IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WILD QUAIL GOLF & COUNTRY CLUB HOMEOWNERS' ASSOCIATION, INC.	)	
Plaintiffs,	)	
v.	)	C.A. No. 2019-0768-PWG
MARK GARY BABBITT AND LUCIENNE CARTER BABBITT	)	
Defendants.	)	

MASTER'S REPORT

Date Submitted: December 9, 2021
Draft Report: January 11, 2022

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GRIFFIN, M.

Pending before me is an action by a homeowners' association to enforce deed restrictions under 10 *Del. C.* §348. Homeowners constructed an addition to their house, which the association alleges violates the deed restrictions because the addition's roof color did not conform to the plans submitted to the association, or to the conditional approval granted by the association. I find that the association did not demonstrate that the architectural review committee's decision imposing a condition as to the addition's roof color was reasonable and nonarbitrary. I recommend that the Court deny the association's claim that the homeowners violated the deed restrictions. This is a final report.

I. BACKGROUND[1]

A. Factual Background

This dispute is focused on a detached garage addition ("Addition") built by Defendants Mark and Lucienne Babbitt (the "Babbitts") in 2018 on their property ("Property") located at 57 Teal Lane, Camden-Wyoming, Delaware.[2] The Property is located within the Wild Quail Golf & Country Club development ("Wild Quail"), which has established the Wild Quail Golf & Country Club Homeowners

[1] I refer to the transcript from the September 21, 2021 evidentiary hearing as "Trial Tr.", and to Plaintiff's Trial Exhibits as "Pl. Tr. Ex." and cite to the page number at the bottom of those exhibits. I refer to Defendant's Trial Exhibits as "Def. Tr. Ex." and cite to the exhibit designation, and to Defendant's Impeachment Exhibits as "Def. Imp. Ex." and cite to the exhibit designation. The parties have referred to themselves as "Petitioner" and "Respondents." I use the terms "Plaintiff" and "Defendants" merely for the sake of clarity.

[2] Docket Item ("D.I.") 1.

Association ("Association") to administer its Declaration of Restrictions ("Restrictions"). The Association's Architectural Commission ("AC") performs the architectural review process under the Restrictions.[3] The AC's chair for the past ten years has been Jeffrey Allen ("Allen").[4]

The Restrictions provide that, prior to constructing an addition, a Wild Quail property owner must obtain the AC's approval and "submit two (2) sets of plans showing all four (4) elevations together with a description of the exterior materials and color."[5] The Restrictions specify a "Color Standard": "exterior colors shall be within the group of colors knows[sic] as soft tones. Any other colors must be approved by the Architectural Committee."[6] The Restrictions also provide that the AC can consider the "suitability of the proposed building or other structure and of the materials" to the site on which the addition will be built ["Suitability Standard"],[7] and whether the addition will be harmonious with its surroundings "and the effect of

[3] Pl. Tr. Ex. 7.

[4] Tr. 45:18-24.

[5] Pl. Tr. Ex. 7.

[6] *Id*.

[7] *Id.* The Suitability Standard is not at issue here. *See* D.I. 29, at 9, n. 33. *See also Point Farm Homeowner's Ass'n, Inc. v. Evans*, 1993 WL 257404, at *3 (Del. Ch. June 28, 1993) (holding that a provision giving the architectural review committee the right to consider the suitability of proposed materials in building a residence "does not provide objective standards that could be applied in an even-handed manner …").

the [Addition] as planned on the outlook from the adjacent or neighboring properties ["Harmony Standard"]."[8]

In preparation for constructing the Addition, in late February or early March 2018, building materials were dropped off at the Property.[9] The Babbitts' neighbor reached out to Allen asking what was going on at the Property.[10] At that time, no application was pending before the AC for the Addition, and no approval had been granted.[11] The Babbitts' contractor, Nicola Alessandro ("Alessandro"), testified that this was due to a misunderstanding between the Babbitts and himself as to who was to secure the AC's approval.[12] On March 2, 2018, Allen advised the Babbitts and Alessandro that construction on the Addition could not proceed until the AC granted approval.[13] Alessandro provided plans for the Addition to Allen on March 2, 2018, and requested that the AC review the plans for the Addition expeditiously.[14] A materials list ("Materials List") showing the color of the Addition's roof ("Roof") as "taupe" was provided to the AC.[15] Allen requested additional information, and

[8] Pl. Tr. Ex. 7.

[9] Trial Tr. 60:17-61:1; *id.* 160:1-4; Pl. Tr. Ex. 33.

[10] Trial Tr. 61:6-8.

[11] *Id*. 62:17-19; Pl. Tr. Ex. 201.

[12] Trial Tr. 122:24-123:8; *id*. 209:10-210:7; Pl. Tr. Ex. 201-202.

[13] *Id*. 201.

[14] *Id.* 201-202.

[15] Trial Tr. 87:7-10; Pl. Tr. Ex. 50.

Alessandro provided it.[16] On March 4, 2018, Allen informed Alessandro that the AC had preliminarily decided to deny the Addition and encouraged the Babbitts to "fully read the deed restriction[sic] and … make the decision to alter the request and replace the metal roof with one that matches the house."[17] Allen testified that this preliminary denial was because the AC "wanted the roof to be consistent with all the other garages that had been constructed in [Wild Quail], and 100 percent of those had asphalt shingle roofs that matched the main residence."[18] Allen described this concern as a "consistency issue"[19] and that the AC used the standards of "consistency of colors" and "something that we think, as a committee, a neighbor might find offensive."[20] Allen testified that, when a property adjoins the golf course, there is heightened scrutiny by the AC concerning the impact of the construction on views of the golf course.[21] On March 6, 2018, Allen informed Alessandro that his concerns about the view of the proposed metal roof from the golf course were resolved, but he remained concerned about how it will look from the street view or from the neighbor's window.[22] He requested a full architectural rendering of the Addition

[16] *Id*. 205-208.

[17] *Id.* 209.

[18] Trial Tr. 180:7-11.

[19] *Id*. 182:17-20.

[20] *Id*. 49:9-13.

[21] *Id.* 186:12-13.

[22] Pl. Tr. Ex. 212.

and Property.[23] Alessandro provided updated elevation drawings of the Addition, noting that the depiction of the Addition's roof was "the best I can do" and that a full architectural rendering would be very expensive and was not regularly requested.[24] On March 10, 2018, the AC sent an email to the Babbitts entitled "Final approval," which imposed a number of conditions as part of its approval, including the condition at issue here – that "[t]he roof color must match as closely as possible to the existing metal roof on the residence" ("Roof Condition").[25]

On May 6, 2019, Allen emailed Mr. Babbitt to express concern that the Roof color had not darkened to match the home's shingle roof.[26] When Mr. Babbitt responded that the Roof does match the home's shingle roof,[27] Allen advised that the Addition did not adhere to the Roof Condition and the AC would refer the matter to the Association's board to consider further action.[28]

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[23] *Id.*

[24] Pl. Tr. Ex. 213-214. The plans showing elevations depicted the Roof color as dark. *See id.* 176-189. Alessandro testified that he told Allen that the colors on the elevation drawings were not representative of the actual colors to be used. Trial Tr. 153:22-154:2. He characterized the elevation drawings as "essentially black and white," with the brick hand drawn and colored in. *Id.* 155:16-21. Allen testified that he had no reason to believe that the color in the elevation drawings was not accurate. *Id*. 202:11-203:12.

[25] Pl. Tr. Ex. 215.

[26] *Id*. 216.

[27] *Id.* 217.

[28] *Id.*

B. Procedural Background

On September 23, 2019, the Association filed a complaint against the Babbitts, asserting that the Babbitts violated the Restrictions and arguing that the Roof, as constructed, fails to conform to its conditional approval or to the Addition's plans, which depicted a dark color roof.[29] The Association asks that the Court direct the Babbitts to modify the addition to conform to the conditional approval, and award attorneys' fees under 10 *Del. C.* §348. On October 22, 2019, the Babbitts filed an answer denying the Association's claims and seeking judgment in their favor and attorneys' fees.[30] The case was dismissed on December 21, 2020 for lack of prosecution.[31] The Association's January 20, 2021 motion to reopen the case was granted on January 27, 2021.[32]

On March 2, 2021, the Babbitts filed a motion for summary judgment contending that the Association had not met its burden of proof regarding the Restrictions' enforceability and the reasonableness of the AC's actions.[33] The Association's April 1, 2021 response claimed that color is an essential aspect of architectural review, and that the Babbitts defied the Restrictions by failing to abide

[29] D.I. 1, ¶¶ 12, 13, 15.

[30] D.I. 5.

[31] D.I. 9.

[32] D.I. 14.

[33] D.I. 17, at 11; D.I. 20, at 2-3.

by the architectural review process.[34] I denied the Babbitts' motion for summary judgment in a Final Master's Report dated June 3, 2021 ("Summary Judgment Report"), finding that there are material facts in dispute concerning whether the Association applied the Restrictions' standards reasonably in imposing the Roof Condition.[35] A one-day trial in this matter occurred on September 21, 2021.[36] The parties submitted simultaneous written closing arguments on December 9, 2021.[37]

II. ANALYSIS

The central issues in this case are (1) whether the Restrictions provide clear, precise and fixed standards for the AC to apply, and (2) whether the AC acted reasonably in imposing the Roof Condition.[38] In the Summary Judgment Report, I held that the Restrictions offer clear, precise and fixed standards for the AC to apply.[39] Specifically, the Color Standard can be applied objectively and is reasonably ascertainable, so that, if the exterior colors are "soft tones" or "subdued

[34] D.I. 19, at 3-4, 29-31.

[35] D.I. 29. No exceptions were taken on that final report, and Chancellor McCormick adopted the final report on June 17, 2021. D.I. 30.

[36] D.I. 37; D.I. 38.

[37] D.I. 41; D.I. 42.

[38] D.I. 29, at 7. The Association argues that the Babbitts' alleged lack of candor and failure to comply with the review process is an important issue in this case. D.I. 41, at 3. I address that issue later in this Report.

[39] D.I. 29, at 10-12.

tints or shades of colors," then no AC approval of the colors is required.[40] And, if the exterior colors are not "soft tones," the AC applies the Harmony Standard in its review of the colors.[41] The Harmony Standard is enforceable "so long as the community possesses a 'sufficiently coherent visual style' and the standard is fairly applied based upon that style."[42] The second issue – whether the AC reasonably applied the Color and Harmony Standards in imposing the Roof Condition – is addressed below.

A. The Parties' Contentions

With regard to whether the AC acted reasonably in imposing the Roof Condition, the Association asserts that the Roof Condition was "clear, objective and consistent with the AC's commitment to have the exterior of additions match the original structure."[43] It contends that the Babbitts' conduct and lack of candor (by ordering materials before submitting the Addition's plans to the AC, and their failure to provide clear information to the AC about the Roof color, which led to Allen's conclusion that the Roof would be a dark brown) affected the AC's review.[44] It further asserts that the Babbitts' "persistent failure to be clear and candid about their

[40] *Id.*, at 10-11.

[41] *Id.*, at 12.

[42] *Id.*, at 9 (citations omitted).

[43] D.I. 19, at 26; *see also* D.I. 41, at 4.

[44] D.I. 41, at 6-9.

intentions" concerning the Roof color during the approval process left "the AC to proceed as best it could."[45] As a result, the AC applied the "standard it had always done in the past, requiring an addition of this type to match the original structure as closely as possible" based upon the information provided by the Babbitts.[46]

The Babbitts argue that the Roof Condition imposed by the AC is not enforceable because it does not specify a particular color and requires that the Roof color "closely match the existing metal roof" on the Babbitts' home.[47] They contend that the Roof Condition is inconsistent with the Harmony Standard, since Allen testified that "it would be very difficult for anybody in the community to see that [the Roof and the metal roof on the home] do not match."[48] They also assert that the Babbitts complied with the architectural review process.[49]

B. Legal Standards

Deed restrictions requiring approval of an association, or its architectural committee, before a property owner can erect a structure on her property, are enforceable if they articulate "a clear, precise, and fixed standard the reviewing body

[45] *Id.*, at 3; *see also* D.I. 19, at 21.

[46] D.I. 41, at 4.

[47] D.I. 42, at 1-2.

[48] *Id.*, at 6 (citing Trial Tr. 192:1-3).

[49] *Id.*, at 7-8.

must apply."[50] However, such restrictions "are viewed with suspicion due to the tendency of such review to be arbitrary, capricious, and therefore unreasonable," and are strictly construed.[51] In reviewing requests under the restrictions, an association or its architectural committee cannot unreasonably withhold approval, and "any doubts as to [the architectural review function's] reasonableness must be resolved in favor of the landowners."[52] Although restrictions "based on abstract aesthetic desirability are impermissible," deed restrictions designed to ensure the "overall harmony of appearance within a community, when that community possesses a 'sufficiently coherent visual style' enabling fair and even-handed application," are permissible.[53] The restrictions must provide "a reasoned, non-arbitrary basis for the

[50] *Benner v. Council of Narrows Ass'n of Owners* [hereinafter "*Benner*"], 2014 WL 7269740, at *1 (Del. Ch. Dec. 22, 2014), *adopted*, (Del. Ch. Mar. 16, 2015); *see also Lawhon v. Winding Ridge Homeowners Ass'n, Inc.* [hereinafter "*Lawhon*"], 2008 WL 5459246, at *5 (Del. Ch. Dec. 31, 2008); *Seabreak Homeowners Ass'n, Inc. v. Gresser* [hereinafter "*Seabreak*"], 517 A.2d 263, 269 (Del. Ch. 1986), *aff'd,* 538 A.2d 1113 (Del. 1988) (TABLE).

[51] *Benner*, 2014 WL 7269740, at *7; *see also Tusi v. Mruz*, 2002 WL 31499312, at *3 (Del. Ch. Oct. 31, 2002) ("because [architectural review restrictions] restrict the 'free use of property,' restrictive covenants must be strictly construed").

[52] *Seabreak*, 517 A.2d at 268; *see also Dolan v. Villages of Clearwater Homeowner's Ass'n, Inc.*, 2005 WL 2810724, at *4 (Del. Ch. Oct. 21, 2005) ("Under Delaware law, a deed that conditions the right to make improvements on the permission of a developer or Review Board is enforceable but permission must not be withheld unreasonably and the burden is on the Review Board to show its actions are reasonable.").

[53] *Lawhon*, 2008 WL 5459246, at *5.

reviewing authority to assess whether a proposal would disrupt the visual harmony of the affected community."[54]

C. The AC Acted Unreasonably in Imposing the Roof Condition

The issue that remains is whether the AC acted reasonably in imposing the Roof Condition under the Restrictions. To be enforceable, the Association must show the AC applied the relevant standards on a reasoned and nonarbitrary basis (not on subjective aesthetics) when it imposed the Roof Condition. In the Summary Judgment Report, I concluded that the Restrictions provide the following approach for the AC to use in evaluating exterior colors in its review process: "[W]hen colors in soft tones are used, exterior colors are not considered as part of the AC's harmony of appearance analysis. When soft tone colors are not used, exterior colors may be considered under the Harmony Standard."[55] In this analysis, "the Babbitt's actions are only relevant if they affected the reasonableness of the AC's review process."[56]

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[54] *Dolan*, 2005 WL 2810724, at *4.

[55] D.I. 29, at 12. The Association appears to argue that the Color Standard was a "minimum standard" and the AC was not required to "approve any color and every color" that meets the Color Standard. D.I. 41, at 5. The Summary Judgment Report sets out the approach that the AC should use in assessing exterior colors and concluded that "the use of soft tones for exterior colors is allowed without the approval of the AC." D.I. 29, at 10. That is the law of the case, and I will not revisit that conclusion.

[56] D.I. 29, at 7, n. 24.

1. The AC did not Consider Whether the Roof's Color was a Soft Tone

The starting point of analysis under the Restrictions' standards for exterior colors is the Color Standard. I first consider whether the AC concluded that the Roof color was not a soft tone as specified in the Color Standard and, if the Roof color was not a soft tone, whether the AC applied the Harmony Standard fairly in imposing the Roof Condition. The AC's approval, itself, does not indicate whether the AC considered the Roof color as a soft tone or provide definite reasons for the imposition of the Roof Condition.[57] Indeed, there is no evidence that shows whether the AC considered the Roof color a soft tone or not.[58] And, the Association admits that "there is no answer to the question of whether the AC concluded the color was a soft tone or not."[59] Therefore, because the Color Standard mandates that exterior colors of soft tones are automatically allowed and not evaluated as a part of the AC's review process, and the AC has not demonstrated that it applied the Color Standard and concluded the Roof color was not a soft tone, I find that the AC did not act reasonably under the Restrictions in imposing the Roof Condition.

[57] Pl. Tr. Ex. 222.

[58] Allen testified that the AC generally does not keep a written record of its actions, except that he makes notes of when and why an AC member opposes an application "sometimes." Trial Tr. 177:17-24. No notes of the AC's actions in this instance, or of internal AC communications, were provided as evidence.

[59] D.I. 41, at 4.

And, considering the Roof color under the Color Standard, the color chosen by the Babbitts – "taupe" – is a soft tone under the Restrictions.[60] Weighing all the evidence presented about the color of the Roof presented at trial and my own observations of the Property, I find that the Roof color appears light beige.[61] This is

[60] The Babbitts and Alessandro testified that they chose this color "taupe" by Alessandro climbing up a ladder and the Babbitts climbing out an upstairs window onto the home's existing metal roof to compare that roof's color with color samples and selected the color sample – taupe or clay – that most closely matched the color of existing metal roof. Trial Tr. 121:17-23; *id.* 129:10-12; *id.* 131:21-132:1; *id.* 134:10-20; *id.* 211:16-212:9. Alessandro ordered "taupe" metal roof panels for the Addition. Trial Tr. 118:8-17; *see* Def. Tr. Exs. B, C.

[61] The Babbitts claim that the Roof color is taupe and matches the home's existing metal roof. *See* n. 60 *supra*; Pl. Tr. Ex. 217. Allen disputes this claim, asserting that the Roof color is vastly different than the color of the home's existing metal roof, and that "on a sunny day, … you're staring at a structure with a large, light glare color to it." Trial Tr. 72:17-20; *id.* 73:8-9; *id*. 55:13-15. I make the conclusion that the Roof color appears light beige largely based upon my personal observations of the Property. I visited the Property and Wild Quail on November 17, 2021 to observe the Roof and Wild Quail. I observed the Roof and Wild Quail twice that day – once in the morning and once in the afternoon. In my morning visit to the Property, I observed that the Roof was a light beige color. The sky was overcast, but it was not dark that morning. In my afternoon visit to the Property, I observed that the Roof was a light beige color. It was sunny in the afternoon, and the trees between the Property and the neighbor's residence cast shadows over the Roof.

I did not find the photographs advanced by either party to be particularly helpful in reaching this conclusion. The aerial photographs advanced by the Association appear to have some color and other distortions, which may be caused by printing. *See* Pl. Tr. Ex. 195-199. Additionally, on cross-examination, the aerial photographer was unable to sufficiently explain the extremely dark tree canopy and variations in the grass color on the photographs. *See Id.*; Trial Tr. 35:3-37:21; Def. Imp. Exs. 1, 2. The Babbitts did not fully explain the photographs introduced as impeachment exhibits, and I give them the weight they are due as exhibits offered only for impeachment.

a soft tone. Light beige is a "subdued tint or shade;"[62] it does not catch the eye like a vibrant red or green. Thus, the Roof's color is a soft tone.[63]

2. Even if the Roof color was not a Soft Tone, the AC did not Reasonably Apply the Harmony Standard

The Association argues that the color information provided by the Babbitts led it to conclude that the proposed Roof color was dark brown.[64] Even if I assume that the information provided by the Babbitts to the AC obstructed the AC's ability to properly review the Roof color (or to decide whether the Roof color was a soft tone), I find the AC still acted unreasonably in imposing the Roof Condition under the Harmony Standard because Wild Quail lacks sufficient visual coherence to enforce a roof color consistency standard (beyond the Color Standard).

Allen testified, "We don't have a written harmony standard. I would think of it more as a consistency issue. That's what our architectural review committee has pretty much used."[65] In a March of 2018 email, Allen stated that the AC wanted the Addition to "look as much as possible as an extension of the house and not what [it

[62] D.I. 29, at 11.

[63] At certain times of the year or day, the metal material of the Roof could be rather reflective. But, the Roof color is nonetheless a soft tone. The AC approved the Roof's metal material. *See* Pl. Tr. Ex. 215. So, the Roof's material is not at issue in this action, only the color.

[64] D.I. 41, at 2-3.

[65] Trial Tr. 182:17-20; *see also id.* 51:22-52:6.

is]."[66] This creates the issue of whether either of these criteria are valid under the Harmony Standard.

The Harmony Standard is enforceable only if Wild Quail possesses a "sufficiently coherent visual style."[67] "[I]f a community has a sufficiently coherent visual style, a deed restriction may protect the perpetuation of the style from erosion so long as the authority entrusted with that task does so in an even-handed, non-arbitrary fashion."[68] This Court has upheld a reviewing authority's imposition of restrictions under deed restrictions similar to the Harmony Standard where the community has distinctive characteristics of a common scheme, such as a "Key West" architectural style,[69] or where the proposed building is obviously incongruous with the rest of the common interest community, that can be objectively viewed.[70]

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[66] Pl. Tr. Ex. 208.

[67] D.I. 29, at 9 (citations omitted).

[68] *Dolan v. Villages of Clearwater Homeowner's Ass'n, Inc.*, 2005 WL 2810724, at *4 (Del. Ch. Oct. 21, 2005).

[69] *Id.*

[70] *See Lawhon*, 2008 WL 5459246, at *4, 8 (the proposed structure had a perpendicular orientation that "would create an incongruous appearance" with the rest of the community, and its color "would be a color unlike the rest – a deep red instead of the earth tones of yellow, clay, white and beige [of the other homes in the community]"); *Christine Manor Civic Ass'n v. Gullo*, 2007 WL 3301024, at *2 (Del. Ch. Nov. 2, 2007) ("barn-like" outbuilding so dwarfed any other existing outbuildings that it created a disharmonious appearance); *Cf. Point Farm Homeowner's Ass'n, Inc. v. Evans*, 1993 WL 257404, at *3 (Del. Ch. June 28, 1993); *Serv. Corp. of Westover Hills v. Guzzetta*, 2009 WL 5214876, at *6-7 (Del. Ch. Dec. 22, 2009).

Wild Quail is a planned subdivision that surrounds a golf-course, which is not part of the subdivision or Association.[71] Based upon my observations, Wild Quail is full of stately, well-maintained dwellings. There is a mixture of architectural styles represented by dwellings in Wild Quail, including: Tudor, Colonial, Italianate, Modern, French Empire, Victorian, and ranch-style. The roofs of the dwellings in Wild Quail vary in colors, including red, clay, blue, light blue, varying degrees of brown, grey, green, and light green. Many roofs within Wild Quail have skylights or solar panels and, at least one detached garage has an array of solar panels on it. Most dwellings have garages attached to the main residence, but some have detached garages. Quite a few of the attached garages have distinctive architectural features that separate them from the rest of the dwelling, such as a stone façade or Tudor-style accents.

The Association has argued that the "continuity in [Wild Quail] and the individual homes can be readily discerned by a visit," and pointed to the fact that few properties have all metal roofs or mixed shingle and metal roofs.[72] I disagree. From my visit, I discerned that there are few metal roofs in Wild Quail,[73] but the roofs vary in color from property to property, at times significantly. Some roofs are

[71] *See* Pl. Tr. Ex. 27-30; Trial Tr. 201:13-17.

[72] D.I. 19, at 24, n. 6.

[73] I note that it is the Roof color, not that the Roof is metal, at issue here.

covered with solar panels. And, quite a few garages have distinctive architectural features that differ from the rest of the dwelling.

Within Wild Quail, I find that there is no objective visual feature or well-developed scheme relating to roof color consistency or garage architecture. Without a "sufficiently coherent visual style" related to roof color, the AC did not have a reasoned, nonarbitrary basis for imposing the Roof Condition, and the imposition of restrictions based on "abstract aesthetic desirability" is not permitted.[74] And, since any doubt as to the reasonableness of the architectural review committee's decision is resolved in favor of the property owner,[75] I find the AC did not reasonably impose the Roof Condition under the Harmony Standard.[76]

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[74] *Lawhon*, 2008 WL 5459246, at *5 (Del. Ch. Dec. 31, 2008); *see also Seabreak*, 517 A.2d 263, 269 (Del. Ch. 1986), *aff'd,* 538 A.2d 1113 (Del. 1988) (TABLE).

[75] *See Seabreak,* 517 A.2d at 268.

[76] The Harmony Standard also includes an "outlook" standard allowing the AC to consider the effect of the Addition on the "outlook from the adjacent or neighboring properties." Pl. Tr. Ex. 7. Allen testified that the AC evaluated the Addition under the "outlook" standard. Trial 201:2-12. Specifically, it considered how the Addition would affect the view from the golf course. Trial Tr. 201:8-12; *id.* 48:14-17 (Allen's testimony that "we have a sincere interest in looking at what the view is, the appearance from the golf course and how it will impact the overall … view, as people play."); *id*. 186:12-13 ("There's an extra level of scrutiny that clearly goes with any construction that happens on the golf course."). The AC also looked at how a neighbor would view the Addition. *See id.* 49:11-13 (Allen's testimony that the AC considers what "we think, as a committee, a neighbor might find offensive"); *id.* 181:15-20 (Allen's testimony that the AC considered "input or concern that would impact a neighbor's view," specifically, the Babbitts' neighbor's concern about "what [the Addition] would look like out of his office window"). Courts have generally considered standards based upon "outlook" of neighboring properties in deed restrictions to be unenforceable because the term "'outlook' has no built-in, objective standards that would enable it to be applied in an evenhanded manner or to be used as a guideline by lot owners in designing their residences." *Seabreak*, 517 A.2d at 270; *see also Point Farms*

3. The AC Applied a Different Standard than the Standard in the Restrictions

I next look at what standard(s) the AC applied in reviewing the Addition. To be upheld, the architectural review function must be done reasonably and the burden is on the association to show that its actions are reasonable.[77] To ensure fairness (through adequate notice of restrictions that burden the property), an association or its architectural committee must apply the standards that appear in a community's deed restrictions,[78] and this Court will generally not look to an architectural review committee's course of performance to add terms or standards to a written set of deed restrictions.[79]

In a March of 2018 email, Allen stated that "it is always the intent of the [AC] to have these garages look as much as possible as an extension of the house and not

Homeowner's Ass'n, Inc. v. Evans, 1993 WL 257404, at *3 (Del. Ch. June 28, 1993); *Abbott v. FD Builders*, 2000 WL 1800137, at *5 (Del. Ch. Nov. 29, 2000). *But see Lawhon*, 2008 WL 5459246, at *8 (Del. Ch. Dec. 31, 2008) ("Delaware case law approves of evaluations made with [the harmony and outlook] criteria."). Even if I consider the AC's decision based on the outlook criteria, it is unenforceable because the evidence shows that the AC's decision was not based on objective factors, but on impermissible aesthetic subjectivity, or whether, in their personal opinions, a golfer or neighbor might not like something about the Addition.

[77] *Seabreak*, 517 A.2d at 268.

[78] *Benner*, 2014 WL 7269740, at *8-9 (Del. Ch. Dec. 22, 2014), *adopted*, (Del. Ch. Mar. 16, 2015); *see also Lawhon*, 2008 WL 5459246, at *4-5.

[79] *Benner*, 2014 WL 7269740, at *8 ("Only if the language of the [deed restrictions] is ambiguous may the Court consider extrinsic evidence of the parties' intent, including the parties' course of performance.").

what they are."[80] He testified that the AC "tends to look at the consistency of color … and materials" to make the structure look "as much as possible" as though it was part of the original structure.[81] He also testified that the AC desires that additions "blend into the surroundings as much as possible."[82] The Restrictions contain neither a "consistency" requirement nor a standard that additions must be substantially similar to the original construction. The architectural review committee bears the burden of showing that it acted reasonably in applying the written deed restrictions.[83] Thus, because the AC applied standards that are different than those reflected in the Restrictions, it cannot demonstrate that it reasonably applied the Restrictions in reviewing the Addition.

4. The Babbitts' Conduct did not Affect the Reasonableness of the AC's Actions

The Association's main argument is that the Babbitts frustrated the AC's ability to conduct a reasonable review process.[84] The Association argues that "[a]ny

[80] Pl. Tr. Ex. 208.

[81] Trial Tr. 50:2-8.

[82] *Id.* 49:19-22.

[83] *Benner*, 2014 WL 7269740, at *8-10 (Del. Ch. Dec. 22, 2014). Allen testified that the AC had "pretty consistently applied [the harmony and consistency standards] … since Wild Quail has been built." *Id.* 52:3-6. But this Court will generally not look to an architectural review committee's past practices to add standards that are not in the applicable deed restrictions. *See Benner*, 2014 WL 7269740, at *8-9.

[84] D.I. 41, at 5 ("The problem in this case is solely [the Babbitt's] creation."); *id.*, at 5-9 (recounting the approval process and arguing that the Babbitts lacked candor with the AC); *see also* D.I. 19, at 30 ("Had the process of architectural review proceeded as designed,

expectation that the AC in fact in this case deliberated on whether the color was or was not a soft tone was thwarted by the [Babbitts'] persistent failure to be clear and candid about their intentions, leaving the AC to proceed as best it could."[85] The Association also argues that the process was "rushed."[86]

In the Summary Judgment Report, I held that the Babbitts' alleged lack of candor and failure to comply with the review process are "only relevant if they affected the reasonableness of the AC's review process."[87] While a property owner's unreasonable behavior can impact the ability of an architectural review committee to conduct a reasoned and nonarbitrary review, the evidence here does not show that the Babbitts' conduct affected the reasonableness of the AC's analysis of the Addition under the Restrictions.

The Association's argument focuses on their theory that Alessandro and the Babbitts misled the AC by withholding color samples for the Roof and using unrepresentative colors in the elevation drawings that were provided to the AC.[88] I am not persuaded by this argument because the Babbitts provided the AC with all of the information required by the Restrictions. The Restrictions require a property

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and [Wild Quail's] standards as established over the last two decades been followed, the AC's decision would stand.").

[85] D.I. 41, at 3.

[86] D.I. 19, at 30.

[87] D.I. 29, at 7, n. 24.

[88] D.I. 41, at 8-11.

owner to submit to the AC drawings showing the four elevations and "a description of the exterior materials and their color."[89] Alessandro provided elevation drawings of the Addition to the AC on March 7, 2018, and noted that the rendering of the Roof was "the best I can do."[90] Alessandro also provided the AC with the Materials List indicating that the Roof color was to be "taupe."[91] The evidence shows that the AC received the elevation drawings and the description of the Roof color as "taupe."[92] Thus, the Babbitts fulfilled their obligations under the Restrictions.

The AC may have been confused about the color.[93] The color of the Roof depicted in the elevation drawings was much darker than the actual Roof color.[94]

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[89] Pl. Tr. Ex. 7.

[90] Pl. Tr. Ex. 213-214.

[91] *See* Pl. Tr. Ex. 50. Although at trial there was conflicting testimony regarding whether the AC had ever received a representative color sample for the Roof, *compare* Trial Tr. 119:8-10 (Alessandro's testimony that he had provided the color chart to the AC) *with id.* 199:4 (Allen's testimony that he had never received the color chart), the AC did receive some description of the color because Allen testified that he was confused by the color "taupe," and looked up the definition of taupe in the dictionary, which said "a dark brownish gray." *Id.* 198:17; *id.* 198:18-19.

[92] *Id.* 75:2-11; *id.* 189:1-8.

[93] D.I. 19, at 25-26.

[94] *See* Pl. Tr. Ex. 184-187. Alessandro testified that he advised Allen that the elevation drawings were not representative of the proposed actual color of the Roof. Trial Tr. 153:22-154:2; *id.* 167:10-168:4. Allen testified that he was told the drawings "would not be an exact match," but were "representative." *Id.* 78:23-79:3. Alessandro also testified that the roofing color on the elevation drawings – burnished slate – is the default color in the computer program used to prepare the elevation drawings; that Allen had the Materials List and color chart showing "taupe" as the proposed color, and the color ultimately used on the Roof. *Id.* 172:5-173:17; Pl. Tr. Ex. 34.

But, despite this apparent confusion,[95] the AC chose to proceed without additional inquiry. The AC had sufficient information to conduct a further inquiry. Additionally, the materials themselves were on the Property and available to members of the AC to go inspect should there have been any concern in the colors and materials.[96]

The AC also suggested that the process was "rushed."[97] The Restrictions require the AC to "approve or disapprove [the] plans within thirty (30) days of receipt of the [plans]."[98] The AC received the initial plans from Alessandro on March 2, 2018,[99] and the updated elevation drawings on March 7, 2018.[100] The AC issued its approval of the Addition on March 10, 2018.[101] The AC chose to conduct this expedited review (at the Babbitts' request) but it could have taken the full 30 days for the review. This highlights the difficulties that architectural review

[95] *See* Trial Tr. 198:17.

[96] *Id.* 209:5-9; Def. Tr. Ex. G. (Mr. Babbitts' March 7, 2018 email to Allen that "committee member[s] can come down [to the Property] and look at the colors of the roof and any other material they would like to exam[ine]").

[97] D.I. 19, at 30.

[98] Pl. Tr. Ex. 7. In his testimony, Allen described a much more drawn-out process by which property owners have preliminary conversations with the AC to understand what the AC wants in proposals. Trial Tr. 46:22-48:5. While that certainly promotes the goal of increased efficiency, it is not required by the Restrictions.

[99] Pl. Tr. Ex. 201-02.

[100] *Id.* 213-14.

[101] *Id.* 215.

committee members face – they must make decisions in compliance with deed restrictions regardless of the impact on neighbors with whom they have personal relationships. But here, the members of the AC chose to accommodate the Babbitts' desire for an expedited review. In this respect, the Babbitts' conduct did not affect the reasonableness of the AC's application of the Restrictions in the architectural review process because the AC chose to proceed with the review on an expedited basis. And, instead of making a reasonable inquiry under the Restrictions, the AC applied standards that do not appear in the Restrictions. Thus, the Babbitts' conduct did not affect the reasonableness of the AC's application of the Restrictions since the AC did not apply the Restrictions' standards.

D. Attorneys' Fees

Finally, both parties seek attorneys' fees under 10 *Del. C.* §348.[102] Since the parties have not meaningfully addressed their requests at this point, I will hold these requests in abeyance to allow the parties the opportunity to address them. The parties shall submit a proposed briefing schedule regarding their attorneys' fees requests within 15 days after this Report is issued.

III. CONCLUSION

For the reasons set forth above, I find that Wild Quail Golf & Country Club Homeowners' Association, Inc. did not demonstrate that the Architectural

[102] D.I. 1; D.I. 5.

Committee's decision imposing the Roof Condition on the Babbitts' property was reasonable and nonarbitrary. Accordingly, I recommend that the Court deny Wild Quail's claim that the Babbitts violated Wild Quail's Declaration of Restrictions by failing to conform to the Association's conditional approval or to the plans they submitted. The parties' claims for attorneys' fees under 10 *Del. C.* §348 remain to be decided. This is a final master's report, and in the interests of justice and judicial efficiency, exceptions are stayed under Court of Chancery Rule 144(f) pending a decision on the parties' requests for attorneys' fees.