

5/31/2022

RE: 313 E. Jackson St, Pensacola, FL; Nannette Chandler

Ms. Lindsay:

I understand that the ARB denied my request to keep the R-panel roof at said address because it does not want to set a precedent of having approved that particular product, and because, as Mr. Mead said, this matter exceeds their scope and purpose and should be referred to Council for decision.

The OEH Association and the City of Pensacola Inspections Department have a duty to enforce all community covenants and restrictions in a fair and reasonable manner. When the Association breaches this duty, by failing to inform the City of Pensacola of all infractions indiscriminately, the homeowner is entitled to the defense of selective enforcement against the enforcement agency.

Selective enforcement is a valid defense when an Association or Review Board acts in an indiscriminate and capricious manner in the enforcement of a particular covenant contrarily from one homeowner to another.

I have included below a complete list of all houses with R-panel metal roofs in the Old East Hill District. All of these property owners have roofs that are not approved by the ARB for one reason or another with the possible exception of Board Member Lou Courtney, who stated that her R-panel metal roof was actually approved by the ARB. There is no record of the Neighborhood Association reporting any of these existing roof replacements as non-conforming, yet every new home owner is denied occupancy of their home by the City of Pensacola even though the roof is the same as the existing homes in the district. The existing homeowners can also legally replace their roof with the same R-panel roof that I am told that I must remove to receive my Certificate of Occupancy. These are also all the homeowners who will be impacted by the decision of the City Council as, per Florida Law, whatever judgement is passed for my property must also be enforced for all of these homeowners as well, in time frame and in scope. The board cannot legally require one thing of me and not also require the same of every other homeowner in the district.

The other issue at hand is that the ARB does not have the power to make subjective assertions on a quasi-judicial scale. The Board is only legally allowed to apply the written ordinances to the review process. In this case, there is nothing written in the City Ordinances nor in any Association covenants and restrictions that declare the R-panel roof as prohibited. There is also no list of acceptable roofing surfaces listed in the Ordinance. This in itself renders the ARB judgement legally unenforceable as it then becomes a subjective matter.

The first seven addresses below were either verbally listed by me at the ARB meeting on March 19, 2022 (or have since installed an R-panel roof on their home), but were not in the packet for the ARB members, as I had to submit my appeal almost immediately after receiving the call from Gregg Harding to make the March agenda deadline.

810 E. Jackson St.  
311 N Davis St  
317 N. Davis St  
418 E. Belmont St  
523 N. 8<sup>th</sup> Ave  
625 N. 9<sup>th</sup> Ave  
401 N. Davis Hwy (2 buildings)

These were on the original list:

315 E. Jackson St  
317 E. Jackson St  
319 E. Jackson St  
321 E. Jackson St  
407 E. Jackson St  
409 E. Belmont  
410 E. Wright St  
310 Alcaniz  
312 Alcaniz  
314 Alcaniz  
318 Alcaniz  
312 N. Davis  
321 N. Davis

Looking at the bigger picture, I feel the best possible solution to remedy and avoid this issue in the future is clarification within the ordinance. The roof materials that are allowed and/or prohibited must be defined. Then, as roofs are replaced within the neighborhood, they will all eventually conform to the historic standards that the Association seeks to promote.