

**HAMILTON COVE HOMEOWNERS ASSOCIATION  
ARCHITECTURAL COMMITTEE MEETING  
1/18/2021 BY ZOOM  
MINUTES**

**Committee Members**

**Martin Curtin, Chairman  
Bart Glass  
Mike Owens**

**In Attendance: Norris Bishton, Association President; Jeff Gubernick, Association Counsel**

**Purpose: Consideration of the submission of Mark and Carol Forbush for alterations to Units 8/81 and 8/82**

- **Letter from Alice E. Waters dated 12/21/2020**
- **Design Plan Submission (Final)**

On January 4, 2021, prior to this meeting the Committee Members met at Hamilton Cove with the Facilities Manager to review the submission and to the extent possible examine the Units in question. The Committee Members were not able to enter the Units 81 and 82. However, the Committee did view the interior of a Unit identical to Unit 81. The Committee also viewed the Building 8 foundation through an opening which provides access.

At the inception of the meeting the Committee reviewed applicable laws, CC&Rs and Rules as follows:

- Rules: Architectural Committee Rules
- CC&Rs: Sections 1.18; 4.02; 4.07 and 8.07.
- State Statutes: Civil Code Sections 4600 and 4760.

Copies are attached in Appendix A.

**Process:** The Committee noted that, pursuant to the Architectural Rules, the Committee is using the two-stage approval process and that this is a first-stage review of a preliminary submission of sketches and a description of the work.

**Submission:** The Committee reviewed the submission and noted the following aspects which the Committee must consider in accordance with the CC&R and Civil Code provisions referenced above:

1. The proposed alterations would require granting Common Area for the exclusive use of the applicant for the installation of an elevator outside the building and to create additional living space within the Unit as reflected in the drawings presented.

2. The drawings presented do not accurately reflect the foundation of Building 8. The installation of the outside elevator would impact the foundation of Building 8 which has a total of 18 Units, 16 of which are above Units 81 and 82.

3. The proposed exterior elevator would involve modifications of an exterior wall and the exterior appearance of the two Units.

4. The two proposed interior elevators would involve structural changes identified as “modification of the second level floor joists.”

5. The proposed alterations would involve additional structural changes as follows:

The following is a list of bearing walls that may be affected:

- Two existing bathroom windows on the exterior wall of Building 8 will be converted to doors to provide entrance into the lower-level of each Unit from the elevator.

- Second-level floor joists at the interior stairwell locations will be modified to accommodate the interior elevators which will be approximately 36” x 36”

- The partition between the kitchens may be weight-bearing as they are located under the upstairs Units. The partition between the dining areas is a party wall based on its location under the upstairs balcony and as viewed in Unit 83 during its reconstruction after a flood.

- Relocation of existing lower-level bedroom doors which are now located on a bearing-wall. (Letter from Alice E. Waters 12/21/2020)

- Opening of the lower-level Common area in Unit 81 same as currently in Unit 82. The connecting door is located on the bearing wall between the Units.

6. The proposed alterations would involve installing a door in a wall separating the two Units. The area involved is Common Area.

7. The applicant claims that various pipes are trespassing on a portion of the two Units.

The Committee generally reviewed alterations approved in the past. The Committee has never permitted two units to be joined through the installation of an interior door. Additionally, the Committee is aware of two instances where the Association transferred the burden of management and maintenance of two small balconies that were inaccessible and not of general use to the membership at large. No Owner in the past has requested permission to make the type of alterations sought by the applicant.

**Issues:** In order to review the submission, the Committee reviewed and decided a series of issues:

**a) Do the proposed alterations involve Common Area as defined in the CC&Rs?**

**Decision:** The proposed alterations involve Common Area as defined in the CC&Rs.

**b) Do the proposed alternations involve granting exclusive use of any portion of the Common Area?**

**Decision:** The proposed alterations would require granting exclusive use of a portion of the Common Area.

**c) Are the proposed alterations intended to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons as referenced in Civil Code Section 4760 (a)(2)?**

**Decision:** No. Civil Code Section 4760(a)(2) is intended to benefit a person who resides in the unit. Section 4760(a)(2)(C) states that

external modifications must be “removed by the member when the separate interest is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.” The submission does not state that a person who is blind, visually handicapped, deaf, or physically disabled owns or resides in either of the Units.

**d) Do the proposed alterations alter the exterior appearance of the Units, and, if so, are such alterations in accordance with the governing documents and applicable provisions of law as required by Civil Code Section 4760(c)?**

**Decision:** The proposed alterations alter the exterior appearance of Units 81 and 82. Specifically, the proposed alterations do not meet the requirement of CC&Rs Section 4.02 which provides that any such exterior alteration “not be detrimental to the appearance of the surrounding area of the Project as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures.” The Project was uniformly designed. Exterior alterations not in accordance with the original design will be conflict with the original design.

**e) Will or may the proposed alterations tend to impair the structural integrity of Building 8 or structurally alter Building 8?**

**Decision:** The proposed alterations will tend to impair the structural integrity of Building 8 and will structurally alter Building 8. Units 81 and 82 are at the base of a building housing 18 Units. The foundation beneath the Units is the foundation for the 18 Units. The foundation is not as depicted in the drawings submitted by the applicant. Additionally, as described above, the proposed alterations involve substantial alterations to joists and bearing walls. Building 8 was completed in 1988. It is over 30 years old. Because the developer of the Project failed to turn over plans to the Association, the Association does not have plans which permit it to know the location of pipes, conduits and structural elements. From time to time the Association has had to make repairs to buildings involving structural elements. The Association has learned that some of the construction would not meet today’s building codes. As a result, the Association is extremely reluctant to unnecessarily disturb any structural element in the Project.

**f) Do the proposed alterations contribute to the benefit or are they a detriment to the Project generally as required by Section 4.07 of the CC&Rs?**

**Decision:** The Committee is cognizant of setting precedents that would work to the detriment of the Project overall. Changes to the exterior appearance of any building in the Project do not benefit the Project overall. No such changes have been made over the last thirty plus years. The Committee does not want to set a precedent that the outside appearance of the Project may be changed. Additionally, the Committee believes that it would be a detriment to the Project generally if Owners regularly undertook changes involving structural elements and for that reason does not desire to set a precedent that such changes are feasible.

**g) Does the provision of Section 8.07 of the CC&Rs which provides:**

**Nothing shall be done in any Condominium or in, on or to the Common Areas which will or may tend to impair the structural integrity of any building in the Project or which would structurally alter any such building except as otherwise expressly provided herein preclude the Architectural Committee, the Board or the Association from approving the proposed alterations?**

**Decision:** Section 8.07 of the CC&Rs limits the authority of the Architectural Committee, the Board or the Association acting by vote of the members from approving alterations “which will or may tend to impair the structural integrity of any building in the Project or which would structurally alter any such building except as otherwise expressly provided [in the CC&Rs].” As indicated above, the proposed alterations will impair the structural integrity of Building 8. There is no provision in the CC&Rs which would allow for the impairment of the structural integrity of any building.

**h) Are the proposed alterations within the authority of the Architectural Committee to approve?**

**Decision:** No for the reasons set out above.

**i) Are the proposed alterations within the authority of the Board or the Members to approve?**

**Decision:** No for the reasons set out above.

**j) Do the proposed alterations fall within any of the exceptions to Civil Code Section 4600(a)?**

**Decision:** No.

**k) Is the applicant's claim that pipes are trespassing on a portion of Units 81 and 82 meritorious?**

**Decision:** No. The pipes are not located within an area that is part of the Unit. They are located in a chute. Section 1.18 of the CC&Rs provides that "Common Areas shall include, without limitation, for maintenance purposes of the Association, but not necessarily by way of fee title, all gas, water and waste pipes, all sewers, all ducts, chutes, conduits, wires and other utility installations of the Project Improvements wherever located."

January \_\_\_\_, 2021

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**Martin Curtin, Chairman**

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**Bart Glass**

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**Mike Owens**

## APPENDIX A

### ARCHITECTURAL COMMITTEE RULES

1. The documents of the Association (Article IV of the CC&R's) establish an Architectural Review Committee composed of three members appointed by the Board of Directors. This Committee has the authority to consider and act upon any and all plans submitted for its approval and perform such other duties as from time-to-time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Committee.

2. In addition, it is the Committee's duty to maintain the architectural standards of the Project and to assure that any new construction, alterations or additions will not detract from the beauty of the Project or the enjoyment thereof by the Owners, and that the upkeep and maintenance thereof shall not become a burden on the Association. It is recommended that Owners refer to limitations imposed by the CC&R's before planning any interior or exterior additions or alterations. Alterations in the Common Area can only be made by the Board of Directors. Request for approval of any alteration must be submitted in writing to:

Architectural Committee  
Hamilton Cove Homeowners' Association  
P. O. Box 1573  
Avalon, CA 90704

3. The Committee shall utilize a two-stage approval process. The Owner's preliminary submission shall include sketches and a description of the work. After the Committee has approved the basic plan, more complete drawings with detailed specifications may be required. If applicable, the Committee may require engineering studies and approvals and permits issued by the City of Avalon.

4. For general information, the following alterations are listed as examples of what shall not be allowed:

- Pictures, plaques, planters, or flagpoles attached to the outside walls and/or doors;
- Screening or any covering attached to deck railings;
- Exterior shutters or blinds;
- Superimposed materials over common balcony surfaces;

- Planters, fences or pots restricting access to and passage through the common balconies;
- Pots that do not conform to the architectural theme or that are so large as to damage the balcony surface, or that are not placed on rollers, as herein provided.
- Use of dead space for anything except storage; and
- Locks on exterior doors other than the locks originally installed.

5. If an architectural change is made without approval of the Architectural Committee, the Owner has thirty (30) days to remove the change or be subject to the Enforcement Procedures, as herein provided.

## **APPLICABLE CC&R PROVISIONS**

**Section 1.18. Common Areas or Common Property.** "Common Areas" or "Common Property" shall mean all areas on the Project, except the Condominiums and Single Family Residential Lots and Residences. Common Areas shall include, without limitation, for maintenance purposes of the Association, but not necessarily by way of fee title, all gas, water and waste pipes, all sewers, all ducts, chutes, conduits, wires and other utility installations of the Project Improvements wherever located (except the outlets thereof when located within the Condominiums), the land upon which the Project Improvements are located, the airspace above the Project Improvements, private streets or driveways, walkways, common stairways, parking areas, and landscaping on those areas of the Project which are not defined as a part of the Condominiums.

**Section 4.02. Review of Plan and Specifications.** The Architectural Committee shall have jurisdiction over Phases 1 through 4 and will assume jurisdiction over Increments 5F through 5G as provided in Section 3.09. The Architectural Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Restated CC&Rs and 6 perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee. No construction, alteration, removal, relocation, repainting, demolishing, addition, modification, decoration, redecoration or reconstruction of an Improvement in the Project shall be commenced or maintained, until the plans and specifications therefor showing the nature, kind, shape, height,



width, color, materials and location of the same shall have been submitted to the Architectural Committee and approved in writing by the Architectural Committee; provided, however, that any Improvement may be repainted without the Architectural Committee's approval, so long as the Improvement is repainted the identical color which it was last painted. Without limiting the generality of this Article IV, the provisions of this Article IV apply to the construction, installation, alteration and modification of solar energy equipment, subject to the provisions of California Civil Code Section 714. The Owner submitting the plans ("Applicant") shall obtain a written, dated receipt for the plans and specifications from Association. Until changed by the Board, the address for the submission of such plans and specifications shall be the business office of the Association located at the Project. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Property or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Committee may condition its approval of proposals or plans and specifications for any Improvement (1) upon the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be recorded against the Project as a result of such work, (2) on such changes therein as it deems appropriate, (3) upon the Applicant's agreement to grant appropriate easements to the Association for the maintenance of the Improvements, (4) upon the Applicant's agreement to install (at its sole cost) water, gas, electrical or other utility meters to measure any increased consumption, (5) upon the Applicant's agreement to reimburse the Association for the cost of maintenance, or (6) upon the Applicant's agreement to complete the proposed work within a stated period of time, or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may provide that the amount of the fee shall be

uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review of any plan submitted for approval. Decisions of the Architectural Committee and the reasons for the decisions shall be transmitted by the Committee to the Applicant at the address set forth in the application for approval, within forty-five (45) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. Any application submitted pursuant to this Section 4.02 shall be deemed approved unless written disapproval or a request for additional information or materials by the Architectural Committee shall have been transmitted to the Applicant within forty-five (45) days after the date of receipt by the Architectural Committee of all required materials. The Applicant shall meet any review or permit requirements of the City of Avalon or the County of Los Angeles prior to making any alterations or Improvements permitted hereunder. No addition, alteration or replacement, or any series of related additions, alterations or replacements carried on as part of a single project, which addition, alteration or replacement, or series of related additions, alterations or replacements, cost Ten Thousand Dollars (\$10,000) or more shall be commenced or maintained until the plans and specifications therefor submitted to the Committee as required above have been approved by Master Lessor. Two copies of the plans and specifications shall be submitted by the Applicant to Association for forwarding to the Master Lessor. Association shall notify the Applicant of Master Lessor's approval or disapproval of the plans and specifications promptly upon receipt of such approval or disapproval by Association. Neither the Association, the Architectural Committee nor its members shall be responsible to the Applicant for any delay in the processing of the plans and specifications on the part of Master Lessor. The Applicant shall send written notice to Association for forwarding to Master Lessor of any substantial repair to be undertaken even if such repair does not require Master Lessor's prior approval hereunder.

**Section 4.07. Scope of Review.** The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, on the basis of aesthetic considerations,

consistency with the Restated CC&Rs, and the overall benefit or detriment which would result to the immediate vicinity and the Project generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The Architectural Committee's approval or disapproval shall be based solely on the considerations set forth in this Article IV, and the Architectural Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

**Section 8.07. Inside and Outside Installations.** No outside installation of any type, including but not limited to clotheslines, shall be constructed, erected or maintained on any Residence, except as may be installed by, or with the prior consent of, the Architectural Committee. No balcony or patio covers, wiring, or installation of air conditioning, water softeners, or other machines shall be installed on the exterior of the buildings of the Project or be allowed to protrude through the walls or roofs of the buildings (with the exception of those items installed during the original construction of the Project), unless the prior written approval of the Architectural Committee is secured. Outdoor patio or lounge furniture, plants and barbecue equipment may be maintained pursuant to the Rules and Regulations. The type and color of all exposed window coverings shall be subject to the prior written approval of the Architectural Committee. Notwithstanding the specificity of the foregoing, no exterior addition, change or alteration to any Condominium or Residence shall be commenced without the prior written approval of the Architectural Committee. Nothing shall be done in any Condominium or in, on or to the Common Areas which will or may tend to impair the structural integrity of any building in the Project or which would structurally alter any such building except as otherwise expressly provided herein. There shall be no alteration, repair or replacement of wall coverings within Condominiums that may diminish the effectiveness of the sound control engineering within the buildings in the Project. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any Condominium for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge

the lien and charge the Owner a Special Assessment for such cost of discharge.

## **APPLICABLE LAWS**

### **Civil Code Section 4600.**

(a) Unless the governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board may grant exclusive use of any portion of the common area to a member.

(b) Subdivision (a) does not apply to the following actions:

(1) A reconveyance of all or any portion of that common area to the subdivider to enable the continuation of development that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report.

(2) Any grant of exclusive use that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report or in accordance with the governing documents approved by the Real Estate Commissioner.

(3) Any grant of exclusive use that is for any of the following reasons:

(A) To eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.

(B) To eliminate or correct encroachments due to errors in construction of any improvements.

(C) To permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.

(D) To fulfill the requirement of a public agency.

(E) To transfer the burden of management and maintenance of any common area that is generally inaccessible and not of general use to the membership at large of the association.

(F) To accommodate a disability.

- (G) To assign a parking space, storage unit, or other amenity, that is designated in the declaration for assignment, but is not assigned by the declaration to a specific separate interest.
- (H) To install and use an electric vehicle charging station in an owner's garage or a designated parking space that meets the requirements of Section 4745, where the installation or use of the charging station requires reasonable access through, or across, the common area for utility lines or meters.
- (I) To install and use an electric vehicle charging station through a license granted by an association under Section 4745.
- (J) To install and use a solar energy system on the common area roof of a residence that meets the requirements of Sections 714, 714.1, and, if applicable, Section 4746.
- (K) To comply with governing law.
- (c) Any measure placed before the members requesting that the board grant exclusive use of any portion of the common area shall specify whether the association will receive any monetary consideration for the grant and whether the association or the transferee will be responsible for providing any insurance coverage for exclusive use of the common area.

**Civil Code §4760. Improvements to Separate Interest.** (a) Subject to the governing documents and applicable law, a member may do the following:

(1) Make any improvement or alteration within the boundaries of the member's separate interest that does not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify the member's separate interest, at the member's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the separate interest for the purposes of this paragraph if the separate interest is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

(A) The modifications shall be consistent with applicable building code requirements.

(B) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

(C) Modifications external to the dwelling shall not prevent reasonable passage by other residents and shall be removed by the member when the separate interest is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(D) Any member who intends to modify a separate interest pursuant to this paragraph shall submit plans and specifications to the association for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

(b) Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable provisions of law.