

1 **Final agency action regarding decision below:**

2
3 **ALJFIN ALJ Decision final by statute**

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 DELORES HARROLD,

8 Petitioner,

9
10 vs.

11 PRESCOTT COUNTRY CLUB PROPERTY
12 OWNER ASSOCIATION,

13 Respondent.

No. 08F-H078003-BFS

**ADMINISTRATIVE LAW JUDGE
DECISION**

14
15
16
17 **HEARING:** October 24, 2007.

18 **APPEARANCES:** Delores Harrold appeared personally. The Prescott Country
19 Club Property Owner Association was represented by its attorney, Scott Humble, Esq.

20 **ADMINISTRATIVE LAW JUDGE:** Brian Brendan Tully

21
22 Based upon the evidence presented at the hearing, the Administrative Law
23 Judge makes the following Findings of Fact, Conclusions of Law and Order:

24
25 **FINDINGS OF FACT**

- 26
27 1. This matter came before the Office of Administrative Hearings, an independent
28 agency, for hearing on the Petition filed by Dolores Harrold ("Petitioner") with the
29 Arizona Department of Fire, Building and Life Safety ("Department") against the
30 Prescott Country Club Property Owner Association ("Respondent"). Petitioner
filed her Petition on August 14, 2007.

- 1 2. Petitioner is a member of Respondent.
- 2 3. Members of Respondent are subject to the Master Declaration of Amended,
3 Restated Covenants, Conditions and Restrictions for Prescott Country Club (“CC
4 & Rs”), including amendments, its Bylaws and the Articles of Incorporation for
5 PCC Property Owners Association, Inc. (“HOA Documents”).
- 6 4. Petitioner filed a single violation Petition alleging that on or about June 18, 2007
7 Respondent violated its HOA Documents by granting a neighbor a variance to
8 construct a two-car carport located at 11573 Turquoise Circle, Dewey, Arizona
9 (“Subject Property”).
- 10 5. Petitioner contends that Respondent does not have the authority under its HOA
11 Documents to grant a variance for a carport.
- 12 6. Petitioner is not the owner of the Subject Property.
- 13 7. The Subject Property has a single family residence with attached garage located
14 on it as required by Respondent’s HOA Documents.
- 15 8. On February 8, 2007, Respondent’s Architectural Control Committee approved
16 the homeowner’s request to build the carport on the Subject Property, which is
17 now attached to the residence. Respondent’s HOA Documents give the
18 Architectural Control Committee the authority to grant such a request.
- 19 9. Respondent’s HOA Documents do not prohibit the construction of approved
20 carports. Therefore, Respondent did not grant a variance to build the carport on
21 the Subject Property.
- 22 10. Petitioner failed to present credible evidence that a variance was granted by
23 Respondent on or about June 18, 2007.
- 24 11. There are carports at residences within Respondent.

25
26 **CONCLUSIONS OF LAW**

- 27 1. A.R.S. § 41-2198.01 permits a member of a homeowners association to file a
28 petition against the association with the Department. That statute provides that
29 such petitions will be heard before the Office of Administrative Hearings.
30

- 1 2. Pursuant to A.A.C. R2-19-119(B), Petitioner has the burden of proof in this
2 matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-
3 119(A).
- 4 3. The Administrative Law Judge concludes that Petitioner failed to sustain her
5 burden of proof in this matter. Respondent's HOA Documents do not prohibit it
6 from granting approval to homeowners requesting to add a carport to their single
7 family residence that has an attached garage. Therefore, Respondent committed
8 no violation by granting the request to construct a carport on the Subject
9 Property.
- 10 4. Since Respondent's HOA Documents do not restrict carports for single family
11 residential homes with attached garages, Respondent's approval of the
12 homeowner's carport request was not a variance from the HOA Documents.
- 13 5. The Administrative Law Judge concludes that Respondent is the prevailing party
14 in this matter. Therefore, Petitioner is not entitled to reimbursement of her
15 \$550.00 filing fee paid to the Department under A.R.S. § 41-2198.02(A).
- 16 6. Respondent failed to present any authority for the granting of attorney fees and
17 costs in this matter.

18 **ORDER**

19
20 IT IS ORDERED that the Petition in Case No. HO 07-8/003 be dismissed.

21
22 Done this day, October 25, 2007

23
24 _____
25 Brian Brendan Tully
26 Administrative Law Judge
27
28
29
30

1 Original transmitted by mail this
2 _____ day of _____, 2007, to:

3
4 Robert Barger, Director
5 Department of Fire Building and Life Safety - H/C
6 ATTN: Debra Blake
7 1110 W. Washington, Suite 100
8 Phoenix, AZ 85007

9 Delores Harrold
10 11159 N. Pima Rd.
11 Dewey, AZ 86327

12 Joseph B. Swan, Jr., Esq.
13 Scott Humble, Esq.
14 Turley, Swan & Childers, P.C.
15 3101 North Central Avenue
16 Suite 1300
17 Phoenix, AZ 85012

18 By _____
19
20
21
22
23
24
25
26
27
28
29
30