

NORTH SHORES BOARD OF GOVERNORS, INC.

RESTRICTIVE COVENANT AND ARCHITECTURAL REQUIREMENTS

Interpretative Guidance for Homeowners on Common Architectural and Covenant Issues

February 2022

Background

North Shores Board of Governors, Inc. (the “Corporation”) serves as the governing body and homeowners association for the North Shores community.¹ All owners in the North Shores Community are members of the Corporation.

Pursuant to its Certificate of Incorporation, the Corporation acts on behalf of the members through its Board (the “Board”). Both the Certificate of Incorporation and Paragraph 20 of the recorded Restrictive Covenants (available on the North Shores web site and applicable to all lots in the North Shores community) grant the Board broad authority to administer and enforce the Restrictive Covenants applicable to all building lots in the North Shores community. In performing that role, the Board interprets and applies the North Shores Restrictive Covenants.

The Restrictive Covenants impose a number of restrictions on individual property owners, including obligations not to interfere with drainage or runoff in construction, and to submit building plans for approval to the Board. The Restrictive Covenants also impose obligations on the Board to make determinations with respect to new construction in the North Shores community, and set forth standards that the Board must apply in making determinations regarding the issue of permits for new construction.

The relevant portion of Paragraph 18 of the Restrictive Covenants, as amended in 2005, provides as follows:

The North Shores Board of Governors, or any committee designated by the Board, or its successors, shall have the right to refuse to approve any such plans or specifications, grading, or landscaping plans or changes, which are not suitable or desirable in the discretion of the Board and in passing upon such plans and specifications, grading or landscaping plans or changes, the said Board, or its successors, shall take into consideration the suitability of the proposed building or improvements or erections and/or the materials of which the building or other improvements or erections are to be built, the site on which it is proposed to be built, the harmony thereof with the

¹ North Shores Board of Governors, Inc., serves as the successor to the unincorporated association North Shores Board of Governors, created pursuant to the initial Restrictive Covenants by North Shores, Inc., the original developer of the community.

surroundings, and the effect of such improvements, additions, alterations or changed use as planned on the outlook [of]² adjacent or neighboring property, and the architectural requirements attached hereto and incorporated by reference herein.

Building on language in the original Restrictive Covenants (as amended) noted above, the architectural requirements (attached as Schedule A to the Restrictive Covenants) declare as their purpose the intention “to ensure the continuing integrity and harmony of the community as a whole, and for the protection, safety, and quality of life of the immediate neighbors and those in proximity who are most affected.” The Restrictive Covenants and the 2005 architectural requirements thus require the Board to consider a variety of subjective and often competing factors relating to construction in the North Shores community, together with the compliance (or non-compliance) of proposed building plans with the specific architectural requirements.

To facilitate the performance of these obligations, the Board has adopted a series of internal rules and procedures, including review of design compliance with the architectural requirements by a qualified architect and, since at least 2006, distribution of initial design plans to adjoining property owners for comment prior to final Board approval of the design plans. Permit application forms make clear to owners seeking building permits from North Shores that drawings must be submitted for this purpose. However, unlike the Restrictive Covenants themselves, these internal rules and practices of the Board were adopted by and are intended to assist the Board in the performance of its decision-making role. The notice and comment procedure is not contained in, nor does it have the force of, the Restrictive Covenants or incorporated architectural requirements.

In keeping with the underlying objectives of the Restrictive Covenants, the Board remains sensitive to the concerns of neighbors as members of the North Shores community and takes seriously comments submitted by neighbors during the permitting process. The Board seeks, wherever possible, to resolve such concerns in matters relating to new construction or renovation in a manner conducive to community harmony.

In an effort to provide guidance to community members, the Board believes that some of the Board’s thinking in recent decisions involving application of our Restrictive Covenants and architectural requirements may be of help in understanding the Board’s approach on some common architectural issues. What follows is by no means a complete statement of the Board’s approach on all issues, nor does it address the Board’s approach on some of the more specific architectural issues such as square footage, height limitations, or other rules addressed in detail in the architectural requirements. Instead, the following is intended to give residents and their architects and contractors some explanation of how the Board tends to view certain issues that either arise frequently and/or involve questions of the Board’s judgment and discretion.

² The word “of” was inadvertently omitted from the original language of the 2005 amendments, and will be corrected the next time the covenants are amended.

The Board emphasizes that as the interpreter of the Restrictive Covenants, the Board learns through experience and may from time-to-time revisit its thinking on the types of matters outlined below. If residents have any question about the Board's current thinking on these types of issues or other issues arising under our Restrictive Covenants or architectural requirements, they should not hesitate to contact any member of the Board.

Specific Covenant Issues Commonly Arising for Board Consideration

1. General Standards Applied to Construction Improvements

In evaluating the regulations and the required factors the Board must consider in approving or disapproving plans for new homes, renovations and other improvements in North Shores, the Board is required, among other considerations, to "take into consideration the "the harmony [of the planned improvements] with the surroundings, and the effect of such improvements, on . . . the adjacent or neighboring property." However, this is not the sole guideline in the Restrictive Covenants and architectural requirements. Additional provisions of the architectural requirements, incorporated by reference in and having the same force as the Restrictive Covenants, give more specific guidance. In particular, paragraph 2(b) of the architectural requirements requires that Board approval or rejection of plans and elevations "be based upon the criteria outlined" in the architectural requirements, and then specifies that plans "will be approved if no deviation from the preliminary drawings has occurred and the plan and drawings comply with these regulations."

In applying the Restrictive Covenants, we view the architectural and development limitations (and the associated community considerations) as specific restrictions on a more general presumption of the freedom of homeowners to develop their property as they see fit, consistent with these community standards and requirements. We also regard the architectural requirements as implementing (and thus providing an interpretative gloss on) the more general covenant standards relating to suitability, harmony and effect on neighboring properties as set forth in Paragraph 18 of the covenants. We interpret the Restrictive Covenants accordingly.

As a result, the Board has chosen not to adopt two suggested interpretations of our regulations proffered by owners seeking to restrict particular improvements in the community -- that the effect of new development on adjoining properties must be paramount in our consideration, or that reaching questions of the compliance of a proposed structure with our architectural regulations is predicated on a threshold requirement that the proposed structure not have any deleterious impact on the outlook of an adjacent property. While we must take into account the impact of improvements on the adjoining properties, we are not under the regulations required to give that particular aspect of the Restrictive Covenants more weight than the others.

Instead, we interpret the regulations to require a balancing of potentially competing considerations involving the interests of different owners that arise in the continued development of an established beach community. Under our interpretation of the Restrictive Covenants, the interests of both constructing owners and adjacent neighbors must be considered simultaneously. We are required to

evaluate the reasonable expectations of affected owners for whom an improvement represents a change in their historic outlook or condition against the reasonable expectations of developing owners who own and seek to improve their properties as they wish, so long as that development is otherwise in accordance with the community's specific architectural regulations relating to such improvements. As noted above, the required balance can often prove difficult.

In reaching our decisions on construction applications, the Board takes account a host of factors that we deem appropriate in applying and interpreting our Restrictive Covenants, including:

- the design approval standards set forth in the Restrictive Covenants and the architectural requirements, including the requirement to consider the harmony of structures in the community and the effect of proposed improvements on adjoining properties;
- the history of the Restrictive Covenants and regulations, and the relevance of the language replaced in 2005 to the interpretation of the standards as amended, in particular, the removal of references to the Board's prior powers to make decisions on "purely aesthetic" grounds;
- the obligations in the architectural requirements to approve or reject design plans in accordance with the criteria set forth in the architectural requirements;
- the specificity of the 2005 architectural covenants with respect to the permitting of, and the height and dimension requirements for elevations, lot coverage, balconies, widow's walks, roof decks, fences and other architectural features;
- the compliance of designs with our specific architectural requirement specifications as to floor areas, massing, variation and elevation;
- the impact of the overall design of proposed new construction and renovation on the adjacent and neighboring properties;
- the consistency of such design with other structures in the neighborhood;
- the location of the lot under review for purposes of ocean and long-distance views, and the proposed use of any desired roof deck (and the outlook that it affords), pool deck, or other distinctive architectural features;
- the materials ultimately used in the construction of a new or renovated dwelling;
- comments submitted by adjacent property owners; and
- such other factors as the Board deems necessary and appropriate in meeting its obligations under paragraphs 18, 20, and 29 of the Restrictive Covenants.

The Board observes notes that disagreements between the neighboring owners regarding development are more manageable if the dialogue between neighbors remains courteous and open, and if both sides are willing to consider and where appropriate accommodate the reasonable expectations of the other during the design and construction process. The Board recognizes that what is "reasonable" may vary depending on the observer and cannot regulate these aspects of neighbor relations. But the Board notes that civility and open communication are essential to the continued well-being of a residential community.

2. Accuracy of Drawings Circulated for Neighbor Comment

The Board has adopted a community comment procedure under which architectural plans for proposed improvements are circulated to adjoining neighbors (and made available in the North Shores office). The Board recognizes that, having chosen voluntarily to allow adjoining property owners the courtesy of providing comments on proposed construction plans in the community, it is most effective if the Board can ensure that the plans reviewed by neighbors are as close as possible to the plans proposed to be finally approved by the Board, including those adopted after revision in response to the architectural review process. However, the Board is also cognizant that building plans often evolve in response to the comment and approval process, and that a requirement that neighbors see the “final” approved drawings could imply multiple submissions, adding time and procedural burdens to the approval process. In adopting our internal rules and practices for notice and comment, the Board is mindful that procedural steps not specifically required in the Restrictive Covenants or architectural requirements may themselves impose a burden on developing owners.

The Board (through the Architectural Review process) makes efforts to provide some level of preliminary comment plans are circulated for neighbor comment, in an effort to make neighbor comments more meaningful. However, plans do sometimes change, and the comment process is a courtesy and administrative practice of the Board, rather than a restrictive covenant that the owners of adjacent properties are entitled to enforce independently. As a result, while the Board makes reasonable efforts to ensure the accuracy of the plans circulated to neighbors for comments, defects in the administration of the comment process do not deprive owners of a right they enjoy under the North Shores covenants.

3. Tree and Vegetation Removal/Trespass Issues

The Board has from time to time been asked to express views about allegations of trespass in connection with the removal of trees or other vegetation that a construction contractor/landscaper for the owners of one property may have removed from land belonging to an adjacent neighbor. While the Board is not empowered to adjudicate boundary disputes, the Board notes that fence lines frequently do not represent the actual property lines in the community. Accordingly, the Board encourages the owners of both properties to establish among themselves by survey and marking the actual location of the property boundary line, and to landscape their properties accordingly.

Further, in circumstances in which a large multi-storey dwelling is constructed on a formerly vacant or single-storey dwelling lot adjacent to one of the community’s older one-storey dwellings, it is consistent with the harmony of the neighborhood for the developing owner to move quickly to plant and restore a suitable tree or other screening line between the properties. Border landscape planning is best undertaken in cooperation with the adjoining neighbor, to provide both parties with an attractive visual screen and softening feature between two different styles of houses. The Board will require such planting in appropriate cases as a condition of architectural approval.

4. Glare from Reflective Construction Materials

The Board has faced questions about metal roofing materials and concerns that the choice of roofing materials can be highly reflective, resulting in the transmission of sun glare to adjoining properties. Fairly interpreted, these objections could raise questions of nuisance under paragraph 3(m) of the architectural regulations in Schedule A and the suitability of materials under Paragraph 18 of the Restrictive Covenants. Having reviewed the issue of roofing materials and taking into account the factors noted in paragraph 1 above (in particular the use of similar materials elsewhere in the community, the purpose for using the materials, and the reasonable expectations of both neighbors and developing owners), the Board does not believe that the use of the metal roofing materials in the design of North Shores dwellings constitutes a nuisance *per se*, nor does the Board conclude that the materials are unsuitable under our covenants for North Shores dwellings.

However, the Board reserves the right to evaluate the issue of highly reflective roofing (or siding) materials on a case by case basis, and the Board would be unlikely to approve, for example, a structure that made significant use of highly reflective metal or glass as a siding material, if future oxidation of the material would not be expected markedly to reduce its reflectivity, consistent with other experience in the neighborhood. The Board also notes that the use of landscape screening along the borders of a property can contribute to the resolution of these types of issues.

5. Landscaping for Drainage

The North Shores community is particularly susceptible to drainage runoff and ponding issues, and the community specifically addresses drainage in both its architectural regulations (Paragraphs 3 (a) and 3(c) in Schedule A) and Restrictive Covenants (Paragraph 19). The Board will enforce rigorously the drainage and runoff requirements in the Restrictive Covenants, in respect of both homes as now built and following any landscape improvements. The Board recommends that developing owners with grade falls to adjacent properties seriously consider the installation of french drains or other hardscape drainage/runoff controls to ensure that their lot does not drain onto adjoining properties or the street in a manner inconsistent with the drainage characteristics of their lots before construction. Landscaping plans -- including the demolition of existing structures in anticipation of rebuilding -- remain subject to the continuing jurisdiction of the Board.

6. Basketball Goals

Basketball goals are addressed specifically in the architectural requirements, and are subject to approval by the Board. Typically, the Board will seek neighbor comment on the proposed location of basketball goals. While neither the Restrictive Covenants nor the architectural requirements afford neighboring properties a consent right, the Board tends to afford greater weight to neighbor comments as the proposed location of a basketball goal approaches the commenting neighbor's property line.

7. Elevated decks

Although our covenants exclude open decks and stairs that are constructed below base flood elevation from the calculation of GFA, elevated decks and stairways above ground level are treated as

“structures” for purposes of determining compliance with required property line setbacks. North Shores generally follows the Sussex County rules for permitting the limited protrusion of uncovered front stairways (no more than 5 feet) into front yard setbacks. However, elevated decks are treated as structures, and in particular with respect to construction on marina and canal-front lots, the separate North Shores requirements for waterfront setback will be strictly enforced in accordance with the treatment of elevated decks, stairs, and other improvements as structures. Thus, North Shores setback requirements for structures on waterfront lots are, pursuant to the separate section of our covenants addressing these lots, deemed to be an additional requirement to (and not subject to the limitations of) the setback and permitting and building requirements of Sussex County and DNREC.

The Board may be willing to grant variances for ground level or “near ground level” decks on a case by case basis, particularly where integrated with approved docks.

8. Driveways

Given drainage concerns in the community, the Board generally requires that all new driveways remain pervious to rainwater; gravel or crushed stone preferred. Paver stones are acceptable, so long as they are specifically designed to meet industry rainwater absorption standards, and are installed in accordance with manufacturer specifications. When submitting applications for installation of paver driveways, homeowners should specify the precise paving system proposed to be employed. Paving systems not specifically designed for rainwater absorption will be regarded as non-pervious in applicable covenant calculations. Driveway installation must include a permeable base. Crushed concrete or any fine material may not be used and are not considered permeable under the North Shores Covenants. Installation of roadside culvert systems (to maintain road drainage) and preservation of catchment swale systems are typical requirements for Board consent to undertake driveway works, given the ponding that occurs in many areas of the neighborhood.

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The Board reserves the right to update and/or amend this guidance from time to time, consistent with the Board’s interpretation of the covenants. This guidance is interpretative only, and all Board action on construction applications remains subject to the terms of the Restrictive Covenants, which this guidance does not purport to modify or amend. This guidance is for solely for the convenience of homeowners, contractors and architects in understanding the Board’s historical approach to the covenant issues addressed herein.