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REFERENCE GUIDE - ARC APPLICATIONS OF PROVISIONS OF THE AMENDED DECLARATION

The original Declaration of Covenants, Conditions, and Restrictions (CCRs) for Pine Bay was dated October 16, 1990, and it has undergone multiple Amendments, with the most recent being dated January 31, 2025. The Pine Bay Architectural Review Committee (ARC) is charged with the enhancement and preservation of the values of all properties in the Community through application of the provisions of Article IV of the Amended Declaration that pertain to Construction Activities¹, and has the authority to withhold its approval of any proposed new improvements or proposed alterations to any existing improvements that it deems are not suitable or desirable in its reasonable judgment. ARC will take into consideration including, but not limited to, (a) whether the proposed work would be in harmony with the existing aesthetics of the Community, (b) the likely impact of proposed work on neighboring properties in the Community; (c) whether design, materials and quality of the proposed work would meet the high residential standards of the Community; (d) conformity with ARC's understanding of the restrictions set forth in the Amended Declaration; (e) the maintenance and potential appreciation in property values in the Community; and (f) the likely impact of proposed work upon such other factors that in its reasonable judgment affect the desirability or suitability of proposed Improvements or proposed alterations to existing Improvements in the Community.

ARC has found that over time certain provisions of Article IV have been applied in ways that should be communicated to all Owners and is therefore setting them out in this Reference Guide so that current and future Owners will have access to them in considering Construction Activities.

I. Roof Pitch

Excerpt from the Amended Declaration, Article IV, Section 9: “The roof pitch of any dwelling, garage or attached accessory outbuilding shall be no less than eight (8) inches vertical rise per twelve (12) inches horizontal.”

¹ <https://pinebay.net/wp-content/uploads/Construction-Activities-2024.pdf>

Background: According to ARC historians, the roof pitch specification was specifically included in the CCR's by the original developer as they wanted an upscale neighborhood look and did not want residences that bore any resemblance to a modular home. The intent of this restriction was to apply only to the main roof structure of the Dwelling or any Attached Outbuilding. It was not meant to apply to the roof structure of auxiliary features such as dormers, porches, porticos and connecting elements of compound roofs if the main structure's roof of the Dwelling or any Attached Outbuilding was in compliance. In fact, numerous existing houses in the Community, built over many years, include such auxiliary features that incorporate roofs that do not meet the stated roof pitch restriction.

Application: Based upon the intended purpose for this restriction imposed by the developer and original Declarant, and ARC's prior approvals and precedents, the minimum 8"/12" slope restriction applies only to the main roof of a Dwelling and of any Attached Outbuilding such as a garage. Where a Dwelling or any Attached Outbuilding has a roof structure of auxiliary features such as dormers, porches, porticos and connecting elements of compound roofs, and the proposed roof pitch of these elements is judged by ARC to aesthetically blend with the overall style and appearance of the Dwelling or Attached Outbuilding, such roof elements need not comply with the minimum 8"/12" slope restriction. For example, it is not practicable to apply the restriction to a one-level porch, as a porch with 12' of depth would require an 8' roof rise taking it up vertically a whole floor level and blocking the whole residential story above it (and making it impossible to have windows therein).

II. Unimproved Average Grade of a Lot

Excerpt from the Amended Declaration, Article IV Section 9 includes: "No structure erected on any Lot may exceed an absolute height of thirty-five (35) feet, measured from the unimproved average grade of that Lot."

Background: In fixing the maximum height of a Dwelling, it was the intent of the developer and original Declarant to preserve in the Community a level of uniformity and scale as perceived from the street (Community) and adjacent properties. It was thought this approach would result in Dwellings and any Attached Outbuildings that would be relatively uniform in height and

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comparable in scale to other Dwellings and Attached Outbuildings in Pine Bay.

Several Lots in the Pine Bay Subdivision incorporate tidal wetlands; these tidal wetlands come with Federal and/or state building restrictions. Furthermore, these tidal wetlands are quite low-lying, which has the effect of materially lowering the grade of the Lot at which the “unimproved average grade” of the Lot is to be calculated. If this Lot were then to be developed with a Dwelling or an Attached Outbuilding, to the height of 35 feet, the grade at which the proposed Dwelling or Attached Outbuilding would be built would be significantly below the grade of the adjacent Pine Bay roadway and adjoining Lots, and might subject the Dwelling or Attached Outbuilding to water infiltration from Pine Bay Common Areas, including tidal wetlands and roadways adjacent to the Lot, and from adjoining Lots.

Application: Where a Lot is encumbered by Federal and/or state wetlands and is thus subject to building restrictions, making a portion of the Lot unbuildable as the site of a Dwelling, ARC finds the phrase "unimproved average grade of a Lot" as used in Article IV, Section 9 to mean the unimproved average grade of that portion of the Lot not encumbered by any Federal and/or state wetlands building restrictions; *provided that* when the so calculated unimproved average grade of that Lot results in an unimproved average grade that is higher than the elevation of the crown of the roadway that is fixed as the front of that Lot, then the unimproved average grade shall be deemed to be the elevation of the crown of the roadway at the front of that Lot. In this case, that roadway elevation shall be used in fixing the height of the proposed Dwelling or any Attached Outbuilding on the Lot under Article IV, Section 9. The intent of the Application is to create a level playing field for current and future Owners of Lots impacted by wetlands restrictions so they may build Dwellings consistent in size, style, and value with other Dwellings in Pine Bay located on Lots without wetlands restrictions. This Application assures that exclusion of unbuildable wetlands from the height calculation does not result in a Dwelling on the Lot exceeding 35 feet in height.

III. Permissible Fence Height

Amended Declaration, Article IV, Section 12, Part a: “No wall or fence of any height shall be constructed upon any Lot until the height, design and approximate location thereof have been approved in writing by the Association or its successors or assigns through the ARC. No boundary fence or wall shall be constructed to a height of more than four (4) feet; however, the fences enclosing pools may be constructed to a height of up to five (5) feet if approved by the ARC. No fence or wall shall be erected or permitted that extends street ward beyond the front corners of the Lot’s main Dwelling structure. Fences are allowed upon ARC approval to the sides and rear of the main Dwelling structure.”

Background: In the case of the Lots fronting on non-Pine Bay community property (i.e., Spring Lake, Country Manor, Seabreeze and DE park lands), ARC has for many years approved the installation of a fence line along these non-Pine Bay community properties of a height taller than four (4) feet, to provide privacy and security for the Lot from these non-Pine Bay community properties, and ARC is continuing to do so. An additional factor noted (i.e., the downward slope of the rear Lot), combined with the other factors noted, has in some cases warranted the use of a fence line higher than four (4) feet.

Application: Where a proposed fence bounds a Lot in Pine Bay adjacent to non-Pine Bay community property, then ARC may approve a fence height of up to six (6) feet measured from the grade of the Lot where the fence will be constructed for fence segments along the perimeter of the Lot fronting on non-Pine Bay community property, subject to approval of ARC as to the location, design and materials of that fencing proposed to be erected. The purpose for this Application is to permit an Owner to install portions of a fence line designed for privacy and security from adjoining non-Pine Bay community property only.

IV. Screening of Above Ground Fuel Tanks - Article IV, Section 23

Excerpt from the Amended Declaration, Article IV, Section 23. “Above ground fuel tanks” shall be properly screened where installed above ground.

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Background: Section 23 states that any above ground fuel tanks shall be screened from view but does not define how to provide proper screening from view. ARC has been flexible in the past, deeming that an opaque enclosure is not necessarily the only type of screening acceptable as providing proper screening of a proposed above ground fuel tank, considering its proposed location.

Application: ARC has historically approved various types of screening where a fuel tank is to be installed, provided that the screening extends above the height of the fuel tank, obscures the tank's view from other Pine Bay neighbors of the Lot or Pine Bay Common Area, and is either (a) landscaping that provides coverage of the fuel tank, (b) opaque enclosures (whether of wood or other type of material) and (c) lattice work screening. ARC is flexible, approving proper screening considering the proposed location. For instance, should a proposed fuel tank be in the direct view from a Pine Bay Common Area or an adjacent Pine Bay neighbor, then a screening that is opaquer might be preferred. Where a fuel tank can only be viewed from a non-Pine Bay community property, then a less opaque screen might be acceptable.

V. Screening of Garbage, Recycling and Yard Waste Receptacles - Article IV, Section 15.

Excerpt from the Amended Declaration, Article IV, Section 15: Garbage, recycling and yard waste receptacles shall be in a screened or walled area “not generally visible from” a Pine Bay Common Area, based upon reasonable standards established by ARC.

Background: ARC has not previously adopted reasonable standards to address the location and screening of these types of receptacles but does so with this Application document. as required by Section 15.

Application: Garbage, recycling and yard waste receptacles shall be placed so as not to be generally visible from a Pine Bay Common Area or from a neighboring Lot. “Generally visible” shall mean a condition readily observable by a person standing, walking or traveling on a Pine Bay Common Area, such as a roadway, or by an adjacent neighbor in Pine Bay. Screening for receptacles may be in the form of plantings, a wall or lattice work fencing, provided that screening in the form of a wall permanently attached to the

ground is not permitted in any setback area. Any screening installed shall rise to at least the height of the receptacle being screened. The design, including color, shall be compatible with the design of the adjacent Dwelling.

VI. The Terms “Improvement”, “Structure”, “Building”, “Dwelling” and “Attached Outbuilding” - Amended Declaration and especially in Article IV.

Amended Declaration, Especially in Various Sections of Article IV: Several terms are used in the Amended Declaration and especially in multiple sections of Article IV, without definition, in a manner that creates inconsistent application of provisions of the Amended Declaration (e.g., use of the term “structure”, where in some cases it could refer to every improvement physically attached to a Lot in a permanent/semi-permanent manner, versus just referring only to what would be considered a “building”).

Background: The Amended Declaration uses the terms “improvements”, “structure(s)”, “building(s)” and “attached outbuilding” indiscriminately throughout and particularly in Article IV, often using multiple terms to refer to the same subject or having a term imply various, but potentially conflicting definitions. This inconsistent use of terminology has created confusion for ARC in applying the stated restrictions. ARC therefore in 2021, after analysis and discussion, developed and adopted a Matrix of Terminology to show how these terms would be used by ARC to apply the restrictions of Article IV under its jurisdiction. The Matrix of Terminology can be found in the ARC section of the Pine Bay website.

Application: Without using the Matrix of Terminology to bring some sense of consistency in the Application of various sections of Article IV, ARC found itself at times unable to determine whether an application for Work on a Lot was compliant with the applicable restrictions of the Amended Declaration or not.