

## **ARCHITECTURAL CHANGE GUIDELINES**

### **SECTION I: INTRODUCTION**

The Architectural Review Committee (“**ARC**”) and Board of Directors (“**Board**”) of the Ashley Forest Association of Durham (“**Association**”) have prepared this document (“**Guidelines**”) to assist homeowners in planning changes to their property, in completing the Architecture Request Form (“**Form**”), and in complying with requirements of the Declaration of Covenants, Conditions and Restrictions for Ashley Forest Subdivision (“**Covenants**”). The Guidelines are intended to facilitate equitable and consistent handling of all applications submitted for ARC review. A copy of the Form and these Guidelines can be found on the Management Company’s internet site for easy access by homeowners.

In a planned community such as the Ashley Forest Subdivision (“**Subdivision**”), a question often arises about how to maintain a quality environment as the community matures. Authority for maintaining the quality in our Subdivision’s design is through the Covenants, which follow Federal, State, and Local legal requirements in the hierarchy of rule making (see Appendix) by neighborhood associations. The Covenants run with the land, are binding on all homeowners and renters, and should be fully understood by all residents. The fact that each homeowner is subject to these Covenants assures all homeowners that acceptable standards of design will be maintained to preserve the Subdivision’s overall environment and character and to protect the property value of each homeowner. Property owners are strongly encouraged to review the Covenants and these Guidelines to obtain a full understanding of architectural control requirements prior to submitting a change request.

The Covenants established an ARC appointed by the Board. The ARC’s or Board’s prior written approval is required for almost any change, addition, or alteration to the exterior of any property. Examples of changes that require ARC approval are given in Section II of this document. Section III describes the application and review process, including correction procedures for violations. Section IV gives the general philosophy of the design review criteria that guide the ARC, and Section V lists specific design requirements. Legal citations are given in the Appendix 1.

The information that follows provides the guidelines used by the ARC and the Board. Some parts of these Guidelines are requirements defined in the Covenants, and parts are requirements that reflect the ARC’s and Board’s intent and historical practice to preserve the character of the neighborhood. This latter group of requirements cannot conflict with the Covenants or legal rulings. It is hoped that these Guidelines will serve as a positive tool to allow the full and free use of each homeowner’s property in a manner that is consistent with the aesthetic and harmonious development of the Subdivision.

### **SECTION II: WHAT CHANGES NEED ARC OR BOARD APPROVAL?**

Prior approval is required for **ANY CHANGE** to the exterior of a property, except for minor landscaping changes, according to Article VII of the Covenants. This requirement applies to every homeowner’s property in the Subdivision. Examples, not

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all-inclusive, of changes that require prior approval are the following:

- Painting a dwelling a new color.
- Adding a deck, walkway, driveway, parking pad, or patio.
- Major landscape or grading changes, particularly those affecting drainage.
- Removing large trees.
- Adding additions to a dwelling.
- Adding fences or walls.
- Roofing that changes the color or roofing material (from asphalt shingle to metal, for example).
- New siding material (vinyl siding covering existing fiber board even if there is no color change).
- Addition of any type of stand-alone structure (storage shed, play house, tree house, doghouse, etc.).
- Adding yard lights or ornaments.

Again, these are just examples to give homeowners ideas about projects that require submission of change requests. If there is any doubt about the need to submit a change request, it is far easier to submit one than deal with the consequences of a change that is later deemed unacceptable or in violation of the Covenants or Board regulations.

Some projects do not require prior approval. These include, among others, minor landscape changes, maintenance and repairs that restore a dwelling or part of a dwelling to prior condition (and include no changes), and replacing a roof with material that is the same as the previous roof and has no significant color change.

### **SECTION III: APPLICATION PROCEDURES**

The ARC is charged with reviewing of all applications for exterior changes to any property in the Subdivision and with rendering a written decision to the applicant of the acceptability of the change. Submission of architectural change Form to the ARC and notification to homeowners of the ARC's decisions are done through the Management Company. The procedures for application, review, inspection, and enforcement of design are outlined below. The ARC, in examining each application, considers whether or not a planned change is in conformance with the Covenants, preserves the quality and character of the neighborhood, and protects property values.

#### **Application Procedure**

1. Complete the Architectural Request Form and attach all required exhibits. Include full details of the proposed change; be sure to include such information as type of material, size, height, color, location, etc. Provide a plat plan of the lot and indicate the location of building, pen, fence, etc., where appropriate.
2. Have your three nearest neighbors sign the Form, indicating their awareness (not necessarily approval) of your plans.
3. Mail, submit electronically, fax, or deliver the Form to the Management Company. Incomplete applications will be returned, causing a delay in obtaining approval. If mailed, it may be wise to check that the Management Company received the application since items occasionally get lost in the mail. The 30-day review period for any application does not start until a fully complete Form, which includes all information required to support a change request, is received by the Management Company.

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**Review Procedures**

1. A Form with all necessary information will be considered on each application's individual merits by the ARC using the Covenants and these Guidelines as a basis for rendering a decision. The ARC has thirty (30) days from the date of submission to the Management Company to review an application; if a decision is not rendered by the end of the 30-day period, ARC approval is no longer necessary, and this requirement is considered to have been waived.
2. During the consideration of an application, ARC members may view the site and may talk to the applicant or applicant's neighbors. The ARC will consider information or comments received from other residents as well. After examination of the application, the ARC will either reject or approve the application as submitted.
3. Each applicant will receive notice regarding the ARC's decision via a written communication from the Management Company. In the case of a rejection, the applicants will be provided in writing with the reason(s) for rejection and may re-submit a Form with the objections addressed. The ARC will record its action and the notification to the applicant by placing copies of the executed application and/or letters in the ARC archives.
4. If an applicant is not satisfied, wholly or in part, with a decision of the ARC, that decision may be appealed to the Board for additional consideration. Under no circumstance is work to begin on any project until approval of either the ARC or the Board has been granted.
5. The ARC may inspect work in progress and request (either orally or in writing) that the applicant corrects any non-compliance with an approved application.

**Correction Procedures:**

1. **Remedies:** An exterior change made without the required approval of the ARC or Board constitutes a violation of the Covenants regardless of whether ARC approval was likely or not. If a violation occurs, the Board will address this with the responsible homeowner to resolve the violation as amicably and fairly as possible for all involved, but in any case of a Covenant violation, the Association has the right to pursue legal actions against any homeowner and seek remedies for the violation (see Appendix 1 for legal citations).
2. **Suspected Violations:** The ARC or Board may inspect authorized construction in progress as well as the community in general to identify apparent or flagrant Covenant violations, for example, exterior changes in progress or completed without prior approval. All homeowners in the Subdivision also have the right to notify the Board or Management Company of apparent violations of any provision of Covenants or these Guidelines. This input will be reviewed by the Board to confirm if a violation has occurred and if further action is warranted.
3. **Violations not resolved:** Failure by or refusal of a homeowner to resolve violations of the Covenants may result in action—fines, for example—by the Association as permitted by law. Particularly egregious violations may also result in the Association filing legal action against an owner for the removal or modification of any unapproved work at the owner's expense.

## **SECTION IV: PHILOSOPHY AND GENERAL CRITERIA FOR REVIEWS**

The ARC evaluates each application on individual merits of that application. The following are the philosophy and criteria used by the ARC to review an application:

### **A. Review Philosophy:**

1. **Validity of Concept:** The basic idea of a proposed exterior change must be sound and appropriate for its surroundings.
2. **Landscape and Environment:** The exterior change must not unnecessarily destroy or blight the natural landscape or the existing man-made environment.
3. **Relationship of Structures and Adjoining Property:** The proposed change should relate harmoniously to its surroundings and to existing buildings and terrain that have a visual relationship to the change, preserving the neighborhood character.
4. **Protection of Neighbors:** The ARC shall make reasonable efforts to protect the interests of neighboring owners and renters by making provisions for such matters as surface water drainage, sound and sight buffers, preservation of views, light, and air, and any other aspects of design, which may have substantial effects on neighboring lots, on safety of residents, and on maintaining property values.

The ARC considers these criteria and exercises discretion in determining which of the criteria will govern in each specific application. However, the ARC, the Board, and the Association are not insurers against problems that may result from the alteration of existing improvements or installation of new improvements on a lot. Any homeowner making a change ultimately bears financial and legal responsibility for adverse conditions created by his change, whether those conditions affect his lot, neighboring lots, or common areas. The ARC and Board specifically do not hold themselves to be experts in the areas of engineering, architecture, or landscape architecture and design, and homeowners should consult such professionals, as necessary, to plan changes.

### **B. General Review Criteria:**

Any proposed change must be compatible with the design characteristics of the applicant's home and the general neighboring setting. Compatibility is defined as harmony in style, scale, materials, color, and construction details and reasonable time estimates to complete a construction change.

- A. **Scale:** The three-dimensional size of the proposed change must relate satisfactorily to adjacent structures and surroundings. For example, a detached storage shed of a disproportionate size would not be satisfactory.
- B. **Materials:** Continuity is established by the use of the same or compatible materials as are used in the existing dwelling. For example, an added storage shed should be made of the same or similar material as the dwelling; likewise, the shingles on a shed should be the same or similar to those of the dwelling.

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- C. Color: Color may be used to intensify visual impact. For example, the color of a fence should blend in with the surrounding natural environment. A storm door should be painted to match the entrance door or the house trim color. A shed should be painted to match the existing dwelling.
- D. Workmanship: The quality of work for any change must be equal to or better than that of any existing structure. Poor practices may cause the owner problems, may be visually objectionable, and may be a nuisance and safety hazard for owners, neighbors and the community at large.
- E. Project Completion Time: All applications must contain a proposed maximum time period from start to completion of construction. If the proposed time period is considered unreasonable, then the ARC may reject the application. In addition, if the actual completion date is longer than 3 months past the original estimated completion date, the Association's Board may elect to hold the homeowner in violation of the original conditions for approval of the request and may take action to remedy the violation.

## **V. DESIGN GUIDELINES**

This section provides specific guidance for change requests that are commonly encountered in the Subdivision. Included in this Section are requirements and recommendations. Some changes that are generally not acceptable are also included. Merely following these guidelines without completing a Form is not acceptable and does not substitute for the Form-submission requirement spelled out in the Covenants.

Unless specifically indicated otherwise, a Form should always be submitted even if approval is believed to be reasonably certain. If any structure is added or modified without prior approval and later deemed unacceptable, corrective measures may legally be pursued by the Board.

### **NOTES:**

- **Utility companies should always be contacted to mark service lines prior to any type of deep digging. NC One Call – (800)-632-4949 – is a contact.**
- **Homeowner assumes responsibility for all improvements made to his property. In some cases, a building permit and building inspection by the City of Durham are required.**
- **All improvements must comply with applicable State, County and City building and zoning codes; homeowner assumes responsibility for compliance with all codes.**
- **Failure to comply with codes renders any ARC approval null and void.**

### Repairs

Owners are responsible for repairs to existing structures and additions. Neither Form submission nor approval are necessary to make repairs and restoration that bring a structure back to its original condition.

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### **Stand-Alone Structures (storage shed, playhouse, tree house, dog house etc.)**

1. Stand-alone structures should be located in the least conspicuous location possible for each lot, usually in the rear and not in a side yard with high visibility from the street.
2. Siding material for a stand-alone structure should be the same color and composition as the dwelling. Tree houses should blend with their placement.
3. When possible, the roof of a stand-alone structure should have the same pitch, be made of the same material, and have the same color as the roof of the dwelling.
4. Easements, common areas, and rights of way must be observed.

The following are additional requirements specifically for freestanding sheds:

5. Detached, freestanding storage sheds are discouraged but not prohibited.
6. Metal sheds are very strongly discouraged and in most cases will not be approved.
7. Sheds must have suitably constructed floor systems and/or foundations.
8. The maximum size of any storage shed is 144 square feet (i.e., 12' x 12') with no one side exceeding 12 feet.
9. Front, back, and both side views of a freestanding shed must be included in the application.

### **Dog Houses**

1. Dog house location on a property should be in an area that is not highly visible from the street and must be at least ten (10) feet from a neighbor's property line. Constructed dog houses should comply with stand-alone requirements.
2. Dog houses must be kept in good repair and free of conditions that are unsanitary or create unpleasant odors.
3. Only one (1) dog house per yard is permitted unless the owner receives a written exemption.
4. Noise nuisances for pets are addressed by Durham City regulations.
5. Attach a plat plan clearly indicating location of the dog house(s).

### **Fences**

1. Metal fences are prohibited by the Covenants with the exception that a 2-inch by 4-inch mesh can be used behind a split rail fence to confine house pets.
2. Fences may not be closer to the front line of the property than the front line of the dwelling.
3. Fences should be located wholly on a homeowner's property, observing rights of way, easements, and common areas.
4. Durham City regulations limit fence heights in rear and side yards to eight (8) feet. These Guidelines recommend a height limitation of six (6) feet or four (4) feet six (6) inches, depending upon fence style, to reduce visual obstruction of other lots.

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The following styles historically have been required for fence additions, but others will be considered:

- French Gothic or Dog Ear Vertical Stockade (buted flat boards with maximum width of 6 inches; 6 feet recommended maximum height).
- Vertical Shadow Line (alternating boards with maximum width of 6 inches; 6 feet recommended maximum height).
- Rustic Rail (posts with 3 or 4 horizontal members; 4 feet 6 inches recommended maximum height).
- Deck Rail (top and bottom supports with 2x2 vertical members spaced every 6 inches; 4 feet 6 inches recommended maximum height)

The recommended material for fences is wood—cedar, spruce, redwood or treated pine—but high-quality newer materials, such as vinyl, may be acceptable. While painting is allowed, a stained or natural finish is recommended. Attach a plat plan to the application with the fence's location clearly marked.

### Exterior Painting/Siding Changes

1. Forms and ARC approval are not required if a house is to be repainted with existing colors (this falls under the category of "repairs").
2. Approval is required if the color scheme changes.
3. A new color scheme must be different than that of adjacent residences. Paint chips showing the new color scheme must be submitted with the Form.
4. Approval is also required for a change in the siding material even if the color remains the same (for example, changing from gray fiberboard to gray vinyl siding).

### Decks

1. All decks should be attached to the rear of the house (no side or front decks) and should not extend beyond the side of the house. If the house has a side entrance toward the back of the house immediately adjacent to the deck, then a four foot extension expressly for the purpose of allowing a stairway to the side entrance will be allowed.
2. All construction must conform to applicable building codes (Durham City requires a building permit and inspection for decks).
3. Durham also requires decking floors to be made of #2 pine or better. Historically, the ARC has required that deck flooring and railing materials should be cedar, redwood or treated pine. Foundation materials for a deck may be brick or concrete, and any foundation must comply with Durham permit regulations as well.
4. Painting a deck is allowed, but a stained or natural finish is recommended.
5. Include a rear view and both side views showing style, type of railings, stairs, etc. with your request, as well as a plat plan showing the deck's location.

### Entrance Lights and Yard Ornamentations

1. One walkway/entrance light mounted on a post that is not to exceed six feet in height to the base of the light fixture may be placed in a front yard. The post

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must be wood or metal and be painted black or the house trim color.

2. High-powered lamps, which are so bright as to be a disruption, are not in keeping with the character of the neighborhood and will not be allowed.
3. A yard light fixture should be similar to or compatible with existing house exterior lights (such as those on front porch/stoop or garage, but not floodlights).
4. Lawn decorations are discouraged in the front and side of a house unless the decoration is a live, growing entity (for example, rose bushes on a trellis). This is in addition to the existing guidelines regarding hedge row planting, etc.
5. Certain lawn ornamentation (e.g., bird baths) will be permitted on an individual basis provided they do not detract from the appearance of the neighborhood.

### Clotheslines

Clotheslines are not permitted.

### Play Equipment

1. Construction of large play sets must have ARC approval and be in compliance any local building and safety regulations.
2. Play equipment should be located in the rear of a house, not on the side or front.
3. No single play unit should exceed eighteen (18) feet by ten (10) feet by fifteen (15) feet high.
4. Typically, one (1) constructed unit is allowed per house (small, low items such as sandboxes are excluded).
5. Play equipment should be located at least 5 feet from property lines.
6. Tree houses are discouraged, but individual plans will be considered by the ARC.

### Basketball Goals

1. Prior ARC approval is not required for placing basketball goals.
2. If permanently installed, a basketball goal should be located on the rear third (toward house) of the driveway or parking pad if grading makes that practical. A temporary basketball goal must never impede the free flow of traffic if placed in a cul-de-sac immediately in front of the owner's house; no goal should ever be placed beside or in a street that has free-flowing traffic (safety hazard). The Board will require the relocation of any goal that violates the free-flow-of-traffic requirement (a Durham City ordinance). Safety of the location of goal placement should be carefully considered by the owner.
2. All goals should be mounted on a single pole.
3. The backboard should be predominantly white, clear, or gray in color.
4. No more than one (1) goal per house is permitted.

### Drives and Parking Areas

Changes to driveways or additions of parking pads require ARC approval.

### Plants and Gardens

1. Committee approval is not required for most planting or landscaping treatments that are biodegradable. However, if a hedge or row is being considered for the front or side yards and will act as a "fence", then approval is required.

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2. Caution should be exercised in digging deep holes to avoid cutting utility service lines. Homeowners should have utility services marked prior to digging.
3. Garden plots contained on the homeowner's property will not require Committee approval. Gardens (vegetable) should be located in the rear of the property. Flower gardens are appropriate for front and side yards.

### Grading and Landscaping

1. Major changes to the topography of a lot could result in increased drainage into a neighboring lot. Therefore, ARC approval is required for such changes. The Homeowner is responsible for conducting any studies or surveys necessary to ascertain that the proposed grading will not adversely affect the neighborhood. The Association does not accept any liability for any damage caused by any grading changes whether approved by the ARC or not.
2. ARC approval is only required when significant landscape changes are planned. This includes the removal of trees, adding shrubs or trees for screening, making hedge or drainage changes, or making other significant alterations.
3. No tree measuring six (6) inches or more in diameter at a point four (4) feet above ground level may be removed without ARC approval unless dead, diseased, or posing an imminent threat or danger to persons or property.

### Sign Regulations

1. Signs expressing "for sale" or "for rent", not exceeding five (5) square feet in area, may be placed on a lot.
2. Political signs, also limited in area to five (5) square feet or less, expressing support for or opposition to political candidates or referendum issues, may also be placed on a lot. Such political signs may be displayed no more than forty-five (45) days before an election and must be removed within seven (7) days after the election (see Appendix 1, Paragraph F).
3. Temporary signs advertising a contractor who is performing work on the property are allowed but must be removed upon completion of the work.
4. Any other sign requires prior approval from the ARC and/or the Board.

### Antennas

1. The ability of any association to regulate the placement and use of antennas to receive satellite signals was restricted by the FCC in 1996 (see Appendix 1: Legal Citations, Paragraph G).
2. Satellite dish antennas may not exceed one (1) meter (39.37 inches) in diameter.
3. Antenna masts extending more than twelve (12) feet above a roofline must meet local permitting regulations and must be reviewed to ascertain that safety regulations have been met.
4. Any antenna not specifically covered by Federal, State, or local regulations requires the submission of a Form to the ARC that includes a full description of the style and placement of the antenna and any safety issues that might be related.
5. Under no circumstance is any homeowner allowed to remove trees on common area to clear the signal path for a dish antenna or antennas of any other type.

**APPENDIX 1: LEGAL CITATIONS**

- A. The hierarchy of neighborhood rule making authority is as follows:
- Federal Statutes, regulations, and court decisions
  - State Statutes, regulations, and court decisions
  - Local Statutes, regulations, and court decisions
  - Covenants
  - Articles of Incorporation
  - Bylaws
  - Board Resolutions (such as some requirements in these Guidelines)
- B. The Covenants of the Association, quoted in part below, provide the basis for the ARC's and Board's authority to regulate architectural changes.

*"After the issuance of a Certificate of Occupancy by the appropriate municipality, no subsequent alteration or modification of any existing improvements nor construction, erection, or installation of additional improvements, including, but not limited to, residences, outbuildings, fences, walls, signs, antennas, clotheslines and other structures, except by Declarant, shall be undertaken upon the properties without the prior review and express written approval of the Board of Directors of the Association or by an architectural committee comprised of three (3) or more representatives appointed by the Board.*

*In the event that the Association, fails to approve or disapprove the site or design of any proposed improvements within thirty (30) days after plans and specifications therefore have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided that the plans and specifications required to be submitted shall not be deemed to have been received by the Association if they contain erroneous data or fail to present adequate information upon which the Association can arrive at a decision. For a request to be considered as received by the Association, it must be logged as received by the Management Company, it must be deemed to contain adequate information upon which the Association can arrive at a decision, and it cannot contain erroneous or incomplete data.*

*The Association shall have the right, at its election, to enter upon any of the properties during site preparation or construction, erection or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials."*

- C. North Carolina General Statute 47F-3-102 describes the powers of owners' associations. Paragraph (12) of this Statute affirms association rights to enforce covenants, bylaws, and rules and regulations of the association (see rule-making hierarchy in Paragraph A above).
- D. North Carolina General Statute 47F-3-107.1 describes the conditions under which a member of an association may be fined.
- E. North Carolina General Statute 47F-3-116 describes the procedure by which an association may place a lien on a property and by which a foreclosure procedure may be initiated by an association.
- F. North Carolina General Statute 47F-3-121 describes sign regulations.
- G. In Section 207 of the Telecommunication Act of 1996, Congress directed the Federal Communication Commission to adopt rules concerning the ability of governmental and nongovernmental entities to regulate the ability to receive broadcast satellite, broadband radio, and television broadcast signals. Specifics for antenna rules can be found in 47 Code of Federal Regulation (C.F.R.) Section 1.4000.