

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Charles P Mandela,

4 Petitioner

5 vs.

6 Blue Ridge Estates Homeowners
7 Association of Coconino County,

8 Respondent

No. 19F-H1918006-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

9
10 **HEARING:** October 17, 2018

11 **APPEARANCES:** Petitioner Charles P. Mandela appeared on behalf of himself.
12 Paul Frame, Esq. appeared on behalf of Respondent Blue Ridge Estates Homeowners
13 Association of Coconino County.

14 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

15
16 **FINDINGS OF FACT**

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18 1. The Arizona Department of Real Estate (“Department”) is authorized
19 by statute to receive and to decide Petitions for Hearings from members of
20 homeowners’ associations and from homeowners’ associations in Arizona.

21 2. Respondent Blue Ridge Estates Homeowners Association of Coconino
22 County (“Blue Ridge”) is a homeowners’ association whose members own single-family
23 houses on lots in the Blue Ridge Estates development in Happy Jack, Arizona.

24 3. Petitioner Charles P. Mandela owns a house in and is a member of Blue
25 Ridge.

26 4. Mr. Mandela submitted a Play Structure Approval Request to construct a
27 patio structure the size of approximately 150 square feet in his backyard. Mr. Mandela
28 submitted the request by using a form found on Blue Ridge’s website. The form
29 provides, in relevant part, as follows:
30

Per the modified Rules and Regulations dated April 6, 2016, this form must be submitted to Architectural Committee for approval of any Play Structure. A play structure is defined, but not limited to, Swing Sets, Jungle Gyms, Tree Houses, Tree Viewing Stands and Ground Placed Play Houses/Forts. You're allowed [to have] one (1) . . . one of each, but no more than (2) play structures. When submitted for approval to be placed on any lot, the submittal should contain the following information:

.....

3. Cannot exceed 80 SF if it's a Tree House, Tree Viewing Stand, Play House/Fort, so please indicate the approximate Square Footage of the Play Structure.

5. Blue Ridge denied Mr. Mandela's request because the size of the structure exceeded the limit of 80 square feet.

6. Subsequently, Mr. Mandela submitted a request to Blue Ridge to build a detached patio structure of approximately 150 square feet in his back yard. ¹

7. Blue Ridge denied Mr. Mandela's request because he Mr. Mandela had a tool shed in his backyard. According to the Blue Ridge Covenants, Conditions, and Restrictions ("CC&Rs") § 3.1(A) and Architectural Committee Aligned Standard ("Architectural Committee regulation") 3(D), only one detached structure can be constructed on the property.

8. On or about July 31, 2018, Mr. Mandela filed a petition with the Department that alleged that Blue Ridge had violated CC&Rs § 3.1(a) by denying his request to place a patio structure in his backyard while allowing another member to erect a Tuff Shed.

9. Blue Ridge filed a written answer to the petition, denying that it had violated any CC&Rs or Architectural Committee regulation. The Department referred the petition to the Office of Administrative Hearings, an independent state agency, for an evidentiary hearing.

¹ Petitioner originally requested that that the patio structure be attached to his home. Respondent denied his request because he provided insufficient plans of the adequacy of the design. Petitioner did not dispute the denial of a patio structure that would be attached to his home.

10. A hearing was held on October 17, 2018.

11. Mr. Mandela contended that the Board should not have denied his request. Mr. Mandela argued that the patio structure was not a detached structure because it could be easily converted to a second residence. Mr. Mandela also contended that an Administrative Law Judge found in a prior decision involving Blue Ridge that under the Blue Ridge CC&Rs, a detached structure is a structure that can be easily converted into a second residence.

12. Blue Ridge contended that the patio structure is a detached structure under the Blue Ridge CC&Rs and that Mr. Mandela could not erect the patio structure on his property because he already had another detached structure on his property.

13. Blue Ridge did not dispute that it approved the placement of a Tuff Shed on a lot in the community.

14. Article III of the CC&Rs is entitled "Land Use Classifications, Permitted Uses and Restrictions." Section 3.1 of the CC&Rs provides in relevant part as follows:

Permitted Uses and Restrictions – Single Family. The Property shall be used, improved and devoted exclusively to Single Family Residential Use. No business, commercial, manufacturing, industrial, mercantile, vending or similar activity of any kind whatsoever shall be conducted on any of the Property No building or structure shall be erected or maintained separate from the Single Family Residence located on any Lot, other than a garage in accordance with Coconino County zoning ordinances in existence at the time. . . . No garage or shed shall be built prior to the issuance of a Coconino County building permit for the construction of a Single Family Residence.

15. Section 3.6 of the CC&Rs prohibits temporary structures from being placed, erected or maintained on any portion of the property. Section 3.7 of the CC&Rs prohibits trailers, mobile homes, or permanent tents from being placed on any property. Section 3.24 of the CC&Rs provides that "[n]o building, fence, wall, screen, residence or other structure shall be commenced, erected, maintained, improved or altered in respect of any Lot without the prior written approval of the . . . Architectural Committee."

1 16. Pursuant to the authority granted by CC&R § 10.2, the Architectural
2 Committee promulgated the following regulations to be aligned with Article III, Sections
3 1, 6, and 7:

4 ARTICLE III
5 LAND USE CLASSIFICATIONS, PERMITTED USES AND
6 RESTRICTIONS

7 Section 3.1 Permitted Uses and Restrictions

8 . . .

9 D. One detached structure may, with Architectural
10 Committee approval, be constructed on a property. The
11 residence must be constructed and completed before the
12 detached structure is built.

13

14 Section 3.6 Temporary Structures

15 A temporary structure or building is defined as one
16 without a cement or block foundation to which the
17 structure or building is permanently attached and may not
18 include any container, (vehicle, r.v., house trailer, hauling
19 trailer etc.) not harmonious with the residence and forest.

20 17. Section 4.2 of the CC&Rs provides that “[b]y a majority vote of the Board,
21 the Association may, from time to time and subject to the provisions of this Declaration,
22 adopt, amend and repeal rules and regulations to be known as the ‘Rules and
23 Regulations.’”

24 18. Section 12.2 of the CC&Rs provides in relevant part as follows:

25 Except as otherwise provided herein, this Declaration may
26 be amended . . . by the affirmative vote (in person or by
27 proxy) or written consent of Members owning at least
28 seventy-five percent (75%) of all Lots. . . .

29 **CONCLUSIONS OF LAW**

30 1. A.R.S. § 32-2199(B) permits an owner or a planned community
organization to file a petition with the Department for a hearing concerning violations of
planned community documents under the authority Title 33, Chapter 16. Such petitions
will be heard before the Office of Administrative Hearings, an independent state agency.

1 2. Petitioner bears the burden of proof to establish that Respondent violated
2 CC&R § 3.1 by a preponderance of the evidence.² Respondent bears the burden to
3 establish affirmative defenses by the same evidentiary standard.³

4 3. “A preponderance of the evidence is such proof as convinces the trier of
5 fact that the contention is more probably true than not.”⁴ A preponderance of the
6 evidence is “[t]he greater weight of the evidence, not necessarily established by the
7 greater number of witnesses testifying to a fact but by evidence that has the most
8 convincing force; superior evidentiary weight that, though not sufficient to free the mind
9 wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one
10 side of the issue rather than the other.”⁵

11 4. Petitioner failed to establish that Blue Ridge violated CC&R Article III,
12 Section 3.1(a) when it denied his request to construct a patio structure in his backyard.
13 Petitioner did not provide any evidence to show that the patio structure met the
14 requirements of a play structure. Additionally, Petitioner provided no evidence to
15 establish that the patio structure is not a barred temporary structure under the CC&Rs.

16 5. It is undisputed that Mr. Mandela has a tool shed on his property.
17 Petitioner did not establish that his proposed patio structure does not constitute a barred
18 detached structure under Blue Ridge CC&Rs § 3.1(A) and Architectural Committee
19 Aligned Standard (“Architectural Committee regulation”) 3(D). Although Mr. Mandela
20 contended that an Administrative Law Judge found in a prior decision that a detached
21 structure is one that can easily be converted to a second residence, Mr. Mandela
22 misinterprets the ruling of the Administrative law judge. Moreover, prior administrative
23 law judge decisions are not precedent or binding on future administrative law decisions.

24 6. Petitioner did not establish that Respondent had violated CC&R § 3.1(a).

25 **ORDER**

26 IT IS ORDERED that Petitioners’ petition is denied.

27 **NOTICE**

28 ² See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74
29 Ariz. 369, 372, 249 P.2d 837 (1952).

30 ³ See A.A.C. R2-19-119(B)(2).

⁴ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁵ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties
2 unless a rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S.
3 § 41-1092.09, a request for rehearing in this matter must be filed with the
4 Commissioner of the Department of Real Estate within 30 days of the service of
5 this Order upon the parties.

6 Done this day, November 6, 2018.

7 /s/ Velva Moses-Thompson
8 Administrative Law Judge
9

10
11 Transmitted electronically to:

12 Judy Lowe, Commissioner
13 Arizona Department of Real Estate
14

15
16 Transmitted U.S. Mail to:

17 Charles Mandela
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19 Happy Jack, AZ 86024

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25 c/o COMMUNITY ASSET MANAGEMENT LLC
26 PO BOX 10000
27 PRESCOTT, AZ 86304

28
29 By: Felicia Del Sol
30