

1 3. On March 31, 2022, the Department issued notice of the underlying petition
2 to Respondent.¹

3 4. On December 13, 2021, Respondent returned its ANSWER to the
4 Department whereby it denied the merits of Petitioner’s allegations.²

5 5. Per the NOTICE OF HEARING, the Department referred this matter to the
6 Office of Administrative Hearings (“OAH”), an independent state agency, for an
7 evidentiary hearing on February 11, 2022, regarding the following issues:

8 **Whether the Association violated CC&Rs Article 4 Sections 5 by “incorrectly**
9 **[applying] the method for determining the allowable square footage of an**
10 **accessory structure.”³**

11 *(Emphasis added.)*

12 **THE PARTIES AND GOVERNING DOCUMENTS**

13 6. Respondent is a homeowners’ association whose members own properties
14 in a residential real estate development located in Tucson, Arizona. Membership for the
15 Association is comprised of the Rivers Edge and Canada Del Oro Estates subdivisions,
16 known collectively as Catalina Ridge.

17 7. Petitioner owns Lot 9 within the Catalina Ridge subdivision and is a member
18 of the Association.

19 8. The Association is governed by its CC&Rs and overseen by a Board of
20 Directors (“the Board”). The CC&Rs empower the Association to control certain aspects of
21 property use within the development. When a party buys a residential unit in the
22 development, the party receives a copy of the CC&Rs and agrees to be bound by their
23 terms. Thus, the CC&Rs form an enforceable contract between the Association and each
24 property owner.

25 9. On an unknown date, the Association’s CC&Rs were recorded with the
26 Pima County Recorder’s Office.

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¹ See Department’s electronic file at H022-22040_Notice_Petition.pdf.

29 ² See Department’s electronic file at H022-22040_Response_Petition.pdf.

30 ³ See Department’s electronic file at Notice_Hearing.pdf; see also Department’s electronic file at H022-22040_HearingScheduled.pdf.

1 a. On October 25, 2019, the Association's Amended and Restated Declaration
2 of CC&Rs were recorded with the Pima County Recorder's Office⁴
3 10. Catalina Ridge CC&Rs Article VII, Use Restrictions, provides as follows:
4 **Section 7 Accessory Structures.** Accessory structures shall include, but
5 are not limited to, detached garages and guest homes and shall be limited to
6 twenty (20) feet in height. Accessory structures shall be limited to 5% of the lot area
7 or forty percent (40%) of the main Dwelling Unit, whichever is less."

8 **STIPULATED EVIDENCE**

9 11. Petitioner submitted his Architectural Review Committee ("ARC") Submittal
10 Form to the Association for his detached garage ("project") on May 15, 2019, along with a
11 cover letter referenced on the form.⁵

12 12. The submission to the ARC included plans for the project prepared by
13 Envision Corporation, dated March 29, 2019.⁶

14 13. Petitioner submitted a second application to the ARC for his project on June
15 19, 2019, along with the required \$3,000 deposit.⁷

16 14. On July 25, 2019, the Association sent Petitioner a DENIAL LETTER for his
17 project.⁸ In pertinent parts, Petitioner was advised that his request to build a 1,441 square
18 foot standalone garage was denied because, "The Committee believes that the square
19 footage of a home does not include garage area or patio."⁹

20 15. Section 2.2.2 of the Design Guidelines, as referenced in the DENIAL LETTER,
21 was included in a version of the Design Guidelines adopted by the Association in April
22 2009.¹⁰ The Design Guidelines were subsequently amended in March 2020. The prior

23 ⁴ See Stipulated Exhibit 6.

24 ⁵ See Stipulated Exhibit 8.

25 ⁶ See Stipulated Exhibit 5.

26 ⁷ See Stipulated Exhibit 9.

27 ⁸ See Stipulated Exhibit 1.

28 ⁹ *Id.*

29 ¹⁰ Section 2.2.2, Building Size, of the Design Guidelines provided "The minimum livable square footage of
30 any Dwelling Unit on a Lot shall be 2,500 square feet. This minimum requirement shall be exclusive of
garages, porches, Guest Houses, and patios. The maximum square footage allowed on a Lot is subject to
the Architectural Review Committee and will be evaluated on a case-by-case basis to ensure a Residence
is not out of character from the community. Under no circumstances shall a Guest House be constructed
prior to the main Residence."

1 section became Section 3.2.2 of the March 2020 Design Guidelines, but the language of
2 said Section was unchanged between the versions.¹¹

3 16. Sections 7.6 and 7.7 of the CC&Rs referenced in the DENIAL LETTER were
4 included in the CC&Rs applicable at the time of the denial letter.¹² The CC&Rs were
5 amended and restated in October 2019, but the language of Sections 7.6 and 7.7 was
6 unchanged between the versions of the CC&Rs.¹³

7 17. Petitioner requested that the ARC reconsider its decision.

8 18. On January 08, 2020, the ARC met to discuss Petitioner's request, as well
9 as to review new correspondence from neighbors provided by Petitioner.

10 19. On January 10, 2020, the Association sent Petitioner a SECOND DENIAL
11 LETTER for his project.¹⁴ In pertinent part, Petitioner was advised that his project request
12 was denied again, after additional consideration, because, "[The proposed build] does not
13 meet the size requirements of the Declaration (previous and revised.)"¹⁵

14 20. Petitioner attended the February 05, 2022, ARC meeting and requested an
15 appeal of its decision.

16 21. On February 07, 2020, the Association sent Petitioner a third and FINAL
17 DENIAL LETTER.¹⁶ In pertinent part, Petitioner was advised that his project request was
18 denied again because, "The plans and submission were not changed in any way."¹⁷

19 22. The square footage of Mr. Petitioner's proposed detached garage is
20 1,441.¹⁸

21 23. The livable square footage of Petitioner's home is 2,820.

22 24. The square footage of the covered front porch of Petitioner's home is 289.

23 25. The square footage of the covered rear porch of Petitioner's home is 327.

24 ¹¹ See Stipulated Exhibit 7.

25 ¹² CC&Rs Article 7.6, Minimum Dwelling Unit Size and Building Height, provides that "[a]ny Dwelling unit
26 erected, permitted or maintained on any Lot shall have a minimum livable square footage, **excluding**
garage, porches or guest house, and patios, of two thousand five hundred (2500) square feet."
(*Emphasis added.*)

27 ¹³ See Stipulated Exhibit 6.

28 ¹⁴ See Stipulated Exhibit 2.

29 ¹⁵ *Id.*

30 ¹⁶ See Stipulated Exhibit 3.

¹⁷ *Id.*

¹⁸ See Stipulated Exhibit 5.

1 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D),
2 32-2199.02, and 41-1092 *et seq.*, OAH has the authority to hear and decide the contested
3 case at bar. OAH has the authority to interpret the contract between the parties.¹⁹

4 3. In this proceeding, Petitioner bears the burden of proving by a
5 preponderance of the evidence that Respondent violated one or more provisions of the
6 Association's community documents.²⁰ Respondent bears the burden of establishing any
7 affirmative defenses by the same evidentiary burden.²¹

8 4. “A preponderance of the evidence is such proof as convinces the trier of fact
9 that the contention is more probably true than not.”²² A preponderance of the evidence is
10 “[t]he greater weight of the evidence, not necessarily established by the greater number of
11 witnesses testifying to a fact but by evidence that has the most convincing force; superior
12 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
13 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
14 the other.”²³

15 5. Each word, phrase, clause, and sentence of a statute or rule must be given
16 meaning so that no part will be void, inert, redundant, or trivial.²⁴

17 6. The issue to be addressed in this matter is whether the Association violated
18 CC&Rs Article 7.7; a pure question of law as to the meaning and interpretation of the
19 relevant provision, as the underlying facts are not in dispute between the parties.

20 7. Here, it is Petitioner's position that his project, a 1,441 square foot detached
21 garage, is permissible under CC&Rs Article 7.7 because his “main Dwelling unit” consists
22 of the livable portions of his home as well as his attached garage and patios, totaling 4,438
23 square feet. In contrast, the Association takes the position that Petitioner's “main Dwelling
24 unit” only consists of the livable portions of his home, totaling 2,853 square feet, which
25 would result in a maximum allowable detached garage totaling 1,128 square feet. Thus,

26 _____
27 ¹⁹ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

28 ²⁰ See ARIZ. ADMIN. CODE R2-19-119.

29 ²¹ *Id.*

30 ²² MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

²³ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

²⁴ See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 the definition of “main Dwelling Unit” is determinative as to whether Petitioner’s proposed
2 detached garage complies with CC&Rs Article 7.7.

3 8. Based upon a review of the credible and relevant evidence in the record, the
4 undersigned concludes that Petitioner did not sustain his burden of proof.

5 9. It is clear from the record that a “Dwelling Unit” can only consist of a portion
6 of a building that is distinct from other structures and improvements like garages and
7 patios. Additionally, “Accessory Structures” are limited to 40% of the main Dwelling Unit,
8 exclusive of a garage, porch, or patio. Hence, the calculation of the relevant square
9 footage of a main Dwelling Unit under CC&Rs 7.7 excludes any non-livable portion of a
10 building, structure, or improvement (attached or otherwise).

11 10. Because the livable portion of Petitioner’s home is 2,853, the maximum
12 allowable square footage of an accessory structure is capped at 1,141.2 square feet
13 under the applicable community document.

14 11. Therefore, the undersigned Administrative Law Judge must conclude that
15 because Petitioner did not establish Respondent’s violation(s) of CC&Rs Article 7.7, his
16 petition is denied.

17 **ORDER**

18 Based on the foregoing,

19 **IT IS ORDERED** that Petitioner’s petition is denied.

20 **NOTICE**

21 **Pursuant to ARIZ. REV. STAT. §32-2199.02(B), this ORDER is binding on the**
22 **parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. § 32-2199.04.**
23 **Pursuant to ARIZ. REV. STAT. § 41-1092.09, a request for rehearing in this matter**
24 **must be filed with the Commissioner of the Arizona Department of Real Estate**
25 **within thirty (30) days of the service of this ORDER upon the parties.**

26 Done this day, July 13, 2022.

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2 **Office of Administrative Hearings**

3
4 /s/ Jenna Clark
5 Administrative Law Judge

6
7 Transmitted electronically to:

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