**Process for Modification of Undeveloped Lots**

**The Settings of Black Mountain**

**Approved by the Board: 9/15/2023**

**Background:**

After meeting with a representative from “Firewise” the following recommendations were made to improve the Firewise status in the community, and to allow for improvement of the appearance of undeveloped property by limited pruning and cutting of trees and shrubs on a lot.  The HOA Board has agreed to these recommendations.

**Policy Statement:**

A large part of the beauty of The Settings community is derived from the mountain forest environment in which we live. The overriding policy in The Settings is to retain the natural look of properties that are not yet and may never be developed. However, in some instances it is desirable to remove dead trees and shrubs, vines, and small volunteer saplings to reduce potential fuel for fires, to improve the growth of desirable trees and bushes, and to improve access to the property. The following guidelines apply to all undeveloped properties in The Settings that have not been approved for clearing for construction related activities, including lots that have been purchased (whether merged or not) by owners of lots where residential construction and landscaping have been accomplished already.

**Guidelines for modification of undeveloped lots:**

* Dead trees should be removed where feasible.  Standing dead tree trunks less than 10 in. in diameter at the base are not a benefit to wildlife, provide fuel for fires, and present a potential fall hazard. They should be cut and removed from the property unless doing so requires the use of heavy equipment that would damage the undergrowth on the lot. Any downed trunks which cannot be removed from the lot should be left lying on the ground, preferably where not visible from the road and adjacent property.
* Vines, especially climbing vines, can be cut and removed. Dead and dying bushes can be cut and must be removed from the lot. **Selective** cutting of live bushes is permitted but extensive removal of large areas of bushes such as rhododendron and mountain laurel is prohibited. Shredding or chipping of cut materials whenever practical can help with the disposal process. The designated side and rear setbacks of a property **may not be thinned of live trees and bushes** in order to maintain separation of lots and privacy. **Running Streams** have a buffer that extends 30 feet horizontally either side as measured from the top of the bank which **may not be disturbed** (see below).
* **Stream Buffer Ordinance**

**The Town of Black Mountain ordinance #O-20-08 states in part:**

**Section 20-382. Stream buffer size**.

Stream buffers shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.

**Section 20-383**

To avoid a loss of effectiveness in protecting streams, the stream buffer shall remain in natural undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken therein except as provided in **Section 20-385**.

Certain uses of land, as specified in **Section 20-385** below, may be permitted within the stream buffer so long as they meet the requirements of that Section and are designed and constructed to minimize the amount of intrusion into the stream buffer and to minimize clearing, grading, erosion and water quality degradation. Nothing herein is intended to preclude the removal of

downed vegetation from the stream bed in order to improve stream flow dynamics. If it is necessary to remove downed or dead vegetation, it should be cut and the root ball left in place to help maintain stability of the shoreline. Nothing herein is intended to [or shall] preclude any activity specifically authorized pursuant to **Section 401 and/or Section 404 of the Clean Water Act.**

**Process for removing trees and shrubs**

* Sapling trees with a diameter less than 6 in. diameter as measured 3 feet above the ground or a circumference of less than 20 in. as measured at the ground may be cut and removed.  **Removal of trees larger than this requires DRB approval and will be subject to fines as outlined below if removed without approval.** In cases where the health of trees greater than 6 in. diameter is in question and removal is desired an analysis by a certified arborist must be obtained and forwarded to DRB before they may be removed.
* Hardwood saplings such as oak and hickory, and understory trees like dogwood, redbud, and sourwood are beneficial to the overall health and beauty of our properties and owners are encouraged to leave some of these saplings intact. A Link to important Native Plants: http://ncwildflower.org/native\_plants/recommendations for suggestions.
* Trees larger than 6 in. diameter which have branches lower than 15 ft. from the ground may be selectively pruned to the 15 ft. height. Lower branches can provide fuel for fires and trimming these branches can improve the view of the lot, access to the lot, and may help prevent the spread of fire. Pruning of any tree above 15 ft. requires DRB permission.
* **Clear cutting, bushhogging, and scraping of** any portion of a lot is strictly prohibited, and will result in the owner being fined and required to replant any area(s) so treated.
* Once the work on a lot is completed, the owner may maintain the property on an ongoing basis in its modified state (eg. by removing brush and new saplings). Permission granted for removal of trees greater than 6 in. diameter is only for those specific trees and does not apply to any future tree removal. Consultation with a certified arborist is recommended as it will help owners develop a maintenance plan to better manage vegetation on their property.

**Lots with existing homes:**

* The above-listed guidelines also apply to lots which already have homes and to additional lots that are purchased by the owner of a developed property whether merged or not.  Owners may continue to prune and clear small undesirable saplings, such as black locust and poplars, so that more desirable trees, such as maples and oaks, have room to grow. Landscaping additions of shrubs and other plantings may be done on an ongoing basis.
* Owners must obtain approval from DRB to remove trees greater than 6 in. diameter as measured 3 ft. from the ground as outlined above.
* Guidelines for maintaining home perimeters are available from the Firewise website.  For example, pine bark mulch provides fuel for fires. It is better to use triple ground hardwood or composted mulch. River rock around the walls of a home provides fire protection.
* An owner of improved property who wishes to extend the original landscaping and/or hardscaping further on the property or onto a merged property must present a proposal to DRB for approval prior to implementation. An application for residential improvement form is located in the Architectural Standards Guidelines, appendix 1, for this purpose.

**Fines for Violations**

***Failure to obtain permission for modification work and for unapproved tree removal will result in fines.***

**There will be a $1500 fine for failure to notify and obtain approval from the DRB in advance of the pruning/thinning work on undeveloped lots.**

**If all or any part of a property is clearcut, bushhogged, graded or scraped clear, a fine between $5,000 and $10,000 will be imposed on the owner depending on the amount of damaged property and how visible the area is from the road and neighboring property.**

**Additional fines for cutting of live trees without prior DRB approval (for each tree):**

**Between 6 in. and 11 in. diameter $1,000**

**Between 12 in. and 23 in. diameter $2,500**

**Over 24 in. diameter $5,000**

See also ‘The Settings of Black Mountain Architectural Design Standards and the Construction Guidelines’ for further information.

Unauthorized tree removals will result in mandatory replacement of the removed trees with trees of 50% cumulative diameter of those removed. The above referenced fines are assessed by the DRB and are due within 10 business days of written Notice to the Owner. Trees required to replace those removed without approval must be planted within three months of written notice of the infraction from the DRB.

**Process for an Owner to Modify Undeveloped Lots**

1.The Lot Owner must notify the DRB of the intent to clean/thin the lot by using the form Appendix below.  Email the completed form to [drb@tsobm.com](mailto:drb@tsobm.com).

2. Owner must obtain a recent survey (within 3 years) with trees marked with species and size.

3. Identify who will be doing the work (Owner, or External supplier): \_\_\_\_\_\_\_\_\_\_\_\_.

*(If by an External supplier - Provide the supplier with a copy of the policy and obtain written understanding of the policy.)*

4. The Lot Owner must present “Before Pictures” along with the completed form.

5. Upon written approval by the DRB, the work can be scheduled by the lot owner.

6. Once the work is complete the Lot Owner must provide “After pictures” of the work to the DRB with a statement that the planned work is completed within 10 days. The DRB may request a meeting with the Owner at the property if there is any concern about the results of the work or the trees removed.

**Appendix:**

**Application to Modify Undeveloped Lots**

This form must be completed and sent to the DRB at email [drb@tsobm.com](mailto:drb@tsobm.com).

Lot Number(s) affected: \_\_\_\_\_\_\_\_\_\_\_\_    \_\_\_\_\_\_\_\_\_\_\_

Owner(s) of the Lots: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address / phone / email:         \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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                                                \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I/we agree to the Purpose and Conditions presented in this Process (HOA Document Effective 09/08/2023).

Signature of the Owner(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:   \_\_\_\_\_\_\_\_\_\_\_\_\_\_

If an external supplier is to be used:

Name of Supplier: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Acknowledgment of receipt of the document “Process of Thinning of Undeveloped Lots in The Settings of Black Mountain:

I have received the above document:

Signature of Supplier: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Submit this form to the DRB at [drb@tsobm.com](mailto:drb@tsobm.com).

Approved by the DRB on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_