



1 be a stand-alone structure, however, Mr. Mandela intended to attach the same to the east  
2 side wall of his residence.

3 5. On October 25, 2019, Blue Ridge denied Mr. Mandela's request stating,

4 Attached is the application for modification in regards to a wooden  
5 gazebo. At this time the committee has decided that this application  
6 cannot be approved per the Architectural Committee Standards  
7 Article X. Only one structure other than the residence may be placed  
8 on the property. The site plan that was given for review shows the  
9 residence and also a shed on property already existing, this would be  
10 the allowable limit per the Architectural Standards.<sup>2</sup>

11 6. On or about January 13, 2020, Mr. Mandela filed a petition with the  
12 Department that alleged that Blue Ridge had violated CC&R's Article X by denying his  
13 request to place the patio shade on the property.

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

18 8. On October 7, 2020, this tribunal held a hearing on the Motion to Dismiss  
19 and denied Respondent's request for the same and set a hearing for the matter to be  
20 heard on its merits.

21 9. A hearing was held on January 13, 2021.

22 10. Mr. Mandela passionately argued that his request to erect the patio shade  
23 should not have been denied as it was going to be attached to the house and not a  
24 separate stand-alone structure, and thus arguing that the denial was erroneous. Mr.  
25 Mandela offered several photographs of other properties with multiple structures on the  
26 property and several stand-alone patio shade structures similar to what he was planning  
27 to erect.

28 11. Blue Ridge contended that it followed Article X of the CC&Rs in properly  
29 denying Mr. Mandela's request. At hearing, Blue Ridge pointed to Article III of the CC&Rs

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30 <sup>2</sup> Id.

1 as the reason for denying the request because the shade would classify as another  
2 structure on the property.

### 3 CONCLUSIONS OF LAW

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

8 2. Petitioner bears the burden of proof to establish that Respondent violated  
9 CC&R § 3.1 by a preponderance of the evidence.<sup>3</sup> Respondent bears the burden to  
10 establish affirmative defenses by the same evidentiary standard.<sup>4</sup>

11 3. "A preponderance of the evidence is such proof as convinces the trier of  
12 fact that the contention is more probably true than not."<sup>5</sup> A preponderance of the evidence  
13 is "[t]he greater weight of the evidence, not necessarily established by the greater number  
14 of witnesses testifying to a fact but by evidence that has the most convincing force; superior  
15 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable  
16 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than  
17 the other."<sup>6</sup>

18 4. Article X in the Blue Ridge CC&Rs established the architectural committee  
19 as well as the architectural standards property owners must follow. It is unclear from the  
20 Petition which specific section Mr. Mandela is challenging the denial, but this tribunal  
21 examines specifically Sections 10.2 and 10.3.

22 5. Section 10.2 states in pertinent part,

23 The Architectural Committee shall have jurisdiction over all original  
24 construction and any modifications, additions or alterations to  
25 improvements on any portion of the Property including, but not  
26 limited to, the construction or installation of, or modifications,  
additions or alterations to: all buildings or structures; landscaping;  
fences; heating, ventilating, air conditioning and cooling units; solar

27 <sup>3</sup> 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  
28 Ariz. 369, 372, 249 P.2d 837 (1952).

<sup>4</sup> See A.A.C. R2-19-119(B)(2).

<sup>5</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

<sup>6</sup> BLACK'S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

panels; paint; and any other construction, modification, addition or alteration affecting the exterior appearance of any structure or Lot....  
**Such standards and procedures may include, without limitation, provisions regarding:**

- (a) the size of the buildings or structures;
- (b) architectural design, with particular regard to the harmony of the design with surrounding buildings or structures and topography;
- (c) placement of buildings or structures;
- (d) landscaping design, content and conformance with the character of the Property, and permitted and prohibited plants;
- (e) requirements concerning exterior color schemes, exterior finishes and materials;
- (f) signage; and
- (g) perimeter and screen wall design and appearance.<sup>7</sup>

(Emphasis added). The reason given in the October 25, 2019 e-mail denial referenced that “[o]nly one structure other than the residence may be placed on the property.”<sup>8</sup> Thus the denial complies with this section because the list was not an exhaustive one, and as such the committee could properly deny the request.

6. Further Section 10.3 states in pertinent part,

No original construction and no modification, alteration or addition subject to the Architectural Committee’s jurisdiction (including, but not limited to, landscaping) shall be commenced until it has been approved or is deemed approved by the Architectural Committee as provided herein. ... The Architectural Committee shall have thirty (30) days after receipt of such plans, specifications, and elevations to approve or disapprove of the proposed construction, installation, modification, alteration or addition or to request additional information, and, if the Architectural Committee disapproves, to give such Owner or other person or entity **reasonably detailed written reasons for such disapproval**....<sup>9</sup>

(Emphasis added). Blue Ridge complied with this section as well because the October 25, 2019 e-mail provided reasonably detailed written reasons. The e-mail did not have to specify which section it was referencing, just an explanation of the denial.

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<sup>7</sup> See Respondent’s Exhibit A.

<sup>8</sup> See Agency file.

<sup>9</sup> See Respondent’s Exhibit A.



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