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Legal Implications for Green Buildings within Condominium and Homeowners Association Regimes in Maryland: Striking a Balance between the Promotion of Green Retrofits to Existing Housing Stock and Maintaining Aesthetics by Homeowners Associations and Condominium Associations

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**LEGAL IMPLICATIONS FOR GREEN BUILDINGS WITHIN
CONDOMINIUM AND HOMEOWNERS ASSOCIATION
REGIMES IN MARYLAND: STRIKING A BALANCE
BETWEEN THE PROMOTION OF GREEN RETROFITS TO
EXISTING HOUSING STOCK AND MAINTAINING
AESTHETICS BY HOMEOWNERS ASSOCIATIONS AND
CONDOMINIUM ASSOCIATIONS**

Nicole M. Lacoste†

I. INTRODUCTION

The value of aesthetics versus the functionality of sustainable design can often be at odds with each other. Travel throughout Maryland and you will see pockets of orderly subdivisions with houses displaying uniform architectural styles.¹ A developer today will often create a menu of home styles and then uniformly apply that menu to its residential developments in order to attract homebuyers preferring a community with uniform character and an overall architecturally sound appearance. Whether the modern day developer chooses to apply a vernacular style exhibiting an assortment of architectural types or strictly builds houses under one architectural style, today's residential developments generally exhibit a sense of uniformity. This uniformity of style seems to comfort

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1. The term "subdivision" used throughout this Article refers generally to a type of residential development designed and built by a single developer and/or one or more homebuilders. A development plan approved by the respective jurisdiction depicting the layout of multiple new residential lots and often roads, open space, and storm water management facilities is the guiding document for the creation of such a residential neighborhood. Other documents, such as a Declaration of Restrictive Covenants, public and private easement agreements with the local municipality, as well as maintenance agreements, may also be required prior to final governmental approval of a residential project, but all of these documents would reference the approved development plan for specific development details. Regulations for development plans are codified in the respective zoning codes and subdivision regulations of each municipality in the state.

homebuyers looking for a neighborhood with a sense of stability and commonality, and the incalculable value of aesthetics is thereby reinforced.

Then along comes this socioeconomic revolution referred to as the “Green Code”² raising our collective awareness of all things “green.”³ New ecologically designed houses are becoming increasingly in demand each day.⁴ For example, “the market for green homes is expected to rise from \$2 billion to \$20 billion over the next ten years.”⁵ No longer are prospective purchasers of homes inquiring only about local crime statistics and the quality of neighborhood schools. Energy efficiency of the structure has graduated into the top tier of many homebuyers’ concerns. Recognizing this growing niche demand, Maryland real estate agents are now able to earn a certification as an “EcoBroker,” a certification that adds a level of professional credibility while helping clients recognize the sustainable and energy-efficient components of a house.⁶

How can this “green revolution” challenge the comfort and serenity created by today’s orderly subdivision? How can aesthetics feel threatened by “green design” in today’s market? In most instances, homeowners and condominium associations, duly organized legal entities entrusted with governing a given community, enact and enforce rules that apply to their members⁷ through covenants on the title to each dwelling unit. For example, it is common for an association to adopt a rule prohibiting alteration to the exterior of a residential unit without the prior consent of an architectural review board.⁸ Where is the line drawn when a dispute arises between an

2. “Green Code” is defined as a worldwide effort to replace wasteful, inefficient energy practices with a strategy for clean energy, energy efficiency, and conservation. See Thomas L. Friedman, *Hot, Flat, and Crowded*, at 7 (Farrar, Straus and Giroux eds., 2008).

3. Press Release Draft, *EcoBroker, EcoBroker Sets the Standard in Green Real Estate Education* (June 28, 2008), available at http://www.ecobroker.com/userdef/PDFs/EcoBroker_Press_Kit_March2008.pdf.

4. *Id.*

5. *Id.*

6. EcoBroker, *About Us*, <http://www.ecobroker.com/misc/aboutus.aspx> (last visited Jan. 22, 2009). EcoBroker, established in 2002 and based out of Colorado, provides educational services to real estate professionals on topics concerning renewable energy, energy efficiency, and indoor air quality. *Id.* As of January 7, 2009, the EcoBroker website lists thirty-one certified EcoBrokers practicing in Maryland. *Id.*

7. “Members” of an association are the owners of the community’s dwelling units.

8. Associations are not obligated by Maryland law to create an architectural review board. The creation of such a board is typically at the discretion of either the developer of the subdivision during the initial formation of the association or the

architectural review board and an applicant seeking approval of an alteration to the exterior of a member's residential unit that promotes "green design"? If beauty is in the eye of the beholder (the beholder being a member of an architectural review board in this scenario), residential retrofits involving the installation of "Green Retrofits"⁹ could potentially face unreasonable obstacles in communities governed by homeowners or condominium associations.

Although the Maryland General Assembly recently considered this potential conflict of interest, the legislative debate was eventually limited to safeguards protecting the installation of "solar collector systems."¹⁰ This Article addresses the necessity of new state law restricting homeowners and condominium associations from preventing the reasonable and prudent installation of Green Retrofits on private residences in the name of aesthetics. The recent Maryland legislation addressing solar collector systems is a positive step forward, and similar legislation needs to be enacted as protection for other types of Green Retrofits that potentially could upgrade the energy efficiency and reduce the carbon-footprint of individual residences.

II. AESTHETICS VS. SUSTAINABILITY: A FICTIONAL SCENARIO FOR CONSIDERATION

Imagine this scenario: Environmentally conscious homeowner, Mr. Green, lives in a residential subdivision named Aucun Compromis Manor built approximately twenty-five years ago. His house sits near the main entrance of the neighborhood and is screened from the neighborhood's main thoroughfare only by a minimal swath of

board of directors of an established and operating association. The declaration and bylaws of an association must grant this authority. Discussion throughout this Article assumes that an architectural review board has been established by the developer and that this board is authorized to make such decisions.

9. The term "Green Retrofits" used throughout this Article refers to any type of alteration made on the exterior of an existing residential structure as opposed to new construction. The purpose is to maximize the use of any available renewable energy source with the ultimate benefit of creating a more energy-efficient structure with lower carbon emissions. Common examples of a Green Retrofit include solar collector systems, wind turbines, storm water catchment systems, rooftop gardens, and glass blocks used as replacements for inefficient non-load-bearing walls, windows, and partitions.
10. A "solar collector system" is defined as a "solar collector or other solar energy device, the primary purpose of which is to provide for the collection, storage, and distribution of solar energy for the electricity generation, space heating, space cooling, or water heating." MD. CODE ANN., REAL PROP. § 2-119(a)(3) (LexisNexis Supp. 2008).

deciduous trees on one side of his lot. Mr. Green is aware that the community is governed by the adopted declaration and bylaws of the Aucun Compromis Manor Homeowners Association. He knows that pursuant to the Homeowners Association's declaration, approval for any alteration to the exterior of his home must be obtained from the Association's architectural review board before he can make the alterations. Mr. Green now wishes to upgrade efficiency and reduce carbon emissions produced by his residence, and proposes to install one set of horizontal wind turbines on the roof of his residence.

At his own cost and initiative, Mr. Green hires two Leadership in Energy and Environmental Design (LEED) accredited professionals (LEED APs),¹¹ an engineer and a local zoning attorney, who assist Mr. Green with selecting the highest quality and most appropriate wind turbine model. Among the factors considered by the two LEED APs are the specific characteristics of Mr. Green's house, such as the direction of wind resources and structural considerations for his twenty-five-year-old house, and the alteration's conformance with the local building code and zoning laws. A suitable design for the proposed wind turbines is formulated, meeting all of the LEED APs' considerations, including compliance with all applicable zoning laws.

Mr. Green submits all of the appropriate information and plans, as well as fees required by the Homeowners Association's architectural review board. Mr. Green arrives at the hearing before the architectural review board with his LEED APs, anxious to describe all of the environmental benefits and cutting-edge technology of his proposed exterior improvement. The architectural review board members receive the presentation by Mr. Green and his LEED APs with a visible level of bewilderment. One board member comments that the wind turbines resemble a space satellite. Another asks if the turbines could be placed on the ground in Mr. Green's backyard so as to prevent any visibility from the neighborhood's main thoroughfare. During a break in the presentation, Mr. Green overhears one of his neighbors in attendance at the meeting complain: "How could he seriously think that such a monstrosity that is visible to anybody coming along the street is a good idea? His plan will ruin our neighborhood's pristine character."

When the Board convenes after the break, the members unanimously decide that Mr. Green's proposal is aesthetically

11. "LEED accredited professional" is a professional accreditation administered by the Green Building Certification Institute, established in collaboration with the U.S. Green Building Council. *See generally* Green Building Certification Institute, What Is a LEED AP?, <http://www.gbci.org> (last visited Jan. 22, 2009) (providing additional information about LEED accredited professionals).

incompatible with the rest of neighborhood, due to the design, configuration, appearance, and location of the wind turbines. When Mr. Green receives the Board's denial of his proposal, he is shocked at the weight the Board places upon each individual member's subjective viewpoint of aesthetics. Why didn't the Board consider the ecological benefits to his wind turbines? Why didn't the Board weigh the benefits of less energy used from the local utility grid? Why didn't the Board consider the cost savings to Mr. Green's monthly utility bills? Why didn't the Board realize that other homeowners might choose to emulate Mr. Green's wind turbines, thereby eventually converting the neighborhood into a recognized green community? Frustrated by this outcome, Mr. Green eventually abandons his dream to install the wind turbines, sells his house in Aucun Compromis Manor, and moves to Taos, New Mexico, to reside in an "Earthship" designed by Michael Reynolds.¹²

III. AUTHORITY OF HOMEOWNERS AND CONDOMINIUM ASSOCIATIONS

How could the architectural review board of a homeowners association produce such an outcome? There are no statutory controls currently in place over the terms of association documents relating to architectural covenants.¹³ As long as the design guidelines of an association do not violate existing federal, state, and local laws, including, *inter alia*, constitutional, civil rights, and zoning laws, a developer has sole discretion from the onset of development to determine the best interest of the association regarding restrictions on any exterior alterations.

In Maryland, homeowners associations are governed by the Maryland Homeowners Association Act¹⁴ and condominium associations are governed by the Maryland Condominium Act.¹⁵ Both homeowners associations and condominium associations may be described as "mini-government[s]" with quasi-governmental

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12. Michael Reynolds is the principle "biotect" and creator of the Earthship Concept, a development company applying sustainable design and construction services. See generally Earthship Biotecture, <http://www.earthship.net/web> (last visited Jan. 22, 2009) (displaying photographs and more information on the biotect approach to sustainable building and design).
 13. *But see infra* notes 22–24 and accompanying text.
 14. See MD. CODE ANN., REAL PROP. § 11B (LexisNexis 2003) (setting forth the Maryland Homeowners Association Act).
 15. *Id.* § 11 (setting forth the Maryland Condominium Act).

authority to regulate use and alterations of structures.¹⁶ By purchasing a residence in a community governed by a homeowners association, or a condominium unit governed by a condominium association, the association member has “agreed, as did all other purchasers, to the terms of the . . . Declaration and By-Laws.”¹⁷

An association’s quasi-governmental authority arises from language contained within its organizational documents, which must include, at a minimum, a declaration and bylaws.¹⁸ It is a common practice in Maryland for declarations to contain a provision permitting the association’s board of directors to “adopt and amend reasonable rules and regulations” at its discretion.¹⁹ As part of the governing process of an association, the board of directors may delegate the authority to a separate body commonly referred to as the “architectural review board.”²⁰ Additionally, Maryland law does not provide a statutory right of appeal to association members from a decision made by an architectural review board.²¹

Both the Maryland Homeowner Association Act and the Maryland Condominium Act require homeowners and condominium associations to disclose to purchasers (and owners in instances of subsequent amendments) its rules and regulations, amongst other effects, and restrictions on exterior modifications to any property

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16. Wayne S. Hyatt & Jo Anne P. Stubblefield, *The Identity Crisis of Community Associations: In Search of the Appropriate Analogy*, 27 REAL PROP. PROB. & TR. J. 589, 601 (1993) (citing Wayne S. Hyatt & James B. Rhoads, *Concepts of Liability in the Development and Administration of Condominiums and Home Owners Associations*, 12 WAKE FOREST L. REV. 915, 918 (1976)); see also Todd Brower, *Communities Within the Community: Consent, Constitutionalism, and Other Failures of Legal Theory in Residential Associations*, 7 J. LAND USE & ENVTL. L. 203, 238 (1992).
 17. *Garfink v. Cloisters at Charles, Inc.*, 392 Md. 374, 379–80, 897 A.2d 206, 209 (2006).
 18. REAL PROP. § 11-104(a) (“The administration of every condominium shall be governed by bylaws which shall be recorded with the declaration.”).
 19. *Id.* § 11-109(d)(2). See also *Dulaney Towers Maint. Corp. v. O’Brey*, 46 Md. App. 464, 469–70 (1980) (“Occasionally the bylaws also contain regulations concerning the use of the condominium by its owners, but usually such regulations are contained in a separate instrument listing a number of rules designed to promote the communal comfort of those living in the condominium, such as restrictions on the parking of automobiles, against the keeping of pets, etc.” (quoting 15A AM. JUR. 2D § 16 (2008))).
 20. Associations are at liberty to use a name of their choice. Some examples include “architectural committee,” “architectural review panel,” and “design board.”
 21. A party may have grounds to challenge an architectural review board’s decision to a circuit court of competent jurisdiction if the complainant alleges the board’s decision was arbitrary or was in violation of the association’s organizational documents. The initial process for a party to appeal a decision from an architectural review board depends on any appeal rights created by the association’s declaration and bylaws.

subject to the governing regime.²² However, Maryland law does not codify the procedure by which an association must oversee the enforcement of any adopted guidelines.²³ For example, the formation of an architectural review board is optional rather than mandatory under Maryland law.²⁴

Several options for how to approach the governance of an association in regard to exterior alterations exist for a developer when first establishing an association regime for a residential neighborhood. For example, a developer may choose to include a minimal set of design guidelines in the declaration and require the eventual formation of an architectural review board after all residential units are sold. That architectural review board would, in turn, draft the design guidelines for the neighborhood. Or, a developer may choose to include an elaborate set of design guidelines in the declaration and forego establishing an architectural review board altogether.²⁵ A developer may also omit design guidelines from the declaration and require the subsequent formation of an architectural review board. It is also conceivable that an association could operate an architectural review board without design guidelines.²⁶

IV. THE ARCHITECTURAL REVIEW BOARD

Typically, an association will delegate authority to adopt and enforce any rules pertaining to approval of, amongst other actions, exterior structural alterations and landscaping, to an architectural review board. The members of a board in an emblematic homeowners or condominium association usually are uncompensated

22. REAL PROP. § 11B-105(a)(3) (describing restrictions on architectural changes, design, color, landscaping, or appearance at the initial sale of lots in homeowners association developments containing more than twelve lots); *Id.* § 11B-106(a)(3) (describing restrictions on architectural changes, design, color, landscaping, or appearance at the resale of lot or initial sale of lot in homeowners association development containing twelve or fewer lots); *Id.* § 11-126(b)(2) (describing the requirements in a condominium's public offering statement of rules and regulations).

23. REAL PROP. § 11B (setting forth the Maryland Homeowners Association Act).

24. *See id.* § 11-104(c) (describing optional provisions within bylaws concerning the use and maintenance of condominium units and common elements).

25. If an association does not have an architectural review board to enforce the design guidelines contained in the declaration, the association's board of directors could serve as the deciding body for member applications proposing exterior alterations.

26. If an association operates an architectural review board without design guidelines, board members would be left to rely on subjective judgments of member applications for exterior alterations.

volunteers who are resident owners within the community. In some instances, board members will have little to no architectural or design expertise, yet these members are empowered with authority to determine the meaning of aesthetics for the community.²⁷ Naturally, residents move from time to time so the board's composition can also change unexpectedly. A change in membership often creates disparity in a board's applied definition of aesthetics and can eliminate any precedents on which applicants may have relied.

In recent years, Maryland courts have become familiar with challenges made against an association's authority to impose architectural and design restrictions on association members. For example, three years ago, the Court of Appeals of Maryland overturned a condominium association's ruling that a unit owner's installation of an exterior vent was in violation of the association's bylaws prohibiting an "alteration of the exterior facade of the condominium units."²⁸ Six years ago, the Court of Special Appeals of Maryland considered specific legal issues pertaining to a dispute between a homeowners association and an association member allegedly in violation of the adopted "Architectural Guidelines" compiled by the association's architectural review board for parking a vehicle on the front and back lawns and placing a basketball hoop on the front lawn of the subject lot.²⁹

The design guidelines imposed by an association are not required by state law to be recorded in the county land records.³⁰ Nor does state law provide prototypical guidelines for associations to follow in regard to the drafting of the design guidelines. In fact, it is common practice in Maryland for developers to not draft any design guidelines and instead allow the architectural review board, once appointed, to draft the rules at its discretion. If an association is not forthcoming with providing copies of these rules to association members when

27. In some instances, language requiring that the membership of an architectural review board has at least one architect member and one engineer member at all times can be included in the declaration. If no association member meets either criteria, language allowing the expenditure of funds from the association's annual budget to hire either a Maryland licensed architect or a Maryland licensed engineer to serve on the architectural review board in a professional advisory capacity may be included in the declaration.

28. *Garfink v. Cloisters at Charles, Inc.*, 392 Md. 374, 377–78, 897 A.2d 206, 207–08 (2006).

29. *Campbell v. Lake Hallowell Homeowners Ass'n*, 152 Md. App. 139, 143–46, 831 A.2d 465, 467–69 (2003).

30. *See* REAL PROP. § 11-111 (setting forth procedures for condominium association's adopted rules and regulations); § 11B-113(c) (describing the contents of a county's homeowners association depository, separate from a county's land records).

first drafted and subsequently amended, an association member has the burden of proactively obtaining a copy for personal review.

V. SAMPLE DESIGN GUIDELINES OF AN ARCHITECTURAL REVIEW BOARD

Since design guidelines are neither recorded in land records (unless made a part of a recorded instrument) nor readily made available for review by the general public, sample authorizing language contained within a declaration, as well as an example of an alteration standards and procedural rules booklet, of an existing condominium association in Maryland are provided in the Appendix of this Article.³¹

The sample declaration provisions grant authority to the association's architectural review board for the development of design guidelines. Specific guidelines, such as restrictions on exterior colors and materials used on a house's exterior, the display of flags other than the U.S. flag, and the placement of a basketball hoop, are not part of this example. Those types of very specific rules are most often left by the author of the declaration for an architectural review board to draft.

If Mr. Green applied for approval of his wind turbine installation using these standards, an architectural review board would turn to the language contained in Section 1.4.2 of the sample declaration when deciding whether to grant approval or disapproval. Specifically, pursuant to Section 1.4.2, the board is authorized to deny an application if "(d) an Alteration . . . is, in its reasonable judgment, . . . architecturally or aesthetically incompatible with the rest of the [Association], due to the Alteration's exterior design, height, bulk, shape, color scheme, finish, style of architecture, configuration, appearance" If Mr. Green is unable to show that the board's denial of his application was arbitrary and capricious, he lacks a right to appeal because the board applied a standard which its declaration gave it authority to adopt. With such broad language in many declarations and sweeping discretion granted to a board in deciding what is the association's best interest, associations are uniquely positioned to deter the Green Retrofit of existing housing stock governed by either a homeowners or condominium regime.

31. The section of a declaration for a condominium as well as the alteration standards and procedural rules booklet were provided by Gregory Reed, Esq., a partner in the Planned Communities and Condominium Practice Group at Ballard Spahr Andrews & Ingersoll, LLP, in Baltimore, Maryland. I greatly appreciate Mr. Reed's permission to include this text as an example of language commonly used in these types of instruments in Maryland.

VI. INCENTIVES TO HOMEOWNERS TO MAKE GREEN RETROFITS TO RESIDENCES

At the same time residents like Mr. Green are encountering obstacles to green retrofitting, due to the reluctance of associations to allow a diversion from the uniform appearance of residences, the Maryland State government is encouraging the very same action from homeowners.³² Just as Maryland earned a reputation for its acclaimed Smart Growth initiatives in the recent past and has been lauded by community planning professional associations and policy think tanks as a national leader in regard to smart planning, the State is now taking a proactive stance in promoting the use of renewable energy sources.³³

On July 2, 2007, Governor Martin O'Malley announced the creation of the *EmPower Maryland* initiative.³⁴ *EmPower Maryland* sets ambitious yet attainable energy efficiency goals for the State.³⁵ The initiative's purpose is to reduce the State's power consumption by 15% by the year 2015.³⁶

In 2004, with revisions in 2007 and 2008, the General Assembly enacted the Maryland's Renewable Energy Portfolio Standard (MREPS).³⁷ This Maryland legislation mandates that electricity suppliers (i.e., utility companies) generate a proscribed amount of renewable energy as part of its retail sales.³⁸ The legislation, as amended, puts a tier structure in place to regulate the industry's shift to renewable energy sources.³⁹ In addition, the General Assembly's 2007 amendment to the MREPS places additional emphasis on the market production and distribution of solar energy.⁴⁰

32. See generally Maryland Department of Planning, *Smart Growth Background*, <http://www.mdp.state.md.us/smartintro.htm> (last visited Jan. 17, 2009).

33. See *id.* Smart Growth initiatives sponsored by the State of Maryland are based upon the practice of directing new growth and redevelopment to previously developed land. *Id.* In 1997, the Maryland General Assembly enacted a collection of five pieces of legislation to encourage Smart Growth: (i) Brownfields, (ii) Priority Funding Areas, (iii) Live Near Your Work, (iv) Job Creation Tax Credits, and (v) Rural Legacy. *Id.*

34. Press Release, Office of the Governor, Governor O'Malley Announces New Energy Efficiency Goals for State Gov't (July 2, 2007), available at <http://www.gov.state.md.us/pressreleases/070702.html>.

35. *Id.*

36. *Id.*

37. MD. CODE ANN., PUB. UTIL. COS. § 7-701 (LexisNexis 2008).

38. *Id.*

39. *Id.*

40. *Id.*

Maryland also participates, along with ten states, in the Regional Greenhouse Gas Initiative (RGGI).⁴¹ The goal of RGGI is to eventually reduce carbon emissions, also commonly referred to as “greenhouse gas,” from the power sector 10% by 2018.⁴² The states intend to use the savings from this program to help consumers with energy efficiency and to create green jobs.⁴³

While the *EmPower Maryland* program is limited to reducing the public sector’s energy consumption and MREPS and RGGI both focus on the production of renewable energy and the reduction of carbon emissions, Maryland also offers attractive incentive programs directly to homeowners to go green.⁴⁴ Maryland residents may benefit from the State’s Solar Energy Grant Program for capturing solar water heat, solar thermal process heat, and photovoltaics; the Windswept Grant Program for harnessing wind power; and the Geothermal Heat Pump Grants for the installation of suitable heat pumps.⁴⁵ The expectation for these incentive programs is that more homeowners will make an investment in renewable energy sources for private residences, and further reduce power consumption and carbon emissions throughout Maryland.⁴⁶

VII. NEW STATE LAW PROHIBITING RESTRICTION ON USE AND SOLAR EASEMENT

The Maryland General Assembly recognized the potential obstacle that an association could pose to the installation of a solar collection system on the exterior of a private residence. In April 2008, the Maryland General Assembly passed House Bill 117, which took effect on October 1, 2008, for the purpose of prohibiting “any covenant, restriction, or condition” contained within a declaration or the bylaws or rules of a homeowners or condominium association that would “impose or act to impose unreasonable limitations on the installation of a solar collector system on the roof or exterior walls of

41. Regional Greenhouse Gas Initiative, About RGGI, <http://www.rggi.org/about> (last visited Jan. 22, 2009) (listing nine other states currently participating in RGGI, which are Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont).

42. *Id.*

43. Regional Greenhouse Gas Initiative, RGGI Benefits, <http://www.rggi.org/about/benefits> (last visited Jan. 22, 2009).

44. See generally DSIRE, Maryland Incentives for Renewables and Efficiency, <http://www.dsireusa.org> (select Maryland on map) (last visited Jan. 22, 2009) (providing information about Maryland renewable energy incentives).

45. *Id.*

46. *Id.*

improvements, provided that the property owner owns or has the right to exclusive use of the roof or exterior walls.”⁴⁷ “Unreasonable limitations” within the context of this recently amended provision includes any limitation that significantly increases the cost or significantly decreases the efficiency of the proposed solar collection system.⁴⁸

The promotion of solar energy projects for governmental, commercial, and residential properties is evidently a high priority for the State.⁴⁹ The General Assembly has deemed the promotion of solar energy projects as in the public’s best interest, as demonstrated by its unanimous support of existing grant and loan programs and this amendment.⁵⁰ Why are other types of Green Retrofits not receiving the same level of attention by the State?

VIII. FURTHER AMENDMENTS TO MARYLAND LAW ARE NEEDED TO PROMOTE RESIDENTIAL GREEN RETROFITS

Despite the General Assembly’s passage of House Bill 117 last year, Maryland law does not prohibit an association from exercising its quasi-governmental authority to disapprove a homeowner’s application to install a Green Retrofit, other than a solar collection system, based only upon a subjective determination of aesthetic value. If Maryland is to position itself as a national leader in energy efficiency as well as renewable energy, and Marylanders are to reduce energy consumption, legal safeguards beyond those codified last year regarding solar collection systems are necessary in order to promote the installation of Green Retrofits. Only by imposing restrictions on the discretionary authority of associations that may de facto halt ecologically-sound residential retrofits in the name of aesthetics will association members have the legal authority to successfully challenge a denial from the architectural review board.

A balance between promoting Green Retrofits for residences and protecting the aesthetic value in homeowners and condominium

47. See generally 2008 Md. Laws 988–89.

48. *Id.* at 989.

49. See H.D. 117, 2008 Leg., 425th Sess. (Md. 1999), available at http://mlis.state.md.us/2008RS/fnotes/bil_0007/hb0117.pdf (setting forth “the public interest to promote solar energy projects by providing State grants, loans, and other financial assistance”).

50. The Roll Call votes for House Bill 117 were unanimous. <http://mlis.state.md.us/2008rs/billfile/HB0117.htm> (House of Delegates voted on March 13, 2008 (138-0), and on April 4, 2008 (140-0); Senate voted on April 3, 2008 (47-0)).

associations has not yet been reached under existing state law. However, a balance is foreseeable considering the level of importance assigned to energy efficiency and green building design by the current administration. Accordingly, the General Assembly must ensure that associations give the appropriate weight to the value of sustainable design by expanding the reach of House Bill 117 and prohibiting unreasonable restrictions on all other types of Green Retrofits within associations.

Two principles often at odds with each other, sustainability and aesthetics, can certainly coexist contemporaneously. Architectural review boards, directed mainly by a subjective desire to protect aesthetics and, in turn, property values, must not be allowed to disregard members' reasonable and well-intended efforts to curb the effects of global warming and climate change. Such reasonable efforts to make a residence more efficient and environmentally friendly at the homeowner's own cost and initiative should be applauded and encouraged. By exposing more people every day to Green Retrofits and making them part of our subdivisions' landscape, the purpose and terminology becomes part of our lexicon. While governments at all levels provide incentives, an association acting as a mini-government must not be allowed to impose unnecessary obstacles to Maryland's green movement and must recognize the importance of Green Retrofits on existing housing stock. If a state law requiring associations to do just that is necessary, then that new law needs to be adopted and made effective as soon as possible.

APPENDIX

DESIGN GUIDELINES IN ASSOCIATION DECLARATION

ALTERATIONS; OTHER CONSTRUCTION.

1.1. Definitions. As used herein:

Alteration means any (a) physical alteration (other than decorative items or work), installation, improvement, addition, removal or other physical change in a Unit (other than construction of nonstructural interior improvements); and exterior painting; (b) construction of Improvements to a Unit, or any substantial reconstruction of Improvements to a Unit (excluding interior painting and other nonstructural modifications not visible from outside of the Unit) which, in the Board's judgment, materially changes its exterior appearance or location; (c) physical alteration, installation, improvement, addition or other physical change in or within the Common Elements, including any landscaping, planting or plant removal; change of topographical characteristics; interior or exterior painting or decorating; and delivery and installation of Service Equipment, furniture or equipment; (d) alteration which would, or would be likely to, affect any Structural Improvements or the Building's structural integrity; (e) alteration which would, or would be likely to, materially and adversely affect the use or proper functioning of any Service Equipment; or (f) Use of a Unit or Common Element prohibited by this Declaration without Approval.

Application means a written application for Approval of Plans (or, where appropriate, a Use) signed by each Applicant and in a form prescribed by the Board.⁵¹

Applicant means a Person or group of Persons who submits an Application to the Board.

Plans means, for an Alteration, plans and specifications (including layout, architectural, mechanical and structural drawings) for such proposed Alteration, prepared by

51. The term "Board," used herein, refers to an architectural review board, similar to the type of board discussed throughout this Article.

architects and/or engineers validly and then currently licensed by the State of Maryland.

Plans Consultant means any independent consulting architect, engineer, landscape architect, interior designer, inspector or attorney which the Council retains to assist the Board in reviewing any Plans.

Plan Review Costs means, for an Alteration, all costs incurred by the Council in (a) the Board's review of Plans for the Alteration and any related data, including any fees or other sums which the Council owes or pays to a Plans Consultant, and/or (b) inspection of the Alteration by a Plans Consultant to determine if it is made in accordance with the [Association] Documents.

- 1.2. Prohibition. Subject to subsection 1.8, neither the Council nor any Owner, Tenant or other Person shall make an Alteration unless the Board has Approved Plans for the Alteration (or, if the Alteration is a new Use, a description of the Use) submitted to it with an Application for Approval pursuant to subsection 1.4. The Plans shall identify each Unit or Common Element for which they are submitted, and be in a form, and contain all other information, which the Board requires. Notwithstanding the foregoing, an Owner may, without Approval of Plans for the Alteration, make new or Restored Improvements to its Unit which (a) do not affect Structural Improvements or other Common Elements, or the Unit's exterior appearance, and (b) (to the extent permitted by Applicable Law) either (i) replace or substitute for, and are substantially similar to, Improvements damaged or destroyed by a Casualty or taken in a Taking, or (ii) are required (and whose nature and design are specified) by Applicable Law or a Title Matter.
- 1.3. Alterations Standards.⁵² The Board may cause the Council to adopt, amend or revoke Alterations Standards. Adoption, revocation or amendment of an Alterations Standard shall not bind the Board to Approve or disapprove any Plans, constitute a waiver of its discretion

52. The term "Alterations Standards," used herein, refers to the design guidelines discussed throughout this Article.

as to any matter, or affect the finality of an Approval granted prior thereto.

(a) **Alterations Standards** means, collectively, (a) the requirements set forth in this Declaration for Alterations, and (b) any other building standards or policy statements concerning the Board's Approval or disapproval of architectural styles or details, or other matters to be reflected in Plans, which the Council (acting through the Board) hereafter adopts, amends or supplements. No new Alterations Standard, and no such amendment or supplement, shall impose any additional material obligation or liability on an Owner or Tenant, or materially decrease its rights, under the [Association] Documents.

1.4. Review of Plans.

1.4.1. Application. If an Owner or the Council seeks Approval of Plans, it shall submit them to the Board with an Application. Any required application fee shall be paid with the Application, and shall not be refunded, whether or not the Plans are Approved, unless the Board determines otherwise. The Board shall have no duty to consider an Application for a Unit encumbered by an Assessment Lien, or whose Owner is otherwise in Default.

1.4.2. Basis for Approval or disapproval. The Board may Approve any Plans, or Application for Approval of a Use, if it determines in its reasonable judgment that none of the following grounds for disapproval exists, or (even if it does exist) that Approval is in [Association]'s best interests, for reasons stated in its formal decision granting the Approval. The Board may refuse to Approve any Plans, or Application for Approval of a Use, only if it determines in its reasonable judgment that any of the following grounds for disapproval exists: (a) The Plans (or an Alteration or Use covered by the Plans) are not in accordance with any [Association] Document, Alterations Standard, Title Matter or Applicable Law; or (b) the Plans lack any information reasonably required by the Board; or (c) construction or existence of an Alteration covered by the Plans would threaten the Building's structural integrity, or impair access or Utility

Services to any Unit or Common Element; or (d) an Alteration or Use covered by the Plans is, in its reasonable judgment, structurally, architecturally or aesthetically incompatible with the rest of [Association], due to the Alteration's exterior design, height, bulk, shape, color scheme, finish, style of architecture, configuration, appearance, materials, location or relative cost; or (e) the proposed Use (i) is not permitted by this Declaration even if Approved, or (ii) would not be in [Association]'s best interest.

- 1.4.3. Notice of decision. Within 10 Business Days (or, if the Board elects in good faith to have the Alteration reviewed by a Plans Consultant, 15 Business Days) after the Board receives an Application and accompanying Plans meeting the requirements of this Section, it shall give the Applicant a Notice responding to the Application which (a) Approves it unconditionally, or (b) Approves it subject to satisfaction of a condition, or (c) states that the Board requires, and identifies, additional or more detailed Plans and/or other information to be submitted before the Board is prepared to Approve or disapprove the Application, or (d) disapproves the Application and states the grounds therefor in reasonable detail. If the Board fails to give the Applicant the Notice within the period prescribed above, the Applicant may give the Council a second Notice ("**Deemed Approval Notice**") expressly requesting that the Board respond to the Application (which, to be effective, shall (a) state in upper-case, bold type that it is a **DEEMED APPROVAL NOTICE** given under this paragraph, and (b) identify the Application and the Plans submitted with it). Unless the Board gives the Applicant the Notice within 10 days after it receives the Deemed Approval Notice, it shall be deemed to have Approved the Application unconditionally.
- 1.4.4. Plan Review Costs. All Plan Review Costs incurred by the Council in connection with an Alteration of a Unit shall be Unit Costs charged to that Unit. All other Plan Review Costs shall be Base Costs. The Board may cause the Council to adopt a schedule of Fees payable by Owners who apply for Approval of Plans. The Fees shall be in amounts sufficient to cover the anticipated Plan

Review Costs for the Application. The Fees may, but need not, include a Fee payable when the Application is submitted to the Board, and one or more Fees in fixed or unfixed amounts equaling the costs incurred by the Council for Plans Consultants.

- 1.5. Effect of Approval. The Council shall not be deemed, by considering, commenting on or Approving Plans for a Unit or Common Element, to have (a) determined or represented to any Person that the Plans or any Improvements made or other action taken pursuant to the Plans or this Declaration comply with any building code or other Applicable Law, or (b) waived its right, in its sole discretion, to disapprove the Plans or anything therein if later submitted for another Unit or Common Element, but as to any Unit or Common Element for which Plans are Approved, the Approval shall be final and irrevocable. The Owner or the Council shall bear the burden and cost of obtaining all permits and approvals by Authorities required by Applicable Law to implement any Plans for its Unit or the Common Elements, respectively.

ALTERATIONS STANDARDS BOOKLET

This booklet sets forth the Alterations Standards and procedural Rules adopted by the Board of Directors of _____ Association, Inc. on _____, 200_, pursuant to the Declaration for _____ dated _____, 200_ and recorded among the Land Records of _____ County, Maryland in Liber __ at folios __ *et seq.*, as amended (“**Declaration**”). It is intended for use by Owners and their architects and builders. Capitalized terms used but not defined herein, but defined in the Declaration, have the meanings given them in the Declaration.

The Board may at its sole discretion amend these Alterations Standards. The Alterations Committee may at its sole discretion vary their application where site-planning or design considerations warrant. No inclusion in, omission from, or amendment to, or variance from these Alterations Standards shall bind the Alterations Committee to Approve or disapprove any feature or matter subject to Approval, but no change of policy shall affect the validity of any Approval granted before the change. **If any term of these Alterations Standards conflicts with the Declaration, the latter shall control. Accordingly, Owners are strongly encouraged to familiarize themselves with the terms of the Declaration which govern Alterations and Uses.**

SECTION 1. ALTERATIONS COMMITTEE.

- 1.1. An Alterations Committee is established under the Declaration to:
 - 1.1.1. Establish reasonable standards (“**Alterations Standards**”) for the construction or installation of additions to the original dwellings, decks, fences, pools, sports courts, storage or utility sheds, landscaping and other structures (collectively, **Improvements**) and any changes to the exterior of the homes in an effort to ensure that any construction or installation is consistent with the quality of workmanship and design of the homes and other Improvements in _____.
 - 1.1.2. Establish reasonable procedures for the processing of applications submitted pursuant to the Alterations Standards.

- 1.1.3. Review and approve plans and specifications (collectively, **Plans**) for Improvements before their installation or construction to assure that (a) the Improvements comply with the Alterations Standards promulgated by the Alterations Committee, or (b) (if there are no Alterations Standards for those Improvements) the Improvements are consistent with the quality of workmanship and design of the homes and other Improvements in _____.
- 1.1.4. Assure that any Improvement constructed or installed conforms to Plans approved by the Alterations Committee.

SECTION 2. APPLICATION PROCEDURES.

- 2.1. Under the Declaration, the construction or installation of an Improvement on a Lot or Common Property and any exterior addition or Alteration to any Lot or Common Property, require that (a) an application ("**Application**") be submitted to the Alterations Committee for review, and (b) the Alterations Committee have approved ("**Approved**") the Application.
- 2.2. Alterations to a Lot usually require the completion and submission of an APPLICATION FOR ALTERATIONS COMMITTEE APPROVAL. Application forms can be obtained from the Association. The applicant shall secure the signatures of at least two adjacent or affected Lot Owners. Some applications may require more signatures, depending on the particulars of the Alteration and the number of neighbors affected, which shall be determined in the sole discretion of the Alterations Committee. Those signatures signify only an acknowledgment that the applicant is seeking Alterations Committee Approval of the proposed Alteration; only the Alterations Committee may grant actual Approval of the Alteration. No work may begin until Alterations Committee Approval is obtained.
- 2.3. If the Alterations Committee fails to Approve or disapprove an Application for Property Alteration or to request additional information concerning the Application, within 30 days after a completed Application is submitted to it, the Application shall be deemed Approved.
- 2.4. Each Owner must ensure that all Alterations to its Lot comply with applicable County and local building codes, zoning requirements and other governmental regulations, and neither

the Alterations Committee nor the Association assumes any responsibility for (a) knowledge or enforcement of those restrictions as to Alterations to Lots, or (b) determining whether those Alterations will reduce or void any applicable warranty or guarantee. The Association must ensure that all Alterations to Common Property comply with those restrictions.

- 2.5. No Alteration to a Lot or Common Property may conflict with or adversely impact approved grading, drainage, sediment control and stormwater management plans for the Lot or Common Property, or any neighboring real property.
- 2.6. Each Owner shall, as an implied condition to Approval of an Application, be conclusively deemed to have unconditionally agreed to Indemnify the Association, Directors, Officers and Alterations Committee due to any claim, loss, cost, damage or expense (including attorneys' fees and court costs) relating to or arising out of any work performed on the Lot. The scope of the Indemnity shall include physical injury, property damage and damage to roads, walks, landscaping or other common or public areas or facilities.

SECTION 3. EXEMPTIONS FROM APPLICATION PROCEDURES.

- 3.1. Under the Declaration, Developer and any Developer Entity or Builder are exempt from application requirements and are not required to submit to the Alterations Committee, or obtain its Approval of, an Application or Plans for construction of any dwelling or other Improvement on a Lot or Common Property before it is first conveyed of record to a person other than Developer or a Developer Entity or Builder.
- 3.2. Real estate sales, construction and management offices, and Builder's storage areas, may be erected, kept or operated on a Lot or Common Property if used solely in connection with the development of _____.

SECTION 4. ALTERATIONS STANDARDS.

- 4.1. Decks, patios and walks. This guideline refers to any new or extended patio, deck, or walk, or to any material change to an existing deck, patio or walk.

- 4.1.1. Application procedure. No Application is required if a deck, patio or walk (a) replaces an existing permitted patio, walk or deck with an identical material or a material similar in color or texture; or (b) is located at existing grade level at the rear of the house and does not extend more than 16 feet from the rear of the house; or (c) is completely enclosed within an existing, opaque, privacy fence. (Refer to Fence regulations in subsection 4.6.) A complete Application containing the following information must be submitted for all other patios, decks, or walks:
- (a) Materials. A list of proposed materials, including type and color.
 - (b) Location. A site plan showing the relationship of the proposed deck, patio or walk to the house, and distances to Lot lines.
 - (c) Screening. A description of proposed Alterations to or removal or relocation of any planting, meters or air conditioning, exterior lighting or existing doors or windows involved with the installation of the deck, patio or walk.
 - (d) Alterations. Plans and elevations, including dimensions, height above grade and details of railings and stairs.
 - (e) Certification. If the proposed deck, patio or walk would change or disturb the existing grade, a certification of a registered landscape architect or professional engineer is required which documents that appropriate measures are being undertaken to conform to the approved grading, sediment and erosion control and stormwater management standards for _____.
- 4.1.2. Alterations Standards. Applications will be evaluated using the following criteria:
- (a) Materials. Decks should be constructed of durable materials; all visible parts of decks, including stairs, should be of wood or materials compatible with the architecture of the residence. Wood may be painted or stained to match house siding or trim; treated wood may be left to weather. Patios or walks may be stone, gravel, aggregate or concrete.
 - (b) Location. If the deck, patio or walk is in a side yard, the deck shall conform to the side yard setback set forth in any applicable building or zoning code. The deck, patio or walk shall not adversely affect the visual or acoustical privacy of adjacent dwellings. Decks or patios shall

generally not extend beyond a distance of one-third of the distance from the rear of the house to the rear Lot line.

- (c) Screening and skirting. Lower elevations of the deck may be screened with compatible materials; areas under the deck may not be used for storage unless specified in the Application and, if approved for storage, must be effectively screened. The storage facilities should be designed as an integral part of the deck when possible. No storage of any type at any time shall be permitted which may increase the risk of vermin or animal infestation.
- (d) Alterations. New patios, decks or walks (i) should not disturb existing contours, so that drainage or water flow is not impacted; and (ii) should provide reasonable visual and acoustical privacy for both applicants and their neighbors; screening or plantings should be considered where it is necessary to preserve privacy. Deck railings should be primarily flat-top vertical board or picket.

4.2. Sheds.

4.2.1. Application procedure. A complete Application is required for all new or extended tool or storage sheds. The Application must include a descriptive drawing (plan and elevations), including dimensions and height above grade. Applications should also provide location, material and screening information essentially the same as outlined in subparagraph 4.1.1(b).

4.2.2. Alterations Standards. Applications will be evaluated using the following criteria:

- (a) Location. Sheds should generally be located as close to the house as possible, preferably attached to the house, but no shed shall be located within the front yard, side or rear setbacks or utility easement areas. Free-standing sheds are discouraged. Free-standing sheds must be designed to respect the “visual rights” and aesthetic interests of neighboring Lots. All sheds should be an integral part of the architecture or Fence design and location. (Refer to Fence regulations in subsection 4.6.)
- (b) Architecture and material selection. The architecture of sheds shall be similar in style, materials, color and roof pitch and otherwise compatible with the architecture of

the house. Lustrous and shiny metallic surfaces and shed kits will not be Approved. If the house is resided, re-roofed, restyled and repainted, the adjacent shed should match.

- (c) Screening. Screening or planting should be included where necessary to preserve visual rights and aesthetic interests.

4.3. Pools, hot tubs and whirlpools.

4.3.1. Application procedure. A complete Application must be submitted for all pools, hot tubs and whirlpools. The Application must include a site plan and certification (as described in clauses 4.1.1(b)(ii) and (v)) showing location and dimensions of the pool, its equipment and Fences in relation to applicant's house and Lot lines. In addition, changes in landscaping, grading, lighting, decks or any other Alteration must be clearly shown on the site plan. Changes which may be necessary off-site require approval of the affected property owner before an Application is submitted and are the sole responsibility of Owner making the changes. Applications should also provide material, screening and design information essentially the same as outlined in clauses 4.1.1(b)(i) to (iv).

4.3.2. Alterations Standards: above-ground pools.

- (a) Location. Pools should generally be located as close to the house as possible, but no pool should be located in the front yard or within side or rear setbacks or utility easements. The Application must show the location of sewer clean outs and their relationship to the proposed pool.
- (b) Architecture and material selection. Above-ground pools exceeding 6 feet in diameter will not be allowed unless integrated as part of a deck/patio/fence design. Above-ground pools must be built in a manner and with material that respect the acoustical, "visual rights" and aesthetic interests of neighboring Lots or Common Property.

4.3.3. Alterations Standards: in-ground pools.

- (a) Location. Pools should generally be located as close to the house as possible, but no pool should be located in the front yard.

- (b) Architecture and material selection. In-ground pools should (i) be designed and located to respect the acoustical, “visual rights” and aesthetic interest of neighboring Lots and Common Property; (ii) fit into the topography; and (iii) be integrally designed with screening, security fencing, decks and pool equipment/pump storage facilities, lighting and landscaping (including any slopes and retaining walls).

4.3.4. Alterations Standards: hot tubs and whirlpools.

- (a) Location. The applicant’s Lot shall be of sufficient size to avoid creating a substantial acoustical or visual impact on adjacent Lot Owners. Hot tubs and whirlpools should (i) be located to the rear and between the sidewalls of the residence, (ii) not protrude more than 3 feet above the adjacent ground or deck level, and (iii) be of a material that will blend with surrounding structures.
- (b) Architectural and material selection. Safety measures such as a secure lid or Fence must be considered for hot tubs and whirlpools. Additional screening with Fences and shrubs or other landscape buffers are encouraged to reduce the impact on adjacent Owners.

4.4. Gazebos.

- 4.4.1. Application procedure. A complete Application is required for gazebos or similar free-standing garden structures. The Application must (a) include a descriptive drawing (plan and elevations), including dimensions and height above grade, and (b) provide essentially the same material, location and screening and design information as outlined in subparagraph 4.1.1(b).

- 4.4.2. Alterations Standards. Applications will be evaluated using the following criteria:

- (a) Location. The Improvement should be sited so as to respect the acoustical, “visual rights” and aesthetic interests of neighboring Lots and Common Property, but should not be sited in the front yard.
- (b) Architectural and material selection. The Improvement should be (i) of similar design and materials to those of the house, and (ii) incorporated with fencing, plantings and other site elements.

4.5. Driveways.

4.5.1. Application procedure. A complete Application is required for all parking pads, driveways or driveway extensions, including certification by a registered landscape architect or professional engineer as provided in clause 4.1.1(b)(v).

4.5.2. Alterations Standards. Applications will be evaluated using the following criteria:

(a) Location. Free-standing parking pads and driveway extensions will be considered only as a design concept integrated with the landscape and house. Parking pads, driveways or driveway extensions shall not be located on any side Lot line.

(b) Architectural and material selection. The grade of the parking pad, driveway or driveway extension shall not concentrate or increase storm-water runoff onto adjoining Lots or Common Property. The material must be compatible with prevailing community standards for underlayment, top-coat and color.

(c) An Application must include (i) a site plan showing the location of the proposed parking pad, driveway or driveway extension on the Lot, (ii) dimensions, cross-section and materials; and (iii) a description of any landscape screening to be used.

4.6. Fences and walls.

4.6.1. Application procedure. A complete Application is required for all fences and walls, including all solid, transparent, or semi-transparent barriers constructed of wood, metal, masonry, or any combination of materials (collectively, **Fences**).

4.6.2. Alterations Standards. Applications will be evaluated using the following criteria:

(a) Location. Front-yard Fences are generally discouraged and will be considered only for decorative purposes as a design concept integrated with the landscape and house; should generally be used to form courtyards and define entranceways; and should not serve as privacy or security fencing. Rear-yard and side-yard Fences are not allowed within utility rights-of-way, and are discouraged from

rear-yard and side-yard lot lines. If a Fence does not extend to the Lot line, the Owner is still required to maintain its Lot to the Lot line.

(b) Architectural and material selection.

- (i) No chain-link, wire-mesh, or wire Fences will be Approved.
- (ii) Gates must match the Fence in material, style and color.
- (iii) Fences must match or be compatible with those of adjacent Lots.
- (iv) Vegetable or flower garden Fences must be no higher than 36 inches.
- (v) Only one of 3 Fence colors (using stain or paint) will be Approved: white; a color to match the house trim; or natural wood color.
- (vi) A split-rail, vertical-board or picket Fence may be used along rear or side yard Lot lines, on the following conditions:
 - (1) It is not more than __ inches high.
 - (2) If wire mesh is to be attached to the interior of the split-rail Fence, it is a flat dark color, rust proof, and welded.
 - (3) Tops of pickets are flat and even; vertical boards exceeding one inch by 4 inches are discouraged.
 - (4) Vertical pickets are separated by at least 2 inches.
- (vii) Stockade or other opaque Fences are allowed only near the dwelling, on the following conditions:
 - (1) Generally, the opaque Fence does not extend a distance greater than one-third the distance from the house to the rear Lot line.
 - (2) It is not more than 6 feet high.
 - (3) The recommended opaque Fences for rear and side yards is the standard stockade fence (but with the pointed tops cut flat). Vertical boards exceeding one inch by 4 inches are discouraged. Vertical picket is preferred to board-on-board.
- (viii) Stockade or other opaque Fences shall not fully enclose the rear yard of a townhouse, but wing walls of opaque Fences up to 12 feet long are permitted.

(c) An Application must include a site plan showing the location of the proposed Fence or wall on the Lot or Common Property, and the following information:

- (i) Color photographs of the house, showing appropriate views of house (front, rear and side).
- (ii) Color photographs or description of style and color of Fences in immediate areas.
- (iii) Fence dimensions, style, color and materials.
- (iv) A description of any landscape screening to be used.
- (v) For any proposed use of opaque Fences, a certification of a registered landscape architect or professional engineer as required under clause 4.1.1(b)(v).

4.7. Landscaping and gardens.

- 4.7.1. Application procedure. (a) No Application is necessary if the garden is (i) placed in the backyard; (ii) smaller than one-eighth of the size of the backyard; and (iii) planted on existing contours so as not to cause drainage problems to other Lots or Common Property.
- (a) All gardens must be (i) maintained in a safe and sanitary condition, with due regard for the visual rights of neighbors, and (ii) protected from infestation or damage from domestic or wild animals, insects or vermin. Any violation of this section may be enforced by requiring fencing or screening, or demolition of the garden and restoration to the proper condition.
 - (b) No Application is required for individual shrubs, foundation plants, small annual or perennial beds, or ground covers.
 - (c) An Application is required for, but not limited to, any of the following:
 - (i) Removal of a tree whose trunk is over 6 inches in diameter measured 2 feet above the ground, whether alive or dead, except that the tree may be replaced by a tree substantially the same size and the identical species without the need for an Application.
 - (ii) Landscaping involving a change of grading or slope, or installation of a wall or other structure.
 - (iii) In-ground sprinkler systems, whether or not automatic.
 - (iv) Landscaping, garden or planting plans or beds (regardless of their size) occupying more than 250 square feet or within 10 feet of an court or adjoining Lot line.
 - (v) All permanent grills or barbecues.

- 4.7.2. Alterations Standards. Applications will be evaluated using the following criteria:
- (a) Material. Terracing or retaining walls, where permitted, may be timber or pre-cast. Above-ground planters may be masonry, ceramic or wood only, except for metal trim. Edging may be metal, if set securely in the ground and not posing a danger to children or domestic animals.
 - (b) Alterations. Plans should not disturb existing contours.
- 4.8. Play equipment.
- 4.8.1. Application procedure.
- (a) No Application is required for swing sets and play equipment of open construction not more than 8 feet high or 10 feet long, and meeting the following location criteria:
 - (b) No Application is required for sandboxes not exceeding 20 square feet in area covered and one foot in height, and meeting the location criteria set forth below.
 - (c) A complete Application is required for play houses and all other instances. The Application should include the following information:
 - (i) A site plan with dimensions showing the relation to existing structures, trees and Lot lines.
 - (ii) A description of material to be used, including color and texture.
 - (iii) Changes in grade proposed (care must be taken in any drainage change).
- 4.8.2. Alterations Standards. Applications will be evaluated using the following criteria:
- (a) The equipment should be located (i) behind the house as inconspicuously as possible, but (ii) not within the rear or side yard setback lines.
 - (b) Equipment should be maintained in good repair and stained or painted when necessary. Broken and or unused equipment should be removed.
- 4.9. Additions.
- 4.9.1. Application procedure.

- (a) A complete Application is required for all additions, including carports, garages, greenhouses, awnings, storm doors, porches, rooms, porch and carport enclosures.
- (b) All Applications should include:
 - (i) The signature of all Owners of Lots surrounding the applicant's Lot.
 - (ii) A site plan showing the location of the proposed structures, Lot lines, and other identifiable landmarks.
 - (iii) Detailed drawings and plans which include dimensions, exterior elevations, changes in grade, etc., and the relationship of the proposed structure to the existing dwelling and Lot lines.
 - (iv) Specifications for exterior materials, including the type of siding on existing and proposed structures, the color of the existing house and trim, color samples of the proposed structure and trim, and exterior lighting arrangements.
 - (v) All additional information required by other sections of these Alterations Standards, such as painting, lighting, windows and roofs.

4.9.2. Alterations Standards. Applications will be evaluated using the following criteria:

- (a) Location.
 - (i) Additions should not significantly impair the view, amount of sunlight or ventilation of adjacent residences or public use and enjoyment of open space.
 - (ii) Additions to the front of a house (except for storm doors) are strongly discouraged.
 - (iii) Additions should not adversely affect drainage conditions on adjacent Lots or Common Property through changes in grade or other significant run-off conditions, including conditions existing during construction.
 - (iv) Additions should not create situations in which adjacent neighbors will have difficulty adding to, modifying, or maintaining existing dwellings.
- (b) Architectural and material selection. The architectural character or theme of an addition should remain consistent with those of the existing structure and others around it. That is, once the character is established, whether it is traditional or contemporary, no portion should be changed

or added which could conflict with or change the character of the structure. In addition, the design of additions should be consistent with the existing shape, style, and size of the dwelling in the following ways:

- (i) Siding, roofing, and trim materials should be the same as or compatible with the existing materials of the dwelling in color and texture.
 - (ii) New windows and doors should be (1) compatible with those of the existing dwelling in style, size and color; (2) located on walls at the same approximate height as those of the existing dwelling; and (3) trimmed in a similar manner.
 - (iii) Roof eaves and fascias should be the same depth, style, and approximate height as existing eaves and fascias. New roofs should have the same pitch as those on the existing dwelling.
- (c) All construction shall be completed in a timely manner and with professional workmanship. Trash, bulk materials, and general disruption of the worksite shall be kept to a minimum.

4.10. Antennas. No television aerial, radio antenna, satellite dish, or similar device for either reception or transmission shall be erected, installed or maintained on the exterior of the home or on the ground, except that one and only one so-called “digital satellite system” disk or antenna, or other disk antenna, in each case having a diameter not exceeding 20 inches, may be maintained anywhere on a House or Townhouse Lot.

4.11. Lighting.

4.11.1. Application procedure. No Application is required for replacement of an existing light fixture, if accomplished with a realistic match to the old fixture. A complete Application is required for all other changes in style, size, shape, color or positioning of exterior lights and additional exterior lights (including but not limited to security and landscape lighting).

4.11.2. Alterations Standards. Applications will be evaluated using the following criteria:

- (a) All exterior lighting should be installed so as not to shine on adjacent Lots, Common Property or public space. Especially with respect to security lighting, light fixtures

should be oriented to illuminate only a specific area, such as a doorway. Some lights may have to be shielded in a manner similar to some streetlight installations to prevent unwanted or excessive intrusion of light from one property to another or onto public or private court areas.

- (b) The following exterior lighting uses are favored:
 - (i) Landscape lighting around the property or at strategic locations highlighting trees or other major plant material.
 - (ii) Decorative lights usually associated with entrances (*e.g.*, coach lamps at the front door and at patio doors).
 - (iii) General lighting where the fixture is inconspicuous could consist of metal cylinder fixtures, either recessed or surface mounted to the underside of the first floor or roof overhangs of the house or the underside of a raised deck.
 - (iv) Temporary lighting for decoration, holiday and festival use, but this lighting should be in place only for the holiday and must be removed within 14 days after the holiday. This also applies to other structures used for or in connection with, or symbolizing, religious events.
- (c) Lighting that is considered harsh in color or intensity should not be used.
- (d) Fixtures should enhance the daytime appearance of the house and appear as an integral part of the design of the house or its landscaping.
- (e) Post lights should not be more than 8 feet high.
- (f) Fluorescent and sodium vapor lights are not acceptable due to their commercial association and harsh color.
- (g) Eaves-mounted bare-bulb floodlights are not permitted. They detract from the appearance of the home, cause glare, and are visually offensive to neighbors or passersby. Alternative lighting methods should be considered.
- (h) Lighting and wiring on, over, or across any public street requires a complete Application and a County permit, and may require evidence of adequate insurance coverage.

4.12. Tennis, basketball or other sport courts.

4.12.1. Application procedure. A complete application for a tennis, basketball or other sport court is required. Applications should include:

- (a) A site plan showing the relationship of the proposed court to the house, lot lines and adjacent structures.
- (b) A certification by a registered landscape architect or professional engineer as provided in clause 4.1.1(b)(v).
- (c) A planting plan showing all proposed trees and shrubs in a well designed plan, providing effective screening along adjacent properties and integrating the court with the rest of the yards.
- (d) A lighting plan and elevations with technical data on light.
- (e) Details of Fence and gates.

4.12.2. Alterations Standards. Applications will be evaluated using the following criteria:

- (a) Location. Sport courts will not be allowed in the front yard and not placed on utility easements, and should be located so as to respect the acoustical, “visual rights” and aesthetic interests of neighboring Lots and Common Property.
- (b) Architectural and material selection. Sport courts must fit into the topography to avoid changing existing property contours, fill or steep slopes. Additional standards concerning Fences, lighting and landscaping may be applicable.

4.13. Painting.

4.13.1. Application procedure. No Application is required to re-paint the same color as the original paint for the applicable area. A complete Application is required to change any exterior paint color, including that of any trim, door or window. The Application must indicate the specific area where color is proposed to be changed, and include a paint color sample of sufficient size applied to appropriate material to enable the application to be evaluated.

4.13.2. Alterations Standards. Applications will be evaluated using the following criteria:

- (a) Color shall match or be compatible with adjacent dwellings and the community as a whole.
- (b) Color changes in areas visible from Common Property or Public Roads are strongly discouraged.

- 4.14. Other Improvements or Alterations. Any other construction, Alteration or addition to the exterior of a residence or a Lot, whether or not specifically covered herein, requires a completed Application and Approval of the Alterations Committee before commencement or installation.