



Andrew Mowery <andrew.p.mowery@gmail.com>

Linda & Kevin Brucker, 1386 Tributary Court, Fort Collins, Colorado 80521

Andrew Mowery <andrew.p.mowery@gmail.com>

Thu, Oct 25, 2018 at 11:49 AM

To: Buck Hammond <buck.hammond@gmail.com>

Cc: Keith Knight <send.keith@gmail.com>, walker flanary <wgflanary@gmail.com>, Maryann Goyn <goynm@outlook.com>, Paul Janov <pauljanov1@gmail.com>, Irve Denenberg <ibdp04hoa@gmail.com>, Clay & Gloria Jones <joneswv@gmail.com>

I apologize, I didn't see the Bruckers on the CC list. I only removed the attorney in my reply. I sincerely apologize for this error.

On Thu, Oct 25, 2018 at 11:48 AM Andrew Mowery <andrew.p.mowery@gmail.com> wrote:

Good morning everyone!

I've read and reviewed the letter from the Brucker's attorney.

I think the first question is whether anyone has contacted our HOA attorney yet. If yes, I would think this letter needs to be reviewed (promptly) for any additional or follow-up comments.

Unfortunately, I would tend to agree that the rules, as written, do not create an exclusive restriction to two colors/manufacturers as we are attempting to enforce. My opinion on that has not changed by this letter. I agree with Mr. Ward that the vague language gives an open-ended interpretation of what "similar" is.

However, the reason I've supported our decision made at the last meeting is because there is certainty in a requirement of the process of getting ACC approval on any architectural changes. We emphasized that they didn't come to us with their variance, and had they done so (like other homeowners had), we would have denied their request. The logic is sound.

So, the contention here is that the ACC and/or the Board waived their rights to approve roof changes by sending out an email that included the vague "similar" language, essentially giving pre-approval if you simply follow the language of the rule. That, in turn, causes us to revisit the issue of whether the Brucker's were required to get ACC approval before they chose, on their own, to interpret the "similar" language in the rule. Unfortunately, there's a reasonable argument from Mr. Ward here regarding waiver that we didn't consider or discuss at our last Board meeting. I think this is the issue that needs review from the HOA attorney, as waiver is actually a complex topic that sometimes defies layman's logic.

While our intentions may have been clear to ourselves in limiting roofs to two color names from two manufacturers, and the word "similar" may have meant, to us, that only brown-tones qualify as "similar", it certainly isn't that unreasonable for another interpretation to result in a gray-tone as "similar". I had brought up with Irve, early on in this discussion, that I honestly didn't feel like this was actually that much of a variation in appearance when I drove down Headwater. I personally feel it is similar in terms of overall appearance. It doesn't stand out to me any stronger than any of the new paint colors that have been applied across the neighborhood. As one of the people who worked with the original builder, there were "tone" restrictions on the paint colors that we are no longer following with our approvals of various darker tones and stronger contrasts. If I were these homeowners and we got deep into the topic of "tones", I'd bring up the changes in paint color tones that have been approved as an example of how a change from brown to gray tones in roofing materials would be judged within the boundaries of interpretations of "similar".

It is my opinion, then, that we need to refocus on the notice that we sent out that gave blanket approval on the condition that the rules were followed. I tend to agree with Mr. Ward that we may have waived our right to hold the lack of running the gray-colored shingles by the ACC against them. We essentially said, "follow the rules, and you

don't need to ask for approval". If the rules are vague, and they are, and we were concerned with anyone using anything other than a brown town, unfortunately, we would necessarily have to require that every homeowner go through the formal process of submitting their intended materials. We chose to avoid that workload under the presumption that everyone would interpret the two colors as an exclusive requirement, and that "similar" would be exclusively limited to interpretations of brown-tones.

I think they are also raising a legitimate point regarding a hearing with the board. At the time when I was in contention with a prior Board, I too demanded a hearing but was denied that meeting for 3 months. When it finally occurred, the primary board member causing the issue failed to show up, and one of the others wasn't notified of the meeting - and it was held at the attorney's office with the intention by that board to saddle me with the bill for such a meeting. I understand the emotions of interpreting the rules of the association to read that if a hearing is requested, it should be granted. I interpret the rules the same way, and if we are going to be strict or rigid about enforcement, that would also require us to do the same in rules that affect our responsibilities to provide a hearing.

Therefore, I think, in order to handle this properly from this point forward we need to:

1. Get our attorney to weigh in on the vague language of "similar"
2. Get our attorney to weigh in on whether we waived a right to review their interpretation of "similar" through the ACC Committee by sending out a blanket conditional pre-approval email.
3. Get our attorney to review whether we are obligated to have an in-person hearing, as the rules appear to suggest.
4. Schedule a hearing to resolve the matter, if our attorney does not have objections.

I understand we've had vacations that have affected this matter, but I believe that at this time, we are all here and available. Keith has recused himself on this matter, so his absence should not be a factor in any delays regarding an in-person hearing. Although, I'd personally rather have his wisdom in the room, for the record.

Sincerely,

Andy

On Wed, Oct 24, 2018 at 11:16 PM Kevin Ward <kward@wicklaw.com> wrote:

Dear Members of the Board:

Please find the attached communication and documentation on behalf of our clients, Linda and Kevin Brucker. A copy of the same has been placed in the U.S. Mail to the attention of the Association.

Respectfully submitted,



Kevin William Ward

Associate Attorney

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