

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

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Section 16. Walls, Fences and Hedges. All walls, fences, planters and hedges shall be controlled strictly for compliance with this Declaration and architectural standards established by the Declarant or the ARC.

Perimeter fencing on all Lots shall be maintained to a fence standard equivalent to original construction and all fencing must be consistent with this Declaration and architectural standards established by Declarant or the ARC.

Fences of wire or chain link construction are prohibited on Lots, and the design and materials of all fences shall be approved by the ARC prior to construction pursuant to the approval requirements of Article VI, Section 1, of this Declaration.

(a) Subject to the provisions of Article VI, Section 1 and 5, Section 6 of this Article and Article XII, Section 8, the location and materials of walls, fences, planters, and hedges on Standard Lots, Estate Lots and Patio Lots shall be further determined by Supplementary Declaration(s) of Covenants, Conditions and Restrictions or Har-Ber Meadows Design Guidelines.

(b) Subject to the provisions of Article VI, Section 1 and 5, Section 6 of this Article and Article XII, Section 8, on a Village Home Lot no wall, fence, planter, or hedge shall be erected or maintained nearer to the front building setback line. No rear fence, wall, or hedge and no side fence, wall, or hedge shall be more than six feet high. The ownership of any wall, fence, or hedge erected as protective screening on a Village Home Lot by Declarant, its agents or assigns, or Builder shall pass with title to the Village Home Lot, and it shall be the Owner's responsibility to thereafter maintain said protective screening.

Declarant, at its sole discretion, is hereby permitted to grant deviations in height, location, and construction materials related to fences and walls which in its judgment will result in a more beneficial use.

ISSUE #1

Section 17. Antennae and Satellite Dishes. Subject to Section 14 of this Article, no electronic, radio, television or any other type of antenna for receiving or transmitting visual or sound communications or any electronic antennae of any kind shall be constructed, erected, placed or permitted to remain on any Lot or any residential dwelling or outbuilding or any other structure thereon.

No electronic, radio, or television satellite dish or any other type of receiving or transmitting dish or any other similar equipment is permitted on any Lot unless it is erected, placed or mounted in such a manner that is not visible from a street, adjacent lot or land.

Sec. 14 (p. 30): Blanket ban, sub-1-meter size cap, or prior approval requirement on satellite dishes or antennas is preempted by federal FCC OTARD regulations.

Statutory / Legal Reference: 47 C.F.R. § 1.4000 (FCC OTARD Rule)

Statutory Comparison: The FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, as expanded by the 2021 OTARD Report and Order, FCC 21-10) preempts community association restrictions that prohibit, charge application fees for, require prior architectural approval for, or impose sub-1-meter (39.37-inch) diameter caps on the installation, maintenance, or use of television broadcast antennas, direct-broadcast satellite dishes 1 meter or less in diameter, and fixed wireless broadband antennas (including hub and relay antennas) situated on property within the exclusive use or control of the owner/tenant.

CURRENT WORDING IN DOCUMENT:

of this Article, no electronic, radio, television or any other type of antenna for receiving or transmitting visual or sound communications or any electronic antennae of any kind shall be constructed, erected, placed or permitted to remain on any Lot or any residential dwelling or outbuilding or any other structure thereon.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that this restriction shall not prohibit or require prior approval for any owner or occupant installing an antenna, fixed wireless broadband hub/relay device, or satellite dish of one meter (39.37 inches) or less in diameter within areas under the owner's or occupant's exclusive use or control, in accordance with FCC OTARD regulations (47 C.F.R. § 1.4000).