

Victor Gardens Community Association & Victor Gardens Single Family Village Homeowner's Association

References found in governing documents" related to architectural & landscape standards, requirements, and the role of the Architectural Review Committee. Including legal opinion.

October 22, 2009

A. Master Disclosure Statement:

- a. Control, preserve and enhance the architectural and environmental character. ¹
- b. Administer and enforce covenants. ¹
- c. ARC's mission statement: ²
 - i. "The committee will use the guidelines that were submitted to the City of Hugo with the PUD Concept Plan approval for the neighborhood as a minimum standard of architectural application. However, the committee's goal is not to aspire to the lowest denomination of the City requirements. The committee will look to maintain the spirit of the Traditional Neighborhood streetscape by enforcing a historical architectural character."

B. Master Bylaws:

- a. Control, preserve and enhance the architectural and environmental character. ³
- b. Administer and enforce the covenants ⁴

C. Master Declaration of Covenants

- a. Master Association has obligation to ⁵ ...
 - i. administer and enforce the covenants, conditions, restrictions, easements and other rights and obligations, set forth in the Master Governing Documents ⁶
 - ii. control, preserve, enhance the architectural and environmental character of the Property. ⁷
- b. Kind, shape, height, materials, floor plans, color scheme and location. ⁸
- c. Site survey required. ⁸
- d. Material samples and colors. ⁸
- e. Minimum standards. ⁹
- f. Compatibility of color, size, location, type ¹⁰
- g. Comparable or better quality of materials as used in existing buildings ¹¹
- h. Compliance with Architectural Review & Design Guidelines for Victor Gardens ¹²
- i. Design guidelines may only amended after every Unit contains a Dwelling. ¹²
- j. Compliance with the Landscape Policy & Requirements ¹³
- k. Landscape Policy may only be amended after every Unit contains a Dwelling ¹⁴
- l. Retaining walls must comply with Guidelines and Landscape Requirements. ¹⁵
- m. Modular block walls are expressly prohibited unless otherwise approved by ARC ¹⁵
- n. Use of natural stone, boulders and rock is encouraged. ¹⁵
- o. Variances – case by case. ¹⁶
 - i. Unique circumstances
 - ii. Is reasonable
 - iii. Does not impose hardship on other Owners
 - iv. Does not violate agreement with City.

D. Landscape Policy & Requirements: ¹⁷

- a. Professionally designed plans
- b. Minimum of 2.5% of purchase price of home and lot combined.
- c. Entire budget for trees, shrubs, plant materials & sod.
- d. Irrigation systems and retaining walls can not be included in Landscape Budget.

- e. Retaining walls must be natural boulder rock, laid rock, or cultured stone adhered...
- f. Keystone walls not allowed except 'Country Manor' or equivalent
- g. Retaining walls must be approved with floor plan
- h. Plant materials
- i. Minimum sized
- j. Minimum amounts
- k. Special consideration for corner lots
- l. Materials allowed
- m. Etc.

E. Victor Gardens Single Family Homeowners Association – Disclosure Statement

- a. ...ensure that the architectural styles and quality of the dwellings in Victor Gardens Single Family Village are preserved. ¹⁸

F. Victor Gardens Single Family Homeowners Association – Declaration of Covenants

- a. One of the purposes of this Declaration is to ensure that the Units and exteriors of the Dwellings located thereon be kept architecturally attractive in appearance. ¹⁹
- b. Applications for approval of Improvements shall be submitted to the A.R.C. or the Board, as applicable, and processed substantially in accordance with the procedures and standards, including but not limited to the Architectural Review and Design Guidelines for Victor Gardens and the Landscape Policy & Requirements, as established by or referenced in Section 8 of the Master Declaration. ¹⁹

G. Legal Opinion of Felhaber, Larson, Fenlon & Vogt, February 2009 ²⁰

- a. "We strongly recommend that any approval of a variance be documented in writing and that such documented approval set forth specific findings of compliance with the four conditions stated in Section 8.7 of the Declaration. A statement of the A.R.C.'s findings with respect to each of the four conditions not only evidences the A.R.C.'s compliance with the variance requirements, but also sets forth limitations on the precedent established by the variance. You should note that one of the conditions is that the variance "does not violate any development agreement with the City..."
- b. "...any variance from the Design Guidelines should also be submitted to the City for approval to avoid any violation or default under any City agreement."

Footnotes / Sources:

Footnote #1:

Text from the Master Disclosure Statement (found on page 2):

The Master Association has certain powers reserved, or delegated to it by the Village associations, as follows:

To control, preserve and enhance the architectural and environmental character of the property, including but not limited to the right to establish architectural and landscape guidelines (the current version of which are attached hereto as exhibits to this Disclosure Statement), and to approve or disapprove all plans for the construction of new dwellings or other improvements in Victor Gardens; and

To administer and enforce the covenants, conditions, restrictions, rules and regulations, assessment obligations and other obligations set forth in (i) the Master Association's governing documents, and (ii) in the governing documents of any Village associations whose powers are not relinquished by the Master Association.

Footnote #2:

Text from the Architectural Review & Design Guidelines (Introduction)

Exhibit G to the VG Master Disclosure Statement

The committee will use the guidelines that were submitted to the City of Hugo with the PUD Concept Plan approval for the neighborhood as a minimum standard of architectural application. However, the committee's goal is not to aspire to the lowest denomination of the City requirements. The committee will look to maintain the spirit of the Traditional Neighborhood streetscape by enforcing a historical architectural character.

Footnote #3

Text from the Master Bylaws - Section 6.4.3:

To control, preserve and enhance the architectural and environmental character of the Property.

Footnote #4:

Text from the Master Bylaws - Section 6.4.6: *To administer and enforce the covenants, conditions, restrictions, easements and other rights and obligations set forth In a Village's Governing Documents or Village's Rules.*

Footnote #5:

Text from the Master Declaration of Covenants - Section 3.1:

Formation/Purposes/Powers. The Master Developer has formed the Master Association as a Minnesota non-profit corporation pursuant to Minnesota Statutes Chapter 317A and Section 515B.2-121 (a) of MCIOA. The Master Association is formed, and shall have the obligation and the power, to perform the following functions:

Footnote #6:

Text from the Master Declaration of Covenants - Section 3.1.2:

To administer and enforce the covenants, conditions, restrictions, easements, and other rights and obligations, set forth in the Master Governing Documents and the Master Rules.

Footnote #7:

Text from the Master Declaration of Covenants - Section 3.1.3:

To control, preserve and enhance the architectural and environmental character of the Property.

Footnote #8:

Text from the Master Declaration of Covenants - Section 8.3:

Application and Approval Required. Except as otherwise authorized by this Section 8, no Improvement shall be constructed, erected, removed, planted or maintained, nor shall any addition to or any change, replacement or alteration thereof be made, until plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and location of the Improvement shall have been submitted to and approved in writing by the A.R.C. Approval shall be requested by written application on such forms as may be required by the A.R.C. As part of the application process, two complete sets of plans and specifications, including site survey, prepared by an architect, landscape architect, engineer or other person found to be qualified by the A.R.C. shall be submitted. The A.R.C. may require submission of samples of building materials and colors proposed to be used. The applicant shall also apply

for approval to the City or other governmental authority having jurisdiction over the subject of the application, if required by the governmental authority. If the information submitted to the A.R.C. is, in the A.R.C.'s sole opinion, incomplete or insufficient in any manner, the A.R.C. may require the submission of additional information.

Footnote #9:

Text from the Master Declaration of Covenants - Section 8.4:

General Standards. The A.R.C. has authority to approve, conditionally approve or deny an application, in its sole and absolute discretion. In making its determinations, the A.R.C. shall consider, at a minimum, the following general criteria:

Footnote #10:

Text from the Master Declaration of Covenants - Section 8.4.1:

Compatibility of color, size, location, type and design for high quality Dwellings, buildings containing Dwellings and other Improvements.

Footnote #11:

Text from the Master Declaration of Covenants - Section 8.4.2

Comparable or better quality of materials as used in existing buildings or other Improvements on the Property.

Footnote #12:

Text from the Master Declaration of Covenants - Section 8.4.5

Compliance with the Architectural Review & Design Guidelines for Victor Gardens as established, and as may be amended from time to time, by the Master Developer (the "Design Guidelines"). The Design Guidelines may be amended by the Master Board only after every Unit contains or constitutes a Dwelling for which a Certificate of Occupancy or other comparable certification has been issued by the City

Footnote #13:

Text from the Master Declaration of Covenants - Section 8.4.6

Compliance with the Landscape Policy & Requirements as established, and as may be amended from time to time, by the Master Developer (the "Landscape Requirements"). The Landscape Requirements may be amended by the Master Board only after every Unit contains or constitutes a Dwelling for which a Certificate of Occupancy or other comparable certification has been issued by the City and the Master Developer, or its successors and assigns, no longer has the right to subject Additional Property to this Master Declaration.

Footnote #14:

Text from the Master Declaration of Covenants - Section 8.4.6

Compliance with the Landscape Policy & Requirements as established, and as may be amended from time to time, by the Master Developer (the "Landscape Requirements"). The Landscape Requirements may be amended by the Master Board only after every Unit contains or constitutes a Dwelling for which a Certificate of Occupancy or other comparable certification has been issued by the City and the Master Developer, or its successors and assigns, no longer has the right to subject Additional Property to this Master Declaration.

Footnote #15:

Text from the Master Declaration of Covenants - Section 8.5.6

The A.R.C. shall establish standards for all retaining walls, whether temporary or permanent, within the Property but all such retaining walls and other walls shall be in compliance with the Design Guidelines and Landscape Requirements. Cinder block, railroad tie and wood retaining walls are prohibited. Modular block walls are expressly prohibited unless otherwise approved by the A.R.C. in its sole discretion. Use of natural stone, boulders and rock for construction of retaining walls is encouraged.

Footnote #16:

Text from the Master Declaration of Covenants - Section 8.7

Exception and Variances. The A.R.C. may, in its sole discretion, grant variances from the requirements contained in Section 8 or otherwise established by the A.R.C, on a case by case basis; provided, that the variance sought (i) involves unique circumstances, (ii) is reasonable, (iii) does not impose a hardship upon other Owners, and (iv) does not violate any development agreement with the City, any governmental law, ordinance, code or regulation. The granting of such a variance by the A.R.C. shall not nullify or otherwise affect the A.R.C.'s right to require strict compliance with its requirements on any other occasion.

Footnote#17:

Text from Exhibit H to Victor Gardens Master Disclosure Statement:

It is required that your professionally designed landscape plan must be a minimum of 2.5% of the purchase price of your home and lot combined." "The entire landscape budget is to allocated solely to trees, shrubs, plant materials & sod.

Irrigation systems and retaining walls are a separate financial consideration" [in addition to the Landscape Budget] "All retaining walls must be natural boulder rock, laid rock or cultured stone adhered to cinder block or poured walls with footings. Keystone walls are not allowed in Victor Gardens with the exception of the 'Country Manor' tumbled or equivalent. Retaining walls must be approved with your floor plan and cannot alter the drainage and utility easements or the final grading plan.

Footnote #18:

Text from Victor Gardens Single Family Village Disclosure Statement (page 2).

Footnote #19:

Text from Victor Gardens Single Family Homeowners Association Declaration of Covenants, Section 9.

One of the purposes of this Declaration is to ensure that the Units and exteriors of the Dwellings located thereon be kept architecturally attractive in appearance. Therefore, except as expressly provided in Section 8 of the Master Declaration, no Dwelling, addition, out- building or other structure, enclosure, fence, retaining wall or other wall, gazebo, sport court, fire pit, exterior lighting, landscaping or other visible exterior Improvement to a Unit, shall be commenced, erected, installed or maintained, unless and until the plans and specifications showing the type, dimensions, color, materials and location of the Improvements have been approved in writing (i) by the A.R.C. established by Section 8 of the Master Declaration, or(ii) by the Board if the A.R.C. delegates its architectural review functions for the Property to the Association. Applications for approval of Improvements shall be submitted to the A.R.C. or the Board, as applicable, and processed substantially in accordance with the procedures and standards, including but not limited to the Architectural Review and Design Guidelines for Victor Gardens and the Landscape Policy & Requirements, as established by or referenced in Section 8 of the Master Declaration. Notwithstanding any delegation of architectural review functions for the Property to the Association, the A.R.C. shall have the overriding power to enforce the procedures and standards established by Section 8 of the Master Declaration if the A.R.C. determines the Association has or is failing to do so. The Developer's written consent shall also be required for Improvements until each Unit contains a Dwelling for which a certificate of occupancy or other comparable certification has been issued by the City and the Developer no longer has the right to subject Additional Property to this Declaration. Master Developer's written consent shall also be required until each Unit (as defined in the Master Declaration) in the Development Area contains or constitutes a Dwelling for which a Certificate of Occupancy or comparable certification has been issued by the City and the Master Developer no longer has the right to subject Additional Property to the Master Declaration.

Footnote#20:

Text from legal opinion letter sought by the Victor Gardens Community Association Board of Directors. Written February 5, 2009 by Felhaber, Larson, Fenlon & Vogt, attorneys-at-law.