

CERTIFIED RESOLUTIONS OF THE BOARD OF DIRECTORS
OF POWDER MILL ESTATES OWNERS ASSOCIATION, INC.

ADOPTION OF PROCEDURES AND GUIDELINES FOR
THE EXERCISE OF ARCHITECTURAL REVIEW AUTHORITY
PURSUANT TO CHAPTER 209 OF THE TEXAS PROPERTY CODE

The undersigned, Derek Riffe, as the duly elected, qualified, and acting Secretary of Powder Mill Estates Owners Association, Inc., a Texas nonprofit corporation (the "Association"), hereby certifies on behalf of the Association that the following resolutions were duly adopted by the Board of Directors of the Association (the "Board") at a meeting of the Board held on _____, 202_, and that such preamble and resolutions have not been amended or rescinded and are in full force and effect on the date hereof.

WHEREAS, the Association is a property owners association governed by Chapter 209 of the Texas Property Code and is vested with the authority to enforce restrictive covenants and other terms and provisions of the Declarations and Amendments for Powder Mill Estates Owners Association, Inc. recorded in the Official Public Records of Harris County, Texas.

WHEREAS, Chapter 209 of the Texas Property Code imposes certain procedures for the denial of a property owner's application for architectural review of proposed construction or modification of an improvement and establishes procedures for appealing a denial of an application for architectural review to the Association's Board of Directors

WHEREAS, the Board desires to adopt procedures and guidelines for conducting architectural review of a property owner's application for proposed construction or modification of an improvement in compliance with Chapter 209 of the Texas Property Code.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the procedures and guidelines set forth on Exhibit "A" attached hereto and incorporated herein by reference.

BE IT RESOLVED, FURTHER, that, the Secretary of the Association is hereby authorized and empowered, in the name and on behalf of the Association, from time to time to do and perform all such further acts and things and to execute and deliver all such further instruments as he or she may deem necessary or advisable to carry out and effectuate the intent and purposes of the foregoing resolutions and of the actions referred to therein.

BE IT RESOLVED, FURTHER, that any actions taken by the officers or directors of the Association prior to the date of this action or hereafter that are within the authority conferred hereby are hereby ratified, confirmed and approved as the act and deed of the Association.

SECRETARY'S CERTIFICATE

IN WITNESS WHEREOF, the undersigned has executed this Certificate as Secretary on behalf of the Association to be effective upon the recording of this document in the Official Public Records of Harris County, Texas.

By: Derek Riffe
Secretary

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on January ___, 2023, by Derek Riffe, Secretary of Powder Mill Estates Owners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.

Notary Public, State of Texas

AFTER RECORDING PLEASE RETURN TO:

Kathy Ann Terry
PO Box 690141
Houston, TX 77269

Exhibit A
PROCEDURES AND GUIDELINES FOR
THE EXERCISE OF ARCHITECTURAL REVIEW AUTHORITY
PURSUANT TO CHAPTER 209 OF THE TEXAS PROPERTY CODE

ARTICLE I
Introduction

The architectural review of applications for construction or modification of improvements is a vital task for ensuring that improvements constructed in Powder Mill Estates Owners Association, Inc. community (the "Community") are in compliance with the terms and provisions of the governing documents applicable to the community. Such task commonly involves a high degree of discretionary determinations, which may be scrutinized or disagreed with by others after the fact. In order to provide greater transparency and procedures for redress when property owners disagree with architectural review decisions concerning their property, the Texas legislature enacted Section 209.00505 of the Texas Property Code, which imposes new procedures for the denial of a property owner's application for architectural review and establishes procedures for appealing a denial of an application for architectural review to the property owners association's board of directors.

These procedures and guidelines are intended to assist the Architectural Control Committee, (the "Architectural Committee") in the review and approval or denial of an application for architectural review of proposed construction or modification of an improvement and, if applicable, the appellate review of a denied application (the "Guidelines"). The Guidelines have been prepared by the Attorney Kathy Ann Terry specifically for the Architectural Committee and the Board of Directors (the "Board") of Powder Mill Estates Owners Association, Inc., (the "Association") and are based on that certain Declarations and Amendments of Powder Mill Estates Owners Association, Inc. and recorded in the Official Public Records of Harris County, Texas, (collectively, the "Declaration").

ARTICLE II
Purpose

The purpose of the Architectural Committee is to serve as a "gate-keeping" function for the construction of improvements in a development. In most Declarations, property owners are required to submit an application for the construction of new improvements or the modification of existing improvements to the Architectural Committee for its review in advance of initiating construction, and the Architectural Committee is vested with exclusive discretion to determine whether such proposed construction of new improvements or modification of existing improvements is in compliance with the Restrictive Covenants applicable to the community. Often such task also involves a subjective determination as to whether the proposed construction is aesthetically attractive and harmonious with the other structures in the community. The authority to review and approve construction of new improvements and/or modifications to existing improvements is generally referred to as the "Architectural Review Authority."

ARTICLE III

Improvements Requiring Approval of the Architectural Committee

The necessity of obtaining approval from an architectural committee is derived from a land-use restriction contained in the dedicatory instruments applicable to the community. Such land-use restriction will often restrict property owners from constructing or modifying certain improvements, buildings and/or structures without the advance written approval of the architectural committee. The scope of items requiring approval of the architectural committee is specified by the dedicatory instruments applicable to the community.

The Declaration for the Community requires the following items to be submitted to and approved by the Architectural Committee:

Section 2. No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plot plan showing the location of the structure thereon have been by the Architectural Control Committee as to harmony with existing structures with respect to exterior design, location with respect to topography and finished grade elevation and as to compliance with minimum construction standards more fully provided for in Section 4.

ARTICLE IV

Scope of Architectural Review Authority

The authority of the Architectural Committee to approve or deny a property owner's application to construct or modify an improvement is not without limitation. In a 1981 case law opinion, entitled *Davis v. Huey*, the Texas Supreme Court held that dedicatory instrument provisions requiring the submission of plans to and prior consent of an architectural committee before construction of improvements are valid "insofar as they furnish adequate notice to the homeowners of the specific restriction sought to be enforced" and that an architectural committee may not impose building restrictions upon property owners that are more stringent than those specifically set out in the dedicatory instruments through its discretionary authority to disapprove proposed construction projects. In other words, even if a dedicatory instrument vests an architectural committee with discretionary approval authority, the architectural committee is not permitted to alter or expand the specific building restrictions or to impose limitations on a property owner's construction or remodeling project that are more restrictive than the specific restrictions set out elsewhere in the dedicatory instrument. Thus, the scope of an architectural committee's review of an application for proposed construction or modification of an improvement is generally dictated by the express provisions of the dedicatory instrument establishing such committee, and an architectural committee may not exercise architectural review authority over characteristics of a proposed improvement that is not expressly within such scope of review.

The permitted scope of Architectural Review Authority by the Architectural Committee established by the Declaration is as set out above.

ARTICLE V

Variance Authority

The Declaration does not grant the Architectural Committee the authority to grant variances.

ARTICLE VI

Time Period for Review

The Declaration provides that an application for architectural review must be completed and communicated to the requesting property owner (or his or her representative) within thirty (30) days from submission. It is very important that the Architectural Committee comply with this deadline as the failure to do so will result in an approval of the application by default.

If the Architectural Committee does not have sufficient information from the requesting property owner to be able to approve an application within the specified time period to do so, the Architectural Committee should deny the application for such reason before the explanation of the deadline, request the additional information needed to perform a review of the application, and inform the requesting property owner that the application will be reconsidered by the Architectural Committee upon receipt of the requested information.

ARTICLE VII

Denial of an Application

Section 209.00505 of the Texas Property Code requires all denials of an application for construction or modification of an improvement to be in writing and delivered to the requesting property owner by certified mail, hand-delivery, or electronic delivery. The written denial must also (1) describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and (2) inform the property owner that he or she may request a hearing with the board of directors for the purpose of appealing the denial by the architectural committee on or before the thirtieth (30th) day after the date the written denial is mailed, hand-delivered or electronically delivered to the property owner.

Based on the permitted scope of Architectural Review Authority described above, an application may be denied by the Architectural Committee for one (1) or more of the following reasons:

The proposed project fails to meet the standard of quality of material required by the ACC.

The proposed project is not harmonious of external design with existing structures.

The proposed project's location is not compatible with respect to topography and finished grade elevation.

ARTICLE VIII

Architectural Committee Composition

Section 209.00505 of the Texas Property Code prohibits a current board member, their spouse, a relative within second degree of consanguinity or anyone residing in their household from being on the Architectural Committee.