The ARC members are not stormwater management experts and will not review your proposed work as to its purpose to alleviate any water issues on your property. Instead the ARC will review your proposed work to assure your neighbors have notice, to assure that water is not diverted from your property to HOA property and have a negative impact, and that the appearance of the proposed system is harmonious with the community design of Sunset Creek.

## Highlights of the New ARC Application Form

### *Electronic Submission*

As most of us now have the ability to scan a document, the ARC now accepts applications electronically. However, if your application includes any plans or drawings larger than 8 ½ x 11”, then the application **cannot** be submitted electronically; two hard copies must be submitted.

After the ARC has made a decision about your application, one copy will be returned to you, and one copy will be retained for the ARC records.

### *Property Lines*

If you think your neighbor's proposal may encroach on your property, please bring this to the attention of the ARC. The ARC will not make a decision until the applicant and you have resolved any confusion. The ARC cannot make a determination of the location of the property line; under law this determination can only be done by a licensed surveyor or civil engineer.

### *Your Neighbors*

Your neighbors have a right to be informed about your plans and to give feedback to the ARC on your proposal. However, your neighbor does not have the right to deny or veto your application.

Which neighbors should get notice? All property owners who have common lot lines with your property along with property owners who reasonably view the improvement or change from their property (this may include neighbors who live behind you).

You should:

1. In the lower right-hand corner of your ARC Application complete the section “page \_\_\_\_ of \_\_\_\_” so that the ARC is assured it has your complete application.
2. Provide a completed application to each of your neighbors who are entitled to notice of your proposed work (this may be done electronically).
3. Have each neighbor who is entitled to notice to sign page two (2) of your application.
4. Have each neighbor who is entitled to notice to initial every page of your application in the section provided at the bottom the page, AND any pages that are in addition to the ARC Application form.