

BIRCH BAY VILLAGE COMMUNITY CLUB

Architectural Rules and Regulations

As adopted by the Birch Bay Village Board of Directors

Effective: December 12, 2022

The Architectural Rules and Regulations (AR&R) have been reorganized so that the information will be easier to find and understand, including many clarifications. Some updates were made to more closely align with Whatcom County building codes. This included adding verbiage calling out that Birch Bay Village is an urban residential area in unincorporated Whatcom County.

Additional changes made were to improve safety at roadways, to improve and document drainage requirements, and to clarify topics most often brought up during ACC reviews. Definitions were added to further clarify the terms used in the AR&R.

ACC RULES AND REGULATIONS CHANGE LOG*

*(for future changes made to AR&R)

<u>Change #</u>	<u>Date</u>	<u>Section</u>	<u>Subject</u>	<u>Revise/Add/Delete</u>
1	03/16/2023	3.2.3	Tree Removal Project Requirements	Delete Paragraph G

TABLE OF CONTENTS

1. Disclosure and Acknowledgment

2. General Provisions

- 2.1 Purpose
- 2.2 Scope
- 2.3 Responsibility
- 2.4 County Regulations Supersede
- 2.5 Exterior Finishes

3. Project Approval Process

- 3.1 Application
- 3.2 Required Project Documents
 - 3.2.1 Major Project Requirements
 - 3.2.2 Minor Project Requirements
 - 3.2.3 Tree Removal Project Requirements
- 3.3 Project Approval Timeline
- 3.4 Project Compliance with ACC
 - 3.4.1 AR&R Compliance
 - 3.4.2 ACC Approval
 - 3.4.3 Project Timeline
- 3.5 Fees
- 3.6 Performance Deposits

4. Restrictive Covenants Building Limitations

- 4.1 Height Limitations for Buildings
 - 4.1.1 Structure Height Allowances
 - 4.1.2 Height Restrictions
- 4.2 Lot Line Setbacks, Height Limitations Within Setbacks and Utility Easements
 - 4.2.1 Streetside Setbacks and Height Limitations
 - 4.2.2 Side-Yard and Rear-Yard Setbacks and Height Limitations
 - 4.2.3 Reservation of Easements
- 4.3 No Other Residential Uses
- 4.4 Single-Family Dwelling Restrictions

5. Additional Project Rules

- 5.1 Impervious Area Restrictions
- 5.2 Minimum Size Requirements for Dwellings
- 5.3 Building Code Requirements/Inspections
- 5.4 Architectural Facade Requirement
- 5.5 Verification of Property Lines and Easements
- 5.6 Manufactured/Mobile/Factory-Built Home Restrictions
- 5.7 Accessory Structure Restrictions
 - 5.7.1 Location Restrictions
 - 5.7.2 Additional Restrictions for Carports
 - 5.7.3 Additional Restrictions for Detached Garage/Detached Workshop
 - 5.7.4 Additional Restrictions for Sheds
 - 5.7.5 Additional Restrictions for Gazebos/Pergolas
- 5.8 Other Structures
 - 5.8.1 Fences
 - 5.8.2 Golf Ball Screening
 - 5.8.3 Decks
 - 5.8.4 Satellite Dishes
 - 5.8.5 Flagpoles
 - 5.8.6 Swimming Pools
 - 5.8.6.1 In-Ground Swimming Pools
 - 5.8.6.2 Above-Ground Swimming Pools
 - 5.8.7 Playsets
 - 5.8.8 Propane Tanks
 - 5.8.9 Arbors/Trellises/Other Outdoor Structures
 - 5.8.10 Marina/Lake/Pond Structures
- 5.9 Landscape/Hardscapes
 - 5.9.1 Landscape Requirements
 - 5.9.2 Trees/Tree Removals
 - 5.9.3 Safety
 - 5.9.4 BBVCC Right of Way (ROW)
 - 5.9.5 Retaining Walls
 - 5.9.6 Vacant Lots
 - 5.9.7 Requirements for Lots Adjacent to Marina, Lakes, Golf Course, Ponds and Streams

6. Additional Provisions

- 6.1 Construction Requirements

- 6.2 Exterior Lighting
- 6.3 Mail/Newspaper Boxes
- 6.4 House Numbers Required
- 6.5 Wind Turbines Prohibited
- 6.6 Access Restriction

7 Culverts, Stormwater Piping and Catch Basin Procedures

- 7.1 General
 - 7.1.1 Design
 - 7.1.2 Materials
 - 7.1.3 Dimensions
 - 7.1.4 Installation and Inspection
 - 7.1.5 Maintenance and Replacement
 - 7.1.6 Stormwater Management

8. Administrative Approvals/Emergency Projects

- 8.1 Administrative
- 8.2 Emergency
- 8.3 Appeals
- 8.4 Variances Require Public Hearing and Board Approval
 - 8.4.1 Variances Are the Exception Rather than the Rule
 - 8.4.2 Allowable Height Variance
 - 8.4.3 Public Hearing Notice and Process
 - 8.4.3.1 Public Hearing Notice Dissemination
 - 8.4.3.2 Public Hearing Determinations
 - 8.4.4 Application for Variance

Definitions

Accessory Structure – A single-story garage, shed, carport or storage building that is not physically attached to a single-family dwelling.

Auxiliary Structure – An accessory structure such as a gazebo or pergola, which is a roofed structure without walls.

Backfill – The placement of earth or selected other material, such as sand, gravel, crushed aggregate or rock, in an excavated void.

Boat Prop – A temporary or permanent support used to keep land-stored boats upright that is not a boat trailer.

Single-Family Dwelling Impervious Coverage – The percent of ground area occupied by a single-family dwelling, its eaves, garage and structures. It shall also include the area covered by any carport in lieu of a garage, whether the area under the carport is hard surfaced or not.

Common Property – Property owned and administered by BBVCC, which is the corporate entity governing and administering the rights and privileges of all owners of private property in Birch Bay Village.

Driveway – A private road that connects directly between a single-family dwelling, garage or carport and a BBVCC paved street.

Easement – A vested or acquired right to use land other than as a tenant, for specific purpose, such right being held by someone other than the owner who holds title to the land.

Exterior Renovations – Remodeling, reconstruction, alterations or additions that increase the size or alter the exterior elevation or appearance of structures on the lot.

Façade – The face of a building, especially the principal front that looks onto a street.

Factory-Built Home – A home that is largely built someplace else, usually in modules, and then shipped to a site for assembly and permanent installation.

Final Average Lot Grade – The surface height of a lot after final grading following construction or placement of a single-family dwelling, disregarding raised areas such as mounds, berms, retaining walls and landscape rock.

Finished Grade – The average elevation of the finished ground level at the center of all walls of a structure.

Flagpole – A pole greater than 6 feet in height used to raise a flag.

Front Lot Line – The property line separating a lot from a street right of way. In the case of a corner lot bounded by two streets, it is the property line separating the lot from the main street right of way (usually the one facing the dwelling's main entrance door).

Golf Ball Screening – A protective screen to prevent golf balls from entering a property and causing damage or injury.

Impervious Material – Material that prevents or seriously impedes the natural penetration of water into the ground. Examples include but are not limited to: concrete, asphalt, brick, pavers and close-boarded decks/walkways.

Lean-To – A simple structure added to an existing building, typically roofed, but not always with walls, floors or foundation.

Living Space – The finished interior area of a single-family dwelling meant for human habitation. It does not include garages, carports, storage sheds and other accessory structures.

Lot Line – A lot boundary as determined by a licensed surveyor, commonly called a property line.

Manufactured Home – Also called a mobile home, a manufactured home is constructed almost entirely in a factory. The home is placed on a steel chassis with wheels, transported to the building site and semi-permanently attached (sometimes they are attached to a permanent foundation). The wheels can be removed but the chassis stays in place.

Mobile Home – Single-family dwellings transportable in one or more sections constructed to a federally preemptive standard. They are equated to manufactured homes.

Modular Home – Homes built in a factory in sections, using the same materials as site-built homes and

constructed for placement on a permanent foundation. At the job site, the builder generally installs the foundation and connects utilities to the house. These homes are generally indistinguishable from site-built homes.

Multi-Story – A dwelling with a full flight of stairs to another level. Within BBVCC for the purposes of the AR&R, the multi-story classification includes split-level and bi-level homes, both of which have two half flights of stairs (one to an upper level, one to a lower level).

Natural Ground Level – The undisturbed surface height of a lot prior to improvement.

Natural Growth – Cedar and fir trees with a trunk 24 inches or more in diameter/75 inches or more in circumference as measured 54 inches above the adjacent ground level.

Parking Space – A minimum area of 10 feet by 20 feet used for temporary storage of motor vehicles, boats, etc.

Performance Deposit – Property owners' funds held by BBVCC to ensure projects are completed as approved by the ACC.

Private Property – Property within the BBVCC that is owned by individual members.

Project Applicant – For private property, it is the owner or person responsible to act for the ownership entity. For common property, it is normally the BBVCC manager on behalf of the Board of Directors.

Rear Lot Line – The property line that is not a front or side lot line.

Rebuild – A home of any type of construction that, undergoing extensive renovation, is required, in part or whole, to be brought up to current building code by the Whatcom County Planning & Development Department.

Remodeling – The act of changing or altering the exterior structure, style or form of a single-family dwelling that adds 30 percent or more to its exterior square footage.

Retaining Wall – A wall designed to resist the lateral displacement of soil or other materials.

Right of Way – BBVCC reserves rights of use for the portion of the right of way between the road edge and private property. Owners have some use of this area with limitations.

Setbacks – Required minimum distances from property lines to structures exceeding a specified height.

Side Lot Line – The two property lines that intersect the front lot line. These property lines separate the lot from the adjacent left/right lots or the non-main street right of way as applicable.

Single-Family Dwelling – A structure (commonly called a home/house) designated to accommodate one household only and that, among other things, may contain only one kitchen.

Single Story – A dwelling at entirely (or almost entirely) a single-near-the-ground level.

Stick-Built Home – A home that is constructed piece by piece on the building site where it will remain.

Stormwater – Water that originates from weather-related precipitation events such as rain or snow/ice melt.

Structure – Structure means that which is built or constructed, an edifice or building of any kind or any piece of work artificially built or composed of parts joined together in some definite manner. Structures are generally permanent in nature and attached to the ground or other structures in such a manner that they are not intended to be moved. Examples include but are not limited to: a house, detached garage/carport, storage shed, fence, privacy screen, flagpole, deck, patio, propane tank enclosure, dock, retaining wall, gazebo, pergola, trellis, concrete work, large playground set, carport, wind screen, exterior stairs and observation platform.

Undue Hardship – Undue hardship exists when the AR&R denies property owners all reasonable use of their property.

Variance – A modification of AR&R terms when it is demonstrated that an undue hardship exists.

Vision Clearance Triangle – All corner lots abutting an intersection that is not controlled by a four-way stop shall provide and maintain a clear vision triangle for the purpose of traffic safety. The vision triangle shall be the area defined within boundaries determined by measuring 20 feet along both the front and side property lines and diagonally connecting the ends of the two lines.

1. Disclosure and Acknowledgment

Birch Bay Village Community Club (“BBVCC”) is a planned community subject to the Declaration of Rights, Reservations, Restrictions and Covenants of Birch Bay Village dated June 20, 1966, recorded at Auditor’s File No. 1009345 (the “Covenants”). Sections 8(a), 8(b) and 8(c) of the Covenants provide for the formation of an architectural control and maintenance committee (ACC) and authorizes rules and regulations to be adopted to control and restrict development of properties within BBVCC.

These Architectural Rules and Regulations (AR&R) as amended were adopted with the intention of creating and maintaining an aesthetically desirable community and to secure road and pedestrian safety. The AR&R aim to preserve the aesthetic quality and property values within the community. They are not intended to satisfy any governmental law, regulation, ordinance or code, including but not limited to any building code, fire code, zoning regulation, shoreline regulation or any other city, county, state or federal rules, regulations, ordinances and codes.

Certain approval processes are required in the Covenants and the AR&R. These approval processes and any final decisions or approvals obtained from BBVCC or the ACC do not in any way mean that the structure or project is compliant with any other laws, rules, regulations or ordinances. Each project applicant is responsible for contacting any and all municipalities or agencies with jurisdiction over the property to ascertain what permits, processes and approvals are necessary or required for the project. This is separate and apart from any requirements of the Covenants or AR&R.

The AR&R may not be consistent with mandatory laws or regulations for development or use of property as detailed above, and approval pursuant to the AR&R does not supersede, contravene or replace any other legal requirement. In the event of a conflict between the AR&R and any other laws, rules, regulations, ordinances and codes, the project applicant must comply with whatever is the most restrictive.

This document is intended to be in full compliance with all BBVCC governing documents and policies. Provided, the BBVCC are subordinate and subject to the Washington Homeowners’ Association Act, the applicable corporation law, the Covenants, the Articles of Incorporation and the Bylaws. In the event of any conflict between the AR&R and the foregoing, the provisions of the foregoing shall control in that order of priority.

2. General Provisions

2.1 Purpose

To create and maintain an aesthetically desirable community by encouraging:

- a. Sensitive architectural design.
- b. Quality workmanship and materials.
- c. Harmony of exterior appearance.
- d. Compatibility of topography and finish grade elevation.
- e. Preservation of the natural environment.

2.2 Scope

The ACC reviews all private and common property projects that create or replace an exterior structure or renovate an existing structure's exterior. This review includes renovation projects that are predominantly interior to a structure but result in an exterior height or plane change such as a roof dormer or wall bump out. Routine repair does not require ACC project review; examples include but are not limited to complete/partial reroofing, residing and repainting.

Repairing means to restore to good working order or to fix or improve damaged condition. Routine repair *does not* include replacement of structures. For example, in the case of a fence, if all of the fenceposts and slats of an existing fence were taken out and new posts and slats were put in the same place, that would be considered a replacement rather than a repair.

Replacement or exterior renovation of existing structures must comply with the current AR&R except for:

- a. Those built in compliance with an existing Board of Directors-approved variance.
- b. Those previously approved by the ACC and built in compliance with prior AR&R height determination rules.

The ACC also reviews projects for tree removal and lake bank reinforcement. Additionally, the ACC resolves objectionable exterior lighting disputes and makes recommendations on AR&R variance requests.

The ACC has final determination as to whether a project review is required.

No new structure, replacement structure, exterior renovation, tree removal or lake bank reinforcement can commence in Birch Bay Village without an ACC project approval, unless specifically exempted from ACC approval elsewhere in the AR&R.

It is recommended that a qualified professional prepare construction documents: construction plans, materials list and site plans. Self-prepared documents for less complex projects are allowed provided they are clear, easily readable and comply with AR&R requirements.

STRUCTURE RESTRICTION

The ACC can restrict or prohibit the creation, replacement or change to any structure even though such a structure is not otherwise restricted or prohibited herein. The ACC will base their determination on their sole discretion that such structure would be detrimental to Birch Bay Village. BBVCC members always have the right to appeal any ACC decision to the Board of Directors.

2.3 Responsibility

The ACC is only concerned with overall planning, specific site considerations and aesthetic quality for the contents of section 2.2. In no way shall the ACC confirm assumed geological

conditions, structural methods proposed, adequacy of design/engineering, nor the general adequacy or safety of any section 2.2 item that it discusses or reviews. Private property owners or, in the case of common property, the BBVCC Board of Directors, are solely responsible for all aspects of their AR&R projects.

2.4 County Regulations Supersede

Much as when federal law preempts state law, county regulations take precedence over HOA rules. BBVCC is a designated Urban Residential community located within unincorporated Whatcom County, therefore Whatcom County Urban Residential Building Code applies and, when more restrictive, supersedes the AR&R. County regulations don't always come into play, as in the case of many minor projects such as building a small shed or fence.

2.5 Exterior Finishes

All exterior materials and finishes must be compatible with existing structures in the area. This includes siding, roofing, driveways, patios, trellises, decks, etc. BBVCC does not specify exterior paint or stain colors but requires that such colors be in good taste and compatible with existing structures in the area. Home facades facing the street must have a minimum of two colors (one body color and one trim color).

3. Project Approval Process

3.1 Application

Project applicants first obtain the ACC Project Application (Major, Minor or Tree Removal) from the BBVCC management office or the community website (in General Documents and Forms within Documents). Next, applicants submit the completed application with required documents to the management office as well as applicable fees and performance deposits. BBVCC staff shall review all applications for completeness and shall submit only completed applications to the ACC. Although staff is available to answer project application questions, their answers neither restrict, modify nor override decisions made by the ACC.

The management office reviews all project submittals for completeness. Projects found incomplete may be rejected until corrected. The management office reviews all project submittals, which are considered complete and ready for ACC review once applicants have complied with all management office review comments.

Private property project applicants are the property owner(s) or person(s) responsible to act for the ownership entity. Private property applicants can designate an agent to represent them for a specific AR&R project. The agent designation must be in writing to the BBVCC management office and contain:

- a. The agent's name, address and phone number.
- b. The project to which the agent designation applies.
- c. The address, division and lot number for the project.
- d. Signature of the property owner.

For common property projects, the person responsible for project application on behalf of the BBVCC Board of Directors is the BBVCC manager.

3.2 Required Project Documents

Required documents depend on the project's type and scope. Generally, major projects require professional design/engineering services and county permits. Major projects include new homes, auxiliary structures, garages, most exterior renovations, retaining walls and carports. Minor projects generally can be completed using vendor/owner-supplied designs and materials. Minor projects include but are not limited to sheds/storage sheds, fences, culverts/catch basins, concrete/asphalt work and decks.

Any modification of approved plans must be submitted to the BBVCC manager. The manager will review the changes and either approve or submit the changes to the ACC for approval. All such modifications must conform to the AR&R.

The BBVCC management office must receive a copy of any required Whatcom County building permit (a county permit stamp on plans is acceptable) prior to commencing any approved project. This permit copy will be maintained with submitted plans on file at the BBVCC office.

3.2.1 MAJOR PROJECT REQUIREMENTS

This section, Major Project Requirements, may require additional rules and regulations under section 5 Additional Project Rules and section 6 Additional Provisions.

- a. ACC Major Project Application
- b. Electronic files of a Lot Plat Survey Map from a State of Washington licensed surveyor. The survey map must show the location and heights of all 15 points used to determine the average ground level as described in section 4.1.2. In the case of an exception when not all 15 points are taken, the surveyor must provide an explanation.
- c. Electronic files of professional construction plans and specifications. The plans shall include elevation drawings showing height on the lot of all new, replacement and exterior renovation structures. The plans shall be of an appropriate scale (recommend 1/4" = 1'). Typical construction sections and elevations must be sufficient to show construction methods and exterior building materials. The specifications must be sufficient to explain the quality and expected performance standards of the proposed structure (or structures).
- d. A construction materials list and color schemes for roofs and all visible exterior surfaces.
- e. A site plan showing all existing and proposed structures, all corner locations on the lot, all lot lines and setbacks to proposed and existing structures, and the method used to arrive at the maximum building height. Additionally, the plan shall be of appropriate scale (recommend 1/8" = 1'), noting division and lot numbers and illustrating location and dimensions in feet of proposed structures, locations of ingress and egress surfaces, future outdoor lighting, proposed screening of vehicles, storage, north arrow for orientation with direction of views, and location of trees 6 inches or more in diameter/19 inches or more in circumference (measured at 54 inches above adjacent ground level) that are proposed for removal.

- f. A Whatcom County-approved soil erosion prevention plan is required for new homes, auxiliary structures and remodeling that impacts disruption to soil. This plan must be maintained until the homeowners complete their landscaping plan.
- g. For new homes, auxiliary structures and exterior renovations that increase impervious area, all lot corners must be staked. Also, the proposed structure's corners (including the corners of any proposed deck area) must be staked and strung with a string between each stake. All staking must be complete no later than six working days prior to the next regularly scheduled ACC meeting.
- h. A stormwater plan meeting the requirements of section 7.

3.2.2 MINOR PROJECT REQUIREMENTS

- a. ACC Minor Project Application
- b. A survey map per section 3.2.1b is not required if there is an existing survey or the project plan elevation drawing shows the project height not exceeding the existing single-family dwelling height. Project location must be clearly identifiable as not encroaching on setback limits.
- c. Electronic copies of legible construction plans and specifications. The plans shall include the height for all above-ground structures.
- d. Site plan showing all existing and proposed structures, location of all lot corners, and all lot lines. This site plan must also include dimensions of all required setbacks from lot lines and other structures. The location of trees 6 inches or more in diameter/19 inches or more in circumference (measured at 54 inches above adjacent ground level) that are proposed for removal must be shown. Normally an existing site plan that was used for the home's construction can be modified for use.

3.2.3 TREE REMOVAL PROJECT REQUIREMENTS

- a. ACC Tree Removal Application
- b. A site plan showing all existing structures and the species (maple, pine, fir, oak, etc.), size and location of the trees to be removed. Tree size is reported as inches of diameter or circumference as measured 54 inches above adjacent ground level.
- c. A written explanation as to why tree removal is being requested.
- d. Clearly mark those trees to be removed with paint, tape or ribbon six working days prior to the next ACC meeting.
- e. Photo of trees to be removed.
- f. Action to be taken after trees are removed, such as grind stump, replace with other trees, or landscaping.
- g. The proposed removal of fir or cedar trees 12 inches or more in diameter/38 inches or more in circumference must be accompanied with a certified arborist's report supporting the need for removal. Exceptions to this may be made if it is readily apparent to the ACC from visual observation that the tree is dead or dying from disease.
- h. See also Section 5.9.2 for additional information.

3.3 Project Approval Timeline

The regular ACC meeting is generally held on the first Tuesday of each month at 7 pm, in the BBVCC Clubhouse or online. The ACC may hold additional meetings at its discretion.

The following rules apply:

- a. To be on the regular meeting agenda, completed project submittals must be ready for ACC review per section 3.1.
- b. Completed project submittals (application, required documents, fees and performance deposits) must be received by the BBVCC management office no later than six working days (not including Saturday, Sunday or holidays) prior to the first Tuesday of the month.
- c. Projects submitted late will be held for the next regularly scheduled ACC meeting.
- d. Submit project applications, documents and fees electronically through BBVCC.com or bring to:
BIRCH BAY VILLAGE COMMUNITY CLUB OFFICE
8055 COWICHAN ROAD, BLAINE, WA 98230

The ACC reviews *fully* completed project applications and approves or disapproves them in writing. The BBVCC manager sends written approval or disapproval to the project applicant. In the event the ACC fails to approve or disapprove within 60 calendar days any project for which all applicable AR&R provisions have been met, the project is considered “approval not needed.”

Work on any project shall not commence until the applicant receives approval by the ACC and written confirmation from the BBVCC manager, unless the previous paragraph applies (meaning, 60 calendar days have elapsed from a fully completed project submittal).

3.4 Project Compliance with ACC

3.4.1 AR&R COMPLIANCE

The BBVCC manager uses the following documents to maintain AR&R compliance:

- a. **Stop Work Order:** A formal written document used to halt:
 1. All work in progress that required ACC approval but was not approved by the ACC.
 2. All work in progress that violates the ACC-approved project.
- b. **Cure Notice:** A formal written document used to inform the property owner of:
 1. Completed work that required ACC approval but was not approved by the ACC.
 2. Completed work that violates the ACC-approved project.

3.4.2 ACC APPROVAL

Projects must be completed in accordance with the AR&R and as approved by the ACC. Projects that fail to comply with what the ACC approved and/or the AR&R will result in the BBVCC manager immediately issuing a Stop Work Order or a Cure Notice and assessing a fine per the BBVCC General Rules and Regulations. In addition, the manager may also take one or more of the following actions on behalf of the BBVCC Board of Directors:

- a. Retaining all or a portion of the project performance deposit.
- b. Requiring the removal of all structures/materials related to unauthorized work and return of property to its original condition.

- c. Notifying the BBVCC Board of Directors of the property owner's noncompliance and the action taken.
 - d. Recommending to the Board of Directors additional fine assessments or legal action.
- The BBVCC manager, in determining what action to take, will normally seek an ACC opinion and recommendation. For time-sensitive flagrant violations, the manager may elect to work directly with the Board.

3.4.3 PROJECT TIMELINE

Timelines for ACC projects that are approved following the issuance of a Stop Work Order or Cure Notice shall be as follows:

- a. **Stop Work Order:** All projects must be completed within six months from the date of the BBVCC manager's written notification of ACC project approval to the property owner. For structures, the exterior (including paint or other suitable finish) must be completed within this timeframe.
- b. **Cure Notice:** All projects must be brought into compliance within 60 days from the date of the BBVCC manager's written notification of ACC project approval to the property owner. Requests for extensions must be submitted to the ACC in writing by the owner prior to expiration of the 60-day correction period.
- c. ACC-approved projects must begin within 12 months from the date of the BBVCC manager's written notification of ACC project approval to the owner. Projects that do not begin within 12 months must be resubmitted to the ACC for a new approval.
- d. For structures, the exterior (including paint or other suitable finish) must be completed within six months from commencement of construction. Construction is deemed to have commenced with the first construction activity. The ACC may grant extensions. The owner must submit extension requests to the ACC in writing prior to expiration of the six-month construction period.

Upon project completion, the owner must request final inspection by the BBVCC management office. The sole purpose of this inspection is to ensure the project complies with what the ACC approved and with the AR&R. In no way does this inspection replace, amend or supplement any state or county required inspections, nor does this inspection certify or make any statement relative to the adequacy of the project's construction, design/engineering or safety.

3.5 Fees

Fees are assessed as listed in the BBVCC Fee Schedule. Fees are payable at the time of project application and must be received not later than six working days prior to the next regular ACC meeting. The ACC will not review any item for which the fee has not been received by the BBVCC management office. Fees are nonrefundable once the ACC has approved the associated project. Fees are refunded for projects that the ACC disapproves.

The BBVCC Board of Directors establishes the fees in the BBVCC Fee Schedule. The fees are subject to change without notice.

3.6 Performance Deposits

To ensure compliance with the AR&R, performance deposits are required as listed in the BBVCC Fee Schedule. Performance deposits are payable at the time of project application and must be received not later than six working days prior to the next regular ACC meeting. The ACC will not review any item for which a performance deposit has not been received by the BBVCC management office. Failure to comply with the AR&R and/or ACC-approved project documents may result in complete or partial forfeiture of the performance deposit per section 3.4.2a.

The BBVCC retains performance deposits for ACC-approved projects until the associated project is complete. Performance deposits for ACC-disapproved projects are returned to the project applicant within 10 days of the disapproval letter, unless the applicant wishes to reapply or appeal to the Board of Directors. Upon completion of ACC projects, it is the applicant's responsibility to request the performance deposit return from the BBVCC management office. The BBVCC manager will verify that either all project work has been completed in accordance with the approved project plan or that the project was disapproved and the performance deposit was returned to the applicant.

Performance deposits not requested for return within two years from the ACC project approval date are forfeited to the BBVCC.

The performance deposits in the BBVCC Fee Schedule are established by the BBVCC Board of Directors and are subject to change without notice.

4. Restrictive Covenants Building Limitations

4.1 Height Limitations for Buildings

4.1.1 STRUCTURE HEIGHT ALLOWANCES

The ACC and/or Board of Directors can allow minor aesthetic height changes to the AR&R when they determine, at their sole discretion, that such improvements enhance a structure's design without adversely impacting village aesthetics, safety, etc. Some example enhancements that could exceed AR&R height restrictions are roof weathervanes, dwelling fireplace chimneys, roof cupolas and fence support post caps.

4.1.2 HEIGHT RESTRICTIONS

This section primarily applies to new and existing homes but also applies to any other structure that a lot owner may propose. Allowable structure height must be established by a Washington State licensed surveyor as part of the legal survey for property verification described in section 3.2.1b.

- a. No new structure or exterior renovation to an existing structure is allowed that exceeds 18 feet in height from the average elevation of the natural ground level except:

Home structures that must be elevated to comply with National Flood Insurance Program requirements or Whatcom County floodplain requirements shall be allowed a maximum height of 18 feet above the base flood elevation (BFE). The BFE is determined by Whatcom

County. For those structures that must elevate their home to comply with National Flood Insurance Program requirements or Whatcom County floodplain requirements, said structures shall be allowed to have a maximum 18 feet above the BFE. This exception is to allow the home an 18 foot build. To obtain approval, owners must fulfill all AR&R requirements and submit to a public hearing. Upon receiving a completed project application, the BBVCC management office will initiate section 8.4.3, Public Hearing Notice and Process.

b. Average elevation of the natural ground level shall be determined by 15 topographic measurements taken at natural ground level within the perimeter of the lot. Said measurements shall be taken, as much as possible, in a grid fashion. The grid will be established with five points on each long perimeter axis of the lot and five points on the long central axis (including all corners).

Material brought in or relocated within a lot shall be disregarded when determining natural ground level. Unusual changes in elevation should be ignored, such as lakeside lots staked at water's edge below steep banks or other precipitous changes in elevation such as lots on the west side of Chehalis Road commencing at Lot 1, corner of Chehalis Road and Sehome Road. In such instances, the nearest point to natural slope of lot remainder shall be taken. When a lot has exceptional topographic conditions, the owner may apply for a variance from AR&R restrictions, limitations and/or measurement procedures.

c. Project plans must document the proposed structure's elevation and allowable elevation determined by the survey. The project plans must also show the height allowed from the natural ground level and the ground level finished floor elevation when applicable.

d. The surveyor is required to drive a spike in the blacktop road in front of the lot circled with visible paint. Adjacent to the spike, in visible paint, the surveyor shall show the structure's allowable height above that spike and, as applicable, the actual National Geodetic Vertical Datum (NGVD) elevation or the North American Vertical Datum (NAVD) elevation.

e. The owner will provide, in writing, height certifications for (a) new homes and (b) exterior renovations proposed to exceed the height of existing structures, as follows:

1. The owner's written height certifications shall include documentation provided by a licensed surveyor. Each certification shall attest that the structure will not exceed the maximum height allowed per the ACC-approved project plan.
2. Height certifications will be provided at the following construction stages:
 - a. Upon completion of forming up for the concrete pour of the foundation (pre-pour), or for foundations subject to the FEMA requirement of a survey of the installed height of the first floor (post-pour).
 - b. Prior to setting roof trusses/roof ridge beams.

3. The certifications shall be turned into the BBVCC manager prior to proceeding to the next construction stage (i.e., pouring concrete foundation, erecting walls, setting roof trusses/roof ridge beams). Failure to provide certification prior to commencing the next construction stage shall result in a stop work order.

4. The cure of a stop work order may include the following:

- a. An order to remove materials exceeding the ACC-approved maximum height.
- b. Redesign of the remaining construction to conform with the ACC-approved maximum height.

f. Homes built in compliance with an existing Board-approved height variance may maintain that variance for replacements or exterior renovations.

4.2 Lot Line Setbacks, Height Limitations Within Setbacks and Utility Easements

The following setback widths, height limitations within setbacks and utility easements pertain to all lots, unless specifically excepted.

4.2.1 STREETSIDE SETBACKS AND HEIGHT LIMITATIONS

Homes shall be set back a minimum of 25 feet from front and side lot lines that parallel BBVCC streets except as follows:

- a. In Division 7, the home minimum setback from the cul-de-sac front lot line is 12 feet.
- b. In Division 3 lot 2; Division 6 lot 13; Division 9 lot 118 and 125; Division 10 lots 1, 2, 3 and 12; Division 13 lot 5; Division 15 lot 41; and Division 15A lots 1, 2, 40 and 46, the minimum setback from the front lot lines is 20 feet.

Part of a home such as a small cantilevered room, bay window, chimney, stairway or roof overhang may extend up to 2 feet into the streetside setback area.

The maximum height within the streetside setback area for any structure is 4 feet from final lot grade.

4.2.2 SIDE-YARD AND REAR-YARD SETBACKS AND HEIGHT LIMITATIONS

Homes shall be set back a minimum of 5 feet from side-yard and rear-yard lot lines. This minimum applies to all parts of a home (e.g., small cantilevered room extensions, bay windows, chimneys, stairways) except for the roof's eave, which may extend up to 18 inches into the setback.

The maximum height within the side-yard and rear-yard setback areas for any structure, fence, detached wall, hedge, privacy screen, windscreen, etc. is 6 feet from final lot grade. Exceptions to this height limitation may be recommended by the ACC for approval by the Board of Directors for heavily sloped lots, particularly if there are retaining walls between properties.

On a lot that abuts or runs parallel to BBVCC marina, Kwann and Thunderbird Lakes, the golf course or the Beaver Pond and its upper feeder creek to Salish Road, any structure exceeding 3

feet above final average lot grade must be set back a minimum of 35 feet from the rear property line. Part of a home such as a small cantilevered room, bay window, chimney, stairway or roof overhang may extend up to 2 feet into the 35 foot setback area, except Division 11C lots 14-20 and Division 14 lots 14 and 15.

4.2.3 RESERVATION OF EASEMENTS

Reservation of easements are defined as:

- a. Easements for drainage, sewers, water pipes and utility companies and service (including but not limited to water supply, electricity, gas, telephone and television).
- b. Reserved over, under, upon, in and through a 2 foot, 6 inch wide strip along each side lot line and the front and rear 5 feet of each lot, tract or parcel of Birch Bay Village.
- c. Specifically to install, lay, construct, repair, renew, operate, maintain and inspect underground pipes, sewers, conduits, cables and wires, inclusive of all necessary facilities and equipment.
- d. For the purpose of serving Birch Bay Village and any other land adjoining, contiguous or adjacent, with the right to enter upon such easement areas, lots, tracts, parcels, roadways and walkways for or pertaining to the previously mentioned.
- e. The property owner should carefully consider the placement of any fence, retaining wall, driveway, patio or planting within an easement. Utility owners retain the right of access for inspection, maintenance, repair or replacement of the utility. Any owner-placed impediment to access shall be removed at the owner's expense should BBVCC, at its sole discretion, determine access has been compromised.

4.3 No Other Residential Uses

Each lot, tract or parcel shall be used only for single-family residential purposes unless otherwise provided. No structure of a temporary character including, but not limited to, a trailer, motorhome, fifth wheel or tent shall be used or placed on any lot, tract or parcel at any time as a residence. The exception is a mobile home for residential purposes that may be located on any lot, tract or parcel which is designated as a Mobile Division lot, in accordance with the Declaration of Rights, Reservations, Restrictions and Covenants of Birch Bay Village.

4.4 Single-Family Dwelling Restrictions

Dwellings are restricted to single-family units, one home per lot. BBVCC is not zoned for duplexes, triplexes or other multifamily dwellings. This restriction also precludes detached accessory dwelling units (DADUs).

5. Additional Project Rules

Note: Reference additional requirements as applicable under section 3.2.1 Major Project Requirements, section 3.2.2 Minor Project Requirements and 3.2.3 Tree Removal Project Requirements.

5.1 Impervious Area Restrictions

a. Dwelling Impervious Area Restriction. The dwelling's impervious square foot area (which includes its eaves, attached structures and garage/carport) shall not exceed 35 percent of the lot. The square foot area of the lot and the dwelling shall be shown on the site plan.

b. Total Impervious Area Restriction. The total impervious square foot area shall not exceed 50 percent of the lot. The total impervious area calculation shall include the dwelling *plus* all other surface areas covered with impervious materials. The site plan shall show the total impervious area square footage.

5.2 Minimum Size Requirements for Dwellings

a. Single-Story Dwellings. The minimum size of the ground-level living area for single-story dwellings is 1,400 square feet. See exceptions in 5.2c and 5.2d.

b. Multi-Story Dwellings. The minimum size of living area for a multi-story dwelling is 1,700 square feet, of which at least 1,000 square feet must be at ground level. See exceptions in 5.2c and 5.2d.

c. Division 7 Manufactured/Mobile Homes. The minimum size of living area for manufactured/mobile homes located on lots within Division 7 is 700 square feet.

d. Division 12M Manufactured/Mobile Homes. The minimum size of living area for manufactured/mobile homes located on lots within Division 12M is 1,000 square feet.

5.3 Building Code Requirements/Inspections

a. Stick-Built. Stick-built (built on-site) dwellings, auxiliary buildings, sheds and storage structures must conform to Whatcom County Building Codes. Non-stick-built HUD-approved structures may be acceptable as stick-built with ACC approval.

b. Manufactured/Mobile. Manufactured, mobile and factory-built dwellings, auxiliary buildings, sheds and storage structures must have a letter of certification or other suitable documentation showing compliance with applicable building codes.

c. Used Structures. Used/pre-owned dwellings, auxiliary buildings, sheds and storage structures, whether site-built, manufactured, mobile or factory built are discouraged. Application to bring into BBVCC a pre-owned or used structure must be accompanied by an inspection completed by an inspector employed by the applicant. The inspector must be licensed by Washington State to conduct such inspection.

5.4 Architectural Facade Requirement

The dwelling elevations facing the main street shall consist of a minimum of three planes offset by at least 2 feet, each plane having a minimum width of 5 feet. Manufactured/mobile homes in Divisions 7 and 12M are exempt from the facade requirement.

5.5 Verification of Property Lines and Easements

a. New Dwelling Application. Applications for all new dwellings must include a legal survey of the lot, such survey having been performed by a Washington State licensed surveyor, paid for by the owner. It is recommended that property corners be marked, easily visible and such markings maintained for ease of visibility in perpetuity.

b. Other Construction Application. Applications for other construction activity (e.g., exterior renovation, retaining walls, fences, hedges, patios, sheds, decks, pergolas, gazebos, sidewalks, driveways, flagpoles, etc.) require demarcation of lot lines. If there is any doubt as to encroachment on adjacent properties or setbacks, or if such demarcation is in question, the ACC, at its sole discretion, may demand a survey, performed by a Washington State licensed surveyor and paid for by the property owner, such survey a condition of construction application approval.

5.6 Manufactured/Mobile/Factory-Built Home Restrictions

Manufactured/mobile/factory-built homes are only allowed on lots within Divisions 7 and 12M. Prior to occupancy, a manufactured/mobile/factory-built home must be connected to the local commercial providers of electrical, water, sewer and gas service (if there are gas appliances in the unit). See sections 5.2c, 5.2d and 5.4 for additional manufactured/mobile home rules.

5.7 Accessory Structure Restrictions

Accessory structures may not be used for habitation, commercial or industrial use, and shall comply with all applicable governmental regulations.

Accessory structures with walls and/or a roof shall be architecturally compatible with the dwelling located on the same lot, including roofing (style, material, color), construction material and exterior color scheme. No structure shall detract from community aesthetics. Quonset huts and structures of a temporary nature are prohibited.

The maximum number is two walled accessory structures per lot (e.g., one shed and one detached garage, one shed and one gazebo, one shed and one playhouse).

5.7.1 LOCATION RESTRICTIONS

Accessory structures that have walls and/or a roof must maintain a minimum separation of 10 feet between exterior walls, and a minimum separation of 6 feet between eaves, from adjacent buildings. Accessory structures are subject to all setback requirements.

Accessory structures are to be located to minimize impact on neighbors and may not be located on lots without a dwelling.

5.7.2 ADDITIONAL RESTRICTIONS FOR CARPORTS

Detached carports are allowed only within Divisions 7 and 12M. Only one detached carport is allowed per lot. The following rules apply:

- a. Must be of permanent-type construction. Corner posts must be permanently set to the ground with reinforced concrete footing or concrete stem wall. Fabric or plastic sheet is prohibited for walls or doors (if any).
- b. Must be located on a hard surface such as concrete or compacted crushed stone.

- c. The interior area square footage at ground level cannot exceed 288 square feet. (*Note: A county building permit is required if the floor area exceeds 200 square feet measured outside wall to outside wall.*)
- d. Maximum height measured from the final average lot grade is 12 feet and no higher than the final height of the house.

5.7.3 ADDITIONAL RESTRICTIONS FOR DETACHED GARAGE/DETACHED WORKSHOP

Application is subject to major project requirements (see section 3.2.1) and to a public hearing (see section 8.4.3). The BBVCC Board of Directors must grant approval before the project can begin. Only one such structure is allowed per lot (i.e., one detached garage or one detached workshop, not one of each). The following rules apply:

- a. The exterior area square footage at ground level cannot exceed 576 square feet.
- b. Maximum height measured from the final average lot grade may be no more than 18 feet and no higher than the final height of the house.
- c. ACC application approval is subject to submission of design plans prepared and stamped/sealed by a Washington State registered architect or Washington State registered engineer, such plans being in accordance with all ARR and all pertinent governmental building codes.

5.7.4 ADDITIONAL RESTRICTIONS FOR SHEDS

These structures are commonly referred to as storage sheds. Small structures not exceeding 24 square feet in area and not exceeding 72 inches in height are exempt from permitting. The following regulations apply to all storage sheds up to 144 square feet. A larger structure is considered a detached garage/workshop per section 5.7.3.

- a. Only one shed/storage structure is allowed per lot.
- b. Construction materials
 - Preferred:** Shed same material as the residence.
 - Alternate A:** High-quality resin kit that is paintable, has reinforced steel support/framing and is attached to a foundation (concrete slab, decked wood frame, pavers or pier blocks).
 - Alternate B:** Certain high-quality metal-sided sheds may be considered based on location, visibility and quality of construction.
- c. Color
 - Preferred:** Same as the residence's primary and secondary colors.
 - Alternative:** In a complementary and unobtrusive color whether painted, stained, powder-coated or colored resin.
- d. Dimensions
 - Exterior dimensions:** Not to exceed 144 square feet measured from outside wall to outside wall, including any lean-to or porch.
 - Vertical walls:** Shall not exceed 8 feet.
 - Peak:** Shall not exceed 12 feet measured from top of foundation.
 - Eave overhang:** Shall not exceed 18 inches.

e. Setback from other structures

There shall be a minimum separation of 10 feet between exterior walls and minimum separation of 6 feet between eaves of adjacent structures on the same property. If the minimum separations are not feasible, alternative separation distances are subject to ACC approval. The ACC shall not approve separations less stringent than pertinent county codes.

f. Other setbacks/location

Encroachment: Shall not encroach upon 5 foot easements (section 4.2.2) associated with side-yard and rear-yard lot lines.

Rear limitation: Properties described in the last paragraph of section 4.2.2 have an additional rear-yard setback limitation of 35 feet.

Visual impact: Placement to minimize visual impact on neighbors. Preferred location is in the backyard. When setbacks will not allow, alternatives may be considered.

Additional ACC conditions may apply.

5.7.5 ADDITIONAL RESTRICTIONS FOR GAZEBOS/PERGOLAS

Gazebos and pergolas, which are considered auxiliary structures, are roofed structures without walls. They shall be erected with the following requirements:

- a. The location of the gazebo/pergola shall be on a firm level surface at a minimum of 5 feet from lot lines.
- b. The maximum height allowed is 12 feet, measured from grade to roof peak.
- c. The area covered by the roof (using roof/eaves for measurement) shall be included in the calculations of total impervious area for the entire lot. Total impervious area shall not exceed 50 percent of the lot. Both lot size and impervious area percentage shall be shown on the application.
- d. Each post support should be anchored sufficiently to the ground.
- e. Ground covering or decking is recommended but not required.
- f. If the gazebo/pergola is connected to an existing auxiliary structure, then the total square footage of the gazebo/pergola plus the attached structure must comply with total allowed square footage of an auxiliary structure.

5.8 Other Structures

5.8.1 FENCES

Fences shall be no closer to the street than the front property line where it abuts to the common area, or 3 feet from street if no common area. All gates must have a locking mechanism and shall swing into the owner's property. In addition, fences shall not be erected so that they encroach on any village-owned property, including street and alley rights of way.

Fence height is determined by measuring from the natural ground level adjacent to the fence to the top of the fence structure, including all latticework or other decorative features, allowing a maximum of 2 inches for ground clearance. The following height limitations apply:

- a. Front yard fences, from property line to 5 feet past the front corner of house, shall be no more than 3 feet in height.
- b. Backyard fences, from 5 feet past the corner of front of house, shall be no more than 6 feet in height.

Patio and courtyard privacy fencing, for both front and back, must meet the conditions of a and b above.

Note: It shall be the responsibility of any person erecting a fence to determine the location of all underground utilities and to take the necessary steps to avoid interfering with them.

5.8.2 GOLF BALL SCREENING

Golf ball screening that exceeds AR&R fence height restrictions may be approved for lots that abut the golf course. To obtain approval, owners must fulfill all AR&R requirements and submit to a public hearing. Upon receiving a completed project application, the BBVCC management office will initiate section 8.4.3, Public Hearing Notice and Process.

The following is required:

- a. Whatcom County must review the screening structure plans and issue a permit prior to submission to the ACC.
- b. The screen height cannot exceed 16 feet as measured from the final average lot grade to the top of the structure's highest point. A height variance may be allowed if it is deemed necessary to prevent injury or damage to the home.
- c. Supporting posts must be metal and powder coated flat black.
- d. The screening net material must be black in color and designed to repel golf balls.
- e. The screen posts must be attached to the ground and set back from property lines a minimum of 5 feet.

5.8.3 DECKS

All decks and walking surfaces over 30 inches above grade or attached to the home require the submission of plans to Whatcom County for approval and permit.

All decks (ground and rooftop), regardless of height and dimensions, require ACC review and approval. Decks less than 30 inches in height will be reviewed for aesthetics (i.e., matches house), safety, durability, location and percent of property covered (impervious calculation). Decks 30 inches or higher will have a more stringent review as detailed in the plan requirements below.

Plans shall include:

1. Exterior elevations ($\frac{1}{4}'' = 1'$ scale,) including:
 - a. North, south, east and west (labeled).
 - b. All grades accurately shown (existing and finish).
 - c. For shoreline properties, existing and proposed grade lines with grade elevations noted.

2. Floor plans for all levels, including:
 - a. Stair detail showing rise and run, number of treads and risers, and location of handrails and guardrails.
3. Foundation plans, including:
 - a. All pads and foundation dimensions, perimeter and interior.
 - b. Girders, posts, strip footings or slab.
4. Floor framing plans:
 - a. Show and label members (joists, beams, etc.).
 - b. Specify size, grade, species, type (GLB, TJI, etc.).
5. Details of:
 - a. Overhangs, cantilevers, ledger connections.
 - b. Special framing and connections.
 - c. Guardrails and handrails.
6. Engineering results (if applicable):
 - a. Engineering outcome must be transferred to plans.
 - b. Calculations shall be stamped and signed by the engineer.

All wood must be pressure treated or naturally resistant to decay. Fasteners, hangers, nails, etc. must also be resistant to rust/decay (e.g., stainless steel, galvanized) or as specifically required for the specified wood preservative used.

Footings must have a reinforcement of two #4 bars each way, with a 3 inch clearance to the bottom of footing. Footings must bear on undisturbed earth.

Skirting is required on all decks.

- a. A solid skirt is required for decks up to 18 inches in height.
- b. A lattice skirt is acceptable for decks greater than 18 inches in height.

5.8.4 SATELLITE DISHES

Installation plans to include lot location for dish-type antennas (satellite dishes) exceeding 3 feet in diameter must be approved in writing by the ACC prior to installation.

5.8.5 FLAGPOLES

Flagpoles are subject to their own set of restrictions with respect to number, location, height, diameter and construction.

- a. A maximum of two flagpoles are allowed on a lot that contains a single-family residence.
- b. Flagpoles cannot be erected on lots without a dwelling.
- c. Flagpoles cannot be erected nearer than 5 feet from any lot line.
- d. A flagpole can only be a single pole.
- e. A flagpole cannot exceed a height of (1) if attached to the ground, 18 feet as measured from the adjacent lot grade to its top (includes any cap or ornament), or (2) if attached to a surface other than the ground (e.g., deck or patio), cannot exceed the dwelling's roof height.

- f. Must be round or oval shaped with an outside diameter not greater than 6 inches and is adequately anchored to its surface.
- g. Is constructed of metal, fiberglass or other durable non-wood material.
- h. Flagpole installation must, at minimum, adhere to the manufacturer's product installation instructions.

5.8.6 SWIMMING POOLS

Swimming pools are defined as any structure intended for swimming, recreational bathing or wading that contains water over 24 inches deep.

5.8.6.1 IN-GROUND SWIMMING POOLS

Review/approval of plans by the ACC for in-ground pools is required prior to construction. Plans shall include:

- a. Drawings with size/dimensions
- b. Lot placement (must be a minimum of 5 feet from lot lines)
- c. Materials list
- d. Impervious calculation

Safety mandates require one of the following:

- a. Fencing that encloses the pool area and allows for a minimum of 48 inches between pool and fence. The fence shall be at least 48 inches in height, with no more than a 2 inch clearance from grade to bottom of fence. Openings in the fence shall not permit the passage of a 4 inch diameter sphere. Natural barriers and dwellings, for all or part of the enclosure, will be considered by the ACC.
- b. A swimming pool power safety cover that complies with current county code.

5.8.6.2 ABOVE-GROUND SWIMMING POOLS

Prior approval of installation by the ACC is required to ensure compliance with the amount of property covered (impervious calculation).

Safety mandate: The above-ground structure is a sufficient barrier if the only means of access is via ladder or steps, and such access is capable of being secured, locked or moved to prevent access. Otherwise, a pool cover is required.

5.8.7 PLAYSETS

Playsets shall be erected with the following considerations:

- a. The playset shall be located on a level surface and clear of any overhead obstacles (e.g., power lines, roof overhangs, tree limbs). It should also be clear of any underground utility elements (e.g., gas lines, sprinkler heads).
- b. Each main post support shall be anchored to the ground to avoid tipping during play and adverse weather conditions.
- c. The playset footprint should allow for a minimum of 6 feet of open space in all directions.
- d. The playset area, inclusive of the open space, should include a protective surface.

5.8.8 PROPANE TANKS

Propane tanks' location, construction and installation must conform to governmental regulations and may not be less than 10 feet from any lot line. Individual propane tanks in Divisions 7 and 12M must have a minimum capacity of 25 gallons. Individual propane tanks in all other divisions must have a minimum capacity of 50 gallons.

Propane tanks shall be either buried in the ground or enclosed on at least enough sides so as to obscure the tank from view from the road or any other lot. Enclosures shall be fire-resistant materials, with the bottom 8 inches above ground and painted to match the house. Corner posts shall be no greater than 4 inches by 4 inches nominal dimension. Cover of the enclosure shall not be allowed. Alternative enclosures can be fireproof materials such as concrete or brick masonry. In-ground tanks must meet all county permitting requirements.

5.8.9 ARBORS/TRELLISES/OTHER OUTDOOR STRUCTURES

Arbors, trellises and other similar structures should be erected at a minimum of 2 feet from any permanent structure to allow access to all sides. The maximum height allowed is 8 feet, as measured from finished grade to the structure's highest point, inclusive of any decorative or ornamental trim. All structures shall be anchored to the ground to avoid toppling.

5.8.10 MARINA/LAKE/POND STRUCTURES

Boathouses and dock sheds are not allowed on any BBVCC waters. Docks are only allowed in the BBVCC marina and on Kwann and Thunderbird Lakes. The following applies to Kwann and Thunderbird lake docks:

- a. The dock plans must include the method of dock access from the lake bank (e.g., ramp, stairs). The docks shall be floating. Fixed piling type docks are not allowed. To minimize protrusion into the lake, the dock shall be parallel to the shoreline when possible and shall only be far enough from the shoreline to keep the floats from resting on the bottom.
- b. The maximum size is 6 feet wide and 12 feet long. The dock shall be constructed of materials appropriate for a marine environment. If pressure-treated lumber is used, flotation shall be sufficient enough to keep the treated lumber from making contact with the water.
- c. Flotation shall be made of closed-cell foam covered with an impervious material or equivalent. Metal drums, logs or other flotation materials or devices are not allowed.
- d. The dock shall be held in place with a method to ensure it will remain in place in the highest winds and with the up and down lake levels.
- e. The dock owners shall sign a hold harmless agreement to release BBVCC from legal action due to any incident involving the dock. The owners will also present proof of current liability insurance and agree to maintain such insurance coverage.
- f. No docks are allowed on vacant lots.
- g. Docks must meet county permitting requirements.

5.9 Landscape/Hardscapes

5.9.1 LANDSCAPE REQUIREMENTS

For new stick-built homes or their exterior renovations, an initial landscape ground cover must be completed no later than eight months after the home or exterior renovation start. For manufactured/mobile homes, the initial landscape ground cover must be completed no later than 90 days from the home's placement on its foundation.

Application of the initial ground cover is to provide for a neat lot appearance and erosion protection. Additional landscaping such as plantings, garden walls and other enhancements are at the lot owner's discretion. Additions of structures not included with the project documents must first be approved by the ACC.

All cuts in the earth, exposed embankments and bare ground must be graded and smoothed. Bare earth must be graveled, barked or seeded with grass and appropriately maintained.

All exposed embankments created by driveway cuts, other general construction or erosion of more than 12 inches or greater than 30 degrees in slope must be corrected by construction of permanent walls. Slopes of less than 30 degrees require the planting of low-growing plants to control soil erosion.

5.9.2 TREES/TREE REMOVALS

The village values the natural environment and the native trees and vegetation that are a part of it. To that end, the planting and maintenance of shrubs and trees is encouraged.

Large cedar and fir trees are highly prized for their wildlife habitat functions. Removal of such trees should be avoided where possible. Application for removal of any such trees 24 inches or more in diameter/75 inches or more in circumference (measured at 54 inches above adjacent ground level) due to concerns with safety or tree health shall be accompanied with a certified arborist report supporting the removal. Rarely, the ACC may exempt these trees that have very apparent issues with safety or health from obtaining an arborist report. Alternatives to removing large firs and cedars should be explored for home construction projects. However, if a tree is located such that it poses a significant impediment to construction, removal can be allowed. In such cases, an arborist report would not be required.

Removal of the following trees is exempt from ACC approval if they are less than 12 inches in diameter/38 inches in circumference (measured at 54 inches above adjacent ground level): willows, alders, cottonwoods, fruit and decorative/hedgerow/foundation trees such as crabapples, dogwoods, magnolias and arborvitae.

A tree removal application must be submitted for any other trees 6 inches in diameter or larger, and may or may not be approved for removal. An arborist report may, in some cases, be required to support such removal.

All tree removal must be conducted with safety in mind. No trees may be felled onto the roads or rights of way without written permission from the village office. No trees shall be felled onto adjoining properties without the owner's written permission. Trees with trunks straddling a property line require, from the owner of the adjoining property, a signed approval to remove the tree in order to avoid disputes regarding ownership.

In cases where a tree's health is questionable and public safety is deemed an issue by BBVCC, the ACC may require a tree to be removed or the provision of a certified arborist's opinion that the tree is safe. The lot owner shall pay for tree removal or arborist's report.

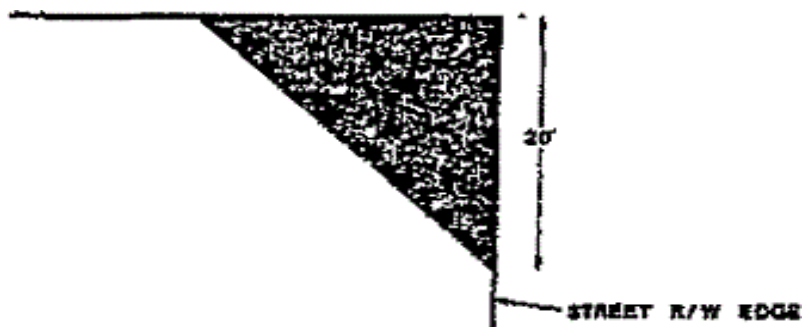
Unauthorized tree removal shall carry a fine as stated in the BBVCC Schedule of Fines.

5.9.3 SAFETY

Trees and shrubs blocking visibility to streets and driveways are a safety hazard. The lot owner must remedy the unsafe condition by trimming, topping or delimiting trees and shrubs as necessary to correct the visibility issue.

Vision Clearance Triangle

- a. All corner lots abutting an intersection that is not controlled by a four-way stop shall provide and maintain a clear vision triangle for the purpose of traffic safety.
- b. The vision triangle shall be the area defined within boundaries determined by measuring 20 feet along both the front and side property lines and diagonally connecting the ends of the two lines. (See figure below.)
- c. No building, structure, vehicle, object, sign or vegetative growth over 36 inches in height shall be permitted within this triangle.
- d. The property owner adjacent to the vision triangle shall be responsible for maintaining the visibility within this triangle pursuant to the requirements herein.



5.9.4 BBVCC RIGHT OF WAY (ROW)

BBVCC reserves rights of use for the portion of the right of way between the road edge and private property. Owners have some use of this area with limitations.

Allowed Uses

- a. With a permit, an area may be created along the road for parking vehicles. See BBVCC governing documents for limitations on such parking. The parking area must be accompanied with stormwater improvements as detailed in section 7. The parking area must be of sufficient width to allow a 3 foot clear space between the road edge and any parked vehicle. The parking area must be graded to allow for the free flow of water off of the roadway. The owner is responsible for upkeep of this area.
- b. Driveways or sidewalks that provide access to the roadway.
- c. Lawn may be planted within the ROW except for 3 feet along the road reserved for a gravel shoulder. The shoulder and lawn must be graded to allow the free flow of water off of the roadway. The owner is responsible for upkeep of this area.
- d. Plantings that have a mature height of less than 2 feet are allowed within the ROW with the understanding that road, drainage or utility maintenance/construction may occasionally destroy said plantings. The owner is responsible for removing or moving such plantings as needed to facilitate work. BBVCC will endeavor to provide notice of destruction 24 hours in advance, but lack of notice will at times be unavoidable. No compensation will be provided for lost or destroyed landscaping within the ROW.
- e. Individually powered solar accent/safety lights less than 2 feet in height.

Prohibited Uses

The following are prohibited within the BBVCC ROW:

- a. Trees
- b. Structures, including sidewalks running parallel to the roadway
- c. Retaining walls
- d. Fences
- e. Vegetation that exceeds 2 feet in height at any time
- f. Decorative landscaping/hardscaping that exceeds 2 feet in height or that is affixed or buried into the ground
- g. Private lighting requiring wiring to a power source and/or wiring between individual light sources
- h. Irrigation systems

5.9.5 RETAINING WALLS

Retaining walls are vertical structures used to stabilize excessive slopes to prevent erosion. They are usually made from one of the following materials:

- a. Poured concrete with a horizontal slab footer and vertical stem wall
- b. Concrete modules
- c. Properly treated wood
- d. Rock

Plans for all retaining walls on slopes greater than 2:1 (2 feet horizontal to 1 foot vertical) or greater than 3 feet in height require ACC approval. Additionally, plans for retaining walls greater than 4 feet in height shall be approved by a Washington State licensed structural engineer. Retaining wall height is determined by a 90 degree vertical

measurement from the lowest point of the wall structure. The following must be shown on plans submitted for ACC approval:

- a. Location and dimensions of retaining walls on site plan
- b. Profile/section of retaining walls with natural ground slopes
- c. Wall materials
- d. When used, concrete module dimensions
- e. Wall height
- f. Wall thickness
- g. When used, horizontal footer width and thickness
- h. Soil depth on each side of the vertical portion of the wall
- i. Drainage system

If a series of retaining walls are proposed, it is preferable that the retaining walls not exceed 5 feet in height nor be closer than 5 feet apart, which as noted above, must be approved by a Washington State licensed structural engineer.

In cases where a railing or fence is requested on top of a retaining wall, the ACC must approve the fence height and materials to meet ACC guidelines and minimize impacts to neighboring properties.

5.9.6 VACANT LOTS

All vacant lots must remain free of all structures, signage, play equipment, treehouses, etc. except for culverts and catch basins when approved by the ACC.

Except for grass cutting, weed and blackberry vine clearing, and tree removal allowed in section 5.9.2, vacant lots may have landscaping improvements only when all the following conditions are met:

- a. Prior to any improvement, a full 15-point height survey must be completed on the property as set forth in section 3.2.1b and the buildable height established with a spike in the street marking the elevation. This buildable height will be used for all subsequent construction on the lot.
- b. The owner must submit an ACC project plan for all landscape improvements to be performed on the property and must receive ACC project approval prior to any work being commenced on the lot.
- c. Improvements are limited to the landscape features of soil, grass, shrubs, retaining walls less than 3 feet in height and trees. Nothing else is allowed.
- d. All landscaping projects must meet all AR&R, including compliance with section 7, whenever there is a change in grade or where landscaping will have a potential impact on stormwater.

5.9.7 REQUIREMENTS FOR LOTS ADJACENT TO MARINA, LAKES, GOLF COURSE, PONDS AND STREAMS

This section applies to any structure or planting on lots in which the rear property line abuts or runs parallel to the BBVCC marina, Kwann and Thunderbird Lakes, the golf course or the Beaver

Pond and its upper feeder creek to Salish Road. Lots contiguous to the above defined landforms are subject to additional restrictions, as follows:

- a. Structures, such as bulkheads, must also receive approvals as required by all relevant regulatory authorities and government agencies and are the sole responsibility of the lot owner.
- b. Structures exceeding 3 feet above final average lot grade must be set back a minimum of 35 feet from the rear property line, except part of a home such as a small cantilevered room, bay window, chimney, stairway or roof overhang may extend up to 2 feet into the 35 foot setback area.
- c. Within the 35 foot setback in section 5.9.7b, no trees, plants, shrubs, bushes or other vegetative matter may extend above 4 feet from natural ground level and must be maintained at or below that level, unless relevant regulatory authorities require specific landscaping to meet stringent environmental requirements as a condition of approval for a building permit.
- d. In addition to the AR&R, government agencies may require more stringent setback requirements near environmentally sensitive areas such as Birch Bay, the Beaver Pond and BBVCC lakes.

Lots exempted from the 35 foot setback regulation: Division 11C lots 14 through 20 and Division 14 lots 14 and 15.

6. Additional Provisions

Note: Reference additional requirements as applicable under section 3.2.1 Major Project Requirements, section 3.2.2 Minor Project Requirements and 3.2.3 Tree Removal Project Requirements.

6.1 Construction Requirements

A portable toilet on the lot is required for contractor use for new home construction or major exterior renovation. All construction materials and debris slash, uprooted stumps and trees must be removed from the lot. That which is usable, i.e. firewood, must be neatly stacked and stored on the lot. Lot vegetation must be maintained at a presentable level from commencement of construction.

Streets must be kept free of mud, debris, gravel, etc. caused by construction equipment or methods during construction. This usually requires cleaning of the street(s) at least once each day. BBVCC management office personnel may require the contractor to clean streets more than once per day.

Streets will not be blocked for other than normal offloading or uploading construction requirements. If streets must be blocked for more than 60 minutes, the contractor must provide sufficient traffic control personnel (commonly called flaggers) to safely control traffic. BVCC management office personnel may require the contractor to provide additional flaggers as they deem necessary.

Contractors are restricted to using only the lot on which they are building for storing materials (including fill), equipment, etc. and will not be allowed to trespass on adjoining lots. The only exception is if a neighboring lot owner has given permission to use their lot. This permission must be given through the BBVCC management office so they can monitor the exact approvals given.

6.2 Exterior Lighting

The purpose of exterior lighting is for safety, security and aesthetics or any combination thereof. The ACC recognizes that subjective judgment is required to determine the type and intensity of exterior lighting allowed in a given circumstance. Exterior lighting must be designed and installed to direct the light beam downward to illuminate (including reflection) only the owner's lot.

If exterior lighting is found to be objectionable by neighbors, they have the right to appeal to the ACC for review. In its review, the ACC is concerned with the interests of individual property owners and neighbors. The desired review outcome is that open good neighbor discussion will result in a solution acceptable to the owners and their neighbors. In the event that differences cannot be resolved, the ACC will make a recommendation to the Board.

Driveway illumination lights are allowed on a lot that contains a single-family residence. Section 4.1.2 height restrictions do not apply to driveway illumination lights that exceed 4 feet in height, and comply with the following:

- a. Are mounted on a round or oval shaped pole with an exterior diameter not greater than 6 inches. The pole must be metal, fiberglass or other durable non-wood material.
- b. Do not exceed 8 feet in height as measured from final grade level to its top, including any cap ornament.

Note: Low lumen solar lights, for low walkway lighting, are excluded from this requirement.

6.3 Mail/Newspaper Boxes

Each lot with a single-family home may have a street-side mail/newspaper delivery box, subject to both U.S. Postal Service and village requirements, as follows:

- a. Mailbox opening shall be placed 6 to 8 inches back from the paved road edge, so that the mail delivery truck's wheels need not leave the paved surface for mail to be placed into the mailbox.
- b. The home's street address number shall be displayed on the mailbox.
- c. The bottom of the mailbox is 41 to 45 inches above the surface of the roadway.

New homeowners are encouraged to coordinate with their neighbors and, if required, the USPS to determine their mailbox placement. Where practical, neighbors are encouraged to consolidate up to four mailboxes in one location.

6.4 House Numbers Required

All homes must display their street address numbers. These numbers must be 3 1/2 inches tall or larger and displayed on the home so that they are visible from the home's main entrance street.

6.5 Wind Turbines Prohibited

Wind turbines used to generate electrical power are not allowed in the BBVCC.

6.6 Access Restriction

No lot shall have or maintain access to any county or public road that is not owned and maintained by the BBVCC. All vehicle access to a lot must be via BBVCC-owned/maintained roads.

7 Culverts, Stormwater Piping and Catch Basin Procedures

The BBVCC maintenance supervisor or an ACC designee will act as the project monitor for culvert, stormwater piping and catch basin installations. Only the project monitor has the authority to modify the contents of this section for unique lot requirements.

7.1 General

Ditches can perform important functions for water quality and roadway longevity. If the property owner of a new project wishes to enclose existing ditches with pipes and catch basins, those functions must be considered.

If the property owner wishes to enclose a ditch for purposes of temporary parking or aesthetics, it shall be accomplished with piping and catch basins along the entire lot line(s) adjacent to the BBVCC street. Partial storm pipe installation (other than a single simple culvert) along a section of a lot line is not allowed. The project civil engineer or project monitor will ascertain the number of catch basins required per lot as determined by roadway and property drainage needs. The stormwater piping and catch basin location shall be shown on the site plan (see 7.1.1).

Properties may also be accessed across existing ditches by use of a single culvert no longer than 30 feet in length. *Note:* No overnight parking is allowed along roadways that have not been improved with stormwater piping and catch basins.

7.1.1 DESIGN

All stormwater piping and catch basin installations shall be shown on the site plan documents. The plan must show existing and proposed pipe size, pipe types, elevations or depths, catch basin location (to maximize water collection from streets and adjacent areas), proposed pipe slope, proposed backfill, etc. Those stormwater plans developed by a licensed civil engineer shall be submitted in their entirety for ACC review. Unless field conditions dictate otherwise, use the following as design standards:

- a. All piping shall be designed and constructed to maintain a straight vertical and horizontal alignment.
- b. Minimum pipe slope is 0.5 percent.
- c. Minimum cover over piping is 24 inches or meeting manufacturer's specifications. Where minimum cover cannot be attained, lean (diggable) concrete may be used as bedding/backfill.
- d. Pipes should be bedded with pea gravel, and the pea gravel should be extended to a minimum of 6 inches above pipe.
- e. Concrete catch basins shall be provided at all changes in pipe grade or alignment or where connecting dissimilar piping materials (e.g., concrete to corrugated polyethylene pipe [CPP]). Concrete inlet boxes (no sump) may be used for 12 inch pipe where a standard catch basin is not deemed necessary. *Special note:* Where grade and alignment are not an issue and a catch basin is not necessary for water collection, Washington State Department of Transportation (WSDOT) Standard Plan "Connection Details for Dissimilar Culvert Pipe" may be utilized as a connection method.
- f. A negative slope of 3 to 8 percent shall be maintained away from the road edge for a minimum of 3 feet. This is to keep water off the roadway.
- g. Catch basin grate elevations should be set to maximize the collection of runoff from the roadway, the BBVCC right of way and adjacent property.
- h. A shallow swale/depression should be maintained to convey runoff to the catch basin.
- i. Simple culvert installations for access to a property can be allowed with special permission from the ACC. Such installations are limited to one culvert pipe no more than 30 feet in length. The location depth, proposed slope and backfill shall be indicated on the project site plan. Culvert pipe ends must be protected from erosion by placement of erosion control fabric and rock. Concrete headwalls are an acceptable alternative but must be constructed to prevent concrete-laden water from entering the system.

7.1.2 MATERIALS

- a. All culverts and stormwater pipes shall be non-perforated rigid double wall CPSSP (corrugated polyethylene storm sewer pipe) meeting WSDOT specifications.
- b. All catch basins shall be precast concrete meeting WSDOT specifications.
- c. Standard frames and grates meeting WSDOT specifications shall be provided for each catch basin.
- d. Pipes should be bedded with pea gravel, and the pea gravel should be extended to a minimum of 6 inches above pipe. Pea gravel alternatives may be sand or ¾" minus crushed rock. Special care must be taken in compaction of alternative materials.
- e. Above the pipe zone, backfill shall be continued with granular fill. This must be bank run gravel or better as determined by the project monitor. For areas proposed for lawn, the top 8 inches of fill may be topsoil.

7.1.3 DIMENSIONS

- a. The minimum stormwater pipe and culvert diameter is 12 inches. The project civil engineer or project monitor will determine the need for pipes larger than 12 inches based on drainage area and upstream and downstream system sizing.

- b. Type 1 catch basins shall be used for pipe up to 15 inches in diameter.
- c. Type 1L or Type 2 catch basins shall be used for 18 inch diameter pipe.
- d. Type 2 catch basins shall be used for pipe up to 24 inches in diameter or in locations where the depth to the pipe invert exceeds 5 feet to allow for maintenance access.

7.1.4 INSTALLATION AND INSPECTION

All stormwater piping and catch basin installations shall be constructed in accordance with the design. Modifications to the proposed stormwater piping and catch basin plan can be made in the field with the approval of the civil engineer or project monitor as necessary to meet the plan's intent.

Improper or poorly installed stormwater piping, culverts and catch basins that damage a street shoulder or pavement shall be replaced or repaired at the lot owners' expense.

Inspection of each culvert and stormwater piping/catch basin installation by the project monitor is required before it is backfilled.

7.1.5 MAINTENANCE AND REPLACEMENT

To maintain proper drainage flow, the BBVCC is responsible for routine maintenance of stormwater piping, culverts and catch basins within BBVCC rights of way.

The need for replacing stormwater piping, culverts or catch basins is determined by the ACC/BBVCC maintenance supervisor and approved by the ACC. The lot owner is responsible for replacing stormwater piping, culverts and catch basins constructed as part of individual lot development.

Lot owners have the option of contracting for the replacement of failing piping/culvert/catch basin systems with proper permitting. BBVCC may perform necessary emergency repairs with a special assessment to the lot owner to cover the total cost of the work.

7.1.6 STORMWATER MANAGEMENT

Each lot owner is responsible for controlling stormwater originating from improvements on their lot. In order to provide this, storm drainage should be a first consideration in the layout and design of property improvements. It should be noted that Birch Bay is a protected area under the National Pollutant Discharge Elimination System. This is a federal program administered locally by Whatcom County. Special requirements for stormwater controls on single-family properties may apply and may supersede BBVCC stormwater requirements. Where not in conflict with federal, state and local regulations, BBVCC rules shall apply and be adhered to.

The following applies:

- a. Stormwater originating from improvements on a lot or common property may not flow directly onto adjacent or nearby properties in quantities or at locations substantially

different from the pre-project condition. *Note:* There are easements on property lines for the extension of utilities, including stormwater if necessary.

b. The method of stormwater disposal for each lot or common property must be established and shown on the site plan when a structure is first placed on the lot or common property. Once the ACC has approved the new structure project, the stormwater disposal method cannot be changed without ACC approval.

c. Lots and common property adjacent to BBVCC lakes are encouraged to use the lakes for their stormwater outfalls. All other lots and common property should use existing drainage ditches, drainage pipes or culverts for their outfalls. Discharges to the lakes and to the BBVCC stormwater systems are assumed to consist of rainfall runoff that is largely uncontaminated. Runoff that comes into contact with oils, greases, metals, pesticides, fertilizers, animal feces, etc. may become contaminated and unsuitable for discharge to wetlands, streams or Birch Bay. At a minimum, property owners and managers within BBVCC are responsible for controlling contaminant sources to prevent pollution of our water.

d. The discharge of water from property onto village roadways is prohibited when such discharges result in icing conditions deemed by BBVCC management to be a safety concern. Such discharges are required to be collected and connected to a stormwater system to eliminate the issue.

e. Outfall pipes into the lakes must have their outfall ends protected from erosion by erosion control fabric and rock. When complete, any visible pipe ends should be obscured from view.

f. All stormwater outfalls shall conform with the following:

1. Outfalls that are 8 inches or larger in diameter shall be nonperforated rigid double wall CPP.

2. All other outfalls shall be a minimum of 4 inches, nonperforated and either rigid double wall CPP or rigid plastic/PVC.

8. Administrative Approvals/Emergency Projects

8.1 Administrative

The ACC may review projects outside of the regular monthly meeting for minor structures such as fences, storage sheds, tree removal, etc. when the estimated value does not exceed \$3,000 and the project is deemed an emergency by the BBVCC manager and ACC chairperson. The review and approval/disapproval process is as follows:

a. The project request must not deviate in any manner from the AR&R.

b. The ACC chairperson establishes a meeting date, time and location, and the BBVCC management office makes a reasonable attempt by phone to contact all ACC members. Project approval may be given by a minimum of three committee members, of which one must be the chair or vice chairperson.

c. Approval of those committee members present, if less than four, must be unanimous. Should any ACC member object to the project for any reason, the project must be presented at the next regular ACC meeting.

8.2 Emergency

The ACC establishes the following criteria for administrative approval of small projects by the BBVCC manager. Projects shall be small in nature and must be compliant with all rules and regulations of Birch Bay Village and Whatcom County. Decisions by the BBVCC manager shall be brought forward at the next regular ACC meeting for ratification by the members. Types of projects include but are not limited to:

- a. Tree removals where there is an imminent danger of failure as assessed by a certified arborist.
- b. Small sections of fence less than 50 feet in total length needed to complete or replace an existing fence.
- c. Construction of handicap facilities immediately necessary to provide access for residents to their dwelling unit. Such construction shall comply with regulations to the maximum extent practicable.

8.3 Appeals

Should the ACC reject any project request, the project applicant may appeal to the ACC at their next regular ACC meeting if the applicant has new information to present. BBVCC members always have the right to appeal any ACC decision to the Board of Directors.

8.4 Variances Require Public Hearing and Board Approval

8.4.1 VARIANCES ARE THE EXCEPTION RATHER THAN THE RULE

Variances may be appropriate to address a property's unique or special characteristics that prevent reasonable use under applicable AR&R requirements. These characteristics may include unique topography such as steep slopes, water bodies or other natural features that are atypical within BBVCC.

The ACC may recommend reasonable variance of these AR&R to overcome practical difficulties and prevent unnecessary hardships in applying the provisions contained in the AR&R. The ACC will review variance requests by considering whether the request conforms to the AR&R's intent and purposes and that such requests will not be materially detrimental and/or injurious to other BBVCC properties or improvements.

All variance request applicants must demonstrate that their request satisfies all the criteria set out below:

- a. That the variance is needed to alleviate practical difficulties and undue hardship caused by exceptional topographical conditions or other extraordinary situations or conditions (including size and shape).
- b. That the variance shall not constitute a granting of special privileges, shall not be based upon reason of hardship caused by previous actions of the property owner or previous owner (including owner selection of building plans too large for the lot) nor be granted for pecuniary reasons alone.

- c. That the granting of the variance will not be materially detrimental and/or injurious to other properties or improvements in Birch Bay Village and will conform to AR&R intent and purposes.
- d. That the property cannot be reasonably used under the AR&R as written.

Upon finding that the variance request satisfies all of the above criteria, the ACC may recommend variance approval to the BBVCC Board of Directors.

8.4.2 ALLOWABLE HEIGHT VARIANCE

If requested by the owner, a new single-family dwelling or exterior renovation of an existing single family dwelling whose lot abuts the BBVCC perimeter fence may be approved to exceed the 18 foot maximum height requirement as follows:

- a. North side of Salish Road, from Division 7 lot 24 thru Division 11B lot 2.
- b. West side of Quinault Road, Skagit Way, Skagit Place and Salish Road from Division 12 lot 9 through Division 7 lot 25.

No structure may be built more than 25 feet above average ground level or FEMA 100-year flood level if the structure is elevated.

Upon receiving a variance request, the BBVCC management office will initiate section 8.4.3, Public Hearing Notice and Process.

8.4.3 PUBLIC HEARING NOTICE AND PROCESS

8.4.3.1 PUBLIC HEARING NOTICE DISSEMINATION

Upon receipt of an application described in section 8.4.1, the BBVCC management office will issue a Notice of Public Hearing. The notice is disseminated in advance of the next regularly scheduled ACC meeting as follows:

- a. Mailed 30 days in advance for section 5.7.3 (Detached Garage/Detached Workshop) and 8.4.2 (Allowable Height Variance) projects to all lot owners whose property lies within 300 feet of a proposed project.
- b. Mailed 30 days in advance for section 5.8.2 (Golf Ball Screening) to all lot owners whose property lies immediately adjacent and those whose views will be impacted by a proposed project.
- c. Mailed 45 days in advance for section 8.4 (Variances) requests to all lot owners whose property lies within 300 feet of a proposed variance.
- d. All notifications of public hearings are to be posted 25 days in advance of the hearing on the reader board outside the BBVCC office.

8.4.3.2 PUBLIC HEARING DETERMINATIONS

The ACC conducts the public hearing, at which time all interested BBVCC members may present their views on the application to the ACC. Following the hearing, the ACC deliberates and makes the following determinations:

- a. For variances: Either disapproves the application or recommends approval to the BBVCC Board of Directors. Any subsequent BBVCC board decision on either an ACC disapproval appeal or an ACC recommendation for approval is sent in writing by the BBVCC manager to the applicant.
- b. For all non-variance hearings, the ACC approves or disapproves the request.

8.4.4 APPLICATION FOR VARIANCE

- a. For section 5.7.3 (Detached Garage/Detached Workshop), 8.4.2 (Allowable Height Variance) and 5.8.2 (Golf Ball Screening), applicants submit a project application per section 3.
- b. For section 8.4 (Variances), applicants may submit either a complete final project application per section 3 or, to save expenses, the applicant may submit one copy of each of the following:
 - 1. Applicable ACC Project Application
 - 2. AR&R Variance Application
 - 3. Preliminary design documents that show the scope of the proposed structure(s) to which the variance applies. These documents must include dimensions, elevation, sectional drawings and height.
 - 4. A site plan that shows the location and dimensions of all structures on the lot including the proposed structure(s) to which the variance request applies.
 - 5. Documentation or letter of explanation supporting applicant's request.

If variance approval is granted based on the above section 8.4.4b, the applicant must follow up with a complete project application per section 3. This complete application will undergo normal ACC project review procedures but will not revisit the approved variance decision.