

The Views of Asheville Homeowners Association Policy #1: Landscaping Guidelines

References:

A. Declaration of Covenants, Conditions, and Restrictions for the Pinnacle Phase 3.

1. g. “Common elements” shall mean all property included within the Development Area which is not part of a lot and not reserved by the Developer, whether for construction of garages or otherwise.

10. Easements. Easements for installation and maintenance of utilities and drainage facilities and for the common retaining wall between lots are reserved five (5) feet in width along the side lot lines of each lot and ten (10) feet in width along the front and rear lot lines of each lot and within the roads and road rights-of-way shown on said plat. Such utilities shall include, but not be limited to, lines for water, sewer, electricity, natural gas, telephone and cable television. Developer may, without the consent or joinder of any lot owner or any other person, execute an easement for the installation and maintenance of such utilities within such areas to any appropriate company or governmental authority. Additional drainage easements, water and sewer easements and utility easements are reserved to Developer, its successors and assigns, which easements are more particularly shown and delineated on said above mentioned plat which plat is hereby incorporated by reference and made a part hereof for a more particular description of such easements and rights-of-way. Within these easements, no structure, planting or other material shall be placed or permitted to remain which might interfere with the installation or maintenance of utilities or which may change the direction or flow of water or obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot except for those improvements for which a public authority or utility company is responsible. Neither Developer or utility company using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees or servants to the grass, shrubbery, trees, flowers or other property of the owner situated on the land covered by these easements.

23. Native Growth. It shall be the obligation of the lot owner to preserve, so far as it is practicable, the native appearance of each lot within the Subdivision. It is the intention hereof that large trees shall be allowed to exist on all lots and that plantings and landscaping be provided so that each lot shall be maintained in such a way as to conform with its natural surroundings, except that trees may be removed by Developer or its designee to enhance views.

24. Exterior Maintenance. The exterior maintenance of each lot, including the maintenance of the trees, shrubs, grass, sidewalks, buildings and improvements shall be the responsibility of each individual lot owner unless the Association arranges for such maintenance. Each individual lot owner shall properly maintain ..., the mowing, trimming, pruning and general care of trees, shrubs and other landscaping items.

B. Asheville Code of Ordinances: Chapter 7 Art. XI Sec. 7-11-3-f of Part II

<http://library.municode.com/index.aspx?clientID=12499&stateID=33&statename=North%20Carolina>

C. NC invasive species: <http://www.ncsu.edu/goingnative/howto/mapping/invexse/index.html>

Background:

1. **Purpose:** To provide clarifications and necessary guidance to the landscaping requirements in the *Declaration of Covenants, Conditions and Restrictions for the Pinnacle Phase 3 (CCR)*.
2. **Background:** After the original hillside clearing when our development was started in 1996, the only large trees remaining on the mountain side were the few large mature hardwoods that are seen today. The rest of the hillside was stripped to bare earth, highly subject to erosion, with only a few patches of small trees and shrubs. Remedial action required by the City of Asheville at that time resulted in the small hardwoods planted on the shoulders of Distant View Drive (mostly Pin Oaks, which have a mature height of ~70' but are very slow growing), and a number of Norway Spruce and Hemlocks, some in the right-of-way and others within what was originally expected to be common area. These "required" trees are covered by the City of Asheville Code of Ordinances. All other trees on the hill are considered volunteers, sprouted from seed, or were planted by homeowners in an effort to make the hillside more attractive or to help stem erosion.
3. **Mature Hardwoods:** A survey of mature hardwoods was conducted in 2013 (See Appendix 1) to specifically identify these trees for evaluation. The inventory resulted in identification of seven remaining mature hardwoods on the common area that could affect a viewscape. Subsequent to the 2013 HOA meeting on January 31, 2014, one tree (identified in the survey as tree #4) was discovered to not be within the common area, reducing the total number of trees of HOA concern to six. Other mature hardwoods exist but they are in the 20' buffer zone that surrounds the development. These trees do not affect any viewscape and were not enumerated in the survey. Large mature trees within a private lot were also not included in the survey. Of the six trees within the common area, one tree appears to have some decay in the root crown and was identified for additional testing. No soil instability was observed in the vicinity of the mature hardwoods, but the recommendation was that the healthy trees should be retained as the best assurance of soil stability on steep slopes.
4. **Preservation of Views:** The view from any property in The Views of Asheville is why our members bought into the development. However, all views are not equal nor can they be. Different elevations, different orientations, different viewsapes all contribute to the differences. No view can be perfect and interpretation of quality of a view is highly subjective.

HOA Landscaping Policy:

5. **Policy Regarding Common Areas as they Relate to Homeowners' Views:** The purpose of these Guidelines is to help preserve the view that was present when a homeowner purchased his/her property.
 - a. Any subsequent growth of a tree or shrub in the common area that impinges on an owner's view may be eligible for removal, except for the group of hardwoods inventoried in 2013 (described above).
 - b. The six mature hardwoods in the common area identified in the 2013 survey were present in the viewscape of all homes or lots in The Views of Asheville when the properties were transferred to private ownership. The preservation of these large mature hardwoods in the common area is of interest to all homeowners when compared to "improving" a view from any particular lot and will not be removed except under exceptional circumstances, including but not limited to, severe damage, disease or rot.
 - c. Each individual homeowner has the final decision on retention or removal of trees and shrubs on their own property for preservation of a view.

6. **Landscaping within Lot Boundaries Guidelines**
 - a. Removal and/or pruning of any trees or shrubbery on a homeowner's lot may be accomplished at the discretion of the individual homeowner.
 - b. Property Lines: It is the responsibility of the homeowner performing the work on their lot to verify the location of their property lines prior to any removal or pruning activity. Note that your title package should include a plat and a description of your property. If the work will be within five feet (5') of your property line, the adjacent property owner (lot owner or HOA Board if HOA common land) must be notified. No work should be started as long as there is some question as to the location of property lines. Before any work is started the resolution to disputes on the location of a property line shall be documented to the satisfaction of the Board or adjacent property owner, whichever applies. Any expenses related to properly establishing the property line shall be borne by the homeowner planning the work.
 - c. Access through Common Area or Damage to Common Area: Access through the common area sometimes may be necessary to accomplish work on a homeowner's lot. Such access shall not be denied but requests must be submitted to the Board in writing. Associated damages to the common area should be anticipated in the request. Remedial repairs in the common area are expected to be difficult to determine prior to the work being performed, but a range of options must be outlined and agreed upon before commencement of the work. When discussing prospective damages and repairs it would be appropriate to involve the arborist who will perform the work. The Board shall make final determination of the scope and adequacy of accomplished repairs within the common area. The procedures in this section are limited to major landscaping work that may reasonably be expected to result in damage to the common area. Routine access through the common area to AC units, foundation plantings, downspouts and drainage lines, sewer cleanouts, cable and telephone connections, and crawl spaces, including access by landscaping contractors to mow lawns, does not require permission.

- d. Expense for Work: The homeowner is solely responsible for the expense of all work on their property and for any repairs necessary in the common area.
- e. Conflicts Between Homeowners Over View Obstructions on One Homeowner's Property: A tree on one homeowner's lot may grow to obstruct another homeowner's view. The Board will not become involved in such conflicts. The homeowner on whose property the tree stands has the final say on whether the view obstruction is removed or not. Homeowners are encouraged to address this problem while the trees are still immature so that removal can be accomplished with relatively little problem. Replacement of a view threat with a different species whose shorter mature growth will not block any view is encouraged.
- f. Conflicts Between Homeowners Over Perceived Dangers or Hazards: If one homeowner feels that a tree on another homeowner's property may be a hazard, they are encouraged to work together to resolve the problem. The Board will not become involved in such conflicts.
- g. Good Neighbor Policy: A voluntary "good neighbor policy" would ensure that all neighbor's opinions are considered before removal of any large mature trees on a lot, since removal might affect other properties or views.

7. Landscaping within easements or rights-of-way.

- a. Definitions
 - i. Easement: A right of use over the property of another. Common examples of easements include the right of a property owner who has no street front to use a particular segment of a neighbor's land to gain access to the road, as well as the right of a municipal corporation to run a sewer line across a strip of an owner's land, which is frequently called a right of way.
 - ii. Easement and Right-of-way: The main difference between a front or side easement and a street right-of-way easement is that the property owner owns the land in the easement on their lot while here within The Views of Asheville, the HOA owns the land in the street right-of-way. Easements for installation and maintenance of utilities and drainage facilities and for the common retaining wall between lots are reserved five (5) feet in width along the side lot lines of each lot and ten (10) feet in width along the front and rear lot lines of each lot and within the roads and road rights-of-way.
 - iii. The right-of-way for Distant View Drive (DVD) is 50 feet wide or 25 feet either side of the center line of the street. Distant View Drive is in general 22 feet wide (outside of curb-to-outside of curb) so this produces a 14-foot wide right-of-way outside of the curb on either shoulder.
 - iv. Front Property Line. Total width of front easement (10') plus right-of-way (14') is then 24 feet as measured from the curb.
- b. Discussion: In reality virtually every lot has landscaping improvements in their front easement or in the right-of-way easement adjacent to their front property line. Some improvements have been planted by the current owner, and some were planted by a previous owner. Some "improvements" are really volunteer shrubs or small trees. Either volunteer or planted improvements are in some cases across the street in the opposite right-of-way.

- c. Landscaping within easements or rights-of-way: The CCR prohibit structures or plantings in easements or rights-of-way which might interfere with the installation or maintenance of utilities or which may change the direction or flow of water or obstruct or retard the flow of water through drainage channels in the easements. Only time will tell if any improvements will interfere with maintenance or water flow. Owners who have landscaping within those areas should be aware that any utility company that may have to damage or remove plants or shrubs is not liable for any damage done by the utility. In addition, utilities are under no compulsion to return such areas to the pre-existing level of landscaping. Under the original CCR the owner is responsible for maintenance within their front easement.
 - d. Maintenance of Right-of-Way Easement: To resolve an ambiguity as to responsibility for maintenance of right of way areas, HOA guidance is that all improvements in the easement area of the right-of-way between a property line and the curb shall be maintained continuously by the owner of the adjacent lot except for those improvements for which a public authority or utility company is responsible. Improvements in the right-of-way not located adjacent to a homeowner's property line are the responsibility of the HOA.
 - e. City of Asheville: Most of the trees growing in the DVD right-of-way were planted by one of our three (3) developers at the direction of the Asheville City Planner and fall under tree pruning standards in the Asheville Code of Ordinances, except that pine trees may be crown reduced if approved by a certified arborist. Volunteer shrubs, if any, and trees or bushes planted by homeowners in the right-of-way are not considered subject to the city code.
 - f. Yard waste: The city schedules pick-up of yard clippings and yard waste on a regular basis. Homeowners are encouraged to call the city to determine the schedule and should strive to place yard waste in bags or in as neat and compact a pile as possible. Piles of yard waste should not extend past the curb into the street so as to obstruct traffic.
8. **Landscaping within the common area or "common elements:"**
- a. Landscaping within the common area or "common elements": The Board of Directors of the Homeowners Association (HOA) is considered a lot owner under the conditions and obligations imposed by Sections 10 and 23 of the CCR. As such, the HOA intention has been to preserve the native appearance of much of the common area. The Board is responsible to the homeowners for the management and enforcement of these guidelines and regulations.
 - b. Planting in common areas: Planting or landscaping in the common areas by individual homeowners is not addressed in the CCR but is permitted under these guidelines. Subsequent to the effective date of this policy, any additional plantings by homeowners in the HOA common areas require approval of the Board. This is to avoid the HOA possibly inheriting such responsibility upon change of ownership. Appendix 2, Agreements between the HOA and Homeowners for landscaping on HOA common land (1) documents the specifics of existing voluntary agreements on plantings within the common area and (2) provides guidance on additional plantings within the scope of those agreements. These agreements will be transferred to subsequent owners, as the HOA will not assume the cost of maintaining landscaping within the common area previously assumed by a homeowner.

- c. The HOA will:
- i. Ensure maintenance of parts of the DVD right-of-way that are not maintained by owners except those areas that are considered too steep or precipitous to mow safely or areas that the board feels may be subject to erosion if cut or cleared.
 - ii. Routinely maintain storm water detention basins and channels. This includes periodically removing “volunteer” trees or shrubs that may take root in those areas and removing silt accumulation.
 - iii. Remove or treat invasive plant species. What determines an invasive species is defined in <http://www.ncsu.edu/goingnative/howto/mapping/invxse/index.html>
 - iv. Treat for diseases or pests that threaten plants or trees within the Views, such as for the Hemlock Woolly Adelgid. To ensure effective treatment the HOA will include in its treatment program (after coordinating with lot owners) trees or plants within lot boundaries, easements and rights-of-way.
 - v. Remove dead or dying trees of any species of any size that are considered a danger to property or a threat to safety.
 - vi. Prune and/or maintain all large mature hardwoods as necessary to ensure longevity and safety.
 - vii. Annual work: The Landscape Committee will work with the HOA contracted landscaper each spring to determine what tree or shrub treatments or removals are necessary. All such scheduled clearances and removals will be communicated to all homeowners via e-mail, providing an opportunity for comments and questions prior to the work being accomplished.

9. **View Obstruction and Preservation**

- a. Large Mature Hardwood Trees: In accordance with the principles established in **Policy Regarding Common Areas as they Relate to Homeowners’ Views**, large mature hardwood trees (Oak, Hickory, Ash, Locust etc.) identified in the 2013 inventory in the common area will not be removed to enhance views.
- b. Property Lines: It is the responsibility of the homeowner performing the work to verify the location of their property lines prior to any removal or pruning activity. Note that your title package should include a plat and a description of your property. No work should be started as long as there is any question as to the location of property lines. Before any work is started the resolution to disputes on the location of a property line shall be documented to the satisfaction of the Board. Any expenses related to properly establishing the property line shall be borne by the homeowner planning the work.
- c. Large Maturing Trees or Small Trees of Any Species: Any trees or any shrubs of any size other than the large mature hardwoods identified in the 2013 inventory may be removed if a homeowner feels that such tree or shrub in the common area is obstructing the view from their home, or feels there is potential obstruction if allowed to mature.
- d. Procedures: The homeowner must contact the Board in writing with a request for whatever remedial or preventative action they feel is required, from pruning a tree to removal. Crown reduction is allowed if recommended by a certified arborist.

- i. Remedial repairs may be required. The extent of any remedial action will normally be dependent on the location of the work in the common area. Work in areas not observable from the street may be limited to erosion prevention or may be negotiated through consultation with neighbors affected by the work. Work in areas observable from the street or in landscaped areas may include clearing of all debris and planting of a different species whose shorter mature growth will not block any view. The Board of Directors shall make the final determination as to remedial requirements.
 - ii. Prior to a decision by the Board of Directors, a description of the prospective work will be communicated to all homeowners via e-mail, providing an opportunity for comments and questions.
- e. Conflicts between Homeowners over view obstructions in the Common Area: A tree in the common area may grow to obstruct a homeowner's view. Another homeowner may object to the removal. This is a very subjective decision but the principles established in **Policy Regarding Common Areas as they Relate to Homeowners' Views** shall govern. The board will have final say on the work to be done. Homeowners are encouraged to address this problem while the trees are still immature so that removal can be accomplished with relatively little problem. Replacement of a view threat with a different species whose shorter mature growth will not block any view is encouraged.
- f. Expense for Removing a View Obstruction: The homeowner requesting the work is responsible for the cost of pruning or removal as well as any remedial replanting.
- g. Private Driveways Located on Easements over Common Area: The owners of driveways on a common area easement are responsible for any landscaping within the easement but must coordinate any work with the Board through written notification.
- h. Contractors: Homeowners may use any licensed and insured arborist or landscaper they choose. The board will not contract for the work. Adjacent homeowners are encouraged to coordinate their individual requirements to minimize repeated intrusions into the common area by multiple contractors with subsequent confusion as to responsibility for remedial work.
- i. Small trees or saplings: Any work to remove small trees or saplings may be performed by a homeowner, once permission is received, without hiring a contractor. The worksite will be inspected by the Landscape Committee to ensure quality of work and removal of all debris.
- j. Good Neighbor Policy: The Good Neighbor Policy applies also to Board management of common areas.
- k. General improvements: Any suggestions for minor general or specific improvements in the common areas, not related to view preservation, should be communicated to the Board for evaluation. New plantings requiring regular maintenance are not encouraged per this section above. If approved, payment for work performed will be determined between the HOA and the homeowner requesting the work.
- l. Invasive Vines: Owners may remove invasive vines (such as bittersweet, kudzu, etc.) within the HOA common land adjacent to their property without a formal request to the HOA Board of Directors as long as the only actions taken are the removal of the invasive vines and any dead tree limbs associated with the vines.

Appendix 1: Findings and Recommendations from Site Inspection of Tree and Soil Issues, The Views of Asheville, 23 Oct 2013

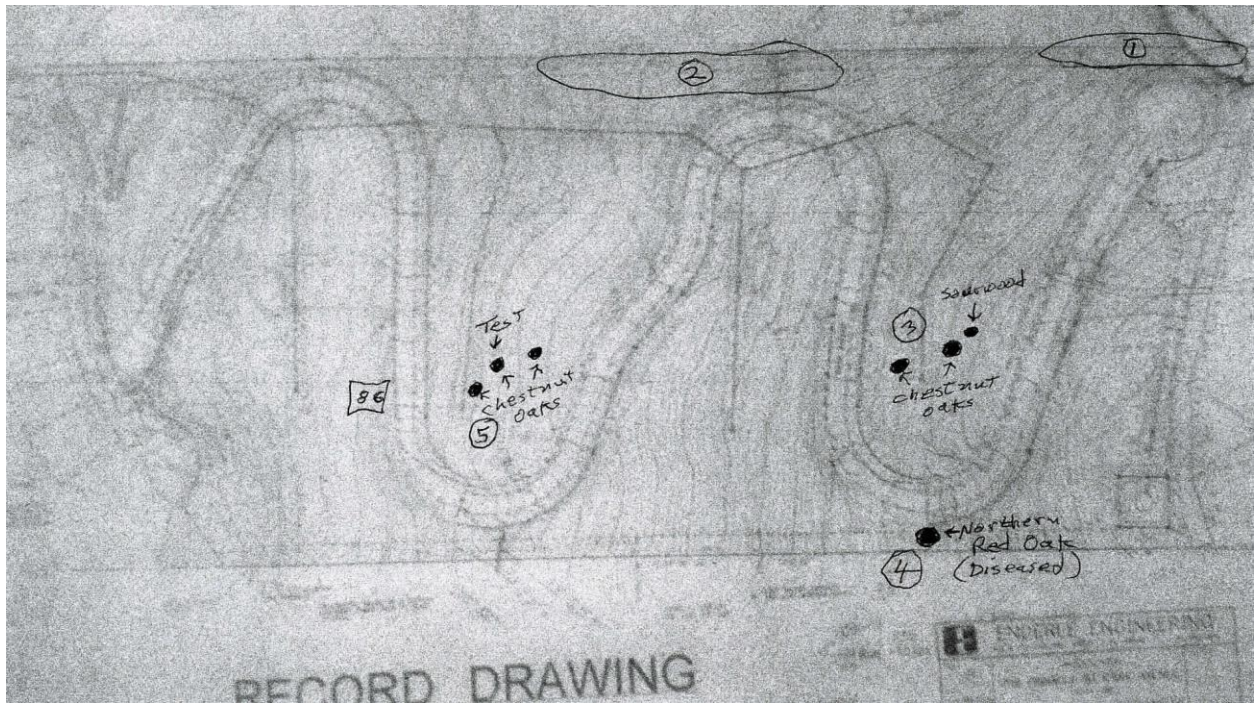
Our inspection showed that there are no trees of concern regarding the wooded areas (#'s 1 and 2 on attached map) near the property boundary next to the cul-de-sac at the top of the hill, or adjacent to the second hairpin bend in the road downhill from the cul-de-sac.

Of the three trees located in the common area within the first downhill hairpin curve (# 3), all look healthy and contribute to overall stability of soil. The crown of the small sourwood is lopsided due to its close proximity to one of the chestnut oaks. Its major benefits are in providing attractive fall color, and producing flowers that attract pollinating insects. Due to its small size, this tree does not contribute greatly to these values, so its removal would not create any significant negative impacts. Due to interference from the adjacent chestnut oak, it is not likely that this tree will thrive and develop a desirable shape or significant size. The Northern Red Oak across the road from this hairpin turn (# 4) is very old and in a state of advanced decay. It should be removed to prevent the possibility of eventually falling across the road possibly causing damage or injury.

Of the three chestnut oaks we looked at within the third hairpin turn downhill from the cul-de-sac (and nearest to your house (#5), two appear to be healthy. The one in the middle, however, shows some decay around the root crown at the base of the trunk. This tree may remain healthy for many years, or it may have significant weakness in the woody tissues within the root crown and/or the trunk and fall much sooner. I recommend that you have an ISA (International Society of Arborists)-certified Arborist check the viability of the root crown and trunk through testing with a Resistometer. This is a thin drill which prints a graph that displays the live and dead tissues within those structures. The Arborist can then advise you on the health of the tree and its risk potential.

Regarding any soil instability associated with the trees we surveyed, I did not see any erosion, sloughing, or fracturing of rock or soil that appeared to be of concern. The most vulnerable area of soil instability is the area where a tree was removed (based on my conversation with you) in the vicinity of the chestnut oaks nearest your property. It appears that Best Management Practices were followed and that area should remain stable until ground cover becomes established. I recommend monitoring this area until that time and address any erosion problem immediately should any appear. I definitely recommend leaving healthy trees wherever and whenever possible as they are the best assurance of soil stability on steep slopes such as those found in the Distant View area.

***Disclaimer:** The information provided about the trees above should be considered only as a best guess, based on a very basic visual assessment provided by Bob Gale at ground level. A more accurate assessment can be obtained by having a certified arborist give a highly-detailed inspection of the root crown, trunk, and canopy (which would include climbing the trees for an aerial inspection). Even so, it is not possible to state with 100% certainty that a tree will remain standing for a specific period of time. In addition, natural weather events may cause trees to lose limbs or to fall at any given time, causing damage to property or even loss of life. Bob Gale offers the above assessment based on many years of experience with specimen trees in urban and suburban settings and in natural forest ecology, but makes no claim that the above trees will remain hazard-free in the near or distant future.*



Positions shown are approximate and not to scale

Appendix 2: Agreements between the HOA and Homeowners for landscaping on HOA common land

1. 76 DVD: Homeowner is responsible for the regular maintenance and upkeep of the grass, shrubs, and trees on the HOA common land fifteen feet to either side of the driveway.
2. 78 DVD: Homeowner is responsible for the regular maintenance and upkeep of the grass, shrubs, and trees on the HOA common land between Lot 78 and Distant View Drive to the north of Lot 78.
3. 86 DVD: Homeowner is responsible for the regular maintenance and upkeep of the shrubs on HOA common land across from their lot on the opposite side of Distant View Drive.
4. 95 DVD: Homeowner is responsible for the regular maintenance and upkeep of the grass and trees on the sloped area and the shrub bed on the HOA common land between the shared driveway and Distant View Drive to the east of Lot 95.
5. 97 DVD: Homeowner is responsible for the regular maintenance and upkeep of the grass along the shared driveway and allowed to perform regular maintenance and upkeep on the shrubs and trees on the HOA common land between the shared driveway and Distant View Drive east of Lot 97.
6. 98/100 DVD: Homeowners are responsible for the regular maintenance and upkeep of the retaining wall to the east of the shared driveway, the grass and shrubs on the steep slope above and to the east of the retaining wall, the storm water drainage system along the shared driveway, and the two shrub beds on HOA common land adjacent to the beginning of the shared driveway.
7. 99 DVD: Homeowner is responsible for the regular maintenance and upkeep of the grass, shrubs, and trees on the HOA common land thirty five feet to the east of Lot 99 and the cherry laurel shrubs and holly trees along the western edge of Distant View Drive east of Lot 99 between the two stands of evergreen trees, and allowed to perform regular maintenance and upkeep of the shrubs and trees on HOA common land thirty five to sixty feet to the east of Lot 99.
8. 102 DVD: Homeowner is responsible for the regular maintenance and upkeep of the grass, shrubs, and trees on the HOA common land between Lot 102 and Distant View Drive to the north of Lot 102 and the three crepe myrtle trees and flowers on the HOA common land between Lot 102 and Distant View Drive to the northwest of Lot 102.
9. 111 DVD: Homeowner is responsible for the regular maintenance and upkeep of the grass, shrubs, and trees on the HOA common land between Lot 111 and Distant View Drive to the south of Lot 111.

NOTE: Within the HOA common areas described above, the planting of replacement grass, flowers, shrubs, or trees of the same existing type is also allowed; however, the planting of new (or new types) of grass, shrubs, flowers, or trees requires approval by the HOA Board of Directors.