

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Charles P. Mandela,

4 Petitioner,
5 vs.

6 Blue Ridge Estates of Coconino County
7 Homeowners' Association,

8 Respondent.

No. 19F-H1918006-REL-RHG

**ADMINISTRATIVE LAW JUDGE
DECISION**

9
10 **HEARING:** February 8, 2019

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

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

15
16 **FINDINGS OF FACT**

17 1. On December 12, 2018, the Arizona Department of Real Estate
18 ("Department") issued an order setting the above-captioned matter for rehearing on
19 February 8, 2019.

20 2. A rehearing was held on February 8, 2019. The Department is authorized
21 by statute to receive and to decide Petitions for Hearings from members of
22 homeowners' associations and from homeowners' associations in Arizona.

23 3. Respondent Blue Ridge Estates of Coconino County Homeowners'
24 Association ("Blue Ridge") is a homeowners' association whose members own single-
25 family houses on lots in the Blue Ridge Estates development in Happy Jack, Arizona.

26 4. Petitioner Charles P. Mandela owns a house in and is a member of Blue
27 Ridge.

28 5. On or about February 1, 2018, Mr. Mandela submitted a Play Structure
29
30

1 Approval Request to construct a cedar patio structure the size of approximately 150
2 square feet in his backyard. Mr. Mandela submitted the request by using a form found
3 on Blue Ridge's website. The form provides, in relevant part, as follows:

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

13

14 **3. Cannot exceed 80 SF if it's a Tree House, Tree
15 Viewing Stand, Play House/Fort, so please indicate the
16 approximate Square Footage of the Play Structure.
17 (Emphasis Added).**

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

20 7. On or about March 2, 2018, Mr. Mandela submitted a request to Blue
21 Ridge to attach a cedar patio shade to his home.

22 8. On or about March 2, 2018, Blue Ridge Chairman, John Hart, requested
23 that Mr. Mandela supply documents showing that the cedar patio shade would not be
24 free standing, for example, plans and material. See Exhibit 4, pg. 18.

25 9. On or about March 3, 2018, Mr. Mandela sent an electronic mail message
26 ("e-mail") to Mr. Hart. The e-mail provides in relevant part, as follows:

27 I am building this myself. I am not an Architect, I have not
28 software to show (6) 2 by 4's to attach from the single family
29 roof lie to the roof lien of the same roof. The structures will
30 be attached. I have shown photos of multiple attached
structures. There are multiple attached structures on BRE
and BRE has approved multiple attached structures.

1 Per the BRE Change form I have submitted the location,
2 property lines, drive way, propane and septic. The materials
3 and colors are provide [sic] in clear color photos that will be
4 used. Cedar wood to match the single family structure and
5 brown metal roofing to be harmonious with the forest. I have
6 not purchased the structure to gain the manufacturers plan.
7 This change does not require Coconino County permit, and
8 does not require structural plans.

9 10. On or about March 8, 2018, Mr. Hart denied Mr. Mandela's request.
10 See Exhibit 4, pgs. 43 and 44. Mr. Hart explained that Mr. Mandela submitted
11 incomplete information. The March 8, 2018 denial letter provided, in relevant part, as
12 follows:¹

13 The last submittal for the construction of your structure dated
14 3-3-18 is declined due to incomplete information.

15 Please provide Alll [sic] the documents required per CCR
16 guidelines for the structure that you are going to build. The
17 drawings and details are to match exactly what you are
18 going to build. Although you have given pictures of what you
19 want to build, they do not represent the structure of what you
20 are going to build. The format for information to be submitted
21 shall be per the guidelines as stated in the CCR's, section
22 10.3, architectural committee standards article 10.

23 The architectural approval process forms can be found on
24 the HOAMCO website portal. You must fill out the 9 page
25 form and submit the documents per the guidelines.

26 Once the appropriate forms are submitted, with all the
27 required documents and details per the CCR guidelines, we
28 will be able to proceed with the approval process for your
29 structure.

30 11. On or about March 23, 2018, Mr. Mandela filed an appeal with Blue Ridge
regarding the denial of his request to attach a cedar patio structure to his house.

¹ See id.

12. Blue Ridge denied Mr. Mandela's appeal. The appeal denial provides in relevant part as follows:²

Your request was denied because the information you provided for construction is not complete. In a follow up with the 800 number provided from the manufacturer of the components of your proposed structure, by telephone, a representative of the company stated that they will not warranty the construction if their design is altered.

What is needed in this case is for you to provide an elevation drawing of your specific construction. along with other appropriate forms and drawings included with the request form. This elevation drawing is common among construction drawings. It would contain, among other things:

1. A detailed drawing of the proposed actual construction, showing views, sizes, dimensions, specifications of devices, notes on construction methods, materials, etc.
2. Foundation details of the proposed construction including attachment methods of foundation to structural members of the construction.
3. Any other information required by the architectural committee, important to the proposed construction. When done neatly and completely, usually all of these elements can be Included in one page of design drawings.

With proper arrangements, members of the board would be willing to meet with you at your proposed construction location to discuss requirements of your proposed construction. This meeting would require a time which is acceptable to all parties.

In the interim, your proposed project is not approved for construction.

13. Mr. Mandela submitted a third request to Blue Ridge to build a detached cedar patio structure of approximately 150 square feet in his back yard.

14. Blue Ridge denied Mr. Mandela's request because Mr. Mandela already had one detached structure on his property. According to the Blue Ridge Covenants, Conditions, and Restrictions ("CC&Rs") § 3.1(A) and Architectural Committee Aligned

² See Exhibit 5.

Standard ("Architectural Committee regulation") 3(D), members may have one detached structure on their property.³

15. On or about July 31, 2018, Mr. Mandela filed a single issue petition with the Department alleging 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.

16. Blue Ridge filed a written answer to the petition, denying that it had violated any CC&Rs or Architectural Committee regulation.

17. Mr. Mandela contended that the Board should not have denied his request. Mr. Mandela argued that the cedar patio structure was not a detached structure because it could not be easily converted to a second residence.

18. Mr. Mandela contended that the Board's modified rule that allows for a second detached play structure violates CC&R 3.1 because it discriminates against people who do not have children.

19. Mr. Mandela asserted that he provided sufficient information to show how he would attach the patio structure to his home. Although Mr. Mandela submitted photos of patio structures being attached to homes, the photographs that he provided did not depict the gazebo that Mr. Mandela was proposed to attach to his home.

20. Mr. Mandela asserted that the Board was discriminating against him because it was not enforcing the rule limiting second detached structures to 80 feet against other homeowners. Mr. Mandela alleged that his neighbor complained that she would have to remove her patio structure because of Mr. Mandela's petition.

21. Mr. Mandela contended that because the instructions for the construction of his proposed play structure provided examples of "permanent installation" and provided a lumber warranty of 5 years against rot and decay, his proposed patio structure was not a temporary structure.

22. Mr. Mandela further contended that he planned to place concrete pavers at the bottom of the patio shade. Mr. Mandela asserted that because he planned to use

³ Members are permitted to have one detached structure and an approved play structure pursuant to Blue Ridge's modified Rules and Regulations. See Exhibit 2. However, Blue Ridge previously denied Mr. Mandela's request for a play structure because the proposed structure exceeded the size limits.

1 concrete pavers, his proposed patio shade was not a temporary structure under the
2 Blue Ridge rules because under the rules, a temporary structure is a structure that does
3 not have a cement or block foundation. Mr. Mandela asserted that his proposed patio
4 structure is not a temporary structure because the concrete pavers constitute a cement
5 foundation.

6 23. Mr. Mandela asserted that the play structure policy limiting construction to
7 80 square feet is discriminatory and should not enforced because he does not have
8 children. Mr. Mandela explained that he wants to build the patio structure so that his
9 mother has a place to come outside and rest.

10 24. Mr. Mandela asserted that he always submits a site plan with his
11 submissions and did so when he submitted three requests to construct the cedar patio
12 structure

13 25. Blue Ridge presented the testimony of Joseph Hancock, the Vice
14 President of Blue Ridge. Mr. Hancock worked with Mr. Hart in reviewing Mr. Mandela's
15 requests. Mr. Hancock has held several contractor's licenses in the state of Arizona
16 consisting of general contractor licenses, electrical and HVAC.

17 26. Mr. Hancock testified that although Mr. Mandela asserted in his request
18 for rehearing that Lot 185 in Blue Ridge had an approved free standing patio shade,
19 Mr. Hancock explained that Lot 185 was built before 2003. Mr. Hancock visited Lot 65
20 and there were no detached structures on the property, only one residence.
21 Mr. Mandela admitted that he made typographical errors in his request for hearing
22 because he owns lots 187 and 188.

23 27. Mr. Hancock opined that a concrete paver is not the equivalent of a
24 cement or slab foundation for purposes of an alignment. Mr. Hancock assisted Mr. Hart
25 in the review of Mr. Mandela submissions and agreed that Mr. Mandela did not provide
26 enough information to illustrate how he would attach the patio structure to his residence.
27 Mr. Hancock explained that Mr. Mandela failed to consider height and width
28 differentials.

29 28. Article III of the CC&Rs is entitled "Land Use Classifications, Permitted
30 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.

29. 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.”

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

ARTICLE III
LAND USE CLASSIFICATIONS, PERMITTED USES AND
RESTRICTIONS

Section 3.1 Permitted Uses and Restrictions

. . .

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

. . . .

Section 3.6 Temporary Structures

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

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

5 32. Section 12.2 of the CC&Rs provides in relevant part as follows:

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

10 CONCLUSIONS OF LAW

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

15 2. It is undisputed that Mr. Mandela has a shed on his property at the time
16 that he requested to erect a free standing cedar patio shade of approximately 150
17 square feet. Petitioner did not establish that his proposed patio structure does not
18 constitute a barred detached structure under Blue Ridge CC&Rs § 3.1(A) and
19 Architectural Committee Aligned Standard (“Architectural Committee regulation”) 3(D).
20 Although Mr. Mandela contended that an Administrative Law Judge found in a prior
21 decision that a detached structure is one that can easily be converted to a second
22 residence, the detached structure addressed in that case was a play structure but MR.
23 Mandela sought to erect a cedar patio structure. Moreover, prior administrative law
24 judge decisions are not precedent or binding on future administrative law decisions.

25 3. Petitioner bears the burden of proof to establish that Respondent violated
26 CC&R § 3.1 by a preponderance of the evidence.⁴ Respondent bears the burden to
27 establish affirmative defenses by the same evidentiary standard.⁵
28

29 ⁴ 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
30 Ariz. 369, 372, 249 P.2d 837 (1952).

⁵ See A.A.C. R2-19-119(B)(2).

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

8 5. Petitioner failed to establish that Blue Ridge violated CC&R Article III,
9 Section 3.1(a) when it denied his request to construct a detached patio structure in his
10 backyard. The preponderance of the evidence shows that the proposed play structure
11 is a second detached structure.

12 6. The preponderance of the evidence shows that the proposed play
13 structure is a temporary structure under the Blue Ridge CC&Rs because it does not
14 have a cement or block foundation. The preponderance of the evidence shows that
15 concrete pavers are not the equivalent of cement or block foundation.

16 7. Petitioner failed to establish that Blue Ridge approved other requests for a
17 second play structure that exceeded 80 square feet, but denied his request. The photos
18 submitted by Petitioner do not establish that the play yards exceed 80 square feet.
19 Although Petitioner asserted in his request for rehearing request that lot 65 had an
20 approved play structure, the credible testimony of the Vice President showed that there
21 was no detached play structure on lot 65.

22 8. Petitioner failed to establish by a preponderance of the evidence that Blue
23 Ridge improperly denied his request to attach a play structure to his home. The
24 preponderance of the evidence showed that Petitioner failed to provide sufficient details
25 to illustrate how he would attach the cedar patio structure to his home.

26 9. Petitioner failed to establish that Blue Ridge’s plays structure policy and
27 denial of his requests violated CC&R 3.1 because Blue Ridge discriminated against
28 Petitioner.
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30 ⁶ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁷ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 10. CC&R 3.1 addresses permitted uses and to the extent that Petitioner may
2 be alleging a violation of the equal protection clause of the Fourteenth Amendment, this
3 tribunal does not have jurisdiction over such a claim.

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

5 **ORDER**

6 IT IS ORDERED that Petitioner's petition is denied.

7 **NOTICE**

8 **This administrative law judge order, having been issued as a result of a**
9 **rehearing, is binding on the parties. ARIZ. REV. STAT. section 32-2199.02(B). A**
10 **party wishing to appeal this order must seek judicial review as prescribed by**
11 **ARIZ. REV. STAT. section and title 12, chapter 7, article 6. Any such appeal must be**
12 **filed with the superior court within thirty-five days from the date when a copy of**
13 **this order was served upon the parties. ARIZ. REV. STAT. section 12-904(A).**

14 Done this day, February 28, 2019.

15 /s/ Velva Moses-Thompson
16 Administrative Law Judge

17 Transmitted electronically to:

18 Judy Lowe, Commissioner
19 Arizona Department of Real Estate

20 Transmitted through US Mail to:

21 Charles Mandela
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