

SECTION IV – ARCHITECTURAL REVIEW PROCESS

H. THE BCC COVENANTS AND THE ARB

H.1. BURKE CENTRE CONSERVANCY COVENANTS

Article VI, Section 1(c) of the Covenants is very explicit regarding architectural control:

"Conditions for Architectural Control. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work, which in any way alters the exterior of any lot or common area or the improvements located thereon from its natural or improved state, existing on the date such property was first subject to this Declaration shall be made or done without the prior written approval of the Architectural Review Board. No building, residence, or other structure, fence, wall or landscaping in lieu thereof, shall be commenced, erected, maintained, improved, altered, made or done on such property without the prior written approval of the Architectural Review Board."

This paragraph clearly states that prior ARB written approval is required for any changes to the exterior appearance of one's property or common area. It is important to understand that this ARB approval requirement applies to all exterior alterations. Repairs and maintenance that do not change exterior appearances (existing materials, style, color, texture, or dimension) of the property do not require ARB approval, unless specifically required by these Standards.

Article VII, Section 4 of the Covenants allows ARB members and Burke Centre Conservancy staff to enter properties for inspection based on prior notice.

"Easement to Inspect. There is hereby created an easement in favor of the Conservancy for ingress and egress on any Lot (a) to inspect such property for alleged violations of the Governing Documents, based on formal, written complaints, and/or compliance with architectural standards and/or approved plans for alterations and improvements and (b) performing such maintenance as is required by the Supplementary Declaration on such Lots, provided the Owner of such Lot is given written notice of the purpose and time of inspection at least three days in advance thereof and such inspection is performed during reasonable hours."

H.2. MEETING THE RESPONSIBILITIES OF THE COVENANTS

The Covenants (Article III, Section 4(b) and the By Laws (Article IX, Section 5) establish the duties of the ARB:

- a. Regulate the external appearance and location of the Properties and improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.
- b. Within 45 days of a correctly filed application, approve, modify, or disapprove the Architectural Review Application.
- c. Monitor lots for compliance with architectural standards and approved plans for alteration(s).
- d. Adopt procedures for the exercise of its duties and enter them into the Book of Resolutions.
- e. Ensure the periodic inspection of the properties for compliance with architectural standards and approved plans for alteration(s).
- f. Adopt architectural standards subject to the confirmation of the Board of Trustees.
- g. Maintain meeting minutes and records of all actions taken.
- h. Enforce architectural standards and make recommendations to the Board of Trustees in instances of continued/unresolved standards violation(s).

H.3. Improvements or Changes within Open Space (Conservancy or Cluster)

Any natural or artificial material installed or changed on the Burke Centre Conservancy or Cluster open space must have the approval of the Board of Trustees based on the recommendation of the ARB and OSC. Nothing shall be installed or changed to any lot or area that encroaches upon the open space. No part of the open space may be put to the exclusive use of fewer than all Conservancy members without the prior, expressed written consent of the Board of Trustees. The Board will consider any request for changes to open space after review by the appropriate cluster, the ARB, and the Open Space Committee, and a determination made with respect to the best interests of the Conservancy as a whole.

I. KEY PARTICIPANTS

Various parties have functional roles in the architectural review process:

I.1. **CONSERVANCY MEMBERS**

Each owner and resident within Burke Centre is a member of the Conservancy, and has a direct and important role in the process. Each member's role is ensuring their property is maintained, being knowledgeable of the architectural and maintenance standards, and participating directly in the architectural review process on an individual, cluster or a volunteer basis.

I.2. **NEIGHBORHOOD CLUSTER ARB REPRESENTATIVES (CLUSTER REPS)**

Appointed cluster committee members have the responsibility of reviewing their cluster's individual homeowner applications and making appropriate recommendations to the ARB.

I.3. **OPEN SPACE COMMITTEE (OSC)**

A committee composed of volunteers, appointed by the Board of Trustees, the OSC is charged with monitoring and analyzing the community's open space areas and amenities. The committee provides recommendations to the ARB and BOT concerning open space use, maintenance, modification, revitalization, and preservation.

I.4. **BURKE CENTRE COMMUNITY SERVICES - ARB (CS-ARB) STAFF**

Architectural Program Management: The Director of Administration oversees and provides direction to the CS-ARB staff for the management of applications, standards, motor vehicle parking and towing violations, etc.

Community Services - ARB Coordinator: The coordinator is an ex-officio member of the ARB, acts as the Secretary of the ARB and serves as a liaison to the Director of Administration and the Board of Appeals. The CS-ARB Coordinator reviews Architectural Review Applications for completeness, and accepts properly completed applications for submission to the ARB. The role of this staff member and the interaction with the homeowner/applicant are key to acceptance and processing of residential and non-residential Architectural Review Applications for ARB review and consideration. Architecture and maintenance standard violations identified during cluster and property inspections are also submitted and processed through the CS-ARB Coordinator.

Community Services - ARB Representative: The representative conducts property inspections required for Property Owners' Association Act (POAA) resale disclosure packets, and cluster and property inspections to monitor compliance with Conservancy architectural and maintenance standards.

I.5. **ARCHITECTURAL REVIEW BOARD (ARB)**

The ARB is composed of Conservancy members from the Conservancy's five neighborhoods, who are appointed by the Board of Trustees for two-year terms, and are responsible for performing the duties specified in Article III of the Burke Centre Conservancy Declaration of Covenants and Restrictions and Article IX of the Burke Centre Conservancy By Laws (see H.2, above). Prior to the monthly ARB meetings, ARB members review applications submitted and scheduled for consideration, including visiting properties, as appropriate, to ensure a clear understanding of the respective properties and the proposed modification(s) as described in the application.

I.6. **APPEALS BOARD**

The BCC Declaration of Covenants and Restrictions is the basis and authority for the Appeals Board. Section 5, Paragraph 5 (b) reads in part:

Powers. The Appeals Board shall have the power and duty to:

(1) Decide appeals to decisions of the Architectural Review Board; and

(2) Decide cases of alleged infraction of the Governing Documents; and thereupon to compel action or enjoin further action of parties found in violation of the Governing Documents; and

(3) Limitations. The Appeals Board may act upon an appeal only upon written petition of the member or members and shall act in accordance with the Bylaws and the Book of Resolutions. The Board of Trustees, upon its own motion, may reverse or modify a decision of the Appeals Board."

The function of the Appeals Board, in hearing an appeal of an ARB decision is to review the ARB's decision in light of the following criteria:

- 1) The Architectural Review Board followed proper procedures in reviewing the application.
- 2) The applicant/other concerned/ directly affected person(s) received a fair hearing.
- 3) The decision rendered by the Architectural Review Board had a rational basis and was not arbitrary.

I.7. **BOARD OF TRUSTEES (BOT)**

The governing board of Burke Centre is obliged to establish, regulate and conduct the business of the association as stated in the Declaration of Covenants and Bylaws. The trustees are responsible for overseeing the enforcement of the governing documents and all other rules, regulations and resolutions. The BOT oversees the actions of both the ARB and Appeals Board. The BOT has the authority to assess monetary charges or to take other legal action, up to and including initiating a lawsuit, to enforce compliance with Conservancy architectural and maintenance standards.

The Board of Trustees (BOT) is the highest board of the Conservancy, and may be asked to consider requests to appeal decisions made by the Appeals Board or the ARB. The BOT has the authority to uphold or overturn decisions of the Appeals Board and the ARB with a two-thirds majority vote of Board members in attendance (e.g., 3 of 5 votes, 4 of 6 votes or 5 of 7 votes).

J. ARCHITECTURAL REVIEW APPLICATION PROCESS

J.1. **PROCESS FOR REVIEWING ARCHITECTURAL REVIEW APPLICATIONS**

The Declaration of Covenants provides that if the Architectural Review Board fails to approve, modify or disapprove in writing a correctly filed application, which the Association has signed as received, within 45 calendar days of the date that the Association signs for such application, approval will be deemed granted.

Architectural Review Application approval authority rests solely with the entire ARB. Neither individual ARB members, neighborhood cluster representatives, individual residents nor staff members have the authority to approve an application.

An official deadline for application submission will be established and published in the Conservator in advance of the deadlines and scheduled ARB meetings. Completed applications received and signed for by the ARB Coordinator by the published deadline will be reviewed at that month's ARB meetings. Application received after the published deadline will not be signed for until the start of the following business week and will be reviewed at the following month's ARB meetings.

Upon receipt of a properly completed and accepted Architectural Review Application, the CS-ARB Coordinator delivers the Application to a designated ARB member for his/her review, and forwards a copy of the Application to the identified neighborhood cluster representative for cluster review and input.

As part of the review process, ARB members may visit the properties. Before doing so, ARB members shall contact the homeowners to provide notice.

The designated ARB member reviews the application for compliance with the applicable architectural standard(s). Based upon this review, the ARB member recommends ARB consideration and approval as a Routine Application, or refers the application to the full ARB for review.

**Routine Application – the application includes all relevant information pertaining to the proposed modification(s), and the proposed modification(s) complies with all elements of the applicable standard(s) for the modification(s) proposed.*

Any ARB member or Conservancy member may request removal of an application from consideration as a Routine Application.

The ARB reviews Architectural Review Applications to determine if the proposed modification(s) is (are) consistent with the applicable architecture standard(s), including the six general criteria - design, color, location and impact, scale, workmanship and timing. In reviewing an application, the ARB considers the proposed modification(s), and the attendant impact, within the context of four levels:

1. Individual property (applicant's dwelling (building) and lot/grounds).
2. Adjacent properties (private lots, open space, natural surroundings).
3. Neighborhood (Cluster and Neighborhood).
4. Burke Centre community as a whole.

Each applicant is notified by the CS-ARB staff of the date, time and place of the meeting at which the ARB will consider their application(s). Agendas for ARB meetings, including the addresses of applications, are listed on the BCC web site; agendas are subject to change prior to the meeting.

The Board of Trustees is notified of all non-residential applications for inclusion in their respective neighborhood council meetings.

J.2. ARCHITECTURAL REVIEW BOARD MEETINGS

Monthly ARB meetings are conducted at a Burke Centre community center, and are open to the public.

Routine Architectural Applications Review Meeting.

- Applications identified as Routine Applications are considered and voted on by the ARB
- Applicants and interested parties in attendance may provide information and comments relevant to the applications being considered as Routine Applications
- ARB members may seek clarification or additional information relevant to each application
- Any ARB member or Conservancy member may request removal of an application from consideration as a Routine Application.
- The ARB renders approval or disapproval of the Routine Applications under consideration by a voice vote; Routine Applications may be approved as a group by a vote of the ARB.

Architectural Applications Review Meeting.

- Applications not identified as Routine Applications are considered and voted on individually
- Applicant(s) may provide additional information relevant to their application, modify their application, or withdraw their application.
- ARB members may seek clarification or additional information relevant to each application
- Interested parties may provide information and comments relevant to each application.
- For each application under consideration, the ARB renders approval or disapproval by a voice vote.

J.3. APPROVED AND DISAPPROVED APPLICATIONS

a. Approved applications: ARB approval of an application provides authorization to begin the modification/alteration as described in the application and approved by the ARB. The owner/applicant will receive written notification of the application's approval, including any application amendments and contingencies identified during the ARB review, discussion and approval process.

Discrepancies between the modification or alteration as described in the application and approved by the ARB, and the actual modification or alteration executed may invalidate the approved application. A new Architectural Review Application may be required in such cases.

b. Disapproved applications: The owner/applicant will receive written notification of the application's disapproval and the basis for the disapproval within ten (10) calendar days of the ARB decision.

J.4. APPEALS

a. ARB decisions may be appealed to the Appeals Board by:

- 1) Providing verbal notice of intent to appeal the Architectural Review Board decision to the CS-ARB Coordinator within five (5) *calendar* days of the respective ARB decision, and;
- 2) Completing and submitting a Request to Appeal ARB Decision Form, specifying and describing the basis for the appeal, to the CS-ARB Coordinator within twenty (20) *calendar* days of the respective ARB decision.

b. A request for appeal of an ARB decision must be based on at least one of the criteria established in the Burke Centre Appeals Board Terms of Reference:

- 1) The Architectural Review Board did not follow proper procedures in reviewing the application.
- 2) The applicant/other concerned person(s) did not receive a fair hearing.
- 3) The decision rendered by the Architectural Review Board did not have a rational basis and was arbitrary.

c. Appeals Board decisions may be appealed to the Board of Trustees by:

- 1) Providing verbal notice of intent to appeal the Appeals Board decision to the CS-ARB Coordinator within five (5) *calendar* days of the respective Appeals Board decision, and;
- 2) Completing and submitting a Request for Appeal to the Board of Trustees form, include a written basis for the request for appeal and a statement clearly describing the desired outcome, to the CS-ARB Coordinator within twenty (20) *calendar* days of the respective Appeals Board decision.

d. A request for appeal of an Appeals Board decision must be based on at least one of the criteria established in Administrative and Policy Resolution 2C:

- 1) The Appeals Board did not properly comply with the appeals process as established in the governing documents.

2) There is new information germane to the subject of appeal that was not available to the Appeals Board at the time of the Appeals Board's decision and which could have influenced the Board's decision.

3) The Appeals Board declined to hear the appeal of the decision of the ARB, or the Appeals Board rejected the appeal. (Pending approval of amended Resolution 2C).

The BOT may accept requests for appeals with a majority vote of the BOT with a quorum present. BOT decisions on appeals and requests for appeal are final.

J.5. ARB MEETING MINUTES

Written minutes of ARB meetings are on file in the BCC office and serve as working documents for community records.

J.6. EMERGENCY REVIEW PROCESS

The Burke Centre Conservancy recognizes that, in rare instances, homeowner's must make emergency repairs and replacements to their dwelling or lot in order to protect persons or property, and that the timing of these projects may be such that the homeowner is unable to obtain prior approval, if necessary, from the Architectural Review Board as described in item J.1. of these Standards.

Homeowner's should be aware that an application is not required to replace many common building elements such as roofing, garage doors, entry doors or windows provided the replacement products are installed in the same location and are of the same size, color, design, and material, as applicable, of the items being replaced, and provided the standards for such items are met. Homeowner's should consult the specific standard for the items being replaced for further detail.

Homeowner's who must make an emergency replacement of a building element with a product that does not conform to the original with respect to its location, size, color, design, or material, as applicable, and cannot, due to extenuating circumstances, submit an application within the normal approval process timeline as described in item J.1. of these Standards, must apply for an Emergency Permit from the Board of Trustees to be temporarily exempted from the normal review process prior to the emergency replacement taking place. The homeowner must also submit an Architectural Review Application for the emergency replacement item(s) within thirty (30) calendar days from the date of submission of the Emergency Permit Application. Both applications can be found in Section P. of these Standards and also online at the Conservancy website and the Conservancy mobile App.

The Emergency Permit Application shall serve as a request for a temporary exemption from the normal review process due to the need for an emergency repair or replacement. The request shall be submitted prior to the repair or replacement and a completed Architectural Review Application, P.3., shall be submitted within thirty (30) calendar days.

Upon receipt of a properly completed and accepted Emergency Permit Application, the CS-ARB Coordinator delivers the Application to the Executive Director. The Board of Trustees delegated the authority to issue or not issue the Emergency Permit to the Executive Director in accordance with Article III, Section 3(c) of the Declaration. The Executive Director will review the application for good cause and issue or not issue the Emergency Permit. The CS-ARB Coordinator will notify the homeowner of the decision within one (1) business day of the Application's acceptance.

It remains the homeowner's responsibility to ensure that replacements made prior to approval by the Architectural Review Board meet the specific standards for the item being replaced. Homeowner's that make emergency replacement of elements that do not meet the standards risk having to remove the improvement or modify it in order to meet the standards. It is recommended that any homeowner undertaking an emergency repair consult with the ARB Coordinator, who is a member of the Conservancy office staff, to obtain further guidance on this process.

K. CLUSTER SUPPLEMENTAL ARCHITECTURAL STANDARDS

The Cluster-Established Architectural Standards allow clusters to express their individuality and unique characteristics. A cluster also may wish to control design, color, scale, location or the extent of an alteration to enhance harmony of the cluster's appearance. Clusters develop their standards to establish compatibility and continuity in design, material, location and color within the cluster. **Non-residential clusters may not establish Cluster Architectural Standards.**

K.1. GENERAL

Cluster Supplemental Architectural Standards may not conflict with or be less restrictive than the BCC Architectural Standards.

K.2. CLUSTER SUPPLEMENTAL ARCHITECTURAL STANDARD ESTABLISHMENT OR MODIFICATION

For a cluster to establish, modify or rescind a Cluster Supplemental Architectural Standard, the following process must be followed. The Cluster Committee is responsible for accomplishment of the cluster part of the process; the ARB chairperson is responsible for accomplishment of the ARB part of the process.

- a. The Cluster Committee must notify each owner of record (resident and non-resident) in the cluster of the proposed cluster architectural standard and request the owner's vote.
- b. At least 75% of the cluster's owners of record must respond to the notification by casting a vote.
- c. Among those voting at least 51% must favor the proposed cluster architectural standard.
- d. Once approved by the Cluster, the Cluster Committee forwards the proposed cluster supplemental architectural standard with a copy of the petition containing the Conservancy members' signatures or the cluster voting ballot returns to the ARB for its review.
- e. Upon review, the ARB forwards the proposed cluster supplemental architectural standard to the Board of Trustees with its recommendation for approval or disapproval.
- f. The BOT reviews the proposed cluster supplemental architectural standard and the ARB's recommendation, and approves or disapproves the supplemental standard.

K.3. APPROVED CLUSTER SUPPLEMENTAL ARCHITECTURAL STANDARDS

Once approved, Cluster-Established Architectural Standards are maintained by the Conservancy until rescinded or modified. Cluster level Architectural Standards may be reviewed by the ARB during the review of the Burke Centre Conservancy Architectural Standards. In cases where a cluster has a Supplemental Architectural Standard and there is no longer a cluster committee, the neighborhood Trustee for that cluster shall be responsible for ensuring the Cluster Supplemental Architectural Standards are reviewed. Conservancy members **may obtain a copy of appropriate approved Cluster Supplemental Architectural Standards by contacting the Conservancy office.**

L. ARCHITECTURAL STANDARDS REVIEW

BURKE CENTRE CONSERVANCY ARCHITECTURAL STANDARDS REVIEW

The BCC Architectural Standards are formally reviewed every five years. Reviews are led by the ARB, and may include a review of the Cluster-Supplemental Architectural Standards by cluster committees. Cluster committees may decide to update cluster supplemental standards through a formal vote of their members.

Upon completion of the architectural standards review, the ARB will submit to the Board of Trustees (BOT) for their consideration a revised architectural standards document that includes all recommended standards updates and revisions. Upon BOT approval, the revised architectural standards are published and made available to homeowners and residents.

If the need to revise any part of the BCC Architectural Standards arises between scheduled reviews, a modified process may be used with the ARB submitting recommended revisions to the BOT for its consideration. Approved revisions become part of the BCC Architectural Standards and made available to the homeowners and residents.