24760

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

RECEIVED
JUN 03 2019
SC Court of Appeals

C/A No. 2017-CP-04-2632
Appellate Case No. 2018-002028

EUGENE L. GRIFFIN, JR. and BETH KING GRIFFIN.....Appellants,

v.

ARDEN CHASE HOMEOWNERS' ASSOCIATION, INC......Respondent.

RECORD ON APPEAL – VOL. I

Daniel L. Draisen, Esquire
SC Bar No. 13536
Krause, Moorhead & Draisen, P.A.
207 E. Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
Attorneys for Appellants

James W. Logan, Jr., Esquire
SC Bar No. 3080
Stacey T. Coffee, Esquire
SC Bar No. 6525
P.O. Box 259
Anderson, South Carolina 29622
(864) 226-1910
Attorneys for Respondents

Ernest C. Trammell, SC Bar No. 5619
Trammell & Mills Law Firm, LLC
P.O. Box 1656
Anderson, SC 29622

J. Franklin McClain, SC Bar No. 3735
401 South Main Street
Anderson, SC 29624

Attorneys for Respondent

INDEX

VOLUME I

	Page No.
Orders:	
Order dated March 28, 2017	3
Order dated September 11, 2017	19
Order dated October 13, 2017	22
Form 4 Order dated May 17, 2018	25
Order dated August 9, 2018	29
Form 4 Order dated November 6, 2018	35
Order dated November 13, 2018	38
Pleadings:	
Summons and Complaint (including Exhibits thereto), filed December 27,2017;	44
Answer and Counterclaim, filed January 19, 2018;	99
Motion for Summary Judgment (including Exhibits thereto), filed by Appellants on March 12, 2018;	107
Motion for Summary Judgment, filed by Respondent on March 27, 2018;	169
Memorandum in Support of Plaintiffs Motion for Summary Judgment, filed by Appellants on April 30, 2018;	179
Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Motion, filed by Respondent on May 1, 2018;	199
Notice of Motion as Motion to Reconsider, Alter or Amend Judgment, filed by Appellant on August 9, 2018;	206
Memorandum in Support of Plaintiffs Motion to Reconsider, filed by Appellant on October 8, 2018;	213
Defendant's Return to Plaintiffs Motion to Reconsider, Alter or Amend Judgment, filed by Respondent on October 15, 2018;	221
Memorandum in Support of Defendant's Return to Plaintiffs' Motion to Reconsider, Alter or Amend Judgment, filed by Respondent on October 23, 2018;	224
Motion to Clarify and to Compel Compliance	228

VOLUME II

Transcripts:	
Complete transcript of May 11, 2018 hearing before Judge Mcintosh;	230
Complete transcript of November 1, 2018 hearing before Judge Mcintosh	262

Page No.

Exhibits:

Declaration of Covenants	300
Initial "Approved" Plans	332
Letter dated May 24, 2017	335
Letter dated May 31, 2017 and floor plan drawing	336
Letter dated June 5, 2017	338
Email dated June 5, 2017	340
Affidavit of John "Jack" Jones with Drawings	342
Letter dated October 13, 2017 and drawings	348
Letter dated October 16, 2017	356
Letter dated October 26, 2017 with additional submissions	360
Letter dated October 30, 2017	369
Letter dated December 1, 2017,	372
Letter dated December 5, 2017	374
Letter dated December 12, 2017 with submittals	378
Sealed Sight Plan drawings and Affidavit of Benjamin Beck, Land Surveyor	386
Letter dated December 22, 2017	392
Email of September 8, 2017	394
Email of September 13, 2017	395
Email of September 13, 2017 #2	396
Email of September 13, 2017 #3	397
Email of September 14, 2017	398
Email from attorney attaching copy of Plaintiff's Motion for Clarification of Court Order; Email of September 26, 2017	400
Email with letter attached dated October 9, 2017	403
Letter of October 10, 2017	405
Email of October 17, 2017	406
Email of November 1, 2017	407
Email of December 6, 2017	408
Affidavit of Benjamin Beck, Land Surveyor	409
Affidavit of John "Jack" Jones, Residential Builder No. 3276	413
Affidavit of George Stephen Crain, former member of ACC	417
First revised garage plans	420
Nine (9) Color Photographs of the completed Griffin garage	423
The physical site, 100 Arden Chase, Lot 23	

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON R. Dean Price, Paula B. Price, Thomas Barney Smith, Jr. and Amanda Aiken Smith, Plaintiffs, v. Eugene L. Griffin, Jr. and Beth King Griffin, Defendants. and Eugene L. Griffin, Jr. and Beth King Griffin, Third-Party Plaintiffs, v. Arden Chase Homeowners Association, Inc., Third-Party Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2016-CP-04-02028 ORDER

PRESIDING JUDGE:	R. SCOTT SPROUSE
DATES OF BENCH TRIAL:	FEBRUARY 27 - 28, 2017
PLAINTIFFS' ATTORNEY:	JAMES W. LOGAN, JR.
DEFENDANTS' ATTORNEY:	DANIEL DRAISEN
COURT REPORTER:	DIANE MARCENGILL

This matter was before the Court for a non-jury trial. The dispute arises from a plan by the Defendants to construct a detached garage for their recreational vehicle. The Plaintiffs filed suit, alleging that the Defendants' planned structure violated the restrictive covenants of the subdivision. The Defendants deny the Plaintiffs' allegations and brought a Third-Party Complaint against the Homeowners Association seeking declaratory judgment. The Court, after hearing testimony from

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

several witnesses (live and via deposition), reviewing briefs, exhibits, and arguments of counsel, and conducting a site visit at the request, and in the presence, of the attorneys, makes the following findings:

Findings of Fact

1. The Plaintiffs are residents of Anderson County, South Carolina.

2. The Defendants are residents of Anderson County, South Carolina.

3. The Third-Party Defendant is a homeowners association located in Anderson County, South Carolina.

4. This dispute arises from the Defendants attempting to construct a detached garage to house their recreational vehicle (RV), which currently is stored at another location. The Defendants began the process of this project in June of 2016, when they submitted plans to the neighborhood's Architectural Control Committee (ACC). The Court heard testimony from Stephen Crain, who is a member of the ACC. The plans submitted to the ACC by the Defendants were returned to the Defendants marked "approved." The Defendants then began the construction process.

The initial work involved digging footings and having footers installed. When opposition to the project began to arise in the subdivision, work halted on the project. The Plaintiff Dean Price, who also was a member of the ACC, voiced an objection to the project approval because he was out of town and unable to attend the meeting when the project was approved initially. In response to neighbors' concerns, the ACC sent a letter to the homeowners explaining their decision to approve the garage plans.

On July 20, 2016, Crain sent a letter to the Defendants informing them that the approval process was defective, making it unlikely that the project could be approved. Regardless of these events, the Defendants proceeded to have the slab poured at the project site. The Plaintiffs filed

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP040202

suit. The Plaintiffs all seek a permanent injunction prohibiting the construction of the proposed garage, alleging that the proposed garage violates the restrictive covenants.

Along with an Amended Answer, the Defendants bring a Third-Party Complaint against the Arden Chase Homeowners Association, Inc. seeking declaratory judgment. The declaratory judgment action seeks clarification of how said restrictive covenants apply to such structures. The dispute between the parties began as a dispute over the method and validity of the ACC approval of the Defendants' proposed garage. There was live testimony regarding the approval process, along with significant portions of the deposition testimony relating directly to that issue. However, each party acknowledges that a homeowner in the subdivision has a right to bring an action on the restrictive covenants and how they apply to the proposed garage. In light of this stipulation and the declaratory judgment request, the parties are not pursuing their respective claims regarding the validity of the ACC approval of the proposed garage. The Plaintiffs seek an Order of the Court granting a permanent injunction against the Defendants, prohibiting them from constructing the proposed garage. The Defendants seek a Court Order allowing them to construct the proposed garage and that several questions regarding the restrictive covenants be answered by the Court by way of declaratory judgment. A summary of the questions before the Court is as follows:

1. Is the proposed garage in accordance with the restrictive covenants of the Arden Chase Subdivision in light of the following questions?

   a. Do the Arden Chase Subdivision restrictive covenants prohibit the construction of a detached garage and, if so, is the detached garage subject to the same rules as an attached garage?

   b. Do the Arden Chase Subdivision restrictive covenants prohibit a certain size of garage, garage doors, or the housing of recreational vehicles (RVs)?

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

c. How is "open to the roadway in front of the residence" defined?

5. The parties in this case all live or operate in the Arden Chase Subdivision, which is located off Concord Road in Anderson, South Carolina.

6. The Arden Chase subdivision was developed in the early 1990s by Jack Jones, the developer. Jones testified that he began the project in 1990 after purchasing a house and surrounding land from the Davis Estate. He contemplated building townhomes, but eventually settled on single-family dwellings on lots with an approximate size of half an acre.

7. Jones employed John Stathakis, a member of the Anderson County Bar, to draw up restrictive covenants for the new Arden Chase Subdivision. He instructed Stathakis to use the restrictive covenants from the existing subdivisions Thornehill and Harpers Ridge as guides. Stathakis completed the restrictive covenants, with Jones approving them. The restrictive covenants were recorded on May 29, 1990.

Both Jones and Stathakis testified at the trial. The restrictive covenants create an Architectural Control Committee (ACC). The ACC has the responsibility to insure that proposed structures are "in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development (see the full provision below).

8. There is no dispute as to applicability of the restrictive covenants to the proposed garage. The garage proposed by the Defendants clearly falls under the definition of a "Structure" under the restrictive covenants:

1.12 Structures. "Structure" means:

a) any thing or object the placement of which upon any Home Site may affect the appearance of the Home Site, including by way of illustration and not

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

limitation, any building or part thereof, garage, porch, greenhouse or bathhouse, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub, sign, signboard, permanent living quarters or any other temporary or permanent improvement to such Home Site.

9. The Defendants' proposed garage is challenged by the Plaintiffs on several grounds. The first involves its design as a detached garage. The Plaintiffs argue that there are no detached garages in Arden Chase, although it appears as though there is a detached pool house and a small garden "shed" on other lots. There is another house that has a second garage, although that garage is connected to the house with a breezeway. This breezeway is not enclosed, but is a paved walkway with a roof over it. The second garage on this particular house is a separate structure from the house and would be so without the breezeway. The breezeway serves no purpose other than allowing persons to walk from the house to the detached garage under the cover of a roof. The Defendants argue that a detached garage is not prohibited by the restrictive covenants.

10. Several provisions in the restrictive covenants give guidance regarding this issue, discussing future construction on the lots of the subdivision. The Court notes that the restrictive covenants do not address the issue of the permissibility of a detached building or garage directly, making this an issue that will require deduction based on the wording of other provisions. There was disagreement between Jones and Stathakis regarding the permissibility of a detached garage, with Jones answering in the affirmative and Stathakis answering in the negative. The restrictive covenants appear to contemplate the prospect of detached buildings on the lots. Several provisions deal indirectly with the issue:

> 5.02 Purpose. Powers and Duties of the ACC. The purpose of the ACC is to review and approve any proposed *installation, construction or alteration of any structure*

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP040228

on any home site. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of the Structures with respect to the topography, finished ground elevation and surrounding structures... (emphasis added).

5.05 Submission of Plans and Specifications. *No Structure shall be commenced, erected, placed, or permitted to remain on any Home Site nor shall any existing Structure upon any Home Site be altered* in any way which materially changes the exterior appearance of the Structure of Home Site, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC...

(a)... all *proposed* Structures and *alterations to existing* structures...

(d)...all *proposed* Structures and *alterations to existing* structures...

(e)...all *proposed* Structures and *alterations to existing* structures...

5.05 (c)...*construction or alteration* or (sic) of a Structure... (ii) ...to be incompatible with topography, finished ground elevation and *surrounding Structures* (emphasis added).

5.07 Disapproval of Plans and Specifications.

(c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards of the Development as set forth in the Design Standards; or (ii) as to the

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP040228

location, to be incompatible with topography, finished ground elevation, *and surrounding Structures*... (emphasis added).

5.09...*installation, alteration or maintenance of any Structure*... (emphasis added).

6.12...*no construction of alteration of any Structure*... (emphasis added).

11. The Court finds that a detached structure is clearly contemplated in the wording of the restrictive covenants, especially in consideration of the testimony of the developer. The Court gives greater weight to the testimony of the developer himself than that of his attorney who drafted the restrictive covenants. Accordingly, the Court finds that a detached garage is not prohibited, per se, by the restrictive covenants.

12. The next question surrounds the size of the proposed garage. The Plaintiffs argue that the proposed garage is too large for the subdivision. There was testimony regarding the thirteen-foot height of the door and the twenty-four foot height of the building itself. Implicit in this argument was the Plaintiffs' belief that the RV owned by the Defendants was too large to be housed in the subdivision. The Defendants countered with photographic evidence of other garages in the subdivision with high roof lines and similar "footprints."

13. An examination of the restrictive covenants reveals no references to specific size of the garage other than minimum square footage:

6.06 Square Footage. Each and every residence shall be a minimum of 2,700 square feet of heated living space. In addition to the aforementioned square footage, each residence shall have a garage of at least 500 square feet plus 100 square feet of storage space, said garage shall not be allowed to open to the roadway in front of the residence.

For a discussion of RVs, the Court turned to another provision in the restrictive covenants:

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

6.21 *Recreational Vehicles* and Trailers.

(a) No commercial or disabled vehicles, boats, boat trailers, motor homes, campers, or like equipment or mobile or stationary trailers of any kind shall be permitted on any home site of the subdivision unless kept in *a completely enclosed garage* so that same shall not be visible from *any* street or public way (emphasis added).

The restrictive covenants clearly contemplate RVs being housed in the subdivision since they are identified specifically by name in Paragraph 6.21. The term "motor homes" also could be used to refer to the Defendants' vehicle.

14. The Plaintiffs presented Carl Cheek as a witness. He is a builder who was hired by the Defendants to construct the garage, using the original plan. Cheek also is a lot owner in Arden Chase. He testified that he began the project because he, like the Defendants, believed that it had been approved by the ACC. He stopped work on the project upon discovering that the action of the ACC had been challenged by other lot owners. When questioned about the project, he testified that it was now his belief that the proposed garage violated the restrictive covenants. The size of the garage was one of the things he cited. He testified that he was not aware of any garages of this size in Arden Chase or Thornehill.

Upon cross examination and being allowed to review the restrictive covenants, Cheek admitted that there were no specific provisions prohibiting detached garages or garages of this size. He further admitted that there were other garages in the subdivision with similar "footprints" and that some of the photographs showed other garages capable of accommodating doors of a similar size as the proposed garage. Cheek considered the roof height "fairly standard."

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP040202

15. Stathakis was questioned regarding the size of the proposed garage. He testified that he did not believe that the restrictive covenants allowed for such a large structure, saying that it was "oversized" and that housing for a vehicle of this size was never contemplated in drafting the document. He further testified that he thought the proposed structure was something that "stands out" in a negative way.

16. Jones was questioned regarding the size of the proposed garage. He testified that, while he was not aware of any specific RV garages in Arden Chase or Thornehill, they were not specifically prohibited. Jones could not recall any discussions prior to the filing of the restrictive covenants about the size of an RV or the garage housing an RV. He did note that he did not believe that the Defendants' initial design was acceptable, although this objection was on aesthetic grounds instead of size. His testimony was that the initial plan "did not look good." Jones assisted the Defendants in revising the plan to a more acceptable exterior in keeping with the harmony and architecture of the community. The restrictive covenants address Jones's concerns in Paragraph 6.02, which reads as follows:

> Design Standards. The Declarant hereby establishes the design standards for Arden Chase, a residential community. Arden Chase shall be developed in strict accordance with the design standards which are made a part of the covenants, conditions and restrictions of Arden Chase. Each and every residence constructed on a home site shall be *distinctive*, demonstrating a well thought out design that is *neither extreme nor mundane* in character. Each and every residence shall be *harmonious* with its home site and the overall residential community (emphasis added).

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP040228

Jones testified that the modified plans were in compliance with the restrictive covenants. The Court notes that the challenge to this proposed structure comes not from its anticipated exterior appearance but from its size, purpose, detachment and direction it faces.

17. One does not have to delve deeply into the intent of the developer when ascertaining the meaning of the pertinent provisions in the restrictive covenants regarding this issue. The restrictive covenants themselves clearly provide for the housing of RVs in the subdivision. As shown above, Section 6.21 is entitled "*Recreational Vehicles* and Trailers." It also uses the term "motor homes" in the body of the paragraph. No interpretation of this paragraph is necessary beyond reading it in light of its plain, ordinary language.

The Plaintiffs made references to Paragraph 6.03 as well, which reads, "Restrictions of Use. Home sites may be used for single-family residences only and for no other purpose...." I find that this paragraph is not applicable to this situation since there is no evidence that the Defendants are planning to use this proposed garage for anything other than storage of an RV for their personal use. The restrictive covenants clearly contemplate lot owners having additional vehicles and boats for personal use. I find that the housing of RVs of this type are not prohibited per se, by the restrictive covenants.

18. The last question regards the front of the building. Paragraph 6.06 provides that a garage "shall not be allowed to *open to the roadway in front of the residence*" (emphasis added). The Plaintiffs allege that the proposed garage opens to the roadway in violation of the restrictive covenants. The Defendants allege that the proposed garage does not "open to the roadway" because it does not point in the same direction as the driveway and is not perpendicular to the roadway.

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP040202

19. Arden Chase Street is the roadway that runs through the subdivision. It enters the subdivision from Concord Road. The Defendants own Lot 23, which is the first lot on the right upon entering the subdivision. The western/northwestern boundary of the Defendants' lot borders Concord Road. The Defendants' house faces Arden Chase Street, with the driveway being nearly perpendicular to said street. Arden Chase Street enters the subdivision in a southeasterly direction. There is a divided median at the entrance of the subdivision. An imaginary straight line from the Defendants' front door would intersect the southeastern tip of the divided median. The Defendants have an attached triple garage which opens to the side of the house, pointing toward the proposed garage. The proposed garage would utilize the existing driveway but open in an angled fashion toward the divided median.

20. Before the commencement of the second day of trial, the attorneys involved in the case put out stakes and string stretching from the front corners of the concrete pad of the proposed garage to the front of the lot in order to show where a straight line from the front of said garage would lead. The right corner leads directly to Arden Chase Street. The left corner leads to Arden Chase Street as well, although the intersection, if fully stretched, would be close to the intersection of Arden Chase Street and Concord Road.

21. Problems abound with the wording of the restrictive covenants regarding this issue. Arden Chase Street runs throughout the subdivision and is the only street. It meanders in a serpentine manner and makes a loop. At least one home in the subdivision has a garage that opens to Arden Chase Street. However, it opens to the street in a different direction than that of the front door because the house is located on a corner lot. Garage doors are visible throughout the subdivision when one drives the full course of Arden Chase Street. The way the street twists and changes directions makes it virtually impossible to keep a garage door from being visible from the roadway.

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP040228

22. There was significant disagreement regarding what "open to the roadway" means. The Plaintiffs objected to the proposed garage because it points at Arden Chase Street and the doors will be visible. The Defendants argue that the opening is not perpendicular to Arden Chase Street and that the proposed garage points a different direction than the driveway. The Defendants further argue that the "open to the roadway" standard does not apply to additional garages.

23. Jones and Stathakis disagreed on this issue as well. Stathakis believed that the proposed garage opens to the road in violation of the restrictive covenants. Jones stated that he believes that the proposed garage is pointed at the entrance of the subdivision rather than the road. Jones acknowledged in cross-examination that there is no requirement in the restrictive covenants that a garage opening must be perpendicular to the road to "open to the roadway." The Court notes that Jones testified before the stakes and string had been placed on the property to show where the front of the building pointed.

24. There is no definition of "open to the roadway" in the restrictive covenants, making this a difficult question. I find that this proposed garage does open to the roadway in front of the house, making it in violation of the restrictive covenants on this issue. The Court is mindful of the complicated nature of the road itself -- a fact reinforced by the Court's site visit. Arden Chase Street points in a different direction at the intersection with Concord Road than it does when the Defendants' driveway intersects it. The road makes a gradual left turn along the front of the Defendants' lot.

However, as noted above, a straight line extended from the front of the proposed garage intersects Arden Chase Street before it intersects Concord Road. Since this path collides with Arden Chase Street in roughly the same area that the front door faces, it is impossible to consider it differently. This strikes the Court as the obvious purpose of the restriction. The Court rejects

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP040202

the argument that additional garages would not be subject to the same restrictions as the mandatory garage. There is no evidence to support the Defendants' contention that the restrictive covenants equate the "open to the roadway" standard with the opening of the structure being in a perpendicular direction from the roadway.

25. The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street.

26. There are no challenges to any other existing structures in the subdivision and it appears that all other existing structures are in compliance as to Paragraph 6.06, in addition to the other provisions in the Restrictive Covenants. In order to aid the parties with an answer to the declaratory judgment portion of the case, future construction in the subdivision can be compliant regarding this provision if a straight line drawn from the front corners of a proposed structure intersect a neighboring lot line, Concord Road, or the outer boundary of the subdivision prior to intersecting Arden Chase Street.

27. This Order should not be interpreted to mean that future structures are exempt from or bypass the normal procedure for obtaining ACC approval. All provisions of the Restrictive Covenants remain in full force and effect.

Applicable Law and Conclusions of Law

1. This Court has jurisdiction over the parties and subject matter. A permanent injunction may be granted to prevent the violation of restrictive covenants. Hunnicutt v. Rickenbacher, 268 S.C. 511, 234 S.E.2d 887 (1977).

2. Venue is proper in Anderson County, South Carolina.

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

3. Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution. The paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document. A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property. However, this rule of strict construction "should not be applied so as to defeat the plain and obvious purpose of the instrument." Taylor v. Lindsay, 332 S.C. 1, 498 S.E.2d 862 (1998).

4. When the language imposing restrictions upon the use of property is unambiguous, the restrictions will be enforced according to their obvious meaning. Shipyard Prop. Owners' Ass'n v. Mangiaracina, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct.App.1992).

WHEREFORE, IT IS ORDERED THAT, the Defendants' proposed garage is not in compliance with the Restrictive Covenants of the Arden Chase Subdivision because the garage door opens to the roadway in front of the house. Therefore, the Defendants are enjoined from constructing the proposed garage as currently planned. The Defendants' proposed garage does comply with all other provisions of the Restrictive Covenants. The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the side of the garage containing the door intersects Concord Road instead of Arden Chase Street.

The Court answers the declaratory judgment questions as follows:

a. Do the Arden Chase Subdivision restrictive covenants prohibit the construction of a detached garage and, if so, is the detached garage subject to the same rules as an attached garage?

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP040202

A detached garage is not prohibited, per se, by the Restrictive Covenants and would be subject to the same restrictions as the mandatory, attached garage.

b. Do the Arden Chase Subdivision restrictive covenants prohibit a certain size of garage, garage doors or the housing of recreational vehicles (RVs)?

The Restrictive Covenants do not restrict the size of any garage except for the mandatory minimum square footage nor do they specify any particular size of garage door. The housing of recreational vehicles (RVs) is not prohibited by the Restrictive Covenants.

c. How is "open to the roadway in front of the residence" defined?

"Open to the roadway" shall be defined as meaning that a straight line drawn from at least one of the two front corners of the proposed structure intersects Arden Chase Street prior to intersecting a neighboring lot line, Concord Road or the outer boundary of the subdivision.

This ruling is for the express purpose of providing interpretation of the restrictions in dispute so as to guide future board members of the ACC when they evaluate future projects submitted to them for approval. Nothing in this Order shall be construed to exempt any future project from any other restriction or standard set forth in the Restrictive Covenants. The Restrictive Covenants shall remain in full force and effect, subject to the provisions of this Order.

AND IT IS SO ORDERED!

[*Judicial signature page to follow*]

Walhalla, South Carolina

ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028



Anderson Common Pleas

Case Caption: R Dean Price VS Eugene L Griffin Jr

Case Number: 2016CP0402028

Type: Order/Permanent Injunction

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2017-03-28 15:30:29 page 16 of 16

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-04-1244

Arden Chase Homeowners' Association, Inc.
PLAINTIFF(S)

Eugene L. Griffin, Jr. and Beth King Griffin
DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

MOTION FOR SUMMARY JUDGMENT IS GRANTED. THIS MATTER IS CONTROLLED BY JUDGE SPROUSE'S ORDER. PLAINTIFFS MOTION FOR PRELIMINARY TEMPORARY RESTRAINING ORDER IS DENIED. THIS ORDER IS WITHOUT PREJUDICE TO EITHER PARTY TO HAVE THE ISSUE OF COMPLIANCE WITH JUDGE SPROUSE'S ORDER DETERMINED BY JUDGE SPROUSE. NO FORMAL ORDER REQUESTED.

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2155

ELECTRONICALLY FILED - 2017 Sep 11 9:08 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2017 Sep 11 9:08 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244

ELECTRONICALLY FILED - 2017 Sep 11 9:08 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244



Anderson Common Pleas

Case Caption: Arden Chase Homeowners' Association, Inc. VS Eugene L. Griffin Jr. , defendant, et al

Case Number: 2017CP0401244

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

ELECTRONICALLY FILED - 2017 Oct 13 2:02 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
Arden Chase Homeowners' Association, Inc., Plaintiffs, vs. Eugene L. Griffin Jr. and Beth King Griffin, Defendants.	C. A. No. 2017-CP-04-1244 **Order Denying Plaintiff's Motion for Temporary Injunction and Clarifying The Court's Original Order**

PRESIDING JUDGE:	R. SCOTT SPROUSE
DATE OF HEARING:	OCTOBER 6, 2017
PLAINTIFFS' ATTORNEYS:	ERNEST C. TRAMMELL; J. FRANKLIN MCCLAIN
DEFENDANTS' ATTORNEY:	DANIEL DRAISEN
COURT REPORTER:	DIANE MARCENGILL

This unusual matter is before the Court pursuant to the request of the Plaintiffs. The Plaintiffs filed this action against the Defendants seeking an injunction prohibiting the construction of a detached garage on the Defendants' lot in the Arden Chase Subdivision. The Plaintiffs allege that the construction is in violation of a previous order of this Court from Case No. 2016CP040208. The Defendants filed a Motion for Summary Judgment in response. The Defendants allege that the construction is in compliance with the aforementioned Order and have proceeded to begin construction.

The parties appeared before the Honorable R. Lawton McIntosh on September 8, 2017. The Court granted Summary Judgment to the Defendants and denied the Plaintiffs' Motion for an Injunction. However, in its Form 4 Order, the Court issued the following condition:

> "This order is without prejudice to either party to have the issue of compliance with Judge Sprouse's Order determined by Judge Sprouse."

The parties are now back before the Court pursuant to that provision. The Plaintiffs again seek an injunction. The Defendants, in addition to opposing the injunction due to a different interpretation of this Court's order, argue that the Plaintiffs are barred procedurally from seeking any further relief under this case number.

A. The Issuance of an Injunction is Procedurally Barred

Rule 56 provides that Summary Judgment is proper when there is no genuine issue of material fact. Summary Judgment is a final order when issued, ending the case. The Plaintiffs did

ELECTRONICALLY FILED - 2017 Oct 13 2:02 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244

not appeal Judge McIntosh's order. The Court finds that counsel for the Defendants correctly pointed out the procedural problems with this case. South Carolina law is clear that an order not appealed from is the law of the case. *Tisdale v. American Life Ins. Co.*, 216 S.C. 10, 13, 56 S.E.2d 581, 581 (1949). As the controlling law of the case, one circuit judge cannot overrule the order of another circuit judge. *Id.* Accordingly, this Court cannot issue any injunction under this case number. However, the Court reads the additional provision in the controlling Form 4 Order to leave the door open for clarification of its original Order. Further, the wording used by Judge McIntosh does not prohibit the filing of a new action by the Plaintiffs.

B. The Intent of the Original Order

The parties seek guidance from the Court as to how "proposed garage" is defined. In the Original Order, the Court permitted the Defendants to "bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street." The Court's intent in the previous order was that the structure as indicated on the submitted plans, was allowed on the condition that the entire structure was turned to comply with the restrictive covenants. The Defendants' modified plan, which slightly increases the square footage of the building and changes the configuration of the front of the building so that only one wall is turned, would constitute a new plan which would require submission to the board. Modification, however slight, of the building as configured on the plan submitted to the Court in the trial, would be a different plan.

The Court recognizes the effect of this ruling, which is made in an effort to enforce the governing restrictive covenants. Counsel for the Defendants has set forth practical reasons why this new plan would actually be less visible from the roadway of the subdivision than the original building if it were turned. The Court also is mindful of the emotions existing in the subdivision. The Defendants are fearful that the current Architectural Control Committee will summarily reject any proposed plans, even if they comply in all aspects with the restrictive covenants. As pointed out at the hearing, an unreasonable rejection of a reasonable plan is actionable. The Court would encourage the parties to resolve this issue prior to any further litigation.

WHEREFORE, this Court finds that it lacks jurisdiction to grant the Plaintiffs any relief under this case number.

ELECTRONICALLY FILED - 2017 Oct 13 2:02 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244



Anderson Common Pleas

Case Caption: Arden Chase Homeowners' Association, Inc. VS Eugene L. Griffin Jr. , defendant, et al

Case Number: 2017CP0401244

Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-04-2632

Eugene L. Griffin, Jr. and Beth King Griffin

PLAINTIFF(S)

Arden Chase Home Owner's Association, Inc.

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This matter was before the Court on Friday, May 11, 2018 on the parties' cross motions for Summary Judgment. The issues are the same: whether or not Plaintiffs' constructed detached R.V. garage complies with Defendant's filed restrictive covenants for the subdivision or the Honorable R. Scott Sprouse's Order and amended Order from the trial of a related matter in *R. Dean Price et al v. Eugene L. Griffin et al*, Case No: 2016-CP-04-02028. Reference is made to both Judge Sprouse's Orders, the entirety of which are being incorporated herein by reference.

In an Order filed on or about June 14, 2017, in Case No: 2016-CP-04-02028, Judge Sprouse held that the Griffin's proposed, partially constructed detached R.V. garage was not in compliance with Arden Chase's recorded, restrictive covenants and enjoined the Griffins. This Order provided further however that:

> [T]he Defendants [Griffins] can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the side of the garage containing the door intersects Concord Road instead of Arden Chase Street.

On or around October 13, 2017, Judge Sprouse issued another Order denying Arden Chase's motion for Temporary Injunction and clarifying the Court's original June 14, 2017 Order in Case No: 2016-CP-04-02028. Judge Sprouse's subsequent Order provides, inter alia, that "[t]he Court's intent in the previous Order was that the structure as indicated on the submitted plans was allowed on the condition that the entire structure was turned to comply with the restrictive covenants. The Defendants [Griffin's] modified plan, which slightly increases the square footage of the building and changes the configuration of the front of the building so that only one wall is turned, would constitute "a new plan which would require submission to the board." Judge Sprouse's July 11, 2014 Order provides that "[n]othing in this Order shall be construed to exempt any future project from any other restriction or standard set for in the restrictive covenants."

ELECTRONICALLY FILED - 2018 May 17 3:40 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 May 17 3:40 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

No party appealed either of Judge Sprouse's Orders. Accordingly, the same parties and their privies are bound by the orders. In another action, *Arden Chase Home Owner's Association v. Eugene L. Griffin, Jr. and Beth King Griffin*, Case No.: 2017-CP-04-1244, the undersigned in a Form 4 Order held:

> "[Griffins] Motion for Summary Judgment granted. This matter is controlled by Judge Sprouse's Order... this Order is without prejudice to either party to have the issue of compliance with Judge Sprouse's Order determined by Judge Sprouse."

Judge Sprouse's October 13, 2017 Order in Case No.:2016-CP-04-02028 resulted from this Form 4 Order.

¶ 5.05 Submission of Plans and Specifications of Arden Chase's restrictive covenants provides: No structure shall be commenced, erected, placed, or permitted to remain on any home site nor shall any existing structure upon any home site be altered in any way which materially changes the exterior appearance of the structure of home site unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC...

Therefore, the issues before this court on cross motions for summary judgment can be more particularly set forth as:

(1) Whether the Griffins complied with Judge Sprouse's Orders?

(2) Whether the Griffins complied with ¶ 5.05 of the restrictive covenants particularly, or the restrictive covenants generally in constructing the detached R.V Garage?[1]

Neither party appealed either of Judge Sprouse's Orders. Accordingly the orders constitute the law of the case. The Griffins did not attempt to turn the entire structure as provided by Judge Sprouse's Order. They simply modified the existing corner walls in an attempt to angle them away from Arden Chase Street and towards Concord Road, resulting in a six-sided structure.

The Griffins did attempt to comply with Judge Sprouse's October 13, 2017 Order by submitting several revised plans to Arden Chase's Architectural Control Committee (ACC). Ultimately, the Griffins' plans were not approved by the ACC. The Arden Chase Home Owner's Association agreed with the ACC's decision. The Griffins were properly notified of these decisions. Notwithstanding the above, the Griffins completed the construction of the R.V. detached garage. There is no genuine issue of material fact that the Griffins did not comply with the approval requirements of Arden Chase's recorded, restricted covenants by obtaining approval before contructing the present structure. The is also no genuine issue of material fact that the griffins did not comply with Judge Sprouse's unappealed orders. Accordingly, Arden Chase shall be and here by is granted Summary Judgment. The Griffins are bound by the law of the case in this matter.

Frankie McClain to prepare a formal Order consistent with these findings, the written and oral arguments at the hearing, its motion and the prior orders of this Court.

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
		$

[1] Nothing contained in this Order is intended to address whether the Arden Chase Architectural Control Committee (ACC) or the Home Owner's Association's conduct in this matter is actionable.

		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2018 May 17 3:40 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 May 17 3:40 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632



Anderson Common Pleas

Case Caption: Eugene L Griffin Jr , plaintiff, et al VS Arden Chase Home Owners Association, Inc.

Case Number: 2017CP0402632

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

ELECTRONICALLY FILED - 2018 Aug 09 4:07 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040263

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	
	)	
EUGENE L. GRIFFIN, JR. AND BETH KING GRIFFIN,	)	C/A No. 2017-CP-04-2632
	)	
Plaintiffs,	)	ORDER
	)	
vs.	)	
	)	
ARDEN CHASE HOME OWNERS' ASSOCIATION, INC.,	)	
	)	
Defendant.	)	

PRESIDING JUDGE:	R. Lawton McIntosh
HEARING DATE:	May 11, 2018
PLAINTIFF'S ATTORNEY:	Daniel Draisen
DEFENDANT'S ATTORNEY:	J. Franklin McClain
COURT REPORTER:	Diane Marcengill

This matter was before me on the parties' cross motions for Summary Judgment. The issues are the same: whether or not the Plaintiffs' (Griffins') constructed R.V. garage complied with the Defendant's Restrictive Covenants for the subdivision or the orders of Judge R. Scott Sprouse from the trial of a related matter in *R. Dean Price, et al v. Eugene L. Griffin, et al*, Case No. 2016-CP-04-02028.

This action was filed by the Griffins on December 11, 2017. The Complaint requests that the Court declare the disapproval by the Architectural Control Committee (ACC) and Home Owners Association (HOA) improper, unjustifiable,

arbitrary and malicious; and that the Court declare the detached garage to be in compliance with the Restrictive Covenants, in character with the other structures in the neighborhood, and allowed as a matter of law. The Griffins also seek damages from the HOA for abuse of process and malicious prosecution and a preliminary and permanent injunction prohibiting the HOA from taking action to abate the detached garage.

The HOA filed an Answer and Counterclaim requesting a declaration from the Court that:

a. The Plaintiffs have constructed their garage in violation of the Order of Judge Sprouse, dated March 28, 2017 and clarified by Order dated October 13, 2017.

b. The Plaintiffs have constructed their garage without the approval of the ACC as required by the Covenants and are therefore in violation of the Covenants.

c. The Plaintiffs must comply with the decision of the Homeowners Association requiring the demolition of the garage.

d. The Defendant is entitled to exercise the Right of Abatement set forth in Section 8.02 of the Covenants.

Both parties have filed Motions for Summary Judgment and have asserted that there is no genuine issue as to any material fact.

ELECTRONICALLY FILED - 2018 Aug 09 4:07 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Aug 09 4:07 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

FACTUAL AND PROCEDRUAL BACKGROUND

In the case of *R Dean Price, et al vs. Eugene Griffin, et al* (Case Number 2016-CP-04-02028) some members of the Arden Chase Subdivision brought an action to enjoin the construction of the Griffins' detached garage.

Judge Sprouse issued his Order dated March 28, 2017, granting the injunction and providing that the "Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street".

Both parties stipulated that the Court's ruling is res judicata.

In June, 2017, the Griffins informed the Architectural Control Committee (ACC) that they were proceeding with construction with some modifications. The attorneys for the HOA notified the Griffins by letter that the ACC believed Judge Sprouse intended that the entire garage be turned and that any altered plans should be submitted to the ACC. The Griffins refused to submit plans to the ACC.

The HOA filed suit seeking an injunction on June 14, 2017. Judge Lawton McIntosh denied the request and granted Summary Judgment in favor of the Griffins without prejudice to either party to have Judge Sprouse clarify his order.

By Order filed October 13, 2017, Judge Sprouse clarified that his intent was that the entire structure would need to be turned in order to comply with the

covenants and that a modified plan would require submission to the ACC. This order is also res judicata.

The Griffins submitted several revised plans to the ACC. These plans were not approved by the ACC. The ACC notified the Griffins of the denial and stated their reasons for the denial. The Griffins did not make a written request for the ACC to reconsider its decision.

The Griffins were notified by letter on December 5, 2017 that the HOA had agreed with the ACC that the building was in violation of the covenants and Judge Sprouse's Order.

FINDINGS AND CONCLUSIONS

The Restrictive Covenants provide as follows:

Section 5.05 Submission of Plans and Specifications: No structure shall be commenced, erected, placed, or permitted to remain on any home site nor shall any existing structure upon any home site be altered in any way which materially changes the exterior appearance of the structure of the home site unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC.

Therefore, the issues before this court on cross motions for summary judgment can be more particularly set forth as:

(1) Whether the Griffins complied with Judge Sprouse's Order?

ELECTRONICALLY FILED - 2018 Aug 09 4:07 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

(2) Whether the Griffins complied with Section 5.05 of the restrictive covenants particularly, or restrictive covenants generally in constructing the detached R. V. Garage?[1]

Neither party appealed either of Judge Sprouse's Orders. Accordingly the orders constitute the law of the case. The Griffins did not attempt to turn the entire structure as provided by Judge Sprouse's Order. They simply modified the existing corner walls in an attempt to angle them away from Arden Chase Street and towards Concord Road, resulting in a six-sided structure.

The Griffins did attempt to comply with Judge Sprouse's October 13, 2017 Order by submitting several revised plans to Arden Chase's Architectural Control Committee (ACC). Ultimately, the Griffins' plans were not approved by the ACC. The Arden Chase Home Owner's Association agreed with the ACC's decision. The Griffins were properly notified of these decisions. Notwithstanding the above, the Griffins completed the construction of the R.V. detached garage. There is no genuine issue of material fact that the Griffins did not comply with the approval requirements of Arden Chase's recorded, restricted covenants by obtaining approval before constructing the present structure. The is also no genuine issue of material fact that the Griffins did not comply with Judge Sprouse's unappealed orders. Accordingly, Arden Chase shall be and here by is granted Summary

[1] Nothing contained in this Order is intended to address whether the Arden Chase Architectural Control Committee (ACC) or the Home Owner's Association's conduct in this matter is actionable.

ELECTRONICALLY FILED - 2018 Aug 09 4:07 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040632

Judgment. The Griffins are bound by the law of the case in this matter.

It is therefore Ordered, Adjudged and Decreed that:

a. The Plaintiffs have constructed their garage in violation of the Order of Judge Sprouse, dated March 28, 2017 and clarified by Order dated October 13, 2017.

b. The Plaintiffs have constructed their garage without the approval of the ACC as required by the Covenants and are therefore in violation of the Covenants.

c. The Plaintiffs must comply with the decision of the Homeowners Association requiring the demolition of the garage.

d. The Defendant is entitled to exercise the Right of Abatement set forth in Section 8.02 of the Covenants.

IT IS SO ORDERED

R. Lawton McIntosh
Circuit Judge
Tenth Judicial Circuit

ELECTRONICALLY FILED - 2018 Aug 09 4:07 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-04-02632

EUGENE L. GRIFFIN, JR AND BETH KING GRIFFIN	ARDEN CHASE HOMEOWNERS' ASSOCATION, INC.
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF'S MOTION TO RECONSIDER IS DENIED. DEFENDANT'S REQUEST TO REMOVE FOOTNOTE FROM ORDER IS DENIED FRANKIE McCLAIN TO PREPARE A FORMAL ORDER..

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2155 Judge Code	Date

SCRCP Form 4C (02/2017)

ELECTRONICALLY FILED - 2018 Nov 06 9:46 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Nov 06 9:46 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2018 Nov 06 9:46 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632



Anderson Common Pleas

Case Caption: Eugene L Griffin Jr , plaintiff, et al VS Arden Chase Home Owners Association, Inc.

Case Number: 2017CP0402632

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-11-06 09:36:44 page 3 of 3

ELECTRONICALLY FILED - 2018 Nov 13 4:01 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	Case Number: 2017-CP-04-02632
	)	
EUGENE L. GRIFFIN, JR. and BETH KING GRIFFIN,	)	
	)	ORDER
Plaintiffs,	)	
	)	
vs.	)	
	)	
ARDEN CHASE HOME OWNERS ASSOCIATION, INC.,	)	
	)	
Defendant.	)	

Presiding Judge: R. Lawton McIntosh
Hearing Date: November 1, 2018
Plaintiffs' Attorney: Daniel Draisen
Defendant's Attorney: Ernest C. Trammell and J. Franklin McClain

This matter was before me on Plaintiffs' Motion to Reconsider, Alter or Amend Judgment. The Defendant filed a return asking that Plaintiffs' motion be dismissed and requesting the removal of a footnote in the order.

FACTUAL AND PROCEDRUAL

BACKGROUND

In the case of *R Dean Price, et al vs. Eugene Griffin, et al* (Case Number 2016-CP-04-02028) some members of the Arden Chase Subdivision brought an action to enjoin the construction of the Griffins' detached garage.

ELECTRONICALLY FILED - 2018 Nov 13 4:01 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040263

Judge Sprouse issued his Order dated March 28, 2017, granting the injunction and providing that the "Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street".

Both parties stipulated that the Court's ruling is res judicata.

In June 2017, the Griffins informed the Architectural Control Committee (ACC) that they were proceeding with construction with some modifications. The attorneys for the HOA notified the Griffins by letter that the ACC believed Judge Sprouse intended that the entire garage be turned and that any altered plans should be submitted to the ACC. The Griffins refused to submit plans to the ACC.

The HOA filed suit seeking an injunction on June 14, 2017. Judge Lawton McIntosh denied the request and granted Summary Judgment in favor of the Griffins without prejudice to either party to have Judge Sprouse clarify his order.

By Order filed October 13, 2017, Judge Sprouse clarified that his intent was that the entire structure would need to be turned in order to comply with the covenants and that a modified plan would require submission to the ACC. This order is also res judicata.

The Griffins submitted several revised plans to the ACC. These plans were not approved by the ACC. The ACC notified the Griffins of the denial and stated

ELECTRONICALLY FILED - 2018 Nov 13 4:01 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040232

their reasons for the denial. The Griffins did not make a written request for the ACC to reconsider its decision.

The Griffins were notified by letter on December 5, 2017 that the HOA had agreed with the ACC that the building was in violation of the covenants and Judge Sprouse's Order.

Based upon the above, the court, by order filed August 9, 2018, found that there was no genuine issue of material fact that the Griffins did not comply with Judge Sprouse's unappealed order and constructed the garage without the approval of the ACC and were therefore in violation of the covenants. The Plaintiffs' were ordered to comply with the decision of the Homeowners Association requesting demolition of the garage.

Plaintiffs' submit three questions in their motion to reconsider:

I. Did the Court err in finding that the Griffins did not make a written request for the ACC to reconsider its decision rejecting the Griffins' revised garage plans?

II. Did the Court err in limiting its consideration to only whether the Griffins complied with Judge Sprouse's Order in regard to the originally submitted garage plans, or should the Court have also considered whether the ACC wrongfully disapproved the Griffins *revised* garage plans which

Plaintiffs assert comply with both Judge Sprouse's Order and the Covenants?

III. Did the Court err in ordering, prior to the complete adjudication of Plaintiffs' claims, that the Defendant is entitled to require the demolition of the garage and may exercise the Right to Abatement if Plaintiffs do not tear down the garage?

Based upon the undisputed facts in the case, I find that there is no question that the Plaintiffs failed to make a written request to the ACC to reconsider its decision. Even if you assume the submission of revised plans constitute such a request, there was no submission from the denial of the ACC on October 30, 2017 until revised plans were submitted on December 12, 2017.

Section 5.03 of the Covenants allows 10 days to request review and provides that the decision "shall be final and binding."

As to Plaintiffs second question, I find that the ACC had the authority and right to disapprove the revised plans which did not comply with Judge Sprouse's Order and the Covenants.

Section 5.05 specifically provides that the submission of plans to the ACC shall include "site plans showing the location of all proposed structures on the Home Site including building setbacks, open space, driveways, walkways, and

ELECTRONICALLY FILED - 2018 Nov 13 4:01 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

parking spaces including the number thereof and all siltation and erosion control measures."

Section 5.07 of the Covenants provides that the ACC shall have the right to disapprove any plans for "the failure to include information in such plans and specifications as may have been reasonably requested."

In supporting their motion, Plaintiffs argue that Judge Sprouse gave them "the opportunity, to either (a) turn the entire building and use the original plans, or (b) to redesign the building and the resubmit the plans to the ACC for approval." This quoted language does not appear in Judge Sprouse's October 13, 2018, Order. In that Order, Judge Sprouse simply stated that the intent of his original order was that the structure as proposed on the plans was allowed on the condition that the entire structure was turned. A modified plan would need to be submitted to the ACC for approval. Judge Sprouse encouraged the parties to resolve the issue prior to any further litigation. However, the Plaintiffs continued construction of the garage without resolving the issue and without the approval of the ACC.

The Plaintiffs have relied heavily on the language in Judge Spouse's original order which stated: "In order to aid the parties with an answer to the declaratory judgment portion of the case, future construction in the subdivision can be compliant regarding this provision if a straight line drawn from the front corners of

ELECTRONICALLY FILED - 2018 Nov 13 4:01 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

a proposed structure intersects a neighboring lot line, Concord Road, or the outer boundary of the subdivision prior to intersecting Arden Chase Street."

However, the final site plan submitted to the ACC on December 12, 2017 and introduced as an exhibit shows that the straight line from one of the sides containing the garage door intersects Arden Chase Road Right-of-Way prior to intersecting a neighboring lot line, Concord Road, of the outer boundary of the subdivision.

Therefore, the revised plan clearly does not comply with Judge Sprouse's Order and does not comply with the covenants.

It is therefore ordered, adjudged and decreed that the Plaintiffs' Motion to Reconsider, Alter or Amend Judgment is denied, and my Order of August 9, 2018 remains in full force and effect.

IT IS SO ORDERED

R. Lawton McIntosh
Circuit Judge
Tenth Judicial Circuit

ELECTRONICALLY FILED - 2018 Nov 13 4:01 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

EUGENE L. GRIFFIN, JR. and BETH KING GRIFFIN, Plaintiffs, vs. **ARDEN CHASE HOME OWNERS ASSOCIATION, INC.,** Defendant.	C/A No. 2017-CP-04-_____ **SUMMONS** (NON-JURY)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at his office at 207 East Calhoun Street, Anderson, South Carolina 29621, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the said relief demanded in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

You are further summoned and notified to apply for the appointment of a Guardian ad Litem to represent you in this action within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S)HE/(THEY) RESIDE(S):

You are further summoned and notified to apply for the appointment of a Guardian ad Litem to represent said infant(s) under 14 years of age (said incompetent or insane person) within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

KRAUSE, MOORHEAD AND DRAISEN, P.A.

December 27, 2017

s/Daniel L. Draisen

1

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

EUGENE L. GRIFFIN, JR. and BETH KING GRIFFIN, Plaintiffs, vs. **ARDEN CHASE HOME OWNERS ASSOCIATION, INC.,** Defendant.	C/A No. 2017-CP-04-_____ **COMPLAINT** (NON-JURY)

The Plaintiffs, complaining of the Defendant in the above-captioned matter, would allege and state as follows:

1. The Plaintiffs, **EUGENE L. GRIFFIN, JR. and BETH KING GRIFFIN,** are citizens and residents of the County of Anderson, State of South Carolina, and are, by virtue of being a lot owner in Arden Chase subdivision, a member/shareholder of the Arden Chase Homeowners' Association, Inc.

2 The Defendant, **ARDEN CHASE HOME OWNERS ASSOCIATION, INC.,** (hereinafter "HOA") is a South Carolina non-profit corporation with is principal office located in the County of Anderson, State of South Carolina that was organized for the purpose of operating a homeowner's association. As such it is authorized to conduct and does conduct business in Anderson County, South Carolina.

3. All parties, matters, and things herein are subject to the jurisdiction of this Court.

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

FOR A FIRST CAUSE OF ACTION

3. This action is brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. 1976, Section 15-53-10 et seq., for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears.

4. The Griffins are the owners of Lot 32 in Arden Chase (100 Arden Chase), a residential subdivision located in Anderson County, South Carolina.

5. All lots in Arden Chase subdivision are subject to the Declaration of Covenants, Conditions and Restrictions for Arden Chase, a Residential Community (the "Covenants"), dated February 1, 1990 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina on May 29, 1990 in Book 1010 at Page 88.

6. Pursuant to the Covenants, the first week of June 2016 the Griffins submitted drawings and plans for the construction of a detached garage to be built for the purpose of housing their motor home to the Architectural Control Committee (ACC) by delivering same to G. Stephen Crain, member of the ACC.

7. In June 2016, the Griffins received a signed copy of the plans that were submitted marked "Approved" and signed by Crain and the President of the Arden Chase HOA, Larry Rowland.

8. In reliance thereon, the Griffins then had the footings dug and footers installed and the slab poured for the construction of the proposed garage.

9. Shortly after beginning construction, the Griffins were served with a lawsuit in the matter of *R. Dean Price. et. al vs. Eugene L. Griffin. et al.*, C/A No. 2016-CP-04-2028, wherein several owners objected to the construction of the Griffins' garage structure on the basis of,

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

among other things, that a) same would be in violation of the Covenants, and b) because there are no other garage structures that have been built of a size necessary to completely enclose a motor home, that any such structure would not be in conformity or harmony with the other structures built in the neighborhood.

10. The matter regarding the construction of a detached garage on the Griffins' property was then litigated in the matter of *R. Dean Price, et. al vs. Eugene L. Griffin, Jr., et al.*, C/A No. 2016-CP-04-2028, in which the Plaintiffs sought to enjoin such construction. The HOA herein was named as a Third-Party Defendant in the previous matter and the Court's Order is therefore binding on the Defendant.

11. In its previous Order, the Court granted the requested injunction solely on the basis that the garage door on the proposed detached garage opened to the roadway in front of the house. However, the Court also specifically held as follows:

> 25. **The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase road.**

12. The Court found that 1) Detached garages are not prohibited; 2) The Restrictive Covenants do not restrict the size of any garage except for the mandatory minimum square footage nor do they specify any particular size of garage door; and 3) The housing of recreational vehicles is not prohibited by the Restrictive Covenants.

13. The Plaintiffs nor the Griffins appealed the Order of the Court and therefore the Court's ruling as to whether the Griffins' garage structure would be allowed if the wall containing the garage door faces Concord Road is *res judicata.*

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

14. On May 24, 2017, the ACC sent a letter to the Griffins advising that if they intended to go forward with the construction of a detached garage, it would be necessary for them to first submit a revised site plan, and that this would need to be done before any construction begins (see letter of May 24, 2017 attached hereto as Exhibit A).

15. Thereafter, on May 31, 2017 the Griffins, by and through their attorney, submitted a copy of the original floor plan with a hand-drawn revision showing the approximate angle change of the front wall that would be made so that a straight line from each corner of the wall containing the garage door intersects Concord Road and no part of Arden Chase road. The Griffins believed that by changing the angle of the wall containing the garage door they would bring the garage into compliance with the Court's prior Order (see letter of May 31, 2017 and floor plan drawing attached hereto as Exhibit B).

16. On June 5, 2017, The Defendant and its ACC, by and through its attorneys, asserted that the information provided on May 31st was not sufficient to determine whether the proposal complies with the Covenants or the Court's Order, that the existing concrete pad must be completed re-configured, and that because the angle of the front wall and its corresponding roofline was being changed it was necessary for the Griffins to submit revised plans to the ACC for approval (which is now comprised of owners that were all adverse in the prior litigation to the approval of Griffins' garage) (see letter of June 5, 2017 attached hereto as Exhibit C).

17. By way of email on June 5, 2017, the Griffins' attorney responded denying that the Griffins were required to go through the ACC approval process again, asserted that the Court included Paragraph 25 of its Order specifically to prevent the Griffins from having to go through the ACC approval process again, and stated that going through the ACC approval process would be

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

futile as the new members of the ACC were all adverse to the garage in the prior litigation (see email dated June 5, 2017 attached hereto as Exhibit D).

18. In response to the Griffins' refusal to submit revised plans to the ACC, the HOA filed a second lawsuit again seeking an injunction captioned, *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin, Jr., et al.*, C/A No. 2017-CP-04-1244.

19. The Griffins filed a Motion to Dismiss, Answer and Counterclaim, and then filed a Motion for Summary Judgment attaching the Affidavit of John Jones in which Mr. Jones attested that:

> In order to meet the requirements as set forth by Judge Sprouse, the front left garage wall needs to be extended and turned a number of feet. By doing so, when the wall containing the garage door is connected to the original length of the rear right wall the angle of garage door wall will be shifted such that will intersect only Concord Road and no part of Arden Chase Street (Arden Drive) (See Affidavit of John Jones).
>
> The attached elevation and floor plan drawings by Tim Strickland Drafting, dated August 30, 2017, fairly and accurately depict the necessary extension and turning of the front left garage wall and the resulting angle change of the wall containing the garage door (See Drawings attached hereto and incorporated by reference thereto and Affidavit of John Jones).
>
> A garage constructed in accordance with the attached plans will be in full compliance with Judge Sprouse's Order, that the direction of the wall containing the garage door, when a straight line is drawn from each corner of that wall, will not intersect any portion of Arden Drive, and that such wall will intersect Concord Road only (See Affidavit of John Jones).
>
> Other than the minor changes deemed necessary to bring the garage into compliance in accordance with the March 28, 2017 Order, the plans and specifications, as well as the materials to be used, are the same as those submitted previously to Judge Sprouse in the litigation surrounding the construction of the subject garage (See affidavit of John Jones).

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

20. On September 8, 2017, the Honorable R. Lawton McIntosh granted the Griffins' Motion for Summary Judgment, denied Plaintiff's request for an injunction, and dismissed HOA's Complaint. However, in its Form 4 Order, the Court issued the following condition:

> "This order is without prejudice to either party to have the issue of compliance with Judge Sprouse's Order determined by Judge Sprouse."

21. The HOA nor the Griffins appealed the Order granting the Defendants Summary Judgment and denying the Plaintiffs' request for an injunction and same is therefore *res judicata.*

22. The HOA then filed a Motion to Clarify and to Compel Compliance with the Court's Order and did so in the matter of *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin, Jr., et al.,* C/A No. 2017-CP-04-1244. The motion sought to have Judge Sprouse clarify his ruling in the matter of *R. Dean Price, et. al vs. Eugene L. Griffin, Jr., et al.,* C/A No. 2016-CP-04-2028, with regard to whether the Griffins were required to re-submit the garage plans for approval to the ACC because the angle of the front wall and its corresponding roofline was being changed, and because doing so added additional square footage.

23. On October 13, 2017, the Honorable R. Scott Sprouse issued an Order denying Plaintiff's Motion for Temporary Injunction and Clarifying the Court's Original Order. In its Order, the Court held:

B. The Intent of the Original Order

> The parties seek guidance from the Court as to how "proposed garage" is defined. In the Original Order, the Court permitted the Defendants to "bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street." The Court's intent in the previous order was that the structure as indicated on the submitted plans, was allowed on the condition that the entire structure was turned to comply with the restrictive covenants. The Defendants' modified plan, which slightly increases the square footage of the building and changes the configuration of the front of the building so that only one wall is turned, would constitute a new plan which would require submission

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP402632

to the board. Modification, however slight, of the building as configured on the plan submitted to the Court in the trial, would be a different plan.

The Court recognizes the effect of this ruling, which is made in an effort to enforce the governing restrictive covenants. Counsel for the Defendants has set forth practical reasons why this new plan would actually be less visible from the roadway of the subdivision than the original building if it were turned. The Court also is mindful of the emotions existing in the subdivision.

The Defendants are fearful that the current Architectural Control Committee will summarily reject any proposed plans, even if they comply in all aspects with the restrictive covenants. As pointed out at the hearing, an unreasonable rejection of a reasonable plan is actionable. The Court would encourage the parties to resolve this issue prior to any further litigation.

24. While the Griffins believed any effort to obtain approval of the ACC for the garage would be futile, on the same day, October 13, 2017, the Griffins, by and through their attorney, submitted a "revised" garage plan to the ACC for approval with the amended floor plan and elevation drawings showing the changes (see letter of October 13, 2017 and drawings attached hereto as Exhibit E).

25. On October 16, 2017, the ACC sent a letter to the Griffins denying the approval of the plans on the basis, of among other things, that the submission did not contain a detailed plan for landscaping and grading and because the plans do not do not call for the "entire structure [to be] repositioned so that it is in compliance with the Arden Chase Covenants and the orders of Judge Sprouse" (see letter of October 16, 2017 attached hereto as Exhibit F).

26. On October 26, 2017, after a second hearing with Judge Sprouse seeking clarification, the Griffins, by and through their attorney, re-submitted the "new" garage plans to the ACC for approval and this time included a google earth aerial site map and copy of the landscaping plan that was submitted with the original garage plans drawing in the front wall angle change (as

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

the Griffins did not intend to make any changes to the proposed landscaping plan) (see letter of October 26, 2017 with additional submissions attached hereto as Exhibit G) .

27. After Summary Judgment was granted the Griffins began construction of the garage in accordance with the "revised" drawings submitted on October 16 and again on October 26th.

28. On October 30, 2017 the ACC again denied the request for approval this time citing that the google earth site plan was insufficient (despite the fact that the garage structure was framed at this time and the ACC was invited to come to the site and review same), that the landscaping plan was insufficient because it did not show the hardscape and grading changes (as a result of the turning of the front wall), and because the entire structure was not "turned in accordance with Judge Sprouse's order" (see letter of October 30, 2017 attached hereto as Exhibit H).

29. On December 1, 2017, the ACC notified the HOA in writing that the Griffins had constructed a detached garage on their lot that was not approved by the ACC, that was constructed in violation of the covenants, and that did not comply with Judge Sprouse's Order. Thereafter the HOA, on December 5, 2017, delivered a letter to the Griffins citing the findings of the ACC, and demanding that the entire slab and building be reoriented, or that the structure be removed in its entirety from the premises within thirty (30) days, or the HOA would have the Right of Abatement (see letters of December 1, 2017 and December 5, 2017 attached hereto as Exhibit I).

30. On December 12, 2017, the Griffins again submitted a revised submittal to the ACC with the intent of curing any alleged deficiencies in the submittals, this time including the following:

1. The revised floor/foundation plan prepared by Tim Strickland Drafting (the foundation is shown on the floor plan);
2. The revised elevation drawings prepared by Tim Strickland Drafting (the materials to be used are specified on the elevation drawings);
3. A detailed landscaping plan by Stepping Stone Landscaping overlaid on the site plan; and

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

4. A complete site plan prepared by Professional Land Surveying Solutions, LLC. (see letter of December 12, 2017 with submittals attached hereto as Exhibit J)

31. Despite the Griffins being requested to submit more formal documentation than has ever been required in Arden Chase, on December 22, 2017 the HOA and the ACC again denied the Griffins' request for approval stating that the ACC nor the HOA will approve a "six-sided building" that is not in compliance with the Covenants and Judge Sprouse's Order (see letter dated December 22, 2017 attached hereto as Exhibit K).

32. The denial is based on an incorrect assertion that a) the Griffins failed to submit plans to the ACC (which it did on May 31, and again on October 13, October 26 and on December 12), and that the only garage that the Griffins can build that would comply with the Covenants must be rectangular and must be constructed with the wall containing the garage door facing Concord Road.

33. The Griffins assert that the detached garage structure on their property, which was completed in late November, complies with the Covenants for Arden Chase in that there are no restrictions in the Covenants that disallow the angling of a portion of a structure to aid functionality and to add architectural detail, and complies with the Court's prior ruling that ***any*** detached garage in Arden Chase will be in compliance when a straight line from each corner of the wall containing the garage door does not intersect any part of Arden Chase road. The Court held:

> 26. There are no challenges to any other existing structures in the subdivision and it appears that all other existing structures are in compliance as to Paragraph 6.06, in addition to the other provisions in the Restrictive Covenants. **In order to aid the parties with an answer to the declaratory judgment portion of the case, future construction in the subdivision can be compliant regarding this provision *if a straight line drawn from the front corners of a proposed structure intersects a neighboring lot line, Concord Road, or the outer boundary of the subdivision prior to intersecting Arden Chase street.*** (emphasis added)

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

34. The Plaintiffs herein assert that their detached garage is in full compliance with the Covenants and Court's directive, and that when a straight line is drawn from each corner of the wall containing the garage door it intersects Concord Road instead of Arden Chase.

35. The Plaintiffs assert that a justiciable controversy exists as to whether the "new" garage plans submitted to the ACC violate any of the Restrictive Covenants for Arden Chase. The plans submitted were not approved by the ACC for the reasons stated above, the HOA is now threatening to "abate" the structure, and as a result a dispute has arisen between the parties hereto. Therefore, the Plaintiffs pray, pursuant to the South Carolina Uniform Declaratory Judgments Act, that this Court determine and declare the rights and duties of the parties under the aforementioned Covenants. The Plaintiffs request that the Court declare the disapproval by the ACC and the HOA improper, unjustifiable, arbitrary and malicious; and that the Court declare the detached garage structure as constructed and where constructed by the Griffins to be in compliance with the Restrictive Covenants, in character with other structures in the neighborhood, and allowed as a matter of law.

FOR A SECOND CAUSE OF ACTON

36. The Plaintiffs incorporate by reference thereto all of the allegations contained in their First Cause of Action above as if fully restated herein.

37. On September 8, 2017, the Honorable R. Lawton McIntosh granted the Griffins' Motion for Summary Judgment, denied Plaintiff's request for an injunction, and dismissed HOA's Complaint in the matter *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin, Jr., et al.*, C/A No. 2017-CP-04-1244.

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

38. The HOA nor the Griffins appealed the Order granting the Defendants Summary Judgment and denying the Plaintiffs' request for an injunction and same therefore constitutes a final adjudication of the matter on Summary Judgment in favor of the Griffins.

39. In the lawsuit, the Plaintiffs asserted that counsel for the HOA, Ernest C. Trammell, Esq. and J. Franklin McClain, Esq. are both owners in Arden Chase subdivision and were well aware of the prior lawsuit against the Defendants with regard to this very same garage structure filed by James W. Logan, Jr., Esq., another attorney that is also an owner in Arden Chase subdivision, and of the Court's prior Order at the time they filed the aforementioned action.

40. The Plaintiffs assert that the HOA's filing of that lawsuit is an abuse of process and constitutes malicious prosecution on the part of the HOA. The HOA attempted to (and is continuing to) threaten and to coerce the Defendants, through the filing of the aforementioned lawsuit, into not building their proposed detached garage structure, by causing additional delays in the construction process, by causing increased construction costs, and by increasing litigation expenses.

41. As a direct and proximate consequence of HOA's abuse of process and malicious prosecution by the filing of the second lawsuit, the Griffins have been further harassed with regard to their ability to build their garage, have been forced to incur additional attorney's fees and costs, and to suffer extreme mental and emotional strain and anguish, all to the Griffins' damage, both actual and punitive, in an amount to be determined at the trial of this case.

FOR A THIRD CAUSE OF ACTON

42 The Plaintiffs incorporate by reference thereto all of the allegations contained in their previous Causes of Action above as if fully restated herein.

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

43. The Plaintiffs herein seek a preliminary and permanent injunction prohibiting the Defendant from taking any action to "abate" the Plaintiffs' detached garage pending the final adjudication of the within matter.

44. The Plaintiffs assert that any "abatement," demolition, destruction or removal of the detached garage structure would cause immediate and irreparable harm to the Plaintiffs inasmuch as the HOA does not have insurance that would cover such wrongful abatement, nor does it have funds sufficient to re-construct the garage structure should the Court find that abatement of the structure was improper. In addition, and based upon Judge Sprouse's prior ruling, the Plaintiffs assert that they are likely to succeed on the merits of their case such that preserving the status quo until the matter is heard is appropriate.

WHEREFORE, the Plaintiffs pray for the following relief:

1. That, pursuant to the South Carolina Uniform Declaratory Judgments Act, this Court determine and declare the rights and duties of the parties and that the Court declare that the Plaintiffs' detached garage structure is in compliance with the Covenants, is in conformity with other structures in the neighborhood, and complies with the Court's prior Order;

2. That the Defendants be awarded damages on their Counterclaim for abuse of process/malicious prosecution to include attorney's fees and costs as sanctions, and actual and consequential damages for harassment, mental and emotional strain and anguish, all in an amount to be determined by the Court;

3. That this Court issue its temporary injunction, pending final determination on the merits, prohibiting the Defendant from taking any action to "abate," demolish, revise, or to remove the Plaintiffs' detached garage; and

4. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

KRAUSE, MOORHEAD AND DRAISEN, P.A.

s/Daniel L. Draisen
DANIEL L. DRAISEN (SC Bar# 13536)
207 East Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
(864) 964-0788 facsimile
ddraisen@kmdlawyers.com
ATTORNEYS FOR THE PLAINTIFFS

December 27, 2017
Anderson, South Carolina

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

Arden Chase Architectural Control Committee

101 Arden Chase ▪ Anderson, South Carolina 29621

May 24, 2017



Mr. and Mrs. Gene Griffin
100 Arden Chase
Anderson, South Carolina 29621

Dear Gene and Beth:

The Arden Chase Architectural Control Committee met today, Wednesday, May 24, 2017.

As you know, the responsibilities of our committee include monitoring property changes to make sure they comply with our covenants and in your case with the court order. With this in mind, we need to hear from you about your intentions of building the RV garage. If you do decide to go forward with this, it will be necessary for you to first submit a revised site plan. This approval process needs to be completed before any construction begins.

Please let us have your response by June 9, 2017.

Sincerely,

Arden Chase Architectural Control Committee

Collin Bryant, Chairman

Committee Members:

Matt Elliott
Tom Smith
Marlene McClain – Ex Officio Member

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

KRAUSE MOORHEAD & DRAISEN P.A.

207 EAST CALHOUN STREET
ANDERSON • SOUTH CAROLINA • 29621
PHONE (864) 225-4000
FAX (864) 964-0700
WWW.KMDLAWYERS.COM

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

PLAINTIFF'S EXHIBIT tabbies B

May 31, 2017

Dr. Collin Bryant, Chairman
Arden Chase Architectural Control Committee
101 Arden Chase
Anderson, South Carolina 29621

RE: Construction of RV garage at 100 Arden Chase

Dear Dr. Bryant and Committee Members:

I write in response to your letter of May 24, 2017. Please be advised that it is the intention of the Griffins to build the RV Garage in accordance with the Court's Order dated March 28, 2017 (copy attached hereto). Garage placement will be on the existing pad with the garage door angled slightly greater to make sure that the door does not face any part of Arden Chase. No revised site plan is necessary. To comply with the Court's Order, several feet will be added to the front most corner at an angle to shift the door more parallel with Concord Road. The roof will likewise be adjusted accordingly. The rest of the structure will remain unchanged and will be built in accordance with the plans as approved by the Court. I have included a sample drawing showing an approximation of how the front angle will be adjusted to comply with the Court's Order.

I trust that this adequately addresses the Committee's concerns.

Sincerely,

KRAUSE, MOORHEAD AND DRAISEN, P.A.

Daniel L. Draisen

DLD
Enclosures
cc: Mr. and Mrs. Gene Griffin

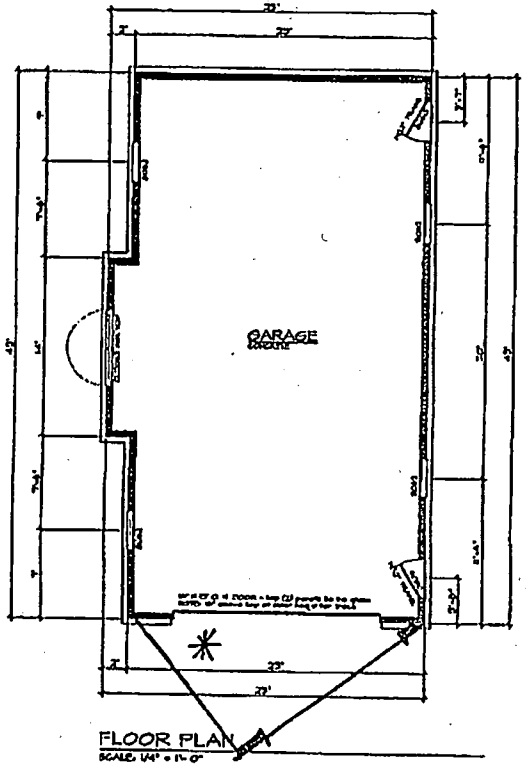
STEVEN M. KRAUSE
skrause@kmdlawyers.com
CERTIFIED NATIONAL BOARD OF TRIAL ADVOCACY

J. KIRKMAN MOORHEAD
kmoorhead@kmdlawyers.com

DANIEL L. DRAISEN
ddraisen@kmdlawyers.com
ALSO ADMITTED IN OKLAHOMA

STEVEN B. LEVEFRE
slefevre@kmdlawyers.com

TIMOTHY A. NOWACKI
tnowacki@kmdlawyers.com
ALSO ADMITTED IN INDIANA



* APPROX. EXAMPLE OF ADJUSTMENT

SQUARE FOOTAGE SUMMARY	
GARAGE	484
TOTAL HEATED	484

GENERAL NOTES:

1) Contractor to field verify all dimensions.
2) Contractor to construct this garage in accordance with all state and local codes and regulations.
3) Contractor to evaluate, verify and install adequate foundation, structural support beams and columns.
4) Contractor to provide waterproofing and termite pre-treatment.

DISCLAIMER

1) Tim Strickland Drafting is not an architect or engineer. Construction from these plans should only be undertaken by a licensed contractor who specializes in residential construction.
2) Tim Strickland Drafting neither offers or assumes any responsibility for construction or or from these plans.
3) Tim Strickland Drafting assumes no responsibility over any phase of construction or completed building.

DATE:
DRAWN BY: TIM STRICKLAND

Tim Strickland Drafting
2307 Bellview Road
Anderson, S.C. 29621 Ph. (864)933-5183

Griffin Garage Plan

Page A-2

60

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

TRAMMELL & MILLS
LAW FIRM, LLC

ERNEST C. TRAMMELL*
FLOYD S. MILLS III
BRADLEY W. BLEDSOE*
ROY N. TRAMMELL
*ALSO MEMBERS OF GEORGIA BAR

1650 EAST GREENVILLE STREET
ANDERSON, SOUTH CAROLINA 29621

P.O. BOX 1656
ANDERSON, SC 29622
PHONE: (864) 231-7171
FAX: (864) 231-7488

June 5, 2017



Daniel L. Draisen, Esq.
KRAUSE MOORHEAD & DRAISEN, P.A.
207 East Calhoun St.
Anderson, SC 29621
(Via Electronic Mail and U.S. Mail)

RE: CONSTRUCTION OF RV GARAGE AT 100 ARDEN CHASE

Dear Daniel:

We have been asked, as the attorneys for the Arden Chase Homeowners Association ("HOA"), to respond on its behalf and on behalf of the Architectural Control Committee ("ACC") of Arden Chase to your letter of May 31, 2017 to the ACC in view of the fact that this matter is now governed, not only by the Restrictive Covenants for Arden Chase ("Restrictive Covenants"), but also by the Order of Judge Sprouse dated March 28, 2017 ("Order").

It is the opinion of the ACC, in which we concur, that neither the information contained in your letter nor the attached "Griffin Garage Plans" (sample drawing) contain sufficient information to enable the ACC to determine whether or not your clients' proposal complies with either the Restrictive Covenants or the Order. By way of example, you state that the garage placement will be on the existing pad yet the sample drawing appears to show a new wall extension at an angle, an "adjustment" to the roof, as well as a new location for the garage door. These new details were not shown on the original drawings submitted previously and thus were not part of the proposed garage "currently planned" on which the Court based its findings and conclusions. Therefore, as required by the Restrictive Covenants, plans and specifications regarding this new structure must be submitted to the ACC for their review before the ACC can properly determine whether this new structure can be approved or disapproved.

We would also point out that, based upon our review of the Order of Judge Sprouse, this proposed new structure, as presented, does not comply, in our opinion, with the Court's Order and we have so advised the ACC. Judge Sprouse clearly stated that ..."The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the side of the garage containing the door intersects Concord Road instead of Arden Chase Street." (Emphasis added). The concrete pad on which the proposed garage referenced in said Order is located is a part of that structure. In the sample drawing enclosed with your letter, it appears that the corners of that pad still face in that same direction which was

found by the Court to be in violation of the Covenants. It is our interpretation of this Order that compliance requires that the existing concrete pad must be completely re-configured so that a straight line from each corner of the side of the garage containing the door, i.e. both sides, intersects Concord Road instead of Arden Chase Street. This has not been done.

Finally, we respectfully ask that you remind your client of the Provision 5.05 of the Arden Chase Restrictive Covenants.

Yours Very Truly,

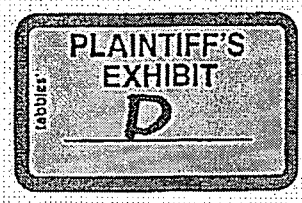
Ernest C. Trammell

J. Franklin McClain

cc: Dr. Collin Bryant
Dr. Matt Elliott
Mr. Tom Smith
Mrs. Marlene McClain

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632



From:	Daniel Draisen
To:	Ernie Trammell
Cc:	"cocrif@aol.com"
Subject:	RE: Construction of RV garage at 100 Arden Chase
Date:	Monday, June 05, 2017 5:13:03 PM
Attachments:	image001.png

Ernie: My client will not entertain any further interference from the ACC on the garage matter. Approval from the prior ACC was obtained and the Final Court Order was not appealed. We believe the Order is clear and that we are complying with same. The corners on the door side will be adjusted so the door faces Concord Road as required by the Judge. We do not believe the Judge ordered that we take up the existing pad and re-pour it. If we can adjust the door angle without doing so, that is approved. What he ruled was based on a finding that the door cannot face any part of Arden Chase. We are not going through any other approval process just to be back where we were before. Take whatever action you believe is necessary on behalf of the ACC. This time we will seek fees and costs. If the Court needs to "clarify" its order with regard to what we plan, so be it.

Alternatively, if the owners want to pay the Griffins back every cent they have in the matter including their legal fees and the cost to remove the pad (probably some $50,000), the Griffins would consider not building the garage, removing the pad, and building it elsewhere. In the absence of this, the garage is going to be built.

Regards, Daniel

DANIEL L. DRAISEN
ATTORNEY

KRAUSE MOORHEAD & DRAISEN P.A.

207 E. CALHOUN ST.
ANDERSON, SOUTH CAROLINA 29621
TEL (864) 225-1000
FAX (864) 964-6788
EMAIL: DDRAISEN@KMDLAWYERS.COM
WWW.KMDLAWYERS.COM

LIFE MEMBER
MILLION DOLLAR ADVOCATES FORUM
The Top Trial Lawyers In America ™

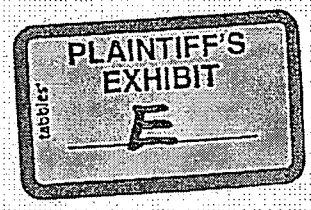
****This electronic communication and any attachment(s) are intended only for the person or entity to which it has been sent. Since the message originated or is associated with a lawyer or law firm, it may contain information that is confidential and that is subject to attorney-client privilege, as well as work product protections. If this message has been received by someone other than the intended recipient, you are requested to immediately notify us by replying to the message and deleting it from your computer. Further, you are advised that any dissemination, copying or distribution of this message, or anything associated with this message, is strictly prohibited.****

KRAUSE MOORHEAD & DRAISEN P.A.

207 EAST CALHOUN STREET
ANDERSON • SOUTH CAROLINA • 29621
PHONE (864) 225-4000
FAX (864) 964-0788
WWW.KMDLAWYERS.COM

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

October 13, 2017



Ernest C. Trammell, Esq.
J. Franklin McClain, Esq.
c/o Trammell and Mills Law Firm
1650 E. Greenville Street
Anderson, South Carolina 29621

RE: Submission of REVISED Garage Plan to the
Arden Chase Architectural Control Committee (ACC)

Dear Ernie and Frankie:

Pursuant to Judge Sprouse's ruling today in which the Court held:

The Defendants' modified plan, which slightly increases the square footage of the building and changes the configuration of the front of the building so that only one wall is turned, would constitute a new plan which would require submission to the board. Modification, however slight, of the building as configured on the plan submitted to the Court in the trial, would be a different plan.

The Court recognizes the effect of this ruling, which is made in an effort to enforce the governing restrictive covenants. Counsel for the Defendants has set forth practical reasons why this new plan would actually be less visible from the roadway of the subdivision than the original building if it were turned. The Court also is mindful of the emotions existing in the subdivision. The Defendants are fearful that the current Architectural Control Committee will summarily reject any proposed plans, even if they comply in all aspects with the restrictive covenants. As pointed out at the hearing, an unreasonable rejection of a reasonable plan is actionable. The Court would encourage the parties to resolve this issue prior to any further litigation.

Accordingly, on behalf of Gene and Beth Griffin, I am herby formally submitting to you as attorneys for the Arden Chase Homeowners' Association, the "revised" garage plans for the Griffin's detached garage (along with a copy of the original plans for ease of reference).

STEVEN M. KRAUSE
skrause@kmdlawyers.com
CERTIFIED NATIONAL BOARD OF TRIAL ADVOCACY

J. KIRKMAN MOORHEAD
kmoorhead@kmdlawyers.com

DANIEL L. DRAISEN
ddraisen@kmdlawyers.com
ALSO ADMITTED IN OKLAHOMA

STEVEN B. LEVEFRE
slefevre@kmdlawyers.com

TIMOTHY A. NOWACKI
tnowacki@kmdlawyers.com
ALSO ADMITTED IN INDIANA

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

KRAUSE MOORHEAD & DRAISEN P.A.

These same plans were attached to Defendants' Motion for Summary Judgment filed with the Court, along with the Affidavit of John Jones certifying that the wall containing the garage door will face no part of Arden Drive.

Please note that the precise physical location of the proposed "revised" garage on the Griffin lot is on the site of the existing concrete pad constructed, as modified, for the revised garage plans. Since the building is partially constructed at this point, we assume the ACC will have no difficulty determining where the Griffins proposed to place the structure on their lot.

We look forward to prompt approval of the "revised" garage plans by the ACC. Should you have any questions or concerns, please feel free to contact me at any time.

With best regards, I remain

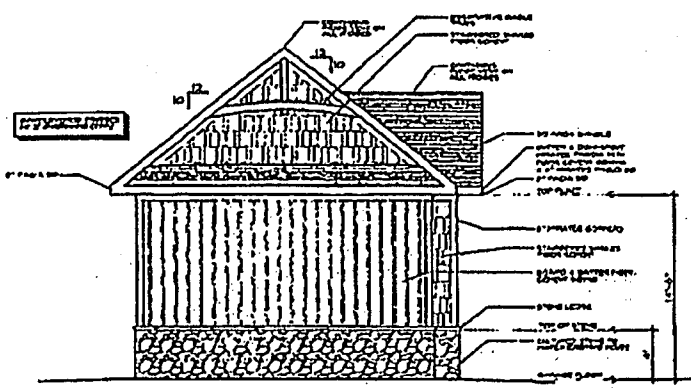
Sincerely,

KRAUSE, MOORHEAD & DRAISEN, P.A.

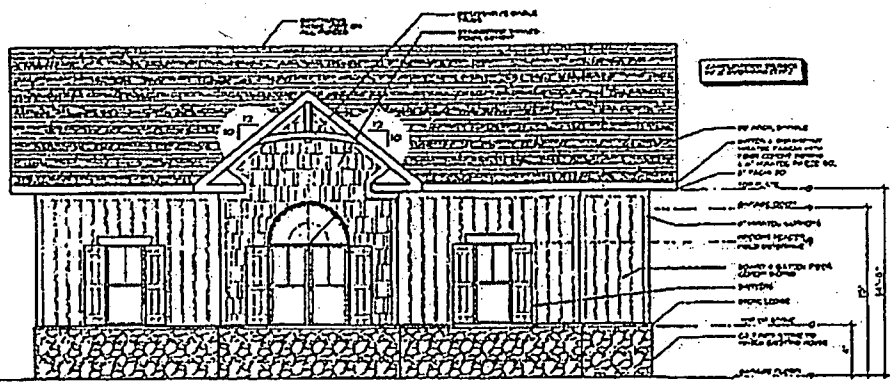
Daniel L. Draisen

DLD
Enclosures
cc: Client

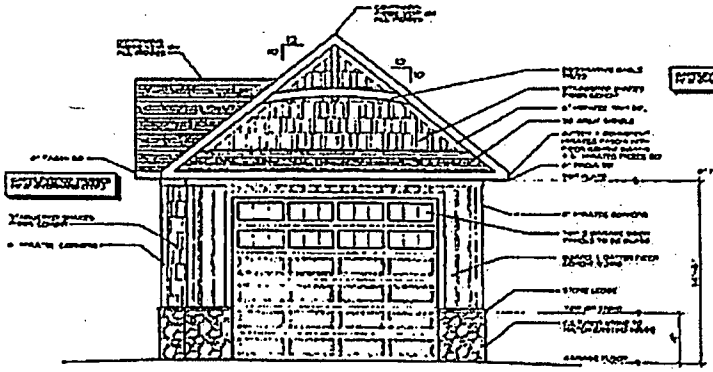
REVISED PLAN



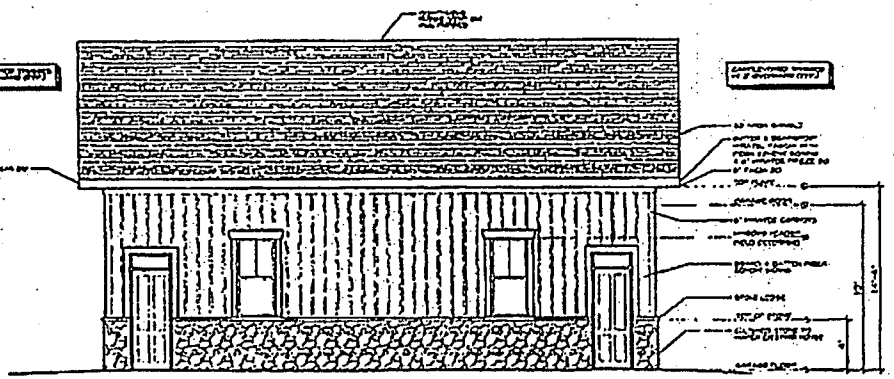
REAR ELEVATION



LEFT ELEVATION (FACING GARAGE DOOR)



FRONT ELEVATION



RIGHT ELEVATION (FACING GARAGE DOOR)

GENERAL NOTES:

1) Contractor to field verify all dimensions
2) Contractor to construct this garage in accordance with all state and local codes and regulations.
3) Contractor to evaluate, verify and install appropriate foundation, structural support, beams and columns.
4) Contractor to provide waterproofing and termite protection

DISCLAIMER

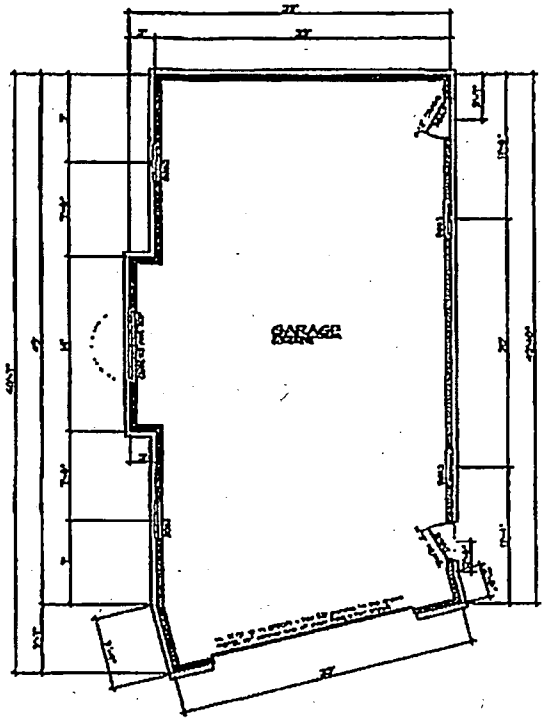
1) Tim Strickland Drafting is not an architect or engineer. Construction from these plans should only be undertaken by a licensed contractor who specializes in residential construction.
2) Tim Strickland Drafting neither offers or assumes any responsibility for construction of or from these plans.
3) Tim Strickland Drafting assumes no responsibility over any phase of construction or completed building.

Tim Strickland Drafting
2307 Bellview Road
Anderson, S.C. 29621 Ph. (864)933-5183

Griffin Garage Plan

Page
A-1

REVISED PLAN



FLOOR PLAN

SQUARE FOOTAGE SUMMARY

GARAGE	1,032
TOTAL HEATED	1,032

GENERAL NOTES:

1) Contractor to field verify all dimensions
2) Contractor to construct the garage in accordance with all rules and local codes and regulations
3) Contractor to provide roofing and structural foundation, wall and support beams and above
4) Contractor to provide waterproofing and termite pre-treatment

DISCLAIMER

1) Tim Strickland Drafting is not an architect or engineer. Construction from these plans should only be undertaken by a licensed contractor who specializes in residential construction.
2) Tim Strickland Drafting does not assume any responsibility for construction of or from these plans
3) Tim Strickland Drafting accepts no responsibility over any phase of construction or completed building.

DATE OBJECT
DRAWN BY: T. STRICKLAND

Tim Strickland Drafting
2307 Bellview Road
Anderson, S.C. 29621 Ph. (864)933-5183

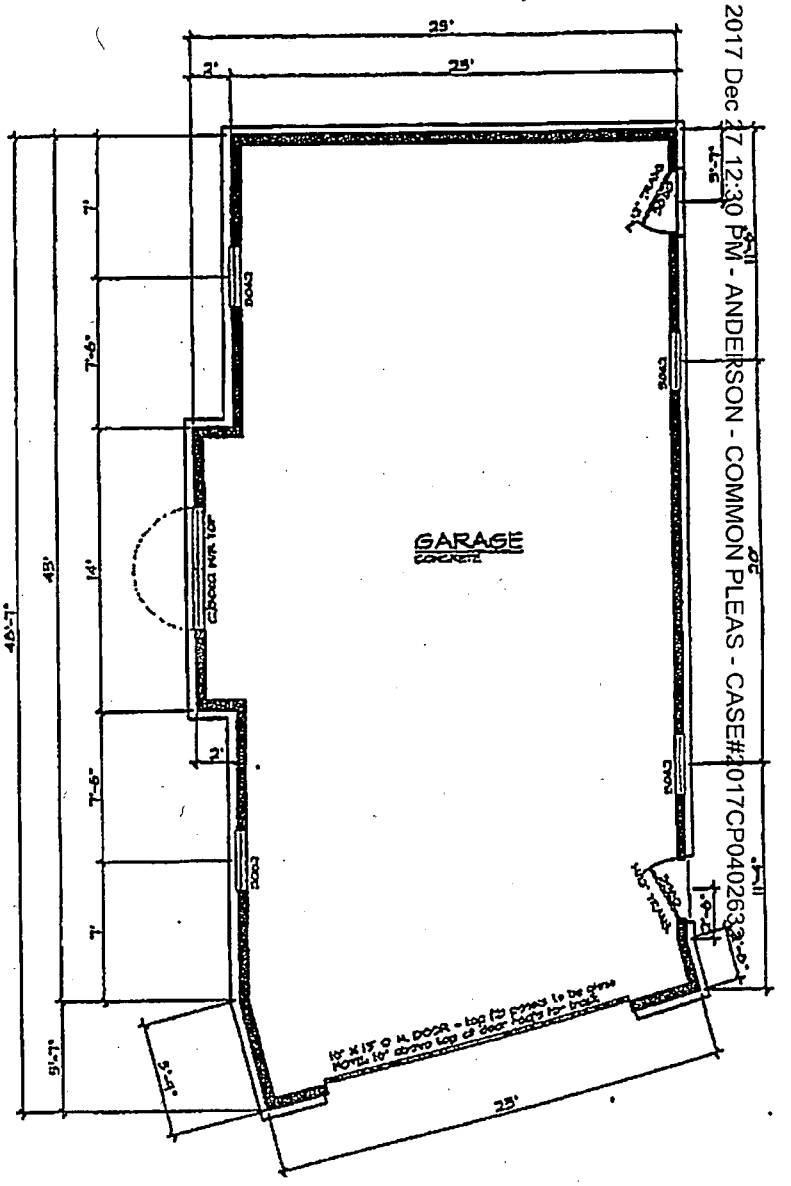
Griffin Garage Plan

Page A-2

67

REVISED -
EXPANDED VIEW

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040263

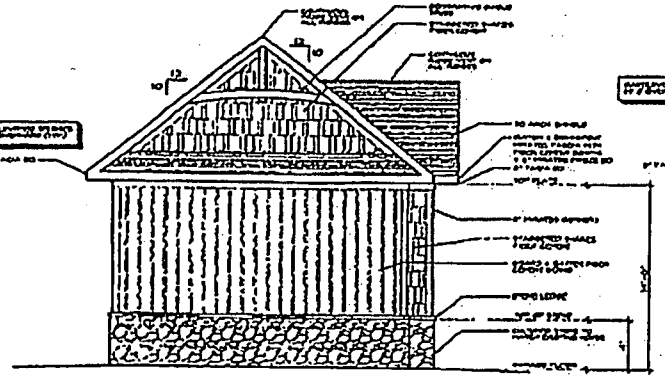


FLOOR PLAN
SCALE: 1/4" = 1'-0"

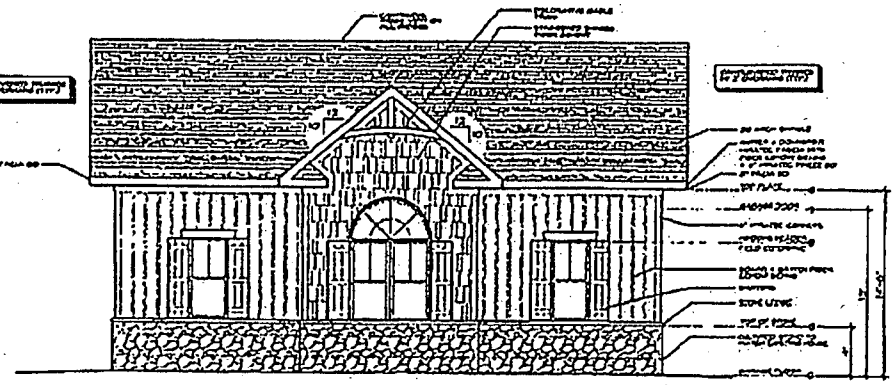
GENERAL NOTES:

1) Contractor to field verify all dimen
2) Contractor to construct this garag with all state and local codes and
3) Contractor to evaluate, verify and

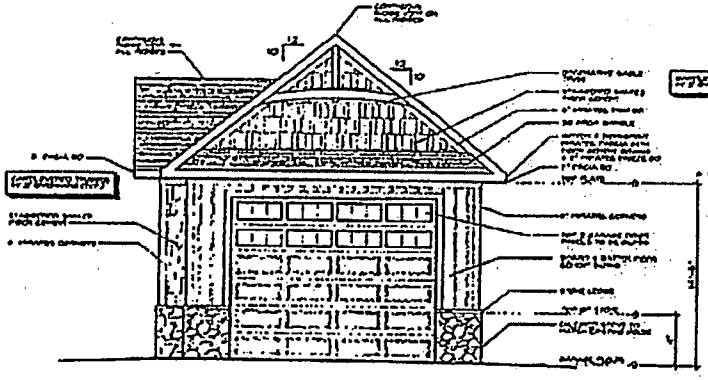
ORIGINAL PLAN



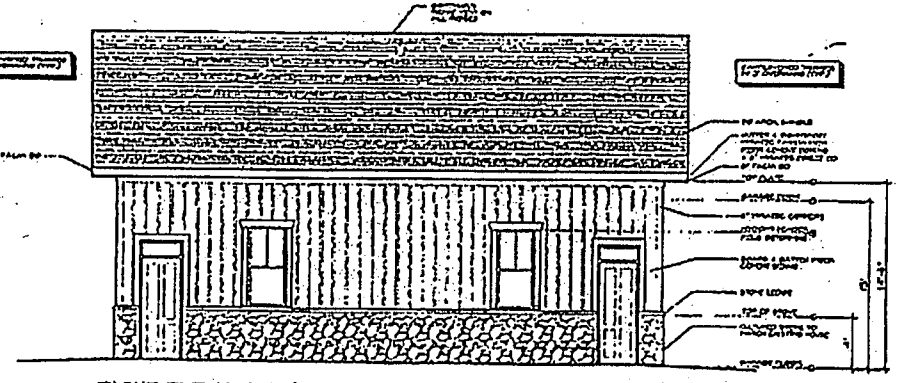
REAR ELEVATION



LEFT ELEVATION (FACING GARAGE DOOR)



FRONT ELEVATION



RIGHT ELEVATION (FACING GARAGE DOOR)

GENERAL NOTES

1) Contractor to field verify all dimensions.
2) Contractor to construct the garage in accordance with all state and local codes and regulations.
3) Contractor to provide, verify and install all required foundation, structural supports beams and columns.
4) Contractor to provide waterproofing and termite protection.

DISCLAIMER

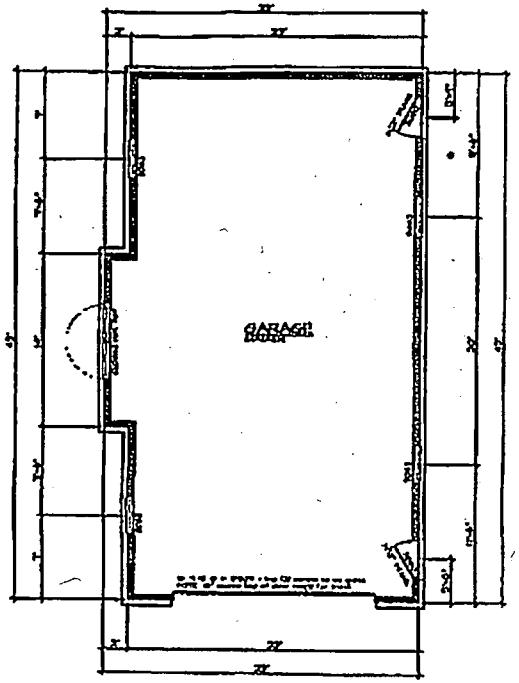
1) Tim Strickland Drafting is not an architect or engineer. Construction plans shown herein are only a representation by a licensed contractor who specializes in residential construction.
2) Tim Strickland Drafting neither offers or assumes any responsibility for construction of any plans shown herein.
3) Tim Strickland Drafting assumes no responsibility over any phase of construction or completed building.

Tim Strickland Drafting
2307 Bellview Road
Anderson, S.C. 29621 Ph. (864)933-5183

Griffin Garage Plan

Page
A-1

ORIGINAL PLAN



FLOOR PLAN

SQUARE FOOTAGE SUMMARY	
GARAGE	484
TOTAL HEATED	484

GENERAL NOTES:

1) Contractor to field verify all dimensions
2) Contractor to construct this garage in accordance with all state and local codes and regulations
3) Contractor to maintain, verify and install adequate foundation, structural support beams and columns.
4) Contractor to provide waterproofing and termite pretreatment.

DISCLAIMER

1) Tim Strickland Drafting is not an architect or engineer. Construction plans shown herein should only be undertaken by a licensed professional in residential construction.
2) Tim Strickland Drafting neither offers or assumes any responsibility for construction of or from these plans.
3) Tim Strickland Drafting assumes no responsibility over any phase of construction or completed building.

DATE
DRAWN BY
TIM STRICKLAND

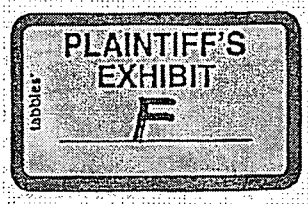
Tim Strickland Drafting
2307 Bellview Road
Anderson, S.C. 29621 Ph. (864)933-5183

Griffin Garage Plan

Page
A-2

70

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632



October 16, 2017

To: Mr and Mrs Griffin, 100 Arden Chase

From: Arden Chase Architecture Control Committee
D. Collin Bryant, Chairman

Re: ACC Review and Action on Revised RV Garage Plans

On Friday, October 13, 2017, Eugene Griffin's attorney, Mr. Daniel Draisen, submitted revised plans for a detached garage on Griffin's property at 100 Arden Chase. This was in response to Judge Sprouse's order given that day where there were findings pertinent to the Architecture Control Committee (ACC): (1.) Griffin's modified plan constituted a new plan that required submission to the ACC for review and action, (2.) Judge Sprouse's original ruling did in fact require the turning of the entire garage to be in compliance and (3.) Any unreasonable disapproval by the ACC could be grounds for future litigation by Griffin.

Acceptance of Service. These plans were emailed to Arden Chase HOA attorney, Mr. Frankie McClain, who subsequently forwarded the email on to the ACC and we accepted service on 10/13/17.

Submission of Plans and Specifications. Section 5.05 of the Arden Chase Covenants states that plans should contain: (a) site plan, (b) foundation plan, (c) floor plan, (d) exterior elevations, (e) specification of materials and (f) detailed plans for landscaping and grading. The plans submitted via email meet this standard, except for (f) detailed plans for landscaping and grading. Considering the magnitude of this project, landscaping and grading plans are an important piece of the overall plan. Upon inspection, the revised plans appear to be identical to the original plans except for slight modifications to the left and right walls. The structure retains the overwhelming majority of its original shape, size and orientation.

Grounds for Approval/Disapproval. The Covenants list certain measures which all plans must meet to be approved and Judge Sprouse compared the original plan to the covenants and found it lacking in one main area, the opening of the garage facing Arden Chase Street (3/28/17 Order).

ACC Review and Action. The ACC finds the design of the revised garage rather peculiar. The addition of an approximate 5' wall on the left side and an approximate 2' wall on the right side appears to serve no practical purpose and, in fact, may make it more difficult to serve its intended use.

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

Nevertheless, the issue remains: does the garage comply with the Arden Chase Covenants and with Judge Sprouse's orders requiring the opening to not face Arden Chase Street? For guidance, we will review Judge Sprouse's orders.

In the 3/28/17 order, Judge Sprouse gave the Griffins one clear way to bring their garage into compliance. The court stated *"The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the side of the garage containing the door intersects Concord Road instead of Arden Chase Street."* In the 10/13/17 clarification, Judge Sprouse stated *"The Court's intent in the previous order was that the structure as indicated on the submitted plans, was allowed on the condition that the entire structure was turned to comply with the restrictive covenants."*

It is clear that Judge Sprouse intended for the original structure to be turned in its entirety to be in compliance, but Griffin chose not to turn the entire structure. Instead, the original foundation and structure were kept and the opening was modified with a slight angle added to the left wall and the right wall. Does this modification satisfy Judge Sprouse's order?

Since significant progress has been made on the construction of the garage, the orientation of the building and the direction of the garage door is evident. The garage was constructed on the original concrete pad (Draisen letter to ACC 6/5/17). The small modification/angulation of side walls does not materially change the appearance and/or orientation of the garage and, as a result, the garage door has not moved and its opening still faces Arden Chase Street. Furthermore, landscaping plans as required by 5.05 were omitted from the revised plans submitted to the ACC on October 13, 2017. Therefore, the garage, as submitted and as currently constructed, does not satisfy the requirements for proper plan submission, Arden Chase's Covenants nor Judge Sprouse's order. As a result, the ACC disapproves of the plan submitted via email on October 13, 2017.

Additionally, the ACC recalls that we previously attempted to obtain these same "revised plans" back in May 2017. As a response, a handdrawn sketch on the original site plan was submitted to the ACC on May 31, 2017 by Griffin's attorney Daniel Draisen. The ACC responded stating that there was not enough information to make a decision on approval or disapproval and the sketch/plan was not approved. Mr. Draisen responded to the ACC via an email to HOA attorney Ernie Trammell on June 5, 2017:

"Ernie: My client will not entertain any further interference from the ACC on the garage matter. Approval from the prior ACC was obtained and the Final Court Order was not appealed. We believe the Order is clear and that we are complying with the same. **The corners on the door side will be adjusted so the door faces Concord Road as required by the Judge.** We do not believe the Judge ordered that we take up the existing pad and re-pour it. If we can adjust the door angle without

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

doing so, that is approved. What he ruled was based on a finding that the door cannot face any part of Arden Chase. We are not going through any other approval process just to be back where we were before. Take whatever action you believe is necessary on behalf of the ACC. This time we will seek fees and costs. If the Court needs to "clarify" its order with regard to what we plan, so be it.

Alternatively, if the owners want to pay the Griffins back every cent they have in the matter including their legal fees and the cost to remove the pad (probably some $50,000), the Griffins would consider not building the garage, removing the pag and building it elsewhere. In the absence of this, the garage is going to be built.

Regards, Daniel"

By the admission of Griffin's own attorney, the garage as it is currently constructed does not comply with the Judge's order.

Afterwards, construction commenced without the ACC receiving a set of plans that were actionable and without approval from the ACC. To be absolutely clear, all construction has been without any approval from the ACC, as required by the Arden Chase covenants.

If he so chooses, Griffin may re-submit plans with the entire structure repositioned so that it is in compliance with the Arden Chase Covenants and the orders of Judge Sprouse. As stated in 5.07 (c), the ACC stands ready to work with Griffin to bring his plans into compliance. Until such time, the garage is not approved by the ACC and further improvements are in violation of 5.10.

Please do not hesitate to contact me via email at dcollinbryant@gmail.com or by phone on my personal cell phone at 843-425-6441.

Kindest Regards,

D. Collin Bryant
Chairman
Arden Chase Architecture Control Committe

KRAUSE MOORHEAD & DRAISEN P.A.

207 EAST CALHOUN STREET
ANDERSON • SOUTH CAROLINA • 29621
PHONE (864) 225-4000
FAX (864) 964-0788
WWW.KMDLAWYERS.COM

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

October 26, 2017



VIA E-MAIL AND US MAIL

Dr. Collin Bryant, Chairman
Arden Chase Architectural Control Committee
101 Arden Chase
Anderson, South Carolina 29621

RE: Construction of RV garage at 100 Arden Chase

Dear Dr. Bryant and Committee Members:

We again attended a court hearing yesterday regarding the Griffin's garage. Judge Sprouse made it clear to all parties that there is currently no action pending before the Court with regard to the garage, and that any re-submission of plans by the Griffins necessitated by the change in the angle of the front wall and the addition of square footage should be treated as a "new" submission to the ACC for review. The ACC's October 16th denial of the re-submission in large part re-hashes the ACC's view of the past actions (which are irrelevant to the re-submitted plans), and as I understand it the denial was based upon a) that the plans submitted did not include the landscaping plan, and b) that the "small modification/angulation of sidewalls does not materially change the appearance and/or orientation of the garage and, as a result, the garage door has not moved and its opening still faces Arden Chase road."

To make the record in this matter perfectly clear, and to resolve any deficiencies in the October 13th re-submission, I hereby submit the following to the ACC for its review and consideration:

1. The revised floor/foundation plan (the foundation is shown on the floor plan);
2. The revised elevation drawings (the materials to be used are specified on the elevation drawings);
3. The landscaping plan; and
4. The site plan (as the structure is partially built, the precise location can be determined by a site visit).

STEVEN M. KRAUSE
skrause@kmdlawyers.com
CERTIFIED NATIONAL BOARD OF TRIAL ADVOCACY

J. KIRKMAN MOORHEAD
kmoorhead@kmdlawyers.com

DANIEL L. DRAISEN
ddraisen@kmdlawyers.com
ALSO ADMITTED IN OKLAHOMA

STEVEN B. LEVEFRE
slefevre@kmdlawyers.com

TIMOTHY A. NOWACKI
tnowacki@kmdlawyers.com
ALSO ADMITTED IN INDIANA

In regard to the ACC's assertion in its October 16th denial letter that the "small modification/angulation of sidewalls does not materially change the appearance and/or orientation of the garage and, as a result, the garage door has not moved and its opening still faces Arden Chase road" is incorrect.

As specified in Judge Sprouse's Order, in order to determine whether the garage doors face any part of Arden Chase road the ACC is to do the following:

> However, as noted above, a straight line extended from the front of the proposed garage intersects Arden Chase Street before it intersects Concord Road. Since this path collides with Arden Chase Street in roughly the same area that the front door faces, it is impossible to consider it differently. This strikes the Court as the obvious purpose of the restriction. The Court rejects the argument that additional garages would not be subject to the same restrictions as the mandatory garage. There is no evidence to support the Defendants' contention that the restrictive covenants equate the "open to the roadway" standard with the opening of the structure being in a perpendicular direction from the roadway.
>
> 25. The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street.

The Court provides the ACC with guidance on how to make this determination. The language of the Order does not hold that the garage door itself cannot not be visible from Arden Chase road, but rather that when a straight line is drawn from each corner of the wall containing the garage door none of those lines intersect Arden Chase road. We assert, as has been certified by Jack Jones, the contractor, that when a straight line is

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

KRAUSE MOORHEAD & DRAISEN P.A.

pulled from each corner of the wall containing the garage door, even the left side (closest to Arden Case road) is some 18 feet off the curb and clearly intersects only Concord Road. We certainly invite the ACC to pull a string from the corners of the garage to verify this, or to hire a surveyor to do so.

In addition, the Griffins contend that the appearance of the garage is substantially unchanged from the "approved" plans other than the small modification/angulation of the front wall.

The issue of whether a detached garage is permitted was resolved by the Court, the issue of whether the size of the proposed garage is permitted was resolved by the Court, the issue of the appearance of the garage was resolved by the Court. The only issue that remained was the proposed orientation of the garage door in relation to the roadway. For this, the Court provided specific guidance as is set forth above.

At yesterday's hearing, the Judge made it clear that the plans before him were the original garage plans. He also made it clear that his ruling only pertains to those plans, and not to any other plans that may be submitted to the ACC (specifically indicating that while turning the entire structure for the original plans would satisfy the Covenants, this was not the only option).

Accordingly, having now made certain that the submittals to the ACC are not deficient, we again ask the ACC to reconsider approval of the Griffin garage. Should the ACC again deny approval, we would ask that the ACC state with specificity each and every basis for its denial.

Sincerely,

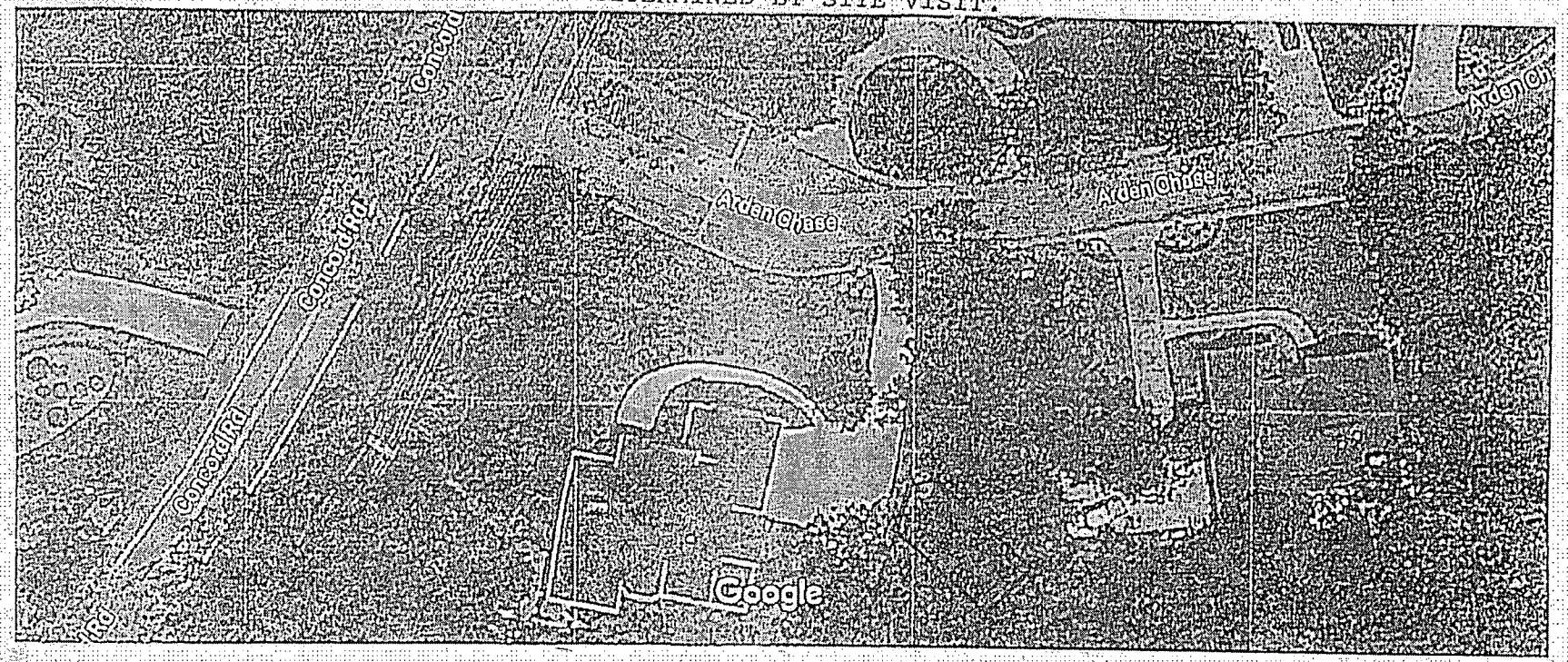
KRAUSE, MOORHEAD AND DRAISEN, P.A.

Daniel L. Draisen

DLD
Enclosures
cc: Mr. and Mrs. Gene Griffin
J. Franklin McClain, Esq and Ernest C. Trammell, Esq.

Google Maps

SITE PLAN - APPROXIMATE LOCATION OF PROPOSED GARAGE. EXACT LOCATION MAY BE DETERMINED BY SITE VISIT.



Map data ©2017 Google United States 20 ft

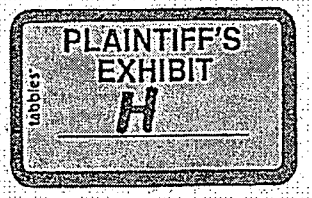
SITE PLAN

77

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040263 2

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632



October 30, 2017

To: Mr and Mrs Griffin, 100 Arden Chase

From: Arden Chase Architecture Control Committee
Collin Bryant, Chairman

Re: ACC Review and Action on Submission of RV Garage Plans (Version 10/26/17)

On Thursday, October 26, 2017, Eugene Griffin's attorney, Mr. Daniel Draisen, presented a set of RV Garage Plans to the Arden Chase Architecture Control Committee (ACC) via email and subsequently via US mail. This submission is in response to the previously disapproved plans (Version 10/13/17) for an already in-progress, yet unapproved detached Recreational Vehicle garage on Griffin's property at 100 Arden Chase.

Acceptance of Service. These plans (Version 10/26/17) were emailed to Arden Chase ACC Chairman Collin Bryant and Arden Chase HOA attorneys, Mr. Frankie McClain and Mr. Ernie Trammell, on Thursday, 10/26/17.

As previously stated, this most recent submission is in response to the ACC's disapproval of plans letter dated 10/16/17. This disapproval was based upon two main criteria:

1. Violation of 5.05 (*Submission of Plans and Specifications*) requiring complete plan submission.
2. The submitted plan (and partially constructed structure) has a garage door opening that still faces Arden Chase Street, in violation of Arden Chase's Covenant 6.06 (*Square Footage*) and Judge Sprouse's Order (3/28/17) and Clarification (10/13/17).

The ACC references its 10/16/17 Disapproval Letter:

> "In the 3/28/17 order, Judge Sprouse gave the Griffins one clear way to bring their garage into compliance. The Court stated "*The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the side of the garage containing the door intersects Concord Road instead of Arden Chase Street.*" In the 10/13/17 clarification, Judge Sprouse stated "*The Court's intent in the previous order was that the structure as indicated on the submitted plans, was allowed on the condition that the entire structure was turned to comply with the restrictive covenants.*"
>
> It is clear that Judge Sprouse intended for the original structure to be turned in its entirety to be in compliance, but Griffin chose not to turn the entire structure. The garage was constructed on the original concrete pad (Draisen letter to ACC 6/5/17). The small modification/angulation of side walls does not materially change the appearance and/or orientation of the garage and, as a result, the garage door has not moved and its opening still faces Arden Chase Street. Therefore, the

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040232

garage, as currently constructed, does not satisfy Arden Chase's Covenants or Judge Sprouse's order.

Furthermore, Arden Chase Covenant 6.06 Square Footage states:

> "Each and every residence shall be a minimum of 2,700 square feet of heated living space. In addition to this aforementioned square footage, each residence shall have a garage of at least 500 square feet plus 100 square feet of storage space. *Said garage shall not be allowed to open to the roadway in front of the residence."*

It is clearly the intent of the Covenants, as supported by Judge Sprouse's Order and Clarification, to not have a garage door open toward the road in front of the residence, in order to conceal garage doors. This current submission is identical in design to the 10/13/17 plans, does not comply with paragraph 24 of Judge Sprouse's 3/28/17 Order and does absolutely nothing to alleviate this issue.

The committee applauds Griffin for including a previously omitted landscape plan in this submission (Version 10/26/17), but the ACC does have a few questions concerning it. Specifically, the committee notes that existing trees and shrubbery to the right of the existing driveway are not included on the drawing. For example, 100 Arden currently has a sizeable holly tree that is not depicted on the drawing. Does Griffin intend to remove said tree? Does he plan to make any changes to the hardscaping on his property including modifications to any driveways or walkways? The committee needs a complete and accurate representation of what Griffin intends to do with the existing as well as proposed landscaping.

This submission also includes a site plan as required by 5.05 (a). However, the submitted site plan is deficient as determined by the covenant, which is reproduced below:

> 5.05. Submission of Plans and Specifications. No structure shall be commenced, erected, placed or permitted to remain on any Home Site nor shall any existing Structure upon any Home Site be altered in any way which materially changes the exterior appearance of the Structure or Home Site, unless plans and specifications therefore shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including where applicable, and without being limited to:
>
> *(a) a site plan showing the location of all proposed and existing Structures on the Home Site including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures;*

The submitted site plan is simply a Google Map aerial view of 100 Arden Chase with a handdrawn sketch of the garage that is neither an accurate representation of the structure's design and orientation nor is it to scale. Covenant 5.05 (a) clearly requires the site plan to show the location of all proposed AND existing structures on the home site including setbacks, open spaces, driveways and walkways.

The ACC needs a comprehensive, detailed site plan as required by the Covenants.

In summary, the committee unanimously stands by our 10/16/17 disapproval by finding that the garage door opening faces Arden Chase Street in violation of the Covenants and Judge Sprouse's Order (3/28/17) and Clarification (10/13/17). Additionally, the landscape plans need updating to clearly show all existing and proposed hardscaping (walkways, driveways, ect.) as well any shrubbery, plants and trees. Finally, the committee needs a complete, accurate and detailed site plan including all the criteria listed in 5.05 (a). Accordingly, the garage is **not approved** by the ACC and all existing and any further work on the garage is in clear and direct violation of 5.10.

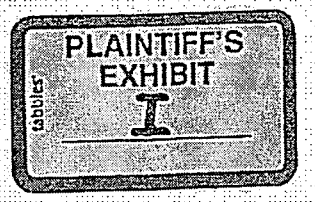
As stated in 5.07 (c), the ACC stands ready to work with Griffin to bring his plans into compliance. Please do not hesitate to contact me via email at dcollinbryant@gmail.com or by phone on my personal cell phone at 843-425-6441.

Kindest Regards,

D. Collin Bryant
Chairman
Arden Chase Architecture Control Committee

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632



December 5, 2017

To: Mr. and Mrs. Griffin, 100 Arden Chase

From: Arden Chase Homeowners Association Board
Mandy Smith, President

Re: Covenant Violation found in Section 5.10 of the Arden Chase Covenants

On December 1, 2017, Mandy Smith, President of the Arden Chase Homeowners Association (ACHOA), received from Collin Bryant, Chairman of the Arden Chase Architectural Control Committee (ACC), a hand-delivered letter (see attached) concerning the unapproved building of the Griffin garage at 100 Arden Chase. The ACC letter asks for the Board's attention and action.

> Article 5.10 (copy attached) of the Arden Chase covenants states:
>
> If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association.

A meeting of the ACHOA Board was called to discuss and decide on the appropriate action from the Board in reply to the ACC's request. That meeting was held on the afternoon of December 4, 2017. All members of the Board (Mandy Smith, President; Marlene McLain, Vice President; Louise Trammell, Secretary; and Alecia Smith, Treasurer) were present. After examining both the covenants and the letter from the ACC, a vote was taken with Mandy Smith choosing to recuse herself from the vote due to previous involvement with the denial of the construction of the garage. The vote was unanimous.

Therefore, in accordance with Article 5.10 of the Arden Chase covenants which states:

> If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation.

Per directions set in the Covenants, the Arden Chase Homeowners Association Board is putting you on notice that to be in compliance with the Arden Chase covenants and Judge Sprouse's order and clarification, you must either reorient the entire slab and building or remove the structure in its entirety from the premises and restore the site to its preconstruction state. If this is not carried out the Association shall have the Right of Abatement as provided in Section 8.02

> If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement.

Respectfully Submitted,

Mandy Smith

Mandy Smith, President
Arden Chase Homeowners Association

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040263

December 1, 2017

To: Arden Chase Homeowners' Association Board of Directors

From: Arden Chase Architecture Control Committee
Collin Bryant, Chairman

Re: Construction of Garage at 100 Arden Chase

It is with regret that I write this letter concerning the construction of a detached garage at Mr and Mrs Griffin's 100 Arden Chase home site. I'm writing after the Architecture Control Committee (ACC) has made multiple attempts to get the Griffins to stop the unapproved and illegal construction. Since the ACC finds the construction in direct violation of section 5.05 of our covenants and in direct violation of Judge Sprouse's Court Orders, section 5.10 ("Violations") instructs the ACC to bring the matter to the Homeowners' Association.

As you may be aware, Mr and Mrs Griffin submitted plans for the construction of a detached RV garage in June 2016 to the Architecture Control Committee (ACC). The ACC at that time was comprised of Gene Griffin, Dean Price and Steve Crain. Larry Rowland was HOA President. Mr Rowland and Mr Crain improperly approved the plans and later reversed their decision. Before any improvements had been made, Mr Griffin was given written notice in July 2016 that the plans were not approved. Nevertheless, he moved forward with improvements to his property and violated section 5.05 of the Arden Chase Covenants.

Litigation followed in September 2016 and Judge Sprouse ultimately ruled that the proposed garage did not comply with the Arden Chase covenants but could be brought into compliance by re-positioning the entire garage so that the garage door did not face Arden Chase Street (Sprouse Order 3/28/2017).

In May 2017, the current ACC, comprised of Tom Smith, Matt Elliott and Collin Bryant, wrote the Griffins seeking their intention for the proposed garage. The Griffins stated that they were moving forward with construction of the garage with small modifications. The ACC responded saying that any modification required submission of said plans for ACC review and approval.

In June 2017, without seeking approval from the current ACC, the Griffins began construction with a modified plan that added two short walls to the front of the garage. This action is in direct violation of section 5.05 which states *"No Structure shall be commenced, erected, placed or permitted to remain on any Home Site nor shall any existing Structure upon any Home Site be altered in any way which materially changes the exterior appearance of the Structure or Home Site, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC."*

The Griffins believed that the new plan satisfied Judge Sprouse's original order without a need for ACC approval but the ACC disagreed. The ACC brought the matter before Judge Sprouse in June 2017 and in October he supported the ACC's contention that Sprouse intended for the entire structure to be repositioned and that any modification constituted a new plan which needs the approval of the ACC. Accordingly, he gave the Griffins two options for building their garage: 1) Reposition the original plan so that the garage door does not face Arden Chase Street or 2) Submit the new plan to the ACC for review and approval.

By this time, substantial progress had been made on the garage but the structure had not been turned and the modified plan had not been submitted to the ACC. After Judge Sprouse's October clarification order, the Griffins finally submitted revised plans. The plan was denied by the ACC because of incomplete information and because the garage door still opens toward Arden Chase Street. The letter of denial was sent to the Griffins and their attorney, Mr Daniel Draisen, on October 30, 2017. That letter advised the Griffins that the ACC stood ready to work with them to bring the plans into compliance. Although 5.03 (b) of the covenants allows the applicant to request a review of an unsatisfactory decision by the ACC by filing a written notice within 10 days, Mr Draisen sent an email stating the ACC was wrong in its decision and that he would ask his clients about submitting missing information including a site plan. No request for a review was made and no appeal was taken from Judge Sprouse's Court Order.

To be absolutely clear, all improvements and construction of the detached garage have been without any approval from the prior or current ACC. Their actions are also in violation of Judge Sprouse's orders as outlined above. In accordance with Section 5.10 of our covenants, the ACC submits this letter for your review and we request a meeting with the HOA Board to discuss this matter.

Respectfully submitted,

Collin Bryant, Chairman
Arden Chase Architecture Control Committee

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

5.08 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

5.09 Inspection Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times enter upon any Home Site and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Home Site or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

5.10 Violations. If any Structure shall be erected, placed, maintained or altered upon any Home Site, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

5.11 Nondiscrimination by ACC. The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

5.12 Disclaimer as to ACC Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure

BOOK 1010 PAGE 101

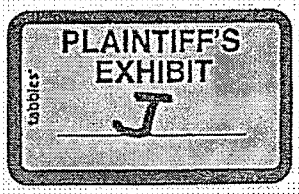
ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

KRAUSE MOORHEAD & DRAISEN P.A.

207 EAST CALHOUN STREET
ANDERSON • SOUTH CAROLINA • 29621
PHONE (864) 225-4000
FAX (864) 964-0700
WWW.KMDLAWYERS.COM

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

December 12, 2017



VIA E-MAIL AND US MAIL

Dr. Collin Bryant, Chairman
Arden Chase Architectural Control Committee
101 Arden Chase
Anderson, South Carolina 29621

RE: Construction of RV garage at 100 Arden Chase

Dear Dr. Bryant and Committee Members:

At the present, we are unclear about the reasons for the denial of the "revised" garage plans submitted by the Griffins. If the ACC is asserting there are deficiencies in the submissions, I hereby submit the following to the ACC for its additional review and consideration:

1. The revised floor/foundation plan prepared by Tim Strickland Drafting (the foundation is shown on the floor plan);
2. The revised elevation drawings prepared by Tim Strickland Drafting (the materials to be used are specified on the elevation drawings);
3. A detailed landscaping plan by Stepping Stone Landscaping overlaid on the site plan; and
4. A complete site plan prepared by Professional Land Surveying Solutions, LLC.

In addition to the paper submissions, as the garage is now completely constructed the ACC is invited to view the structure itself for any additional desired details.

It also appears, if we are reading the most recent letter from the HOA correctly, that the ACC will not approve, or even consider approving, any garage structure on the Griffins lot that is not a) identical to the original plans considered by Judge Sprouse (rectangular in shape), and b) who's entire slab and building structure are reoriented to face Concord Road. This indicates an unwillingness of the ACC and HOA to even consider the "new" submission as suggested by the Court.

STEVEN M. KRAUSE
skrause@kmdlawyers.com
CERTIFIED NATIONAL BOARD OF TRIAL ADVOCACY

J. KIRKMAN MOORHEAD
kmoorhead@kmdlawyers.com

DANIEL L. DRAISEN
ldraisen@kmdlawyers.com
ALSO ADMITTED IN OKLAHOMA

STEVEN B. LEVEFRE
slefevre@kmdlawyers.com

TIMOTHY A. NOWACKI
tnowacki@kmdlawyers.com
ALSO ADMITTED IN INDIANA

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

KRAUSE MOORHEAD & DRAISEN P.A.

However, the Griffins again assert that in his Order Judge Sprouse held:

> 26. There are no challenges to any other existing structures in the subdivision and it appears that all other existing structures are in compliance as to Paragraph 6.06, in addition to the other provisions in the Restrictive Covenants. In order to aid the parties with an answer to the declaratory judgment portion of the case, future construction in the subdivision can be compliant regarding this provision *if a straight line drawn from the front corners of a proposed structure intersects a neighboring lot line, Concord Road, or the outer boundary of the subdivision prior to intersecting Arden Chase street.* (emphasis added)

The complete site plan prepared by Professional Land Surveying Solutions, LLC clearly shows that the site lines when drawn from the front corners of the garage (as constructed) do not intersect any portion of Arden Chase street.

Accordingly, having submitted "formal drawings" to make absolutely certain that the submittals to the ACC are not deficient, and having shown that the front of the garage does not intersect any portion of Arden Chase street, we again ask the ACC to reconsider approval of the Griffin garage. Should the ACC again deny approval, we would ask that the ACC state with specificity each and every basis for its denial.

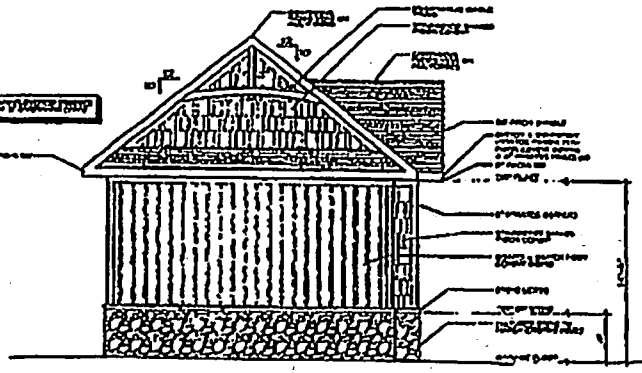
Sincerely,

KRAUSE, MOORHEAD AND DRAISEN, P.A.

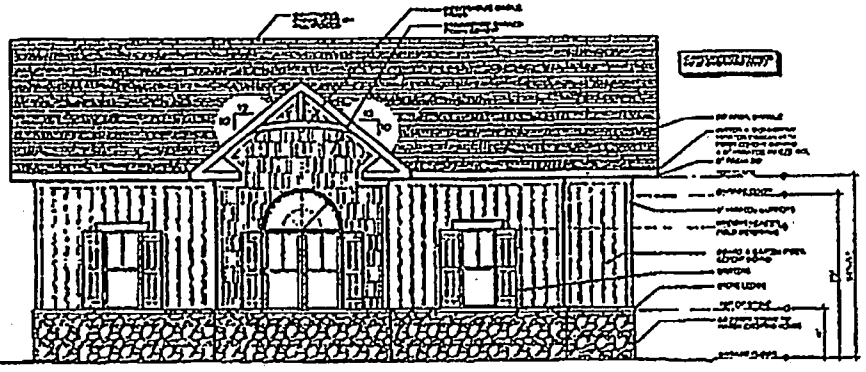
Daniel L. Draisen

DLD
Enclosures
cc: Mr. and Mrs. Gene Griffin
J. Franklin McClain, Esq and Ernest C. Trammell, Esq.
Mandy Smith, President, Arden Chase HOA

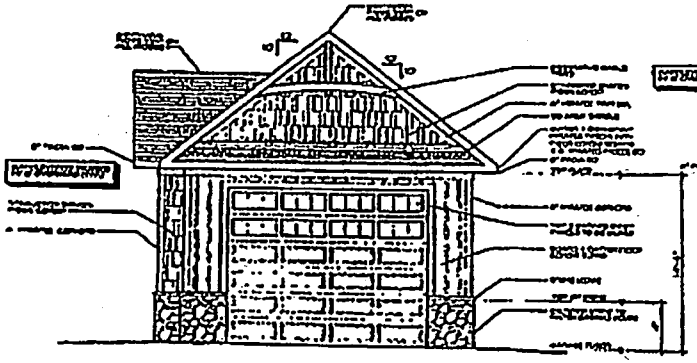
REVISED PLAN



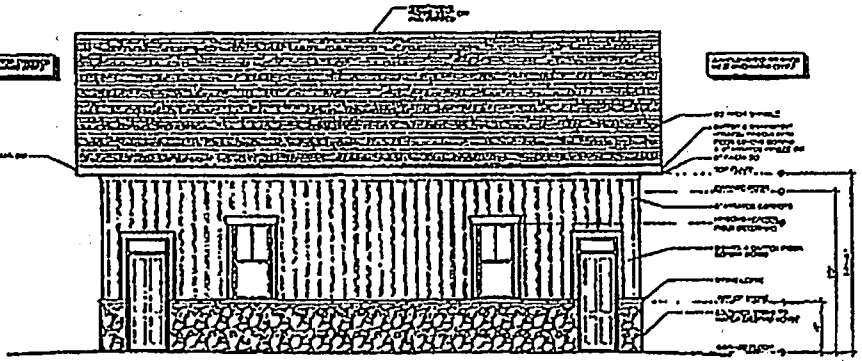
REAR ELEVATION



LEFT ELEVATION (FACING GARAGE DOOR)



FRONT ELEVATION



RIGHT ELEVATION (FACING GARAGE DOOR)

GENERAL NOTES:

1) Contractor to field verify all dimensions
2) Contractor to construct this garage in accordance with all state and local codes and regulations.
3) Contractor to examine, verify and install [illegible]
4) Contractor to provide waterproofing and termite pre-treatment.

DISCLAIMER

1) The Strickland Drafting is not an architect or engineer. Construction from these plans should only be undertaken by a licensed contractor who specializes in residential construction.
2) The Strickland Drafting neither offers or assumes any responsibility for construction of or from these plans.
3) The Strickland Drafting assumes no responsibility over any phase of construction or completed building.

DATE 08 30 17
DRAWN BY TIM STRICKLAND

Tim Strickland Drafting
2307 Bellview Road
Anderson, S.C. 29621 Ph. (864)933-5183

Griffin Garage Plan

Page A-1

REVISED PLAN

FLOOR PLAN

SQUARE FOOTAGE SUMMARY	
GARAGE	1,053
TOTAL HEATED	1,053

GENERAL NOTES:

1) Contractor to field verify all dimensions
2) Contractor to construct this garage in accordance with all state and local codes and regulations.
3) Contractor to construct, verify and install proper interior foundation, anchored anchors beams and columns.
4) Contractor to provide waterproofing and termite pre-treatment.

DISCLAIMER

1) The Strickland Drafting is not an architect or engineer. Construction from these plans should only be undertaken by a licensed contractor who specializes in residential construction.
2) The Strickland Drafting neither offers nor assumes any responsibility for construction of or from these plans.
3) The Strickland Drafting assumes no responsibility over any errors or omissions of completed building.

DATE 08/30/17
DRAWN BY TIM STRICKLAND

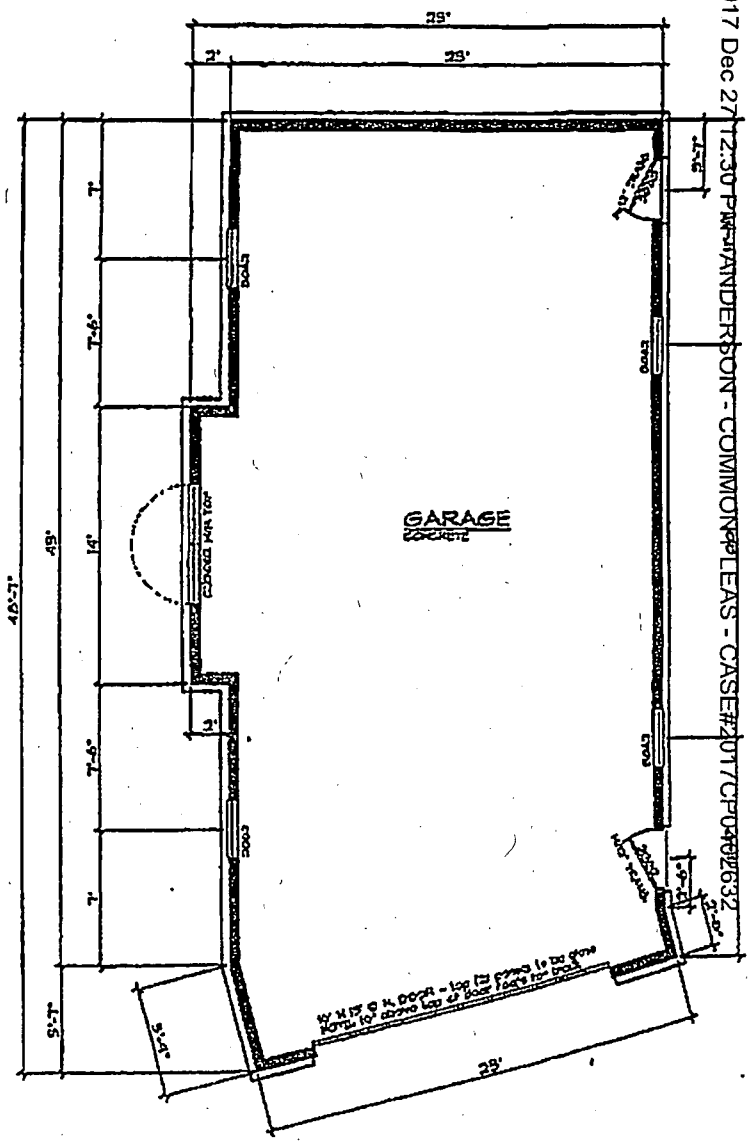
Tim Strickland Drafting
2307 Bellview Road
Anderson, S.C. 29621 Ph. (864)933-5183

Griffin Garage Plan

Page A-2

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE #2017CP04002632

REVISED - EXPANDED VIEW



FLOOR PLAN
SCALE: 1/4" = 1'-0"

GENERAL NOTES:

1) Contractor to field verify all dimen
2) Contractor to construct this garag with all state and local codes and
3) Contractor to maintain, verify and

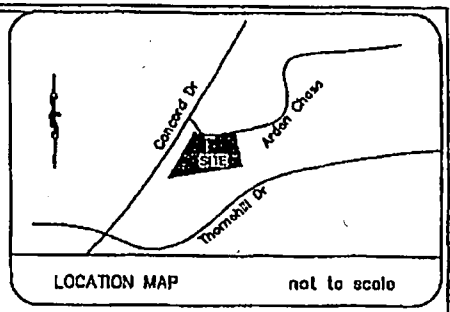
SITE PLAN

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402682

EXEMPTION FROM REVIEW PROCESS
This Plat is a RESURVEY of an existing lot of record with no changes to existing lot lines.

T. Lloyd Silva PLS No. 28142

Survey of
Arden Chase Subdivision, Lot 23
for
Eugene L. Griffin
and
Beth King Griffin
100 Arden Chase
Anderson County, South Carolina 29621
1" = 40' December 01, 2017



Magnetic

LEGEND

Crimp-Top Pipe	CT
Open-Top Pipe	OT
Iron Pin Set	IPS o
Iron Pin Found	IPF •
Nail Found	NF ▲
Nail Set	NS △
Point	Pt
Power Pole	PO

Concord Road S-4-34
Arden Chase
Arden Chase Common Area
Thornehill Common Area
Lot 22
Dwelling
porch
deck
Building
A/C
building setback line
SIGHT VIEW FROM GARAGE
IPF 1/2" Rod
Tie Line N80°44'32"E 125.10'
S60°04'01"E 50.93'
N80°41'25"E 114.90'
S09°17'00"E 125.04'
N29°51'27"E 202.50'
S80°44'33"W 282.18'

-NOTES-
Property & areas shown subject to any and all rights-of-way, easements, and restrictions that may exist of record, above or on the ground.
Except as specifically stated or shown on this Plat, this survey does not purport to reflect any of the following which may be applicable to the subject Real Estate: Easements, other than possible easements that were visible at the time of making this survey; Building setback lines; Restrictive covenants; Subdivision restrictions; Zoning or other Land use regulations and any other facts than an accurate and current Title Search may disclose. This survey does not constitute a Title Search by Surveyor.
TMS # 1471701057
Reference: Plat Book S134, Page 7
Plat Book S1176, Page 58

40' 0 40' 80'
scale Graphic Scale feet

I hereby state that to the best of my professional knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Standards of Practice Manual for Surveying in South Carolina, and meets or exceeds the requirements for a Class "A" Survey as specified therein; also there are not visible encroachments or projections other than shown.

T. Lloyd Silva PLS No. 28142

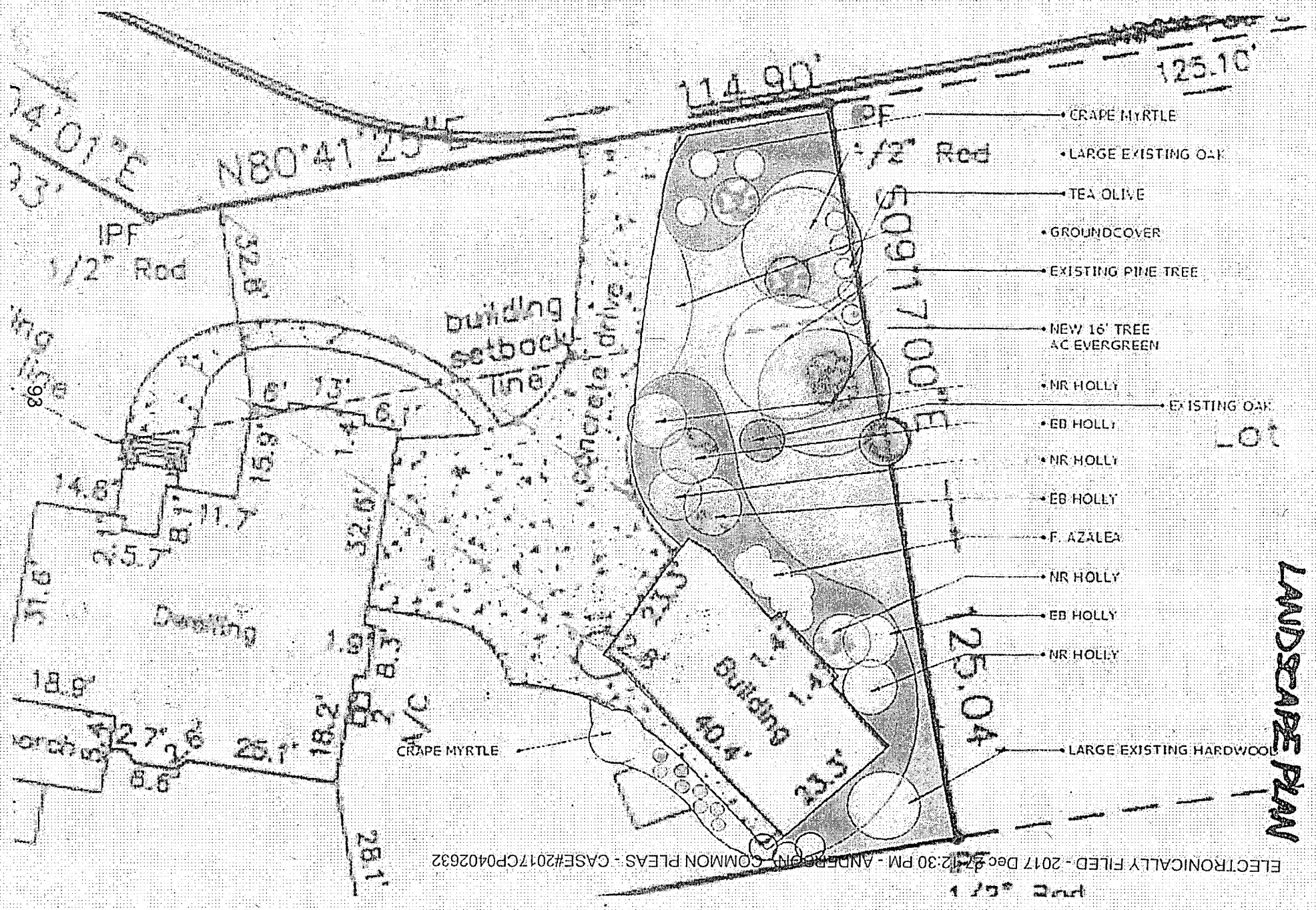
SOUTH CAROLINA PROFESSIONAL LAND SURVEYING SOLUTIONS, LLC No. 4743 CERTIFICATE OF AUTHORIZATION

PLS SOLUTIONS, LLC
107 PINE LANE
ANDERSON, SOUTH CAROLINA 29621
PHONE: (864) 630-9627

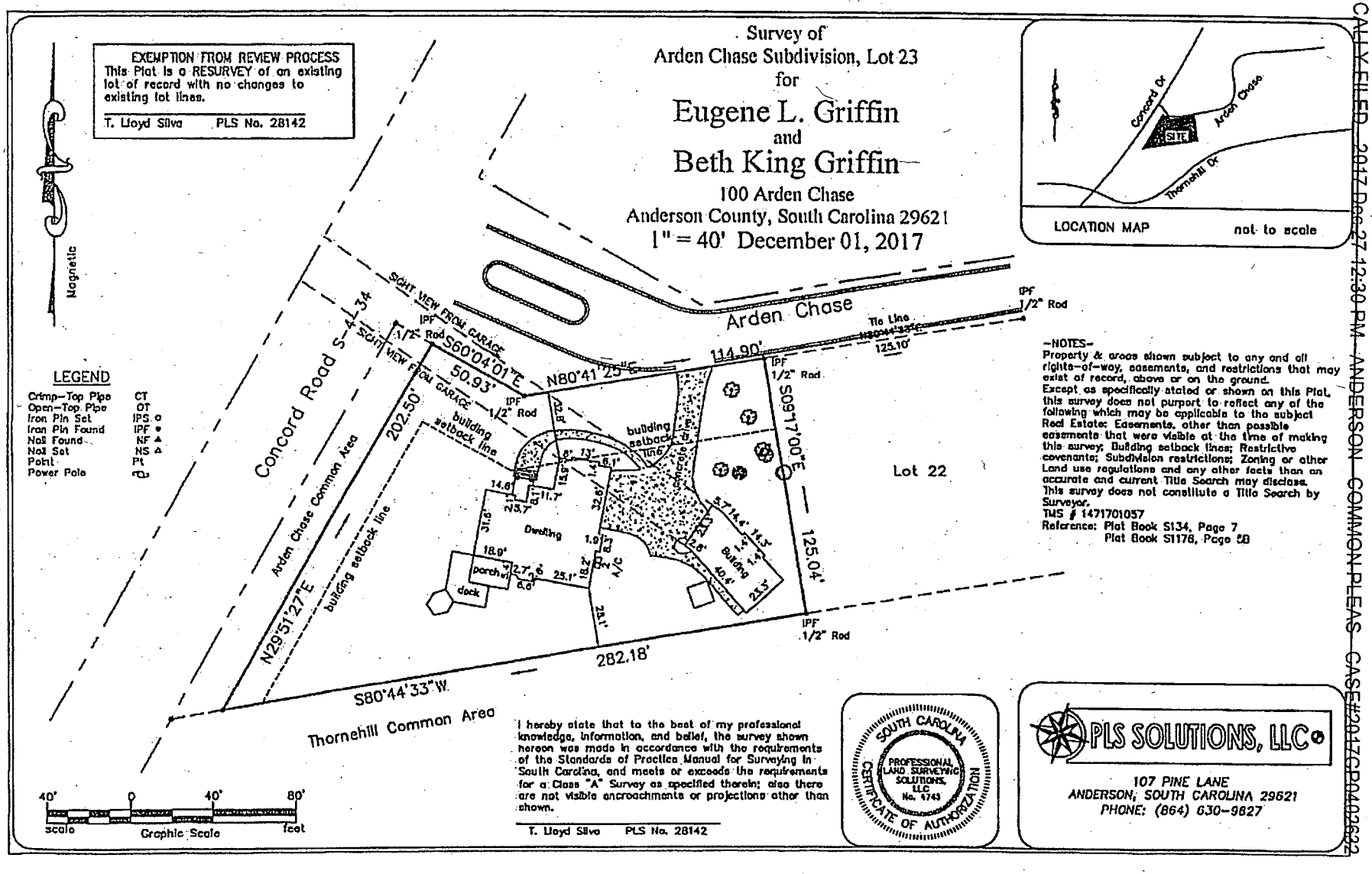
92

LANDSCAPE OVERLAY

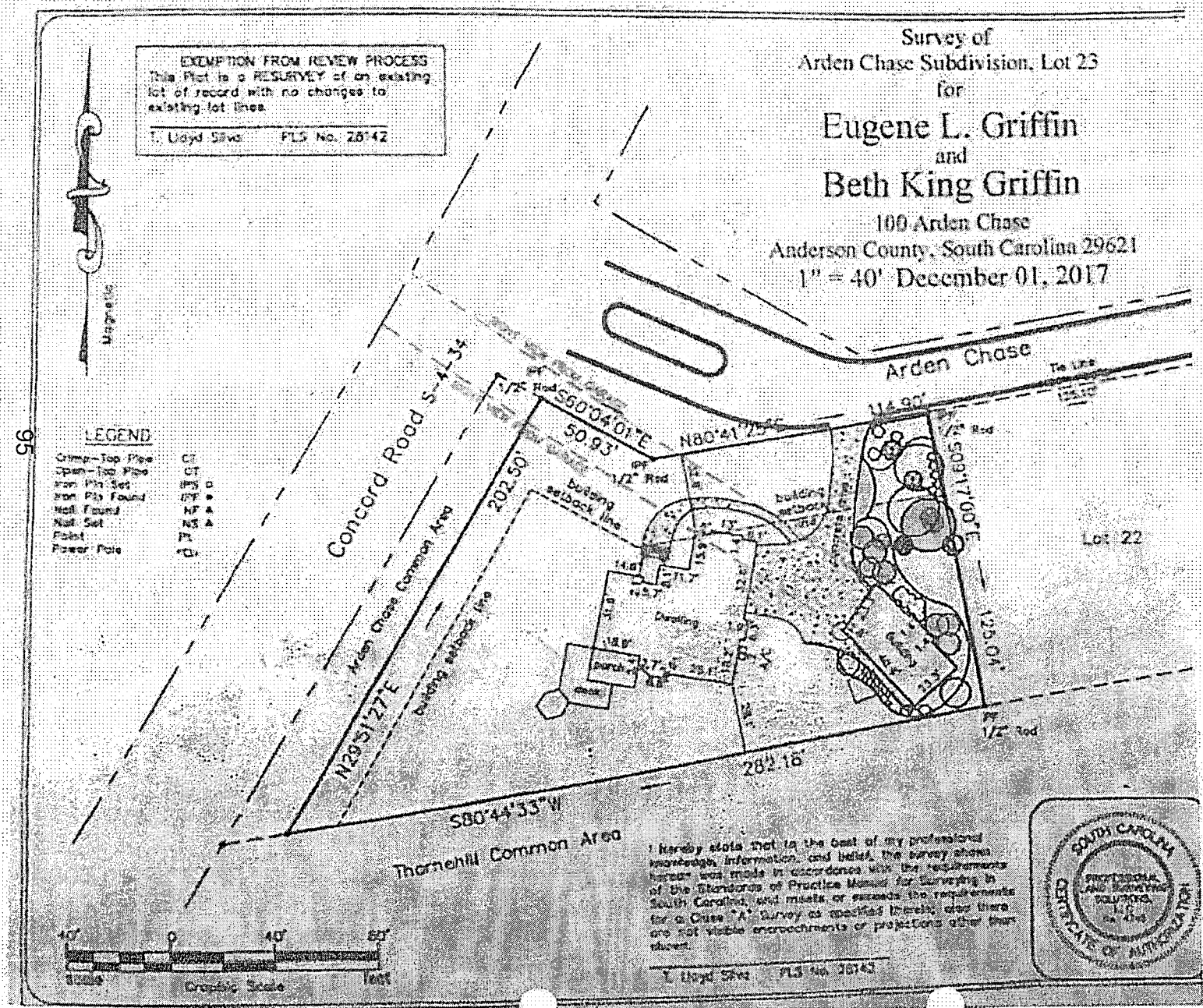
ELECTRONICALLY FILED - 2017 Dec 27 3:07PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

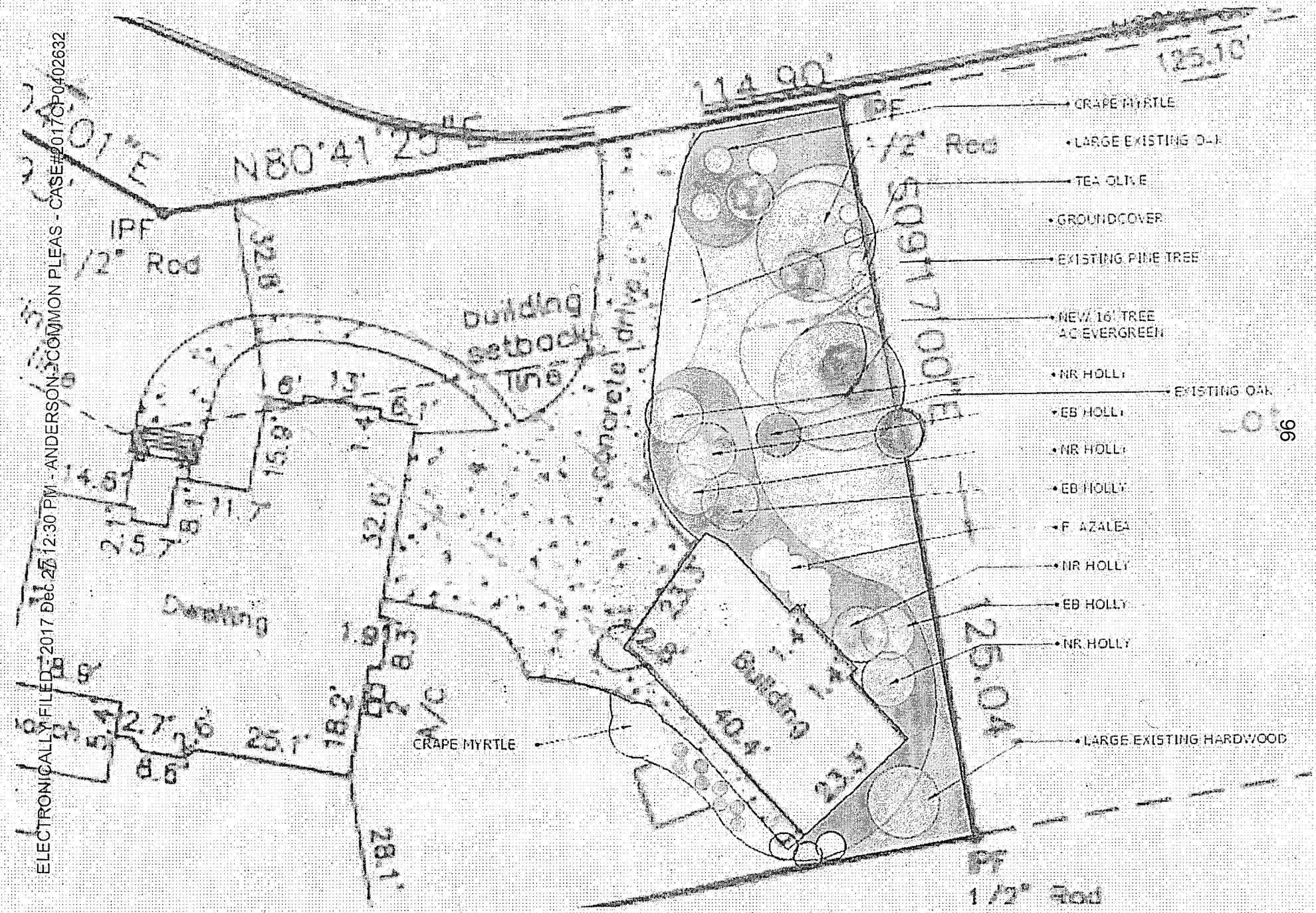

LANDSCAPE PLAN
CREPE MYRTLE
LARGE EXISTING OAK
TEA OLIVE
GROUNDCOVER
EXISTING PINE TREE
NEW 16' TREE
AC EVERGREEN
NR HOLLY
EXISTING OAK
EB HOLLY
NR HOLLY
EB HOLLY
F. AZALEA
NR HOLLY
EB HOLLY
NR HOLLY
LARGE EXISTING HARDWOOD
building setback line
Building
Dwelling
IPF 1/2" Rod
N80°41'25"E
114.90'
125.10'
260.04'
LOT
ELECTRONICALLY FILED - 2017 Dec 4 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON COMMON PLEAS - CASE#2017CP0402632



ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632





ELECTRONICALLY FILED - 2017 Dec 26 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

111 Arden Chase
Anderson, South Carolina 29621

December 22, 2017



VIA E-MAIL AND US MAIL

Daniel L. Draisen
207 East Calhoun Street
Anderson, South Carolina 29621

RE: Construction of RV garage at 100 Arden Chase

Mr. Draisen:

Because you are still unclear about the reasons for the denial of the Griffin garage, I will attach the afore sent letter of Dr. Bryant stating very clearly where the Griffins are not in compliance with the Arden Chase covenants nor the Order of the Court.

Attached to your letter of December 12, 2017, you sent a copy of the revised floor plan, the elevation, the detailed landscaping plan, and a complete site plan of the Griffin garage. These were never submitted to the ACC for approval. In fact, this was the first time these plans were seen. Out of courtesy when noticing building activity on their lot, the Griffins were reminded by the ACC of the proper procedure of submitting plans to them. The committee then received nothing but a sketch of a six-sided building rather than a complete set of plans. Those same attachments of your letter actually contain information that further supports the decision of the ACC and Homeowner's Association that your clients garage is not in compliance with the covenants and Court Order.

In your letter, you invite the committee to view the structure for any desired details. There is no need for such viewing because the structure has been deemed unapproved. The building as it stands is not in compliance with the covenants and Judge Sprouse's Order. I refer you again to Dr. Bryant's letter.

I agree with your assessment that the ACC will not approve a six-sided garage and that they are ready to allow the garage only if it meets with the covenants and ruling of the court.

The Association has spoken and determined that a violation has occurred. The Association intends to pursue its right of abatement unless the requested action is taken as outlined in its letter of December 5, 2017.

Respectfully Submitted,

Arden Chase Homeowner's Association

By: Mandy Smith
Mandy Smith, President

Arden Chase Architectural Control Committee

By:
Collin Bryant, Chairman

ELECTRONICALLY FILED - 2017 Dec 27 12:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Jan 19 3:17 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	Case Number: 2017-CP-04-02632
	)	
EUGENE L. GRIFFIN, JR. and BETH KING GRIFFIN,	)	
	)	ANSWER AND COUNTERCLAIM
Plaintiffs,	)	
	)	
vs.	)	
	)	
ARDEN CHASE HOME OWNERS ASSOCIATION, INC.,	)	
	)	
Defendant.	)	

The Defendant, Arden Chase Home Owners Association, Inc., herein answering the Complaint of the Plaintiff would respectfully show unto the Court and allege that:

1. The Defendant denies each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted, modified or explained.

2. The Defendant admits Paragraphs 1, 2, 3, 4 and 5 of the Plaintiff's Complaint.

FOR A FIRST DEFENSE

3. The Defendant denies so much of paragraph 6 of the Complaint as alleges that drawings and plans were submitted pursuant to the Covenants and would show that the plans did not include items specifically required by the Covenants.

4. Answering Paragraphs 7 and 8 of the Plaintiff's Complaint, the Defendant upon information and belief, admits that the Plaintiffs received a copy of the plans marked "Approved." The Defendant would show that the plans were not approved pursuant to the Covenants and the Plaintiffs should have known that their plans had not been properly approved and should not have relied thereon.

5. The Defendant admits Paragraph 9 and 10 of the Plaintiff's Complaint.

ELECTRONICALLY FILED - 2018 Jan 19 3:17 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

6. The Defendant admits so much of Paragraph 11 as alleges that in the previous Order the Plaintiffs were "enjoined from constructing the proposed garage as currently planned" and could "bring their proposed garage into compliance by changing its (emphasis added) direction so that a straight line from each corner of the side of the garage intersects Concord Road instead of Arden Chase Street."

7. The Defendant admits Paragraphs 12 of the Plaintiff's Complaint.

8. The Defendant denies so much of Paragraph 13 as alleges that the Court ruled that the Griffin's structure would be allowed if the wall containing the garage door faces Concord Road and would show that the ruling of the Court was that the garage would be in compliance if its direction was changed. This intention of the Court was clarified by Judge Sprouse in his Order dated October 13, 2017. In his Order the Judge ruled his intent was that the proposed structure "was allowed on the condition that the entire structure was turned to comply with the restrictive Covenants. The Plaintiff's Motion to Reconsider was denied and the Order is *res judicata*.

9. The Defendant admits Paragraph 14 of the Plaintiff's Complaint.

10. Answering Paragraph 15 of the Plaintiff's Complaint, the Defendant admits that some drawings were submitted but Defendant would show that said drawings did not comply with the requirements of the Covenants. The Defendant has no knowledge of the Plaintiffs' belief concerning compliance with the Court Order.

11. The Defendant admits so much of Paragraph 16 as alleges that the Plaintiffs were put on notice that the documents submitted were not in compliance with the Covenants and did not comply with the Court's Order. The Defendant would further show that the Plaintiffs were notified of the Defendant's interpretation of the Court Order which interpretation was subsequently confirmed by the Court.

ELECTRONICALLY FILED - 2018 Jan 19 3:17 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

The Defendant would further show that the Plaintiffs were asked to submit revised plans for approval as required by the Covenants and as subsequently directed by Judge Sprouse.

12. The Defendant admits so much of Paragraph 17 of the Complaint as alleges that the Plaintiffs refused to submit revised plans as requested by the ACC and required by the Covenants and the Court. The Defendant would further show that the Plaintiffs, through their attorney, advised the ACC that the Plaintiffs would "not entertain any further interference from the ACC on the garage matter".

13. As to the allegations concerning the members of the ACC in Paragraphs 16 and 17 of the Complaint, the Defendant would show that the present members of the ACC were elected unanimously at a meeting of the HOA attended by the Plaintiffs who participated in the voting.

14. The Defendant admits Paragraph 18 of the Plaintiff's Complaint.

15. The Defendant admits so much of Paragraph 19 of the Complaint as alleges that the Plaintiffs filed a Motion to Dismiss, Answer and Counterclaim, and then a Motion for Summary Judgment attaching an affidavit of John Jones. The Defendants deny the accuracy of the affidavit.

16. The Defendant admits the allegations of Paragraphs 20 and 21 of the Complaint.

17. Answering Paragraph 22 of the Complaint, the Defendant admits that the HOA filed a Motion to Clarify and to Compel Compliance (as allowed by the Order of Judge McIntosh). The Defendant denies the allegations as to the intent of the Motion and would show that the Defendant sought to have Judge Sprouse clarify whether he intended that the Plaintiffs would be in compliance by changing the direction of the entire structure.

18. The Defendant admits Paragraph 23 of the Plaintiff's Compliant.

ELECTRONICALLY FILED - 2018 Jan 19 3:17 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

19. Answering Paragraph 24 of the Complaint, the Defendant would show that it has no knowledge of the Plaintiffs' belief and would further show that the revised plans submitted on October 13th did not comply with the requirements of the Covenants.

20. The Defendant admits Paragraph 25 of the Plaintiff's Complaint.

21. The Defendant admits so much of Paragraph 26 as alleges there was a hearing on October 26, 2017, but would show that the hearing was to consider Plaintiff's Motion to Reconsider. The motion was denied. The Defendant admits that "new" plans were resubmitted but denies that said plans complied with the requirements of the Covenants, or the prior Court Order.

22. The Defendant does not have sufficient information to admit or deny Paragraph 27 of the Complaint.

23. Defendant admits so much of Paragraph 28 as alleges that the revised plans were denied by letter of the ACC dated October 30, 2017 and attached to the Complaint as Exhibit H. The Defendant would show that pursuant to Section 5.03(b) of the Covenants, the Plaintiffs were allowed ten days after receipt of any decision of the ACC to have the matter reviewed by the ACC. The Plaintiffs failed to file a request for review and therefore, the decision of the ACC is "final and binding."

24. The Defendant admits Paragraph 29 of the Plaintiff's Complaint.

25. The Defendant admits so much of Paragraph 30 as alleges that the Plaintiffs submitted additional documents on or about December 12, 2017, but would show that these plans were submitted after the decision of the ACC had become "final and binding" and after the HOA notified the Plaintiffs that they were in violation of the Covenants and directed that this violation be abated within 30 days.

ELECTRONICALLY FILED - 2018 Jan 19 3:17 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

26. The Defendant admits so much of Paragraph 31 of the Complaint as refers to the letter attached as Exhibit K but would show that this letter is irrelevant because the previous decision of the ACC is "final and binding."

27. The Defendant denies Paragraph 32 of the Complaint.

28. The Defendant admits so much of Paragraph 33 as correctly quotes the Order of Judge Sprouse but denies the remaining allegations thereof.

29. The Defendant denies Paragraph 34 of the Plaintiff's Complaint.

30. The Defendant admits so much of Paragraph 35 as alleges that a justiciable controversy exists but would submit that the controversy exists because the Plaintiff refused to adjust their plans to comply with the Court Order and refused to submit plans to the ACC that comply with the requirements of the Restrictive Covenants.

31. The Defendant admits Paragraphs 37 and 38 and would show that the Summary Judgment Order was without prejudice to have Judge Sprouse clarify his order.

32. The Defendant admits Paragraph 39 of the Complaint.

33. The Defendant denies Paragraphs 40 and 41 of the Complaint.

34. The Defendant denies Paragraphs 43 and 44 of the Plaintiffs' Complaint and would show any harm caused to the Plaintiffs by the demolition of the garage would be the direct result of the Plaintiffs' refusal to abide by the Restrictive Covenants and the Order of the Court.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM

35. Defendant incorporates herein the allegations contained in its first defense that are consistent with this defense and counterclaim.

ELECTRONICALLY FILED - 2018 Jan 19 3:17 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

36. The Defendant, Arden Chase Home Owners Association, Inc. ("HOA") is a South Carolina non-profit corporation organized for the purpose of operating a homeowner's association.

37. The Plaintiffs are owners of Lot 32 in Arden Chase and the Plaintiffs and Defendant are subject to the Covenants, Conditions, and Restrictions for Arden Chase Homeowner's Association dated February 16, 1900 and recorded in the Deeds Office for Anderson County in Book 1010 at Page 88.

38. Pursuant to Section 5.02 of the Covenants, the Architectural Control Committee ("ACC") has the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any structure or any home site.

39. Section 5.03(b) of the Covenants requires authorization by 2 members of the ACC and provides that the action is final and binding subject to review by the ACC on its own motion or appeal by the applicant to the ACC. The applicant, within 10 days, may file a written request to have the matter reviewed by the ACC. No appeal by the Plaintiffs was filed.

40. No plans for the Plaintiffs' proposed garage have ever been approved by the ACC as required by the Covenants.

41. In his Order dated March 28, 2017, Judge Sprouse made no ruling concerning the approval of the plans by the ACC but simply held that the Plaintiffs were enjoined from constructing the garage and can bring their garage in compliance by changing its direction.

42. By letter dated May 24, 2017, the Plaintiffs were advised by the ACC that a revised plan would need to be submitted and approved by the ACC prior to construction of the garage (Exhibit A of the Complaint). The Plaintiffs refused to submit revised plans as required by the Covenants and continued with construction without approval of the ACC. The Plaintiffs

ELECTRONICALLY FILED - 2018 Jan 19 3:17 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

notified the ACC through their attorney that revised plans were not necessary because they had reconfigured the front of the garage to comply with the Order of Judge Sprouse.

43. Upon information and belief, the Plaintiffs devised a plan to circumvent the Order of Judge Sprouse based upon the belief that the Court would not require them to demolish the garage once it was completed.

44. An actual controversy exists between the parties concerning the Plaintiffs' construction of the garage without approval of the ACC as required of the Covenants and also in violation of the prior Court Order.

45. Pursuant to Sec. 15-53-10, *et seq.* of the S. C. Code of Laws, Defendant respectfully seeks a declaration from the Court that:

a. The Plaintiffs have constructed their garage in violation of the Order of Judge Sprouse, dated March 28, 2017 and clarified by Order dated October 13, 2017.

b. The Plaintiffs have constructed their garage without the approval of the ACC as required by the Covenants and are therefore in violation of the Covenants.

c. The Plaintiffs must comply with the decision of the Homeowners Association requiring the demolition of the garage.

d. The Defendant is entitled to exercise the Right of Abatement set forth in Section 8.02 of the Covenants.

WHEREFORE, having fully answered the Plaintiffs' Complaint herein, the Defendant prays that the same be dismissed, that the Court enter judgment in its favor on its Counterclaim, and for such other and further relief as this Court deems just and proper.

ELECTRONICALLY FILED - 2018 Jan 19 3:17 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

/s/ Ernest C. Trammell
Ernest C. Trammell (SC Bar # 0005619)
Trammell & Mills Law Firm, LLC
1650 East Greenville Street (29621)
PO Box 1656
Anderson, South Carolina 29622
864-231-7171
864-231-7488 (Fax)
ernie@trammellandmills.com

/s/ J. Franklin McClain
J. Franklin McClain (SC Bar # 0003735)
401 South Main Street
Anderson, South Carolina 29624
864-231-1137
fmcclain@cityofanderson.com

ATTORNEYS FOR DEFENDANT

Anderson, South Carolina

January 18, 2018

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

EUGENE L. GRIFFIN, JR. and BETH KING GRIFFIN, Plaintiffs, -vs- **ARDEN CHASE HOMEOWNERS' ASSOCIATION, INC.,** Defendant.	C/A No. 2017-CP-04-2632 **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO: ERNEST C. TRAMMELL, ESQ. and J. FRANKLIN McCLAIN, ESQ., ATTORNEYS FOR THE PLAINTIFF.

You are hereby notified that the Plaintiffs in the above-captioned matter, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will move the Court for an Order granting the Plaintiffs' Summary Judgment as to the Plaintiffs' Complaint within ten (10) days of the date of the filing of this Notice and Motion, or as soon thereafter as is convenient to the Court.

COME NOW the Plaintiffs' in the above-captioned matter and move the Court for an Order granting them Summary Judgment on the following grounds:

As an initial matter, the Plaintiffs assert and incorporate fully as if attached hereto or stated herein verbatim all of the documents, witness testimony, evidence and legal arguments presented to the Court in the matters of *R. Dean Price, et. al vs. Eugene L. Griffin, et al.,* C/A No. 2016-CP-04-2028, and *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin, Jr., et al.,* C/A No. 2017-CP-04-1244, as well as all Orders of the Court issues in those prior actions.

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATEMENT OF UNDISPUTED FACTS

1. The Griffins are the owners of Lot 32 in Arden Chase (100 Arden Chase), a residential subdivision located in Anderson County, South Carolina.

2. All lots in Arden Chase subdivision are subject to the Declaration of Covenants, Conditions and Restrictions for Arden Chase, a Residential Community (the "Covenants"), dated February 1, 1990 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina on May 29, 1990 in Book 1010 at Page 88 (the Covenants are attached hereto and incorporated by reference thereto).

3. Pursuant to the Covenants, the first week of June 2016 the Griffins submitted drawings and plans for the construction of a detached garage to be built for the purpose of housing their motor home to the Architectural Control Committee (ACC) by delivering same to G. Stephen Crain, member of the ACC.

4. In June 2016, the Griffins received a signed copy of the plans that were submitted marked "Approved" and signed by Crain and the President of the Arden Chase HOA, Larry Rowland.

5. In reliance thereon, the Griffins then had the footings dug and footers installed and the slab poured for the construction of the proposed garage.

6. Shortly after beginning construction, the Griffins were served with a lawsuit in the matter of *R. Dean Price, et. al vs. Eugene L. Griffin, et al.*, C/A No. 2016-CP-04-2028, wherein several owners objected to the construction of the Griffins' garage structure on the basis of, among other things, that a) same would be in violation of the Covenants, and b) because there are no other garage structures that have been built of a size necessary to completely enclose a motor

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040263

home, that any such structure would not be in conformity or harmony with the other structures built in the neighborhood.

7. The matter regarding the construction of a detached garage on the Griffins' property was then litigated in the matter of *R. Dean Price, et. al vs. Eugene L. Griffin, Jr., et al.*, C/A No. 2016-CP-04-2028, in which the Plaintiffs sought to enjoin such construction. The HOA herein was named as a Third-Party Defendant in the previous matter and the Court's Order is therefore binding on the Defendant.

8. In its previous Order, the Court granted the requested injunction solely on the basis that the garage door on the proposed detached garage opened to the roadway in front of the house. However, the Court also specifically held as follows:

> 25. **The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase road.**

9. The Court found that 1) Detached garages are not prohibited; 2) The Restrictive Covenants do not restrict the size of any garage except for the mandatory minimum square footage nor do they specify any particular size of garage door; and 3) The housing of recreational vehicles is not prohibited by the Restrictive Covenants.

10. The Plaintiffs nor the Griffins appealed the Order of the Court and therefore the Court's ruling as to whether the Griffins' garage structure would be allowed if the wall containing the garage door faces Concord Road is *res judicata.*

11. On May 24, 2017, the ACC sent a letter to the Griffins advising that if they intended to go forward with the construction of a detached garage, it would be necessary for them to first submit a revised site plan, and that this would need to be done before any construction begins (see

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

letter of May 24, 2017 attached as Exhibit A to Complaint).

12. Thereafter, on May 31, 2017 the Griffins, by and through their attorney, submitted a copy of the original floor plan with a hand-drawn revision showing the approximate angle change of the front wall that would be made so that a straight line from each corner of the wall containing the garage door intersects Concord Road and no part of Arden Chase road. The Griffins believed that by changing the angle of the wall containing the garage door they would bring the garage into compliance with the Court's prior Order (see letter of May 31, 2017 and floor plan drawing attached to Complaint as Exhibit B).

13. On June 5, 2017, The Defendant and its ACC, by and through its attorneys, asserted that the information provided on May 31st was not sufficient to determine whether the proposal complies with the Covenants or the Court's Order, that the existing concrete pad must be completed re-configured, and that because the angle of the front wall and its corresponding roofline was being changed it was necessary for the Griffins to submit revised plans to the ACC for approval (which is now comprised of owners that were all adverse in the prior litigation to the approval of Griffins' garage) (see letter of June 5, 2017 attached Complaint as Exhibit C).

14. By way of email on June 5, 2017, the Griffins' attorney responded denying that the Griffins were required to go through the ACC approval process again, asserted that the Court included Paragraph 25 of its Order specifically to prevent the Griffins from having to go through the ACC approval process again, and stated that going through the ACC approval process would be futile as the new members of the ACC were all adverse to the garage in the prior litigation (see email dated June 5, 2017 attached to Complaint as Exhibit D).

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

15. In response to the Griffins' refusal to submit revised plans to the ACC, the HOA filed a second lawsuit again seeking an injunction captioned, *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin, Jr., et al.*, C/A No. 2017-CP-04-1244.

16. The Griffins filed a Motion to Dismiss, Answer and Counterclaim, and then filed a Motion for Summary Judgment attaching the Affidavit of John Jones in which Mr. Jones attested that:

> In order to meet the requirements as set forth by Judge Sprouse, the front left garage wall needs to be extended and turned a number of feet. By doing so, when the wall containing the garage door is connected to the original length of the rear right wall the angle of garage door wall will be shifted such that will intersect only Concord Road and no part of Arden Chase Street (Arden Drive).
>
> The attached elevation and floor plan drawings by Tim Strickland Drafting, dated August 30, 2017, fairly and accurately depict the necessary extension and turning of the front left garage wall and the resulting angle change of the wall containing the garage door (See Drawings and Affidavit of John Jones attached to Complaint).
>
> A garage constructed in accordance with the attached plans will be in full compliance with Judge Sprouse's Order, that the direction of the wall containing the garage door, when a straight line is drawn from each corner of that wall, will not intersect any portion of Arden Drive, and that such wall will intersect Concord Road only.
>
> Other than the minor changes deemed necessary to bring the garage into compliance in accordance with the March 28, 2017 Order, the plans and specifications, as well as the materials to be used, are the same as those submitted previously to Judge Sprouse in the litigation surrounding the construction of the subject garage.
>
> (See affidavit of John Jones attached to Complaint).

17. On September 8, 2017, the Honorable R. Lawton McIntosh granted the Griffins' Motion for Summary Judgment, denied Plaintiff's request for an injunction, and dismissed HOA's Complaint. However, in its Form 4 Order, the Court issued the following condition:

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

"This order is without prejudice to either party to have the issue of compliance with Judge Sprouse's Order determined by Judge Sprouse."

18. The HOA nor the Griffins appealed the Order granting the Defendants Summary Judgment and denying the Plaintiffs' request for an injunction and same is therefore *res judicata.*

19. The HOA then filed a Motion to Clarify and to Compel Compliance with the Court's Order and did so in the matter of *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin, Jr., et al.,* C/A No. 2017-CP-04-1244. The motion sought to have Judge Sprouse clarify his ruling in the matter of *R. Dean Price, et. al vs. Eugene L. Griffin, Jr., et al.,* C/A No. 2016-CP-04-2028, with regard to whether the Griffins were required to re-submit the garage plans for approval to the ACC because the angle of the front wall and its corresponding roofline was being changed, and because doing so added additional square footage.

20. On October 13, 2017, the Honorable R. Scott Sprouse issued an Order denying Plaintiff's Motion for Temporary Injunction and Clarifying the Court's Original Order. In its Order, the Court held:

B. The Intent of the Original Order

The parties seek guidance from the Court as to how "proposed garage" is defined. In the Original Order, the Court permitted the Defendants to "bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street." The Court's intent in the previous order was that the structure as indicated on the submitted plans, was allowed on the condition that the entire structure was turned to comply with the restrictive covenants. The Defendants' modified plan, which slightly increases the square footage of the building and changes the configuration of the front of the building so that only one wall is turned, would constitute a new plan which would require submission to the board. Modification, however slight, of the building as configured on the plan submitted to the Court in the trial, would be a different plan.

The Court recognizes the effect of this ruling, which is made in an effort to enforce the governing restrictive covenants. Counsel for the Defendants has set forth practical reasons why this new plan would actually be less visible from the

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

24. After Summary Judgment was granted the Griffins began construction of the garage in accordance with the "revised" drawings submitted on October 16 and again on October 26th.

25. On October 30, 2017 the ACC again denied the request for approval this time citing that the google earth site plan was insufficient (despite the fact that the garage structure was framed at this time and the ACC was invited to come to the site and review same), that the landscaping plan was insufficient because it did not show the hardscape and grading changes (as a result of the turning of the front wall), and because the entire structure was not "turned in accordance with Judge Sprouse's order" (see letter of October 30, 2017 attached to Complaint as Exhibit H).

26. On December 1, 2017, the ACC notified the HOA in writing that the Griffins had constructed a detached garage on their lot that was not approved by the ACC, that was constructed in violation of the covenants, and that did not comply with Judge Sprouse's Order. Thereafter the HOA, on December 5, 2017, delivered a letter to the Griffins citing the findings of the ACC, and demanding that the entire slab and building be reoriented, or that the structure be removed in its entirety from the premises within thirty (30) days, or the HOA would have the Right of Abatement (see letters of December 1, 2017 and December 5, 2017 attached to Complaint as Exhibit I).

27. On December 12, 2017, the Griffins again submitted a revised submittal to the ACC with the intent of curing any alleged deficiencies in the submittals, this time including the following:

1. The revised floor/foundation plan prepared by Tim Strickland Drafting (the foundation is shown on the floor plan);
2. The revised elevation drawings prepared by Tim Strickland Drafting (the materials to be used are specified on the elevation drawings);
3. A detailed landscaping plan by Stepping Stone Landscaping overlaid on the site plan; and
4. A complete site plan prepared by Professional Land Surveying Solutions, LLC.

(see letter of December 12, 2017 with submittals attached to Complaint as Exhibit J)

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

28. Despite the Griffins being requested to submit more formal documentation than has ever been required in Arden Chase, on December 22, 2017 the HOA and the ACC again denied the Griffins' request for approval stating that the ACC nor the HOA will approve a "six-sided building" that is not in compliance with the Covenants and Judge Sprouse's Order (see letter dated December 22, 2017 attached to Complaint as Exhibit K).

LEGAL ARGUMENT

I. There are no covenants or restrictions contained in the Declaration of Covenants, Conditions and Restrictions for Arden Chase, a Residential Community that prohibit the Plaintiffs' garage as constructed.

The ACC's denial of the Griffins' revised plan submissions is based on an incorrect assertion that a) the Griffins failed to submit plans to the ACC (which it did on May 31, and again on October 13, October 26 and on December 12), and that the only garage that the Griffins can build that would comply with the Covenants must be rectangular and must be constructed with the wall containing the garage door facing Concord Road

The Griffins assert that the detached garage structure on their property, which was completed in late November, complies with the Covenants for Arden Chase in that there are no restrictions in the Covenants that disallow or prohibit the angling of a portion of a structure to aid functionality and to add architectural detail, and the structure complies with the Court's prior ruling that *any* detached garage in Arden Chase will be in compliance when a straight line from each corner of the wall containing the garage door does not intersect any part of Arden Chase street. The Court held:

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

26. There are no challenges to any other existing structures in the subdivision and it appears that all other existing structures are in compliance as to Paragraph 6.06, in addition to the other provisions in the Restrictive Covenants. **In order to aid the parties with an answer to the declaratory judgment portion of the case, future construction in the subdivision can be compliant regarding this provision *if a straight line drawn from the front corners of a proposed structure intersects a neighboring lot line, Concord Road, or the outer boundary of the subdivision prior to intersecting Arden Chase street.*** (emphasis added)

The Plaintiffs herein assert that their detached garage is in full compliance with the Covenants and Court's directive, and that there can be no factual dispute that when a straight line is drawn from each corner of the wall containing the garage door of the garage as built the line intersects Concord Road instead of Arden Chase. In support of such assertions, the Plaintiffs submit the Affidavit of John "Jack" Jones, contractor, and the signed and sealed Survey of Arden Chase Subdivision, Lot 23, prepared by PLS Solutions, LLC, T. Lloyd Silva, PLS No. 28142, showing that when a straight line is drawn from the front corners of the garage structure (as built) the line intersects Concord Road or the outer boundary of the subdivision and no part of Arden Chase street (Affidavit of John "Jack" Jones attached hereto and Survey of Arden Chase Subdivision, Lot 23, attached hereto).

In addition, there are simply no restrictions contained in the Covenants that disallow or prohibit the angling of a portion of a structure to aid functionality and to add architectural detail to the structure. "The historical disfavor of restrictive covenants by the law emanates from the widely held view that society's best interests are advanced by encouraging the free and unrestricted use of land. Hamilton v. CCM, Inc., 274 S.C. 152, 263 S.E.2d 378 (1980). "Restrictive covenants are contractual in nature." Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). "The language of a restrictive covenant is to be construed according to the plain and ordinary meaning

attributed to it *at the time of execution*." Taylor v. Lindsey, 332 S.C.1, 4, 498 S.E.2d at 864 (1998). "The paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Id.* at 4. "A restriction on the use of property must be created in express terms or by plain and unmistakable implication and all such restrictions are to be strictly construed, *with all doubts resolved in favor of free use of the property*, although the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants." Hamilton at 152, 263 S.E.2d 378 (1980).

"The court may not limit a restriction, nor will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms, even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written." Taylor at p.4, S.E.2d 862, 863 (1998). "Restrictive covenants will be enforced unless they are indefinite or contravene public policy." Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987). "An action to enforce restrictive covenants by injunction is in equity." Seabrook Is. Property Owners Ass'n v. Marshland Trust, Inc., 358 S.C. 655, 661, 596 S.E.2d 380, 383 (Ct. App. 2004).

In Palmetto Dunes, the South Carolina Court of Appeals held that "a refusal to approve plans for aesthetic reasons will be upheld where the *covenant or appropriate authority* has provided guidelines for enforcement and expressed the purpose of the restrictive covenant." Palmetto Dunes v. Brown, 287 S.C. 1, 336 S.E.2d 15 (1985). "Although... not expressly named and prohibited, a particular use or structure may be forbidden by the covenant's general language without an express designation or label." *See, eg.* Nance v. Waldrop, 259 S.C. 69, 187 S.E.2d 26 (1972).

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

Accordingly, the Plaintiffs request that the Court declare the disapproval by the ACC and the HOA improper, unjustifiable, arbitrary and malicious; and that the Court declare the detached garage structure as constructed and where constructed by the Griffins to be in compliance with the Restrictive Covenants and allowed as a matter of law. Further, the Plaintiffs request an Order of the Court enjoining and restraining the Defendant from abating, demolishing, destroying, or removing the Plaintiffs' detached garage, or any attempts to do so.

II. There is no factual dispute that Plaintiffs were the prevailing party in the second lawsuit filed in this matter, and that they were granted Summary Judgment as to Plaintiff's claims.

On September 8, 2017, the Honorable R. Lawton McIntosh granted the Griffins' Motion for Summary Judgment, denied Plaintiff's request for an injunction, and dismissed HOA's Complaint in the matter *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin, Jr., et al.*, C/A No. 2017-CP-04-1244. The HOA nor the Griffins appealed the Order granting the Defendants Summary Judgment and denying the Plaintiffs' request for an injunction and same therefore constitutes a final adjudication of the matter on Summary Judgment in favor of the Griffins.

In the lawsuit, the Plaintiffs asserted that counsel for the HOA, Ernest C. Trammell, Esq. and J. Franklin McClain, Esq. are both owners in Arden Chase subdivision and were well aware of the prior lawsuit against the Defendants with regard to this very same garage structure filed by James W. Logan, Jr., Esq., another attorney that is also an owner in Arden Chase subdivision, and of the Court's prior Order at the time they filed the aforementioned action.

The Plaintiffs assert that the HOA's filing of that lawsuit was an abuse of process and constitutes malicious prosecution on the part of the HOA. The HOA attempted to (and is continuing to) threaten and to coerce the Defendants, through the filing of the aforementioned

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

lawsuit, into not building their proposed detached garage structure, by causing additional delays in the construction process, by causing increased construction costs, and by increasing litigation expenses.

As there are no facts in dispute with regard to the summary dismissal of the Plaintiff's action in *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin. Jr., et al.,* C/A No. 2017-CP-04-1244, the Plaintiffs are entitled to a judgment as a matter of law on their claims that that the Defendant HOA engaged in abuse of process and malicious prosecution. Accordingly, the Plaintiffs request that the Court enter judgment on behalf of the Plaintiffs and against the Defendant on their abuse of process claims, and that the Court set a hearing to establish the amount of Plaintiffs' damages suffered as a result thereof.

WHEREFORE, the Plaintiffs pray for an Order of this Court granting their Motion for Summary Judgment, and for an award of the costs of this action, attorney's fees as sanctions, and for such other and further relief as this Court may deem just and appropriate in such amounts as may be determined at a damages hearing held for such purpose.

Respectfully submitted,

KRAUSE, MOORHEAD AND DRAISEN, P.A.

s/Daniel L. Draisen
DANIEL L. DRAISEN (SC Bar# 13536)
207 East Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
(864) 964-0788 facsimile
ddraisen@kmdlawyers.com
ATTORNEYS FOR THE PLAINTIFFS

March 12, 2018
Anderson, South Carolina

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0400868

Exhibit 1

10199 BOOK 1010 PAGE 088

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
ARDEN CHASE
A RESIDENTIAL COMMUNITY

THIS DECLARATION is made on the date hereinafter set forth by ARDEN DEVELOPMENT CORP., a South Carolina corporation (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located off Concord Road in Anderson, South Carolina, which property is more particularly described in Exhibit "A" attached hereto and made a part of this Declaration; and

WHEREAS, Declarant intends to develop on the real property described above a development to be known as Arden Chase (hereinafter referred to as the "Development"); and

WHEREAS, Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined);

NOW, THEREFORE, the Declarant hereby declares that all of the property described in Exhibit "A" shall be held, sold and conveyed subject to this Declaration of Covenants, Conditions and Restrictions, which is for the purpose of enhancing and protecting the desirability and attractiveness of said real property. Declarant further declares that this Declaration shall run with the title to said real property, and be binding on all parties having any right, title or interest in the described property or any part thereof, and shall, subject to all limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns, and to the benefit of the Association.

ARTICLE I
DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

1.01 Association. "Association" means Arden Chase Homeowners' Association, Inc. (a non-profit corporation organized under the South Carolina Nonprofit Corporation Code), its successors and assigns.

BOOK 1010 PAGE 088

00001

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

1.02 Board. "Board" means the Board of Directors of the Association.

1.03 Bylaws. "Bylaws" means the Bylaws of the Association.

1.04 Common Property. "Common Property" means all real property (together with any and all improvements now or hereafter located thereon) and all personal property now or hereafter owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.

1.05 Declarant. "Declarant" means Arden Development Corp., a South Carolina corporation, its successors and assigns. The term shall also be applied to any person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, which lawfully acquires the rights, privileges and options of Declarant in accordance with this Section 1.05. Should any of the Property become subject to a first mortgage given by Declarant (as defined herein) as security for the repayment of a loan to improve the Property for development as part of this residential community, then all rights, privileges and options herein reserved to the Declarant, if held by the Mortgagor under said Development Loan shall inure to the benefit of the holder of such first mortgage upon its becoming the actual owner of the Property then subject to such first mortgage through judicial foreclosure or sale made pursuant to any power of sale contained in such first mortgage or by conveyance of a deed in lieu of foreclosure. The Declarant as hereinabove defined, may transfer all of its rights, privileges and options as Declarant to a successor-in-title to all or some portion of the Property, provided any such successor-in-title shall acquire for the purpose of development or sale all or some portion of such property, and provided further, that in a written instrument, such successor-in-title is expressly assigned all of Declarant's rights, privileges and options herein reserved to Declarant. Such an assignment may be included as a recital in any deed executed by Declarant which conveys any portion of the Property.

1.06 Declaration. "Declaration" means the Declaration of Covenants, Conditions and Restrictions for Arden Development Corp.

1.07 Home Site. "Home Site" means any numbered parcel of land shown upon that preliminary plat of survey of Arden Development Corp. (the final plat of survey to be recorded at a later date) recorded in Plat Book 134, Page 7, Anderson County, South Carolina records or as similarly shown on supplemental surveys of such tract or such additional tracts as may be added to the Property from time to time, as provided herein; provided however, that no portion of the Common Property shall ever be a lot except as provided for in Section 2.04.

BOOK 1010 PAGE 089

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

1.08 Member. "Member" means any member of the Association.

1.09 Owner. "Owner" means the record owner (including Declarant) whether one or more persons or entities, of a fee simple title to any Home Site, provided, however, that where fee simple title has been transferred and is being held merely as security for repayment of a loan, the person or entity who would own the Home Site in fee simple if such loan were paid in full shall be considered the Owner.

1.10 Property. "Property" means that certain real property (other than Common Property) hereinabove described.

1.11 Restrictions. "Restrictions" means all covenants, restrictions, easements, liens and other obligations created or imposed by this Declaration.

1.12 Structure. "Structure" means:

(a) any thing or object the placement of which upon any Home Site may affect the appearance of such Home Site, including by way of illustration and not limitation, any building or part thereof, garage, porch, greenhouse or bathhouse, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub, sign, signboard, permanent living quarters or any other temporary or permanent improvement to such Home Site;

(b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Home Site, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Home Site; and

(c) any change in the grade at any point on a Home Site of more than six (6) inches, whether or not Subsection (b) of this Section 1.12 applies to such change.

ARTICLE II
COMMON PROPERTY

2.01 Conveyance of Common Property.

(a) The Declarant may from time to time cause to be conveyed to the Association certain real property or grants of easements, as well as personal property, for the common use and enjoyment of the Owners (such real and personal property being hereinafter collectively referred to as "Common Property"). In addition, the Declarant may from time to time cause the conveyance of certain real property or grants of easements to the general

BOOK 1010 PAGE 090

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

public as may be required by governing authorities in accordance with this Declaration.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association common property for scenic and natural area preservation. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

(e) The Association hereby covenants and agrees to accept all such conveyances of Common Property.

2.02 Right of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Home Site upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to those items set forth in Section 2.01, which include suspension by the Association as provided in Sections 2.03(f) and 3.05.

2.03 Rights of The Association. The rights and privileges conferred in Section 2.02 hereof shall be subject to the right of the Association acting through the Board to:

(a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;

(b) charge reasonable fees in connection with the maintenance of the Common Property; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;

BOOK 1010 PAGE 091

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

(c) suspend the voting rights of any Member, pursuant to Section 3.05, and the right of enjoyment granted or permitted by Section 2.02;

(d) grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;

(e) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof;

(f) borrow money for the purpose of carrying out the activities of the Association, including the acquisition construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources;

(g) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

(h) to sell, lease or otherwise convey all or any part of its properties and interest therein; provided however, that the Association shall not sell, encumber by security interest, convey, dedicate or transfer any Common Property or interest therein without the approval of two-thirds (2/3) of each class of Members.

2.04 Types of Common Property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of each class of Members of the Association, be used for any different purpose or purposes without the prior written consent of the Declarant.

2.05 Entrance Easements. It is contemplated that certain easements for the erection and maintenance of entrance monuments, Residential Community signs, wall, fences and other structures

BOOK 1010 PAGE 092

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

intended to provide an attractive atmosphere or to provide privacy to Owners within the Development will be reserved by the Declarant and may be set forth on plats of survey of the Development recorded in the County Records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Development. All Owners taking title to any Home Site upon which such an easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the deed conveying such easements to the Association. Such easements shall be Common Property.

ARTICLE III
THE HOMEOWNERS' ASSOCIATION

3.01 Purposes, Powers and Duties of The Association. The Association shall be formed as a non-profit civic organization for the primary purpose of performing certain functions for the common good and general welfare of the people of the Development. To the extent necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the South Carolina Nonprofit Corporation Code and (b) shall have the power to exercise all of the rights, powers and privileges of the Association as set forth in this Declaration.

3.02 Membership in the Association. Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Conditions and Restrictions.

3.03 Voting Rights. Subject to the following provisions of this Section 3.03, the Association shall have two classes of voting membership: Class A and Class B.

(a) Class A. Every person who is an Owner with the exception of the Declarant except as otherwise set forth herein, shall be a Class A Member and shall be entitled to one vote for each Home Site owned. When more than one person is a Class A Member by virtue of an ownership interest in the same Home Site, the vote for such Home Site shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. The membership of a Class A Member shall automatically terminate upon the Member's sale of his Home Site. However, no termination of Class A Membership shall affect such Member's obligation to pay assessments, fines or penalties as hereinafter provided for, due and payable for any period prior to the date of

BOOK 1010 PAGE 093

ELECTRONICALLY FILED - 2018-Mar-12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

(b) Class B. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and during its existence the Class B Member shall be entitled to vote on all matters and in all events. The Class B Member shall be entitled to three (3) votes for each Home Site owned by it; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (a) the expiration of five (5) years from the date of recording of this Declaration; or (b) the date as of which three-fourths (3/4) of the Home Sites which may be developed on the Property shall have been conveyed, by either the Declarant or by a builder who purchased the Home Site from Declarant for the purpose of erecting a dwelling thereon, to an individual Owner or Owners for residential occupancy. If at the time of termination of the Class B membership, Declarant still owns any Home Sites, then as to each Home Site owned by Declarant, Declarant shall be deemed to be a Class A Member.

ARTICLE IV.
ASSESSMENTS AND MAINTENANCE CHARGES

4.01 Covenant for Assessments and Creation of Lien and Personal Obligations. The Declarant, to the extent that Declarant is an Owner, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Home Site, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Home Sites owned by him;

(b) to pay to the Association any special assessments for capital improvements and any fines, penalties or other charges which may or shall be levied by the Association pursuant to this Declaration against all Home Sites owned by him;

(c) that there is hereby created a continuing charge and lien upon all Home Sites owned by him against which all assessments, fines, penalties and other charges are made to secure payment of such items and any interest thereon as provided in Section 4.07 hereof and costs of collection including reasonable attorneys' fees.

(d) that such continuing charge and lien on such Home Sites bind such Home Sites in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges,

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

liens or encumbrances which may hereafter in any manner arise or be imposed upon such Home Sites whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Home Site or Home Sites (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures;

(e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Home Site or Home Sites from liability for any assessment thereafter assessed;

(f) that all annual and special assessments (together with interest thereon as provided in Section 4.07 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Home Site or Home Sites owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Home Site or Home Sites as provided in Section 4.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Home Site or Home Sites owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

4.02. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the new community of the Development, including, but not limited to, and in addition to other purposes set forth in this Declaration, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

4.03 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

4.04 Annual Assessment or Maintenance Charge.

(a) Subject to the terms of this Article, each Home Site in the Property is hereby subjected to an annual assessment or maintenance charge for the purpose of creating a fund to be known as the "maintenance fund," which maintenance charge and assessment will be paid by the Owner or Owners of each Home Site within the Property. Payment of such assessments will be made in advance in monthly, quarterly or annual installments with the due dates being established by the Board of Directors.

(b) The annual maintenance charge and assessment will commence as to each Home Site on the first day of the month following the earliest to occur of the following events: (i) upon the occupancy of the Home Site as a residence; or (ii) upon the conveyance of the Home Site by Declarant to an Owner or tenant for residential occupancy; or (iii) upon the conveyance of the Home Site by a builder who purchased the land from Declarant for the purpose of erecting a dwelling thereon to an Owner or tenant for residential occupancy.

(c) Beginning on the date this Declaration is executed through December 31, 1990, the annual maintenance charge and assessment will not exceed $250.00 per annum (said rate of charge being the "maximum annual assessment" for 1990). Beginning January 1, 1991, and from year to year thereafter, the maximum annual assessment may be increased by the Board of Directors; however, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum annual assessment for the previous year without a vote of the membership which shall require approval of two-thirds (2/3) of each class of Members present, in person or by proxy, at a meeting duly called for such purpose, with at least sixty percent (60%) of the Owners or other proxies present.

(d) Unless required as a matter of law or as otherwise set forth in this Article, neither the Declarant, nor any builder who has purchased land from Declarant for the purpose of creating a dwelling thereon, shall at any time be subject to the annual maintenance charge and assessment; however, the Declarant hereby agrees that until such time as Declarant no longer has the right to appoint members to the Board of the Association, Declarant will pay to the Association any deficit amounts not covered by the income of the Association which are reasonably necessary to maintain the Common Property in a neat, attractive, and in addition, where such property is intended for recreational use, usable condition. In no event shall Declarant be required to pay any amounts, specifically including any deficit amount, which would exceed an amount equal to the number of Home Sites owned by Declarant and/or any other builder and subject to the Declaration at the time Declarant becomes responsible for payment, or the time the deficit is incurred, multiplied by an amount equivalent to one-fourth (1/4) of the annual

BOOK 1010 PAGE 096

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

assessment which should have been paid or has become due and payable by any other Owner of a Home Site from the time Declarant became responsible for such payments (including assessments), or the time the deficit was incurred. Beginning on the first day of the next month following the expiration of Declarant's right to appoint members to the Board of the Association, Declarant and/or any builder owning a Home Site which is part of the Property shall be subject to an annual maintenance charge and assessment in an amount equal to one-fourth (1/4) of the full annual assessment being paid by all other Owners. In addition and notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or material or a combination of services and materials, rather than in money, (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution.

4.05 Special Assessments for Working Capital Fund, Nonrecurring Maintenance, and Capital Improvements.

In addition to the annual assessments authorized by this Article IV, the Association may levy:

(a) upon the first sale of each and every Home Site to an Owner who will individually or through tenants or assigns occupy a Home Site, such sale to be made by Declarant or by a builder who has purchased the Home Site from Declarant for the purpose of erecting a dwelling thereon, a special assessment of $500.00 which shall be collected at the closing of such sale for the benefit of the Association. The aggregate fund established by such special assessment shall be maintained in a segregated account, and shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board; and

(b) in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part any Association expenses not covered by the annual budget, including, but not limited to, the cost of nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have been approved by a two-thirds (2/3) vote of each class of Members of the Association who are present in person or by proxy at a meeting duly called for such purpose.

ARTICLE V.
ARCHITECTURAL CONTROL

5.01 Architectural Control Committee - Creation and Composition. An Architectural Control Committee (the "ACC") shall be established, consisting of at least three (3) individuals to be

BOOK 1010 PAGE 097

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

appointed by the Declarant until all Home Sites have sold and have constructed upon them permanent residential homes after which appointments to the ACC shall be made by the Board of Directors.

5.02 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to review and approve any proposed installation, construction or alteration of any Structure on any Home Site. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Home Site.

5.03 Activities.

(a) The ACC shall adopt and promulgate the Design Standards and shall, as required, make findings, determination, rulings, and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

(b) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the ACC on its own motion or appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

ACC Members:
1- Steve Crane
2- Dean Price
3- Mark Griffith (?)

BOOK 1010 PAGE 098

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

5.04 Design Standards.

(a) The ACC shall from time to time adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purposes of:

(i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;

(ii) governing the procedure for such submission of plans and specifications;

(iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and

(iv) assuring the conformity and harmony of external design and the general quality of the Development.

(b) The ACC may publish copies of its current Design Standards, in which case they shall be made readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

5.05 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, or permitted to remain on any Home Site nor shall any existing Structure upon any Home Site be altered in any way which materially changes the exterior appearance of the Structure or Home Site, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including where applicable, and without being limited to:

(a) a site plan showing the location of all proposed and existing Structures on the Home Site including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures;

(b) a foundation plan;

(c) a floor plan;

(d) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures shall appear after all back-filling and landscape are completed;

BOOK 1010 PAGE 099

ELECTRONICALLY FILED - 2018 Mar 12 1:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

(e) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and

(f) detailed plans for landscaping and grading.

5.06 Approval of Plans and Specifications. Upon approval by the ACC of any plans and specification submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Home Site or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Home Site or Structure. Approval of any such plans and specifications relating to any Home Site or Structure, however, shall be final as to that Home Site or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

5.07 Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration for any of the following reasons:

(a) the failure to include information in such plans and specifications as may have been reasonably requested;

(b) the failure of such plans or specifications to comply with this Declaration or the Design Standards;

(c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards of the Development as set forth in the Design Standards; or (ii) as to location, to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

BOOK 1010 PAGE 100

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402632

5.08 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

5.09 Inspection Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times enter upon any Home Site and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Home Site or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

5.10. Violations. If any Structure shall be erected, placed, maintained or altered upon any Home Site, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

5.11 Nondiscrimination by ACC. The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

5.12 Disclaimer as to ACC Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure

BOOK 1010 PAGE 101

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner or property affected by these Restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extent to claims, demands, and causes of action not known at the time the release is given.

5.13 Declarant and Builder. The provisions contained in this Article, as well as all other architectural control provisions contained in the Development documents shall not apply to Declarant. This Section 5.13 may only be amended with the prior written consent of the Declarant.

ARTICLE VI
GENERAL COVENANTS AND RESTRICTIONS

6.01 Application. The covenants and restrictions contained in this Article VI shall pertain and apply to all Home Sites and to all Structures erected or placed thereon.

6.02 Design Standards. The Declarant hereby establishes the design standards for Arden Chase, a residential community. Arden Chase shall be developed in strict accordance with the design standards which are made a part of the covenants, conditions and restrictions of ARDEN CHASE.

Each and every residence constructed on a home site shall be distinctive, demonstrating a well thought out design that is neither extreme nor mundane in character. Each and every residence shall be harmonious with its home site and the overall residential community.

6.03 Requirements of Construction. The Owner of each home site hereby consents to the requirement that the Owner of each home site shall commence construction of a permanent residential dwelling on the subject property within four years of the date of the closing of the purchase of the home site.

BOOK 1010 PAGE 102

PL 0001

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

6.04 Contractors. Each and every residence shall be constructed by a licensed contractor of good reputation for quality residential construction. The ACC shall have the right to approve or disapprove the contractor.

6.05 Materials. Each and every residence shall be of brick or stucco veneer and shall be constructed of first quality materials.

6.06 Square Footage. Each and every residence shall be a minimum of 2,700 square feet of heated living space. In addition to the aforementioned square footage, each residence shall have a garage of at least 500 square feet plus 100 square feet of storage space. Said garage shall not be allowed to open to the roadway in front of the residence.

6.07 Costs. To maintain the high standards set by the Declarant for ARDEN CHASE, each and every residence constructed shall have an actual cost of no less than $175,000.00 excluding the costs of the home site and landscaping. A sufficient amount of money shall be spent on landscaping so as to enhance the Home Site and the community. The Owner must submit detailed landscaping plans to the ACC for their approval upon the submission of the plans for the dwelling to be constructed.

6.08 Maintenance. Each Owner shall keep and maintain each Home Site and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same do not obstruct the view of motorists or pedestrians or street traffic. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

6.09 Restriction of Use. Home Sites may be used for single-family residences only and for no other purpose provided that Declarant or Builder may operate a Sales Office and/or Model Home on a Home Site or Home Sites designated by Declarant.

6.10 Resubdivision of Property. No Home Site may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision.

6.11 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Home Site without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as

BOOK 1010 PAGE 103

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040232

a condition or approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation.

6.12 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Development Guidelines of the ACC. The plans and specifications for initial construction shall include landscaping that is complete and appropriate for the residential setting and Arden Chase as a whole.

6.13 Trees. No living tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Home Site unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 6.05 hereof. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ACC.

6.14 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Home Site except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefor approved by the ACC.

6.15 Signs. No signs whatsoever (including but not limited to commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefor, be installed, altered or maintained on any Home Site, or on any portion of a Structure visible from the exterior thereof, except:

(a) such signs as may be required by legal proceedings;

(b) not more than one "For Sale" or "For Rent" sign, such sign having a maximum face area of five square feet; provided, however, that if, at the time of any desired use of such sign, the Association is making "For Sale" or "For Rent" signs available for the use of Owners, the signs made available by the Association must be used;

(c) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC.

6.16 Setbacks.

(a) Each dwelling which is erected on a Home Site shall be situated on such Home Site in accordance with the building and

BOOK 1010 PAGE 104

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

setback line shown on the recorded plat, and in no event shall any dwelling be erected upon any Home Site in a manner which violates such building and setback lines. For purposes of this requirement all porches, patios, decks, shutters, awnings, eaves, gutters and other such overhangs will not be considered in violation thereof, even though such structure shall extend beyond said building and setback lines if approved by the ACC.

(b) In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. No Structure shall be erected or placed on any Home Site unless its location is consistent with such setbacks.

6.17 Fences. No fence or wall or any kind shall be erected, maintained, or altered on any Home Site without the prior written approval of the ACC of plans and specifications for such fences and walls. No fence of any type shall be used to enclose the front yard.

6.18 Roads and Driveways. No road or driveway shall be constructed or altered on any Home Site without the prior written approval of the ACC of plans and specifications for such roads and driveways. Guidelines relating to the design and location of roads and driveways may be included in the Design Standards of the ACC.

6.19 Antennae. No exterior television or radio antennae of any sort, including satellite dishes, shall be placed, allowed or maintained upon any portion of a Structure or Home Site without prior written approval by the ACC. No antennae shall be installed or used for the purpose of transmitting electronic signals.

6.20 Clotheslines, Garbage Cans, Etc. No clotheslines shall be permitted. All equipment, garbage cans, and woodpiles shall be kept in garage or screened by adequate planting or approved fencing so as to conceal them from view by neighboring residences and streets.

6.21 Recreational Vehicles and Trailers.

(a) No commercial or disabled vehicles, boats, boat trailers, motor homes, campers, or like equipment or mobile or stationary trailers of any kind shall be permitted on any home site of the subdivision unless kept in a completely enclosed garage so that same shall not be visible from any street or public way.

(b) No home site shall be used to repair or restore any motor vehicle or boat, whether the work is performed by the owner or any other party.

BOOK 1010 PAGE 105

ELECTRONICALLY FILED - 2018 Mar 12 3:30 PM - ANDERSON - COMMON PLEAS - CASE #2017CP0402628

(c) Temporary, part-time and/or permanent employees of any lot owner in the subdivision shall be required to park their motor vehicles on the premises of the homeowner in question, and under no circumstances shall parking of vehicles be allowed or permitted on the streets of the subdivision. This shall not be interpreted to prohibit parking on the streets when a special gathering or event is held at a homeowner's dwelling, and the number of vehicles exceeds the amount of space available on the homeowner's premises.

6.22 Recreational Equipment. Recreational and playground equipment shall be placed or installed only upon the rear of a Home Site as approved by the ACC.

6.23 Non-Discrimination. No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Home Site to any persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

6.24 Animals. No animals, including birds, insects, and reptiles, may be kept on any Home Site unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Home Site unless plans, specifications and location for said Structure have been approved by the ACC.

6.25 Solid Waste.

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Home Site or on Common Property.

(b) Except during approved construction, no person shall burn rubbish, garbage, or any other form of solid waste on any Home Site or on Common Property.

(c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Home Site unless screened or otherwise handled in a manner set forth in the Design Standards.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed. Guidelines relating to the type of containers permitted,

BOOK 1010 PAGE 106

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402632

the manner of storage and the place of pick-up may also be included in the Design Standards.

6.26 Nuisances. No noxious or offensive activity shall be carried on upon any Home Site, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the community.

6.27 Swimming Pools. Any swimming pool, wading pool, or other type of structure containing water for recreational use shall be placed on any home site in such a manner so as to be behind the setback line on the lot in question, it being specifically prohibited that anything similar to this can be constructed or placed in the front yard of a dwelling. In any event, location of this type improvement must be approved in writing by the ACC prior to the construction and/or installation. All swimming pools, wading pools, or other similar structures must be constructed and installed below ground level, and in no event shall one be permitted above ground level. Each homeowner shall landscape the swimming pool, wading pool, or other structure, either with shrubbery, a conventional fence, or some other landscaping tool, so that privacy of the swimming area is maintained and so that said area is not readily accessible to individuals other than the owner. In the event a privacy fence shall be constructed, it must be in accordance with other provisions of this Declaration relating to the installation of fences. This provision shall not be interpreted to prohibit a small inflatable or similar wading pool for small preschool children, if the privacy of the area is otherwise maintained as required herein.

ARTICLE VII
EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.01 Easements.

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

(i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television and other utilities and similar facilities;

(ii) the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

(iii) slope control purposes, including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;

(iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature on any common area; and

(v) the erection, installation, construction and maintenance of fences, walls, monuments, signs, etc. along streets in, around and along, and at entrances to, the Development, and the right to landscape such areas, plant, re-plant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature.

(b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

(c) In addition to the above, the Declarant hereby grants a general easement in favor of utility, cable television and other such service companies across the Property, to maintain, repair, replace and service wires, pipes, conduits, street lights and other structures and facilities provided for the benefit of the Owners.

(f) The easements created in this Article VII are in addition to any easements or rights created elsewhere in this Declaration or in other easements of record. The provisions of this Article VII may not be amended without the written consent of the Declarant, its successors and assigns.

7.02 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Home Site with respect to which easements are shown on a recorded deed or grant of easement, or on any filed or recorded map or plat relating thereto, or as otherwise set forth in Section 7.01.

7.03 Entry. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved.

7.04 Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

BOOK 1010 PAGE 108

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP042632
ELECTRONICALLY FILED - 2016 Dec 30 12:19 PM - ANDERSON - COMMON PLEAS - CASE#2017CP042632

ARTICLE VIII
ENFORCEMENT

8.01 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, his legal representatives, heirs, successors and assigns.

8.02 Right of Abatement.

(a) Except where different notice provisions are provided in Sections 5.10 and 6.08, in the event of a violation or breach of any Restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement. If any assessment, interest, costs or charge required by this Declaration is not paid within sixty (60) days after such assessment is due or such charge is imposed, the Association shall have the right to notify any or all mortgagees have a security interest in the Owner's Home Site or Home Sites that such Owner is in default in the performance of his obligations under these Restrictions, and of those actions taken or proposed to be taken by the Association as a result of the default.

(b) The Right of Abatement, as used in this Section and Sections 5.10 and 6.08 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Home Site or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or 10% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Home Site enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Home Site after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only

BOOK 1010 PAGE 109

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

(i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof, and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Home Site or Home Sites (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

8.03 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by, this Declaration; and therefore; any beneficiary hereof shall be entitled to relief by way or injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

8.04 Collection of Assessments and Enforcement of Lien.

(a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Home Site or Home Sites subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

(b) As an additional remedy, but in no way as limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Home Site or Home Sites subject to the lien at auction, at the usual place for conducting sales at the Court House in Anderson County, South Carolina, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Anderson County, South Carolina are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees

BOOK 1010 PAGE 110

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

that the recitals so to be made by the Association, or assigns shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Home Site or Home Sites, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen per centum of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A HOME SITE SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF SOUTH CAROLINA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

8.05 No Waiver. The failure of the Declarant, the Association, or the Owner of any Home Site, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE IX
DURATION AND AMENDMENT

9.01 Duration and Perpetuities.

The provisions of this Declaration shall run with and bind the land and shall be and remain in effect so long as South Carolina law limits to forty (40) years, the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land for a period of forty (40) years from the date this Declaration are filed for record in the Office of the Clerk of Court of that county in which the Property is located, after which time such provision shall be automatically extended, if permitted by law, for successive

BOOK 1010 PAGE 111

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

periods of ten (10) years, unless an instrument, signed by at least seventy-five (75%) percent of the then Owners of record and the holders of first mortgages on their Home Sites has been recorded in the office of the Clerk of said Court, agreeing to terminate or change such provisions in whole or in part. Every purchaser or grantee of any interest in any portion of the Property, by acceptance of a deed or other conveyance thereof, thereby agrees that the provisions of these Covenants may be extended and renewed as provided in this section.

9.02 Amendment. So long as Declarant owns at least one (1) Home Site held primarily for sale, this Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Home Sites subject to these Restrictions, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Home Sites subject to these Restrictions, or (iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private mortgage insurance company to insure mortgage loans on the Home Sites subject to these Restrictions; provided any such amendment shall not adversely affect the title to any Owner's Home Site, unless any such Owner so affected thereby shall consent thereto in writing. This Declaration may be amended at any time and from time to time by an agreement signed by at least seventy-five (75%) percent of the Owners' provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if the Declarant is the owner of any real property subject to this Declaration. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Home Site affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Office of the Clerk of Court of that county in which the Property is located. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that these Restrictions may be amended as provided in this Section.

BOOK 1010 PAGE 112

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ARTICLE X
LEASES

10.01 Application. In order to assure a community of congenial Owners and thus protect the value of the residential community, the leasing of a residence, by any Owner (other than as provided herein for certain mortgagees and Declarant) shall be subject to the provisions contained in this Article so long as the Property is subject to the Restrictions.

10.02 Notice and Regulation. Any Owner intending to lease his residence, shall give written notice of such intention to the Board of Directors, stating the name and address of the intended lessee, the terms of the proposed lease and such other information as the Board may reasonably require. The Board of Directors shall have the authority to make and enforce reasonable rules and regulations in order to enforce this provision, including the right to impose fines constituting a lien upon the Home Site being leased.

10.03 Required Lease Provisions. The Board of Directors may set the minimum lease term; however, said minimum term shall not be set for less than one (1) year. All leases and lessees are subject to the provisions of the Declaration and Bylaws. The Owner must make available to the tenant a copy of this Declaration. Any leases of a residence shall be deemed to contain the provisions of Sections 10.03 (a), (b), (c) and (d), whether or not said provisions are expressly stated therein, and each Owner covenants and agrees that any lease of his residence shall contain the language of said provisions, and further, that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the residence. Any lessee, by occupancy of a residence, agrees to the applicability of this covenant and its incorporation as part of the lease along with the following provisions:

(a) Lessee acknowledges that promises made to Lessor, as contained in Article X, Section 10.03(a), (b), (c) and (d) of the Declaration of Covenants, Conditions and Restrictions for Arden Development Corp. which govern the leased Premises, and which provisions are incorporated within this lease agreement, are made for the benefit of the Association for the purpose of discharging Lessor's duties to the Association through Lessee's performance. In order to enforce those provisions made for the benefit of the Association, the Association may bring an action against Lessee for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and Bylaws, as they may be amended from time to time, or which may be available at law or equity, including but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by a lessee. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

BOOK 1010 PAGE 113

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

(b) Lessee shall comply strictly with all provisions of the Declaration, Bylaws, and with the administrative rules and regulations adopted pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of his or her family and guests in order to assure compliance with the foregoing and shall indemnify and hold Lessor and the Association harmless for any such person's failure to comply. Lessee acknowledges that the violation by Lessee or any occupant or person living with Lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Lessee further acknowledges that the Association has the right to act on its own behalf, or where necessary on behalf of Lessor, as Lessor's attorney-in-fact, to seek any remedies which are available to a landlord upon breach or default of a lease agreement by Lessee.

(c) Upon request by the Association, Lessee shall pay to the Association all unpaid annual assessments and during and prior to the terms of this lease agreement and any Lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Association's request. All payments made to the Association shall reduce by the same amount Lessee's obligation to make monthly rental payments to Lessor under the Lease. If Lessee fails to comply with the Association's request to pay assessments, Lessee shall pay to the Association all late or delinquent charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent Lessee would be required to make such payments to the Association if Lessee were the Owner of the Premises during the term of this lease agreement and any other period of occupancy by Lessee.

(d) Lessee's rights shall be subject to all rights of the Association and any bona fide mortgage or deed to secure debt which is now or may hereafter be placed upon the Premises by Lessor.

10.04 Enforcement. For the purpose of enforcing the provisions of Section 10.03, which shall be incorporated in the provisions of any leases of a Lot, each Owner, by acceptance of a deed or other conveyance of a Lot, hereby irrevocably appoints the Association, which may act by any one of its authorized officers, as his attorney-in-fact, to enforce said provisions and to take any action, at law or equity, which could be taken by said Owner against the Lessee should Lessee default in performance under the lease agreement. Each Owner hereby further acknowledges that this power of attorney shall only apply in the event of noncompliance by a Lessee with the provisions of Section 10.03, and that the Association, its Board of Directors, employees and agents shall be held harmless by each Owner in exercising the power of attorney herein granted to the Association.

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040232
ELECTRONICALLY FILED - 2016 Dec 30 12:43 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040232

10.05 Expenses of Eviction. In the event the Association proceeds to evict the Lessee, any costs, including attorney's fees and the court costs, associated with the eviction shall be specially assessed against the residence and the Owner thereof, such being deemed hereby as an expense which benefits the residence and the Owner thereof.

10.06 Rights of Lessee. Any Lessee charged with a violation of the Declaration, Bylaws, or rules and regulations is entitled to the same rights to which the Owner is entitled as provided in the Association's Bylaws.

10.07 Rights of First Mortgagees. Notwithstanding anything to the contrary herein contained, the provisions of this Article shall not apply to impair the right of any first mortgagee to:

(a) foreclosure or take title to the residence pursuant to remedies contained in any mortgage;

(b) take a deed or assignment in lieu of foreclosure; or

(c) sell, lease, or otherwise dispose of a residence acquired by the mortgagee.

ARTICLE XI
MISCELLANEOUS

11.01 Other Changes. Notwithstanding any other provisions herein which may be construed to the contrary, unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant) of the individual residences in the Development have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property owned, directly or indirectly, by such Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common area or property by the Association shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of dwellings on the residences of the Development, the exterior maintenance of residences and improvements thereon, the maintenance of the Common Property or party walks or common fences or common roadways and driveways, or the upkeep of lawns and planting in the Development;

BOOK 1010 PAGE 115

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 20 4:42 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

(d) fail to maintain fire and extended coverage on insurable Association Common Property, if any, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(e) use hazard insurance proceeds for losses to any Association Common Property for other than the repair, replacement or reconstruction of such property.

11.02 Professional Management. Any agreement for professional management of the Association, or any other contract providing for services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days written notice.

11.03 No Reverted. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverted.

11.04 Severability. A determination by a Court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

11.05 Headings. The headings of the Articles and Section hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

11.06 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, plural, and vice versa.

11.07 Notices. All notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be deposited in the United States Mail, with sufficient postage and sent to the following addresses:

(a) Declarant: ARDEN DEVELOPMENT CORPORATION
2410 North Main Street, Suite A
Anderson, S.C. 29621

(b) Owner: _____

_____

_____

Any written communication transmitted in accordance with this Section 11.07 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2016 Dec 30 12:12 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402632

11.08 No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed this 16th day of February, 1990.

Signed, sealed and delivered in the presence of:

ARDEN DEVELOPMENT CORP.
a South Carolina corporation

Witness

BY _____ (SEAL)
John P. Jones (President)

Laura C. Maxwell
Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

SWORN TO AND SUBSCRIBED BEFORE ME,
THIS 16 DAY OF February, 1990.

_____
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: 8-7-90

FILED FOR RECORD
ANDERSON, S.C.
MAR 23 3 20 PM '90

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

PERSONALLY appeared before me Laura C. Maxwell, who being first duly sworn, states that she saw the above-named John P. Jones, President, Arden Dev. Co. sign, seal and as his act and deed, deliver the within written Declaration of Covenants, Conditions and Restrictions, and that she with John J. Stathakis witnessed the execution thereof.

Sworn to before me, this 16th
day of February, 1990.

Laura C Maxwell

_____
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: 8-7-97

BOOK 1010 PAGE 117

PL 00030

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

PROPERTY DESCRIPTION

ALL that certain place, parcel or lot of land lying and being in Centerville Township, County of Anderson, State of South Carolina, and in School District Five, containing 2.22 acres, more or less, and being triangular in shape as shown on plat of Robinson Engineering Service dated October 22, 1956, of record in the Office of the Clerk of Court for Anderson County, South Carolina, in Plat Book 41, at page 104, and being more particularly described according to said plat as follows:

BEGINNING at the northwestern corner of said lot, said corner being in Concord Road and running thence N. 84 - 34 E. 920.8 feet to an iron pin corner; thence S. 73 - 20 W. 1075.8 feet to a corner in Concord Road; thence along Concord Road N. 27 - 22 E. 250 feet to the beginning corner; being bounded on the north by lands now or formerly of Waldo B. Brown, on the South by lands now or formerly of Dr. J. J. Davis, and on the West by Concord Road.

BEING the same property conveyed to J. J. Davis and Susan A. Davis by deed of Waldo F. Brown, dated November 20, 1954, and recorded in the aforesaid Clerk's Office in Deed Book 10-S, at page 277.

THIS being the same property conveyed unto Ardon Development Corporation by deed of Susan A. Davis dated August 25, 1989, recorded in the aforesaid Clerk's Office in Deed Book 884 at page 54 and by deed of SCN Bank as Trustee under the Last Will and Testament of James J. Davis to Ardon Development Corporation by deed dated August 25, 1989, recorded in the aforesaid Clerk's office in Deed Book 884 at page 50.

ALSO, all of that certain lot or parcel of land situated in School District Five, Centerville Township, the County of Anderson, South Carolina, containing 12.15 acres, more or less, being more particularly described shown on a plat of survey by D.M. Robinson, Registered Engineer, dated December 9, 1952, said lot being bounded on the north by lands of Waldo F. Brown, on the East and South by lands of the Foster L. Brown Estate, Concord Road intervening, and having the following courses and distances:

BEGINNING at a point at its southwestern boundary near the easterly side of the aforesaid road, thence N. 81 - 21 E. 1366.4 feet; thence N. 12 - 23 W. 519 feet; thence S. 73 - 20 W. 1075.8 feet; thence S. 27 - 22 W. 455.2 feet to the beginning corner.

EXHIBIT "A"

BOOK 1010 PAGE 118

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

BEING the same property conveyed to J.J. Davis and Susan A. Davis by deed of Waldo F. Brown and others dated December 13, 1952, recorded in the aforesaid Clerk's Office in Deed Book 9-H, at page 211.

THIS being the same property conveyed unto Arden Development Corporation by deed of Susan A. Davis dated August 25, 1989, recorded in the aforesaid Clerk's Office in Deed Book 884, at page 54, and by deed of SCN Bank as Trustee of the Last Will and Testament of James J. Davis to Arden Development Corporation by deed dated August 25, 1989, recorded in the aforesaid Clerk's Office in Deed Book 884 at page 50.

FILED FOR RECORD
AT 3:20 P.M.
MAR 29 3 20 PM '90

RECORDED THIS 29 DAY
OF MAR A.D., 19 90
IN VOL 1010 PAGE 88
AT 3:20 P. M.
Ellen A. Ives C.C.P.
ANDERSON COUNTY, S.C.

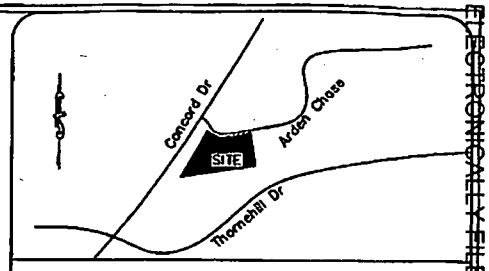
BOOK 1010 PAGE 119

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

EXEMPTION FROM REVIEW PROCESS
This Plat is a RESURVEY of an existing lot of record with no changes to existing lot-lines.

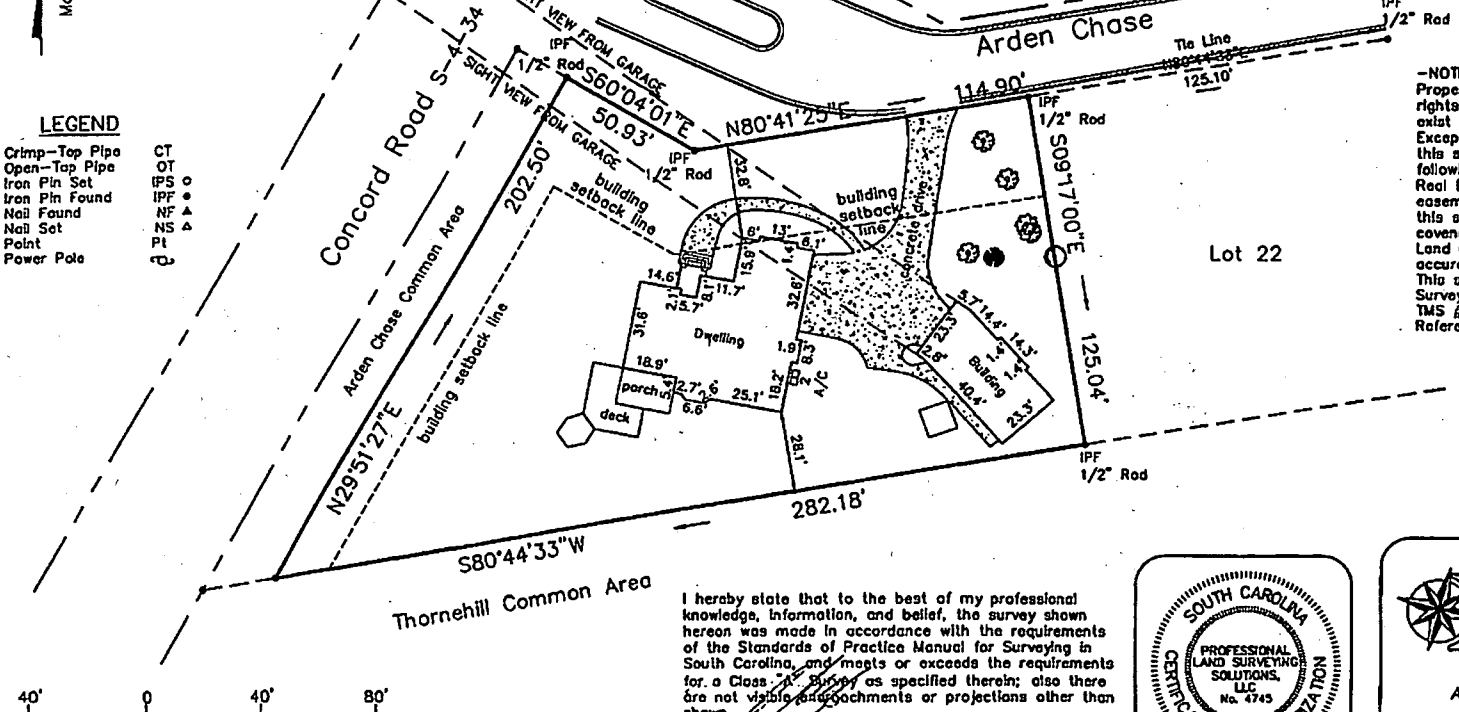
T. Lloyd Silva PLS No. 28142

Survey of
Arden Chase Subdivision, Lot 23
for
Eugene L. Griffin
and
Beth King Griffin
100 Arden Chase
Anderson County, South Carolina 29621
1" = 40' December 01, 2017



LOCATION MAP not to scale

Magnetic



LEGEND

Crimp-Top Pipe	CT
Open-Top Pipe	OT
Iron Pin Set	IPS ○
Iron Pin Found	IPF ●
Nail Found	NF ▲
Nail Set	NS △
Point	Pt
Power Pole	

-NOTES-
Property & areas shown subject to any and all rights-of-way, easements, and restrictions that may exist of record, above or on the ground.
Except as specifically stated or shown on this Plat, this survey does not purport to reflect any of the following which may be applicable to the subject Real Estate: Easements, other than possible easements that were visible at the time of making this survey; Building setback lines; Restrictive covenants; Subdivision restrictions; Zoning or other Land use regulations and any other facts than an accurate and current Title Search may disclose. This survey does not constitute a Title Search by Surveyor.
TMS # 1471701057
Reference: Plat Book S134, Page 7
Plat Book S1178, Page 58

40' 0 40' 80'
scale Graphic Scale feet

I hereby state that to the best of my professional knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Standards of Practice Manual for Surveying in South Carolina, and meets or exceeds the requirements for a Class "A" Survey as specified therein; also there are not visible encroachments or projections other than shown.

T. Lloyd Silva PLS No. 28142

SOUTH CAROLINA PROFESSIONAL LAND SURVEYING SOLUTIONS, LLC No. 4745 CERTIFICATE OF AUTHORIZATION

PLS SOLUTIONS, LLC
107 PINE LANE
ANDERSON, SOUTH CAROLINA 29621
PHONE: (864) 630-9627

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

ARDEN CHASE HOMEOWNERS' ASSOCIATION, INC.,

Plaintiffs,

-vs-

EUGENE L. GRIFFIN, JR., and BETH KING GRIFFIN,

Defendants

AFFIDAVIT OF JOHN "JACK" JONES

C/A No 2017-CP-04-01244

PERSONALLY APPEARED BEFORE ME, John "Jack" Jones, who, being first duly sworn, states that he is over the age of eighteen (18) years, resides at 403 Concord Avenue, in Anderson, South Carolina, and that he freely and voluntarily gives the following statement:

1. I am a South Carolina Licensed Residential Builder holding license number 3276.

2. I was hired by Gene and Beth Griffin to construct a detached garage on their property in Arden Chase.

3. I am familiar with the litigation surrounding the construction of the garage, and am aware of the rulings contained in Judge Sprouse's Order of March 28, 2017.

4. Particularly, I am aware that Judge Sprouse held that:

> 25. The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street.

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

5. I have determined that in order to meet the requirements as set forth by Judge Sprouse the front left garage wall needs to be extended and turned a number of feet. By doing so, when the wall containing the garage door is connected to the original length of the rear right wall the angle of garage door wall will be shifted such that will intersect only Concord Road and no part of Arden Chase Street (Arden Drive).

6. The attached elevation and floor plan drawings fairly and accurately depict the necessary extension and turning of the front left garage wall and the resulting angle change of the wall containing the garage door.

7. I hereby certify and attest that a garage constructed in accordance with the attached plans will be in full compliance with Judge Sprouse's Order, that the direction of the wall containing the garage door, when a straight line is drawn from each corner of that wall, will not intersect any portion of Arden Drive, and that such wall will intersect Concord Road only.

8. Other than the minor changes deemed necessary to bring the garage into compliance in accordance with the March 28, 2017 Order, the plans and specifications, as well as the materials to be used, are the same as those submitted previously to Judge Sprouse in the litigation surrounding the construction of the subject garage.

FURTHER AFFIANT SAYETH NOT.

JOHN JONES

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

John Jones, by signing below, states that he has read the foregoing Affidavit and all matters alleged therein are true and correct to the best of his knowledge. Further, he acknowledges and understands that: **A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL PENALTIES AS PROVIDED BY LAW.**

WITNESS #1

JOHN JONES

WITNESS #2

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

ATTESTATION

PERSONALLY appeared before me DANIEL L DRAISEN and made oath that (s)he witnessed JOHN JONES sign the foregoing Affidavit and that (s)he saw HIM witness the execution thereof. The witness further certifies that s/he is not an interested party to the transaction and that s/he personally witnessed the affiant sign the within document.

WITNESS #1

SWORN TO AND SUBSCRIBED BEFORE
ME this 30 day of August, 2017.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: April 14, 2018

ELECTRONICALLY FILED - 2018 Mar 12 1:29 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028
ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	CASE NO.: 2016-CP-04-02028
R. Dean Price, Paula B. Price, Thomas Barney Smith, Jr. and Amanda Aiken Smith. Plaintiffs, v. Eugene L. Griffin, Jr. and Beth King Griffin, Defendants. and Eugene L. Griffin, Jr. and Beth King Griffin, Third-Party Plaintiffs, v. Arden Chase Homeowners Association, Inc., Third-Party Defendants.	ORDER

PRESIDING JUDGE:	R. SCOTT SPROUSE
DATES OF BENCH TRIAL:	FEBRUARY 27 - 28, 2017
PLAINTIFFS' ATTORNEY:	JAMES W. LOGAN, JR.
DEFENDANTS' ATTORNEY:	DANIEL DRAISEN
COURT REPORTER:	DIANE MARCENGILL

This matter was before the Court for a non-jury trial. The dispute arises from a plan by the Defendants to construct a detached garage for their recreational vehicle. The Plaintiffs filed suit, alleging that the Defendants' planned structure violated the restrictive covenants of the subdivision. The Defendants deny the Plaintiffs' allegations and brought a Third-Party Complaint against the Homeowners Association seeking declaratory judgment. The Court, after hearing testimony from

ELECTRONICALLY FILED - 2019 Mar 28 3:49 PM - ANDERSON - COMMON PLEAS CASE#2018CP0402832

several witnesses (live and via deposition), reviewing briefs, exhibits, and arguments of counsel, and conducting a site visit at the request, and in the presence, of the attorneys, makes the following findings:

Findings of Fact

1. The Plaintiffs are residents of Anderson County, South Carolina.

2. The Defendants are residents of Anderson County, South Carolina.

3. The Third-Party Defendant is a homeowners association located in Anderson County, South Carolina.

4. This dispute arises from the Defendants attempting to construct a detached garage to house their recreational vehicle (RV), which currently is stored at another location. The Defendants began the process of this project in June of 2016, when they submitted plans to the neighborhood's Architectural Control Committee (ACC). The Court heard testimony from Stephen Crain, who is a member of the ACC. The plans submitted to the ACC by the Defendants were returned to the Defendants marked "approved." The Defendants then began the construction process.

The initial work involved digging footings and having footers installed. When opposition to the project began to arise in the subdivision, work halted on the project. The Plaintiff Dean Price, who also was a member of the ACC, voiced an objection to the project approval because he was out of town and unable to attend the meeting when the project was approved initially. In response to neighbors' concerns, the ACC sent a letter to the homeowners explaining their decision to approve the garage plans.

On July 20, 2016, Crain sent a letter to the Defendants informing them that the approval process was defective, making it unlikely that the project could be approved. Regardless of these events, the Defendants proceeded to have the slab poured at the project site. The Plaintiffs filed

ELECTRONICALLY FILED - 2019 Mar 12 3:39 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402682

suit. The Plaintiffs all seek a permanent injunction prohibiting the construction of the proposed garage, alleging that the proposed garage violates the restrictive covenants.

Along with an Amended Answer, the Defendants bring a Third-Party Complaint against the Arden Chase Homeowners Association, Inc. seeking declaratory judgment. The declaratory judgment action seeks clarification of how said restrictive covenants apply to such structures. The dispute between the parties began as a dispute over the method and validity of the ACC approval of the Defendants' proposed garage. There was live testimony regarding the approval process, along with significant portions of the deposition testimony relating directly to that issue. However, each party acknowledges that a homeowner in the subdivision has a right to bring an action on the restrictive covenants and how they apply to the proposed garage. In light of this stipulation and the declaratory judgment request, the parties are not pursuing their respective claims regarding the validity of the ACC approval of the proposed garage. The Plaintiffs seek an Order of the Court granting a permanent injunction against the Defendants, prohibiting them from constructing the proposed garage. The Defendants seek a Court Order allowing them to construct the proposed garage and that several questions regarding the restrictive covenants be answered by the Court by way of declaratory judgment. A summary of the questions before the Court is as follows:

1. Is the proposed garage in accordance with the restrictive covenants of the Arden Chase Subdivision in light of the following questions?

   a. Do the Arden Chase Subdivision restrictive covenants prohibit the construction of a detached garage and, if so, is the detached garage subject to the same rules as an attached garage?

   b. Do the Arden Chase Subdivision restrictive covenants prohibit a certain size of garage, garage doors, or the housing of recreational vehicles (RVs)?

ELECTRONICALLY FILED - 2018 Mar 12 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402682

c. How is "open to the roadway in front of the residence" defined?

5. The parties in this case all live or operate in the Arden Chase Subdivision, which is located off Concord Road in Anderson, South Carolina.

6. The Arden Chase subdivision was developed in the early 1990s by Jack Jones, the developer. Jones testified that he began the project in 1990 after purchasing a house and surrounding land from the Davis Estate. He contemplated building townhomes, but eventually settled on single-family dwellings on lots with an approximate size of half an acre.

7. Jones employed John Stathakis, a member of the Anderson County Bar, to draw up restrictive covenants for the new Arden Chase Subdivision. He instructed Stathakis to use the restrictive covenants from the existing subdivisions Thornehill and Harpers Ridge as guides. Stathakis completed the restrictive covenants, with Jones approving them. The restrictive covenants were recorded on May 29, 1990.

Both Jones and Stathakis testified at the trial. The restrictive covenants create an Architectural Control Committee (ACC). The ACC has the responsibility to insure that proposed structures are "in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development (see the full provision below).

8. There is no dispute as to applicability of the restrictive covenants to the proposed garage. The garage proposed by the Defendants clearly falls under the definition of a "Structure" under the restrictive covenants:

1.12 Structures. "Structure" means:

a) any thing or object the placement of which upon any Home Site may affect the appearance of the Home Site, including by way of illustration and not

ELECTRONICALLY FILED - 2018 Mar 12 1:29 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402682

limitation, any building or part thereof, garage, porch, greenhouse or bathhouse, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub, sign, signboard, permanent living quarters or any other temporary or permanent improvement to such Home Site.

9. The Defendants' proposed garage is challenged by the Plaintiffs on several grounds. The first involves its design as a detached garage. The Plaintiffs argue that there are no detached garages in Arden Chase, although it appears as though there is a detached pool house and a small garden "shed" on other lots. There is another house that has a second garage, although that garage is connected to the house with a breezeway. This breezeway is not enclosed, but is a paved walkway with a roof over it. The second garage on this particular house is a separate structure from the house and would be so without the breezeway. The breezeway serves no purpose other than allowing persons to walk from the house to the detached garage under the cover of a roof. The Defendants argue that a detached garage is not prohibited by the restrictive covenants.

10. Several provisions in the restrictive covenants give guidance regarding this issue, discussing future construction on the lots of the subdivision. The Court notes that the restrictive covenants do not address the issue of the permissibility of a detached building or garage directly, making this an issue that will require deduction based on the wording of other provisions. There was disagreement between Jones and Stathakis regarding the permissibility of a detached garage, with Jones answering in the affirmative and Stathakis answering in the negative. The restrictive covenants appear to contemplate the prospect of detached buildings on the lots. Several provisions deal indirectly with the issue:

> 5.02 Purpose. Powers and Duties of the ACC. The purpose of the ACC is to review and approve any proposed *installation, construction or alteration of any structure*

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402628
ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402628

on any home site. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of the Structures with respect to the topography, finished ground elevation and surrounding structures... (emphasis added).

5.05 Submission of Plans and Specifications. *No Structure shall be commenced, erected, placed, or permitted to remain on any Home Site nor shall any existing Structure upon any Home Site be altered* in any way which materially changes the exterior appearance of the Structure of Home Site, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC...

(a)... all *proposed* Structures and *alterations to existing* structures...

(d)...all *proposed* Structures and *alterations to existing* structures...

(e)...all *proposed* Structures and *alterations to existing* structures...

5.05 (c)...*construction or alteration* or (sic) of a Structure... (ii) ...to be incompatible with topography, finished ground elevation and *surrounding Structures* (emphasis added).

5.07 Disapproval of Plans and Specifications.

(c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards of the Development as set forth in the Design Standards; or (ii) as to the

ELECTRONICALLY FILED - 2018 Mar 12 1:29 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402682
ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402682

location, to be incompatible with topography, finished ground elevation, *and surrounding Structures*... (emphasis added).

5.09...*installation, alteration or maintenance of any Structure*... (emphasis added).

6.12...*no construction of alteration of any Structure*... (emphasis added).

11. The Court finds that a detached structure is clearly contemplated in the wording of the restrictive covenants, especially in consideration of the testimony of the developer. The Court gives greater weight to the testimony of the developer himself than that of his attorney who drafted the restrictive covenants. Accordingly, the Court finds that a detached garage is not prohibited, per se, by the restrictive covenants.

12. The next question surrounds the size of the proposed garage. The Plaintiffs argue that the proposed garage is too large for the subdivision. There was testimony regarding the thirteen-foot height of the door and the twenty-four foot height of the building itself. Implicit in this argument was the Plaintiffs' belief that the RV owned by the Defendants was too large to be housed in the subdivision. The Defendants countered with photographic evidence of other garages in the subdivision with high roof lines and similar "footprints."

13. An examination of the restrictive covenants reveals no references to specific size of the garage other than minimum square footage:

> 6.06 Square Footage. Each and every residence shall be a minimum of 2,700 square feet of heated living space. In addition to the aforementioned square footage, each residence shall have a garage of at least 500 square feet plus 100 square feet of storage space, said garage shall not be allowed to open to the roadway in front of the residence.

For a discussion of RVs, the Court turned to another provision in the restrictive covenants:

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028

6.21 *Recreational Vehicles* and Trailers.

(a) No commercial or disabled vehicles, boats, boat trailers, motor homes, campers, or like equipment or mobile or stationary trailers of any kind shall be permitted on any home site of the subdivision unless kept in *a completely enclosed garage* so that same shall not be visible from *any* street or public way (emphasis added).

The restrictive covenants clearly contemplate RVs being housed in the subdivision since they are identified specifically by name in Paragraph 6.21. The term "motor homes" also could be used to refer to the Defendants' vehicle.

14. The Plaintiffs presented Carl Cheek as a witness. He is a builder who was hired by the Defendants to construct the garage, using the original plan. Cheek also is a lot owner in Arden Chase. He testified that he began the project because he, like the Defendants, believed that it had been approved by the ACC. He stopped work on the project upon discovering that the action of the ACC had been challenged by other lot owners. When questioned about the project, he testified that it was now his belief that the proposed garage violated the restrictive covenants. The size of the garage was one of the things he cited. He testified that he was not aware of any garages of this size in Arden Chase or Thornehill.

Upon cross examination and being allowed to review the restrictive covenants, Cheek admitted that there were no specific provisions prohibiting detached garages or garages of this size. He further admitted that there were other garages in the subdivision with similar "footprints" and that some of the photographs showed other garages capable of accommodating doors of a similar size as the proposed garage. Cheek considered the roof height "fairly standard."

ELECTRONICALLY FILED - 2018 Mar 12 3:29 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402682
ELECTRONICALLY FILED - 2017 Mar 28 1:29 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402682

15. Stathakis was questioned regarding the size of the proposed garage. He testified that he did not believe that the restrictive covenants allowed for such a large structure, saying that it was "oversized" and that housing for a vehicle of this size was never contemplated in drafting the document. He further testified that he thought the proposed structure was something that "stands out" in a negative way.

16. Jones was questioned regarding the size of the proposed garage. He testified that, while he was not aware of any specific RV garages in Arden Chase or Thornehill, they were not specifically prohibited. Jones could not recall any discussions prior to the filing of the restrictive covenants about the size of an RV or the garage housing an RV. He did note that he did not believe that the Defendants' initial design was acceptable, although this objection was on aesthetic grounds instead of size. His testimony was that the initial plan "did not look good." Jones assisted the Defendants in revising the plan to a more acceptable exterior in keeping with the harmony and architecture of the community. The restrictive covenants address Jones's concerns in Paragraph 6.02, which reads as follows:

> Design Standards. The Declarant hereby establishes the design standards for Arden Chase, a residential community. Arden Chase shall be developed in strict accordance with the design standards which are made a part of the covenants, conditions and restrictions of Arden Chase. Each and every residence constructed on a home site shall be *distinctive*, demonstrating a well thought out design that is *neither extreme nor mundane* in character. Each and every residence shall be *harmonious* with its home site and the overall residential community (emphasis added).

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2016CP040262
ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP040262

Jones testified that the modified plans were in compliance with the restrictive covenants. The Court notes that the challenge to this proposed structure comes not from its anticipated exterior appearance but from its size, purpose, detachment and direction it faces.

17. One does not have to delve deeply into the intent of the developer when ascertaining the meaning of the pertinent provisions in the restrictive covenants regarding this issue. The restrictive covenants themselves clearly provide for the housing of RVs in the subdivision. As shown above, Section 6.21 is entitled "*Recreational Vehicles* and Trailers." It also uses the term "motor homes" in the body of the paragraph. No interpretation of this paragraph is necessary beyond reading it in light of its plain, ordinary language.

The Plaintiffs made references to Paragraph 6.03 as well, which reads, "Restrictions of Use. Home sites may be used for single-family residences only and for no other purpose...." I find that this paragraph is not applicable to this situation since there is no evidence that the Defendants are planning to use this proposed garage for anything other than storage of an RV for their personal use. The restrictive covenants clearly contemplate lot owners having additional vehicles and boats for personal use. I find that the housing of RVs of this type are not prohibited per se, by the restrictive covenants.

18. The last question regards the front of the building. Paragraph 6.06 provides that a garage "shall not be allowed to *open to the roadway in front of the residence*" (emphasis added). The Plaintiffs allege that the proposed garage opens to the roadway in violation of the restrictive covenants. The Defendants allege that the proposed garage does not "open to the roadway" because it does not point in the same direction as the driveway and is not perpendicular to the roadway.

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402632

19. Arden Chase Street is the roadway that runs through the subdivision. It enters the subdivision from Concord Road. The Defendants own Lot 23, which is the first lot on the right upon entering the subdivision. The western/northwestern boundary of the Defendants' lot borders Concord Road. The Defendants' house faces Arden Chase Street, with the driveway being nearly perpendicular to said street. Arden Chase Street enters the subdivision in a southeasterly direction. There is a divided median at the entrance of the subdivision. An imaginary straight line from the Defendants' front door would intersect the southeastern tip of the divided median. The Defendants have an attached triple garage which opens to the side of the house, pointing toward the proposed garage. The proposed garage would utilize the existing driveway but open in an angled fashion toward the divided median.

20. Before the commencement of the second day of trial, the attorneys involved in the case put out stakes and string stretching from the front corners of the concrete pad of the proposed garage to the front of the lot in order to show where a straight line from the front of said garage would lead. The right corner leads directly to Arden Chase Street. The left corner leads to Arden Chase Street as well, although the intersection, if fully stretched, would be close to the intersection of Arden Chase Street and Concord Road.

21. Problems abound with the wording of the restrictive covenants regarding this issue. Arden Chase Street runs throughout the subdivision and is the only street. It meanders in a serpentine manner and makes a loop. At least one home in the subdivision has a garage that opens to Arden Chase Street. However, it opens to the street in a different direction than that of the front door because the house is located on a corner lot. Garage doors are visible throughout the subdivision when one drives the full course of Arden Chase Street. The way the street twists and changes directions makes it virtually impossible to keep a garage door from being visible from the roadway.

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402632

22. There was significant disagreement regarding what "open to the roadway" means. The Plaintiffs objected to the proposed garage because it points at Arden Chase Street and the doors will be visible. The Defendants argue that the opening is not perpendicular to Arden Chase Street and that the proposed garage points a different direction than the driveway. The Defendants further argue that the "open to the roadway" standard does not apply to additional garages.

23. Jones and Stathakis disagreed on this issue as well. Stathakis believed that the proposed garage opens to the road in violation of the restrictive covenants. Jones stated that he believes that the proposed garage is pointed at the entrance of the subdivision rather than the road. Jones acknowledged in cross-examination that there is no requirement in the restrictive covenants that a garage opening must be perpendicular to the road to "open to the roadway." The Court notes that Jones testified before the stakes and string had been placed on the property to show where the front of the building pointed.

24. There is no definition of "open to the roadway" in the restrictive covenants, making this a difficult question. I find that this proposed garage does open to the roadway in front of the house, making it in violation of the restrictive covenants on this issue. The Court is mindful of the complicated nature of the road itself -- a fact reinforced by the Court's site visit. Arden Chase Street points in a different direction at the intersection with Concord Road than it does when the Defendants' driveway intersects it. The road makes a gradual left turn along the front of the Defendants' lot.

However, as noted above, a straight line extended from the front of the proposed garage intersects Arden Chase Street before it intersects Concord Road. Since this path collides with Arden Chase Street in roughly the same area that the front door faces, it is impossible to consider it differently. This strikes the Court as the obvious purpose of the restriction. The Court rejects

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402682

the argument that additional garages would not be subject to the same restrictions as the mandatory garage. There is no evidence to support the Defendants' contention that the restrictive covenants equate the "open to the roadway" standard with the opening of the structure being in a perpendicular direction from the roadway.

25. The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street.

26. There are no challenges to any other existing structures in the subdivision and it appears that all other existing structures are in compliance as to Paragraph 6.06, in addition to the other provisions in the Restrictive Covenants. In order to aid the parties with an answer to the declaratory judgment portion of the case, future construction in the subdivision can be compliant regarding this provision if a straight line drawn from the front corners of a proposed structure intersect a neighboring lot line, Concord Road, or the outer boundary of the subdivision prior to intersecting Arden Chase Street.

27. This Order should not be interpreted to mean that future structures are exempt from or bypass the normal procedure for obtaining ACC approval. All provisions of the Restrictive Covenants remain in full force and effect.

Applicable Law and Conclusions of Law

1. This Court has jurisdiction over the parties and subject matter. A permanent injunction may be granted to prevent the violation of restrictive covenants. Hunnicutt v. Rickenbacher, 268 S.C. 511, 234 S.E.2d 887 (1977).

2. Venue is proper in Anderson County, South Carolina.

ELECTRONICALLY FILED - 2018 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402632
ELECTRONICALLY FILED - 2017 Mar 28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402632

3. Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution. The paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document. A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property. However, this rule of strict construction "should not be applied so as to defeat the plain and obvious purpose of the instrument." Taylor v. Lindsay, 332 S.C. 1, 498 S.E.2d 862 (1998).

4. When the language imposing restrictions upon the use of property is unambiguous, the restrictions will be enforced according to their obvious meaning. Shipyard Prop. Owners' Ass'n v. Mangiaracina, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct.App.1992).

WHEREFORE, IT IS ORDERED THAT, the Defendants' proposed garage is not in compliance with the Restrictive Covenants of the Arden Chase Subdivision because the garage door opens to the roadway in front of the house. Therefore, the Defendants are enjoined from constructing the proposed garage as currently planned. The Defendants' proposed garage does comply with all other provisions of the Restrictive Covenants. The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the side of the garage containing the door intersects Concord Road instead of Arden Chase Street.

The Court answers the declaratory judgment questions as follows:

a. Do the Arden Chase Subdivision restrictive covenants prohibit the construction of a detached garage and, if so, is the detached garage subject to the same rules as an attached garage?

ELECTRONICALLY FILED - 2018 Mar 12 1:28 3:41 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402682

A detached garage is not prohibited, per se, by the Restrictive Covenants and would be subject to the same restrictions as the mandatory, attached garage.

b. Do the Arden Chase Subdivision restrictive covenants prohibit a certain size of garage, garage doors or the housing of recreational vehicles (RVs)?

The Restrictive Covenants do not restrict the size of any garage except for the mandatory minimum square footage nor do they specify any particular size of garage door. The housing of recreational vehicles (RVs) is not prohibited by the Restrictive Covenants.

c. How is "open to the roadway in front of the residence" defined?

"Open to the roadway" shall be defined as meaning that a straight line drawn from at least one of the two front corners of the proposed structure intersects Arden Chase Street prior to intersecting a neighboring lot line, Concord Road or the outer boundary of the subdivision.

This ruling is for the express purpose of providing interpretation of the restrictions in dispute so as to guide future board members of the ACC when they evaluate future projects submitted to them for approval. Nothing in this Order shall be construed to exempt any future project from any other restriction or standard set forth in the Restrictive Covenants. The Restrictive Covenants shall remain in full force and effect, subject to the provisions of this Order.

AND IT IS SO ORDERED!

[*Judicial signature page to follow*]

Walhalla, South Carolina

ELECTRONICALLY FILED - 2017 Mar 12 1:20 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402028



Anderson Common Pleas

Case Caption: R Dean Price VS Eugene L Griffin Jr

Case Number: 2016CP0402028

Type: Order/Permanent Injunction

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

ELECTRONICALLY FILED - 2018 Mar 27 2:33 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	
	)	
EUGENE L. GRIFFIN, JR. AND BETH KING GRIFFIN,	)	C/A No. 2017-CP-04-2632
	)	
Plaintiffs,	)	**MOTION FOR SUMMARY JUDGEMENT**
	)	
vs.	)	
	)	
ARDEN CHASE HOME OWNERS' ASSOCIATION, INC.,	)	
	)	
Defendant.	)	

TO: DANIEL L. DRAISEN, ATTORNEY FOR THE PLAINTIFFS

The Defendant, Arden Chase Home Owners Association (HOA), moves the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting summary judgment in its favor as a matter of law.

This Motion is based upon the following grounds:

1. There is no genuine issue as to any material fact.

2. In June 2016, Plaintiffs submitted plans to be approved by the Architectural Control Committee (ACC) of the HOA as required by the restrictive covenants.

3. Although the initial plans were marked "approved" the Plaintiffs were notified by letter of Steve Crain of the ACC "that the approval process was defective making it unlikely that that the project could be approved. Regardless of these events, the Defendant's proceeded to have the slab poured at the project site." (Judge Sprouse Order of 3/28/2017, p. 2)

4. In the case of R. Dean Price, et al (CA No. 2016-CP-04-02028) Judge R. Scott Sprouse issued his order that the Griffins' proposed garage is not in compliance with the Restrictive Covenants because the garage door opens to the roadway in front of the house. Therefore, the Defendants' are enjoined from constructing the proposed garage as currently planned. ...The

Defendants can bring their garage into compliance by changing its direction..."

5. In May, 2017, the Griffins informed the ACC that they were moving forward with the construction with some modifications. Upon request by the ACC for the new plans to be submitted for approval, the attorney for the Griffins sent an email stating that "the Griffins will not entertain any further interference from the ACC on the garage matter." The Griffins proceeded with construction without approval of the ACC.

6. The HOA filed suit June 14. 2017 asking that construction be stopped. Judge Lawton McIntosh on September 08, 2017, granted summary judgment and denied HOA's request without prejudice to either party to have Judge Sprouse clarify his order.

7. On September 13, 2017 Mr. Draisen sent an email stating that the Griffins were moving forward with the construction. In a return email Mr. Draisen was advised that the ACC opposed it and were going to ask that Judge Sprouse clarify his order. The Griffins proceeded with construction of the garage.

8. By Order of Judge Sprouse filed October 13. 2017, Judge Sprouse stated that his intent was to turn the **entire** structure in order to comply with the covenants and that a modification plan would require submission to the ACC.

9. Although "revised" plans were subsequently submitted to the ACC on October 13, 2017, the plans were denied by the ACC and the Griffins were notified. The Griffins made no written request to have the matter reviewed by the ACC as required by Section 5.07(b) of the Covenants. The Griffins proceeded with construction of the garage.

10. On October 26, 2017, after their motion to reconsider was denied by Judge Sprouse, the Griffins submitted new plans for approval. These plans were denied by the ACC with a letter advising of the reasons for the denial and inviting the Griffins to contact the ACC to work with them to make their plan compliant (Exhibit 1). The Griffins made no request for review by the ACC as required by the covenants. The Griffins proceeded with construction of the garage.

11. Pursuant to Section 5.03(b) of the Covenants, the decision of a majority of the ACC shall be final and binding upon the ACC and any applicant for approval.

ELECTRONICALLY FILED - 2018 Mar 27 2:33 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

12. On December 1, 2017, the ACC notified the HOA in writing that the Griffins had constructed the garage in violation of the covenants and Judge Sprouse's Order. The HOA agreed with the decision of the ACC and notified the Griffins by letter of December 5, 2017, that the structure was in violation and that the structure should be redirected or removed in its entirety within 30 days (Exhibit 2). The Griffins proceeded with construction of the garage.

13. The garage has not been redirected and has not been moved.

Wherefore, Defendant prays for an Order granting summary judgment in its favor as a matter of law.

Respectfully submitted

Anderson, South Carolina
March 27, 2018

/s/ Ernest C. Trammell
Ernest C. Trammell (SC Bar # 0005619)
Trammell & Mills Law Firm, LLC
1650 East Greenville Street (29621)
PO Box 1656
Anderson, South Carolina 29622
864-231-7171
864-231-7488 (Fax)
ernie@trammellandmills.com

/s/ J. Franklin McClain
J. Franklin McClain (SC Bar # 0003735)
401 South Main Street
Anderson, South Carolina 29624
864-231-1137
fmcclain@cityofanderson.com

ATTORNEYS FOR DEFENDANT

ELECTRONICALLY FILED - 2018 Mar 27 2:33 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Mar 27 2:33 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

October 30, 2017

To: Mr and Mrs Griffin, 100 Arden Chase

From: Arden Chase Architecture Control Committee
Collin Bryant, Chairman

Re: ACC Review and Action on Submission of RV Garage Plans (Version 10/26/17)

On Thursday, October 26, 2017, Eugene Griffin's attorney, Mr. Daniel Draisen, presented a set of RV Garage Plans to the Arden Chase Architecture Control Committee (ACC) via email and subsequently via US mail. This submission is in response to the previously disapproved plans (Version 10/13/17) for an already in-progress, yet unapproved detached Recreational Vehicle garage on Griffin's property at 100 Arden Chase.

Acceptance of Service. These plans (Version 10/26/17) were emailed to Arden Chase ACC Chairman Collin Bryant and Arden Chase HOA attorneys, Mr. Frankie McClain and Mr. Ernie Trammell, on Thursday, 10/26/17.

As previously stated, this most recent submission is in response to the ACC's disapproval of plans letter dated 10/16/17. This disapproval was based upon two main criteria:

1. Violation of 5.05 (*Submission of Plans and Specifications*) requiring complete plan submission.
2. The submitted plan (and partially constructed structure) has a garage door opening that still faces Arden Chase Street, in violation of Arden Chase's Covenant 6.06 (*Square Footage*) and Judge Sprouse's Order (3/28/17) and Clarification (10/13/17).

The ACC references its 10/16/17 Disapproval Letter:

> "In the 3/28/17 order, Judge Sprouse gave the Griffins one clear way to bring their garage into compliance. The Court stated "*The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the side of the garage containing the door intersects Concord Road instead of Arden Chase Street.*" In the 10/13/17 clarification, Judge Sprouse stated "*The Court's intent in the previous order was that* ***the structure as indicated on the submitted plans, was allowed on the condition that the entire structure was turned to comply with the restrictive covenants***."
>
> It is clear that Judge Sprouse intended for the original structure to be turned in its entirety to be in compliance, but Griffin chose not to turn the entire structure. The garage was constructed on the original concrete pad (Draisen letter to ACC 6/5/17). The small modification/angulation of side walls does not materially change the appearance and/or orientation of the garage and, as a result, the garage door has not moved and its opening still faces Arden Chase Street. Therefore, the

ELECTRONICALLY FILED - 2018 Mar 27 2:33 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

garage, as currently constructed, does not satisfy Arden Chase's Covenants or Judge Sprouse's order.

Furthermore, Arden Chase Covenant 6.06 **Square Footage** states:

> "Each and every residence shall be a minimum of 2,700 square feet of heated living space. In addition to this aforementioned square footage, each residence shall have a garage of at least 500 square feet plus 100 square feet of storage space. ***Said garage shall not be allowed to open to the roadway in front of the residence."***

It is clearly the intent of the Covenants, as supported by Judge Sprouse's Order and Clarification, to not have a garage door open toward the road in front of the residence, in order to conceal garage doors. This current submission is identical in design to the 10/13/17 plans, does not comply with paragraph 24 of Judge Sprouse's 3/28/17 Order and does absolutely nothing to alleviate this issue.

The committee applauds Griffin for including a previously omitted landscape plan in this submission (Version 10/26/17), but the ACC does have a few questions concerning it. Specifically, the committee notes that existing trees and shrubbery to the right of the existing driveway are not included on the drawing. For example, 100 Arden currently has a sizeable holly tree that is not depicted on the drawing. Does Griffin intend to remove said tree? Does he plan to make any changes to the hardscaping on his property including modifications to any driveways or walkways? The committee needs a complete and accurate representation of what Griffin intends to do with the existing as well as proposed landscaping.

This submission also includes a site plan as required by 5.05 (a). However, the submitted site plan is deficient as determined by the covenant, which is reproduced below:

> 5.05. Submission of Plans and Specifications. No structure shall be commenced, erected, placed or permitted to remain on any Home Site nor shall any existing Structure upon any Home Site be altered in any way which materially changes the exterior appearance of the Structure or Home Site, unless plans and specifications therefore shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including where applicable, and without being limited to:
>
> ***(a) a site plan showing the location of all proposed and existing Structures on the Home Site including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures;***

The submitted site plan is simply a Google Map aerial view of 100 Arden Chase with a handdrawn sketch of the garage that is neither an accurate representation of the structure's design and orientation nor is it to scale. Covenant 5.05 (a) clearly requires the site plan to show the location of all proposed AND existing structures on the home site including setbacks, open spaces, driveways and walkways.

The ACC needs a comprehensive, detailed site plan as required by the Covenants.

In summary, the committee unanimously stands by our 10/16/17 disapproval by finding that the garage door opening faces Arden Chase Street in violation of the Covenants and Judge Sprouse's Order (3/28/17) and Clarification (10/13/17). Additionally, the landscape plans need updating to clearly show all existing and proposed hardscaping (walkways, driveways, ect.) as well any shrubbery, plants and trees. Finally, the committee needs a complete, accurate and detailed site plan including all the criteria listed in 5.05 (a). Accordingly, the garage is **not approved** by the ACC and all existing and any further work on the garage is in clear and direct violation of 5.10.

As stated in 5.07 (c), the ACC stands ready to work with Griffin to bring his plans into compliance. Please do not hesitate to contact me via email at dcollinbryant@gmail.com or by phone on my personal cell phone at 843-425-6441.

Kindest Regards,

D. Collin Bryant
Chairman
Arden Chase Architecture Control Committee

ELECTRONICALLY FILED - 2018 Mar 27 2:33 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Mar 27 2:33 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

December 5, 2017

To: Mr. and Mrs. Griffin, 100 Arden Chase

From: Arden Chase Homeowners Association Board
Mandy Smith, President

Re: Covenant Violation found in Section 5.10 of the Arden Chase Covenants

On December 1, 2017, Mandy Smith, President of the Arden Chase Homeowners Association (ACHOA), received from Collin Bryant, Chairman of the Arden Chase Architectural Control Committee (ACC), a hand-delivered letter (see attached) concerning the unapproved building of the Griffin garage at 100 Arden Chase. The ACC letter asks for the Board's attention and action.

> Article 5.10 (copy attached) of the Arden Chase covenants states:
>
> If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association.

A meeting of the ACHOA Board was called to discuss and decide on the appropriate action from the Board in reply to the ACC's request. That meeting was held on the afternoon of December 4, 2017. All members of the Board (Mandy Smith, President; Marlene McLain, Vice President; Louise Trammell, Secretary; and Alecia Smith, Treasurer) were present. After examining both the covenants and the letter from the ACC, a vote was taken with Mandy Smith choosing to recuse herself from the vote due to previous involvement with the denial of the construction of the garage. The vote was unanimous.

Therefore, in accordance with Article 5.10 of the Arden Chase covenants which states:

> If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation.

Per directions set in the Covenants, the Arden Chase Homeowners Association Board is putting you on notice that to be in compliance with the Arden Chase covenants and Judge Sprouse's order and clarification, you must either reorient the entire slab and building or remove the structure in its entirety from the premises and restore the site to its preconstruction state. If this is not carried out the Association shall have the Right of Abatement as provided in Section 8.02

> If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement.

Respectfully Submitted,

Mandy Smith

Mandy Smith, President
Arden Chase Homeowners Association

ELECTRONICALLY FILED - 2018 Mar 27 2:33 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040232

December 1, 2017

To: Arden Chase Homeowners' Association Board of Directors

From: Arden Chase Architecture Control Committee
Collin Bryant, Chairman

Re: Construction of Garage at 100 Arden Chase

It is with regret that I write this letter concerning the construction of a detached garage at Mr and Mrs Griffin's 100 Arden Chase home site. I'm writing after the Architecture Control Committee (ACC) has made multiple attempts to get the Griffins to stop the unapproved and illegal construction. Since the ACC finds the construction in direct violation of section 5.05 of our covenants and in direct violation of Judge Sprouse's Court Orders, section 5.10 ("Violations") instructs the ACC to bring the matter to the Homeowners' Association.

As you may be aware, Mr and Mrs Griffin submitted plans for the construction of a detached RV garage in June 2016 to the Architecture Control Committee (ACC). The ACC at that time was comprised of Gene Griffin, Dean Price and Steve Crain. Larry Rowland was HOA President. Mr Rowland and Mr Crain improperly approved the plans and later reversed their decision. Before any improvements had been made, Mr Griffin was given written notice in July 2016 that the plans were not approved. Nevertheless, he moved forward with improvements to his property and violated section 5.05 of the Arden Chase Covenants.

Litigation followed in September 2016 and Judge Sprouse ultimately ruled that the proposed garage did not comply with the Arden Chase covenants but could be brought into compliance by re-positioning the entire garage so that the garage door did not face Arden Chase Street (Sprouse Order 3/28/2017).

In May 2017, the current ACC, comprised of Tom Smith, Matt Elliott and Collin Bryant, wrote the Griffins seeking their intention for the proposed garage. The Griffins stated that they were moving forward with construction of the garage with small modifications. The ACC responded saying that any modification required submission of said plans for ACC review and approval.

In June 2017, without seeking approval from the current ACC, the Griffins began construction with a modified plan that added two short walls to the front of the garage. This action is in direct violation of section 5.05 which states *"No Structure shall be commenced, erected, placed or permitted to remain on any Home Site nor shall any existing Structure upon any Home Site be altered in any way which materially changes the exterior appearance of the Structure or Home Site, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC."*

The Griffins believed that the new plan satisfied Judge Sprouse's original order without a need for ACC approval but the ACC disagreed. The ACC brought the matter before Judge Sprouse in June 2017 and in October he supported the ACC's contention that Sprouse intended for the entire structure to be repositioned and that any modification constituted a new plan which needs the approval of the ACC. Accordingly, he gave the Griffins two options for building their garage: 1) Reposition the original plan so that the garage door does not face Arden Chase Street or 2) Submit the new plan to the ACC for review and approval.

By this time, substantial progress had been made on the garage but the structure had not been turned and the modified plan had not been submitted to the ACC. After Judge Sprouse's October clarification order, the Griffins finally submitted revised plans. The plan was denied by the ACC because of incomplete information and because the garage door still opens toward Arden Chase Street. The letter of denial was sent to the Griffins and their attorney, Mr Daniel Draisen, on October 30, 2017. That letter advised the Griffins that the ACC stood ready to work with them to bring the plans into compliance. Although 5.03 (b) of the covenants allows the applicant to request a review of an unsatisfactory decision by the ACC by filing a written notice within 10 days, Mr Draisen sent an email stating the ACC was wrong in its decision and that he would ask his clients about submitting missing information including a site plan. No request for a review was made and no appeal was taken from Judge Sprouse's Court Order.

To be absolutely clear, all improvements and construction of the detached garage have been without any approval from the prior or current ACC. Their actions are also in violation of Judge Sprouse's orders as outlined above. In accordance with Section 5.10 of our covenants, the ACC submits this letter for your review and we request a meeting with the HOA Board to discuss this matter.

Respectfully submitted,

Collin Bryant, Chairman
Arden Chase Architecture Control Committee

ELECTRONICALLY FILED - 2018 Mar 27 2:33 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

5.08 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

5.09 Inspection Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times enter upon any Home Site and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Home Site or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

5.10. Violations. If any Structure shall be erected, placed, maintained or altered upon any Home Site, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

5.11 Nondiscrimination by ACC. The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

5.12 Disclaimer as to ACC Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure

BOOK 1010 PAGE 101

ELECTRONICALLY FILED - 2018 Mar 27 2:33 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

EUGENE L. GRIFFIN, JR. and BETH KING GRIFFIN, Plaintiffs, -vs- **ARDEN CHASE HOMEOWNERS' ASSOCIATION, INC.,** Defendant.	C/A No. 2017-CP-04-2632 **MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

TO: ERNEST C. TRAMMELL, ESQ. and J. FRANKLIN McCLAIN, ESQ., ATTORNEYS FOR THE PLAINTIFF

COME NOW the Plaintiffs in the above-captioned matter and submit their Memorandum in Support of Plaintiffs' Motion for Summary Judgement and in Opposition to Defendant's Motion for Summary Judgment.

As an initial matter, the Plaintiffs assert and incorporate fully as if attached hereto or stated herein verbatim all documents, witness testimony, evidence and legal arguments presented to the Court in the matters of *R. Dean Price, et. al vs. Eugene L. Griffin, et al.*, C/A No. 2016-CP-04-2028, and *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin, Jr., et al.*, C/A No. 2017-CP-04-1244, as well as all Orders of the Court issues in those prior actions.

The Plaintiffs also incorporate by reference thereto all documents attached to their Motion for Summary Judgment filed in the within matter. In addition, the Plaintiffs submit herewith the Affidavits of the following in support of their Motion and in opposition to the Defendant's Motion:

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

Benjamin Beck, Land Surveyor (PLS Solutions, LLC)

John "Jack" Jones, Residential Builder

George Stephen Crain, Former Member of Arden Chase Architectural Control Committee

STATEMENT OF UNDISPUTED FACTS

1. On October 13, 2017, the Honorable R. Scott Sprouse issued an Order denying Plaintiff's Motion for Temporary Injunction and Clarifying the Court's Original Order. In its Order, the Court held:

> **B. The Intent of the Original Order**
>
> The parties seek guidance from the Court as to how "proposed garage" is defined. In the Original Order, the Court permitted the Defendants to "bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street." The Court's intent in the previous order was that the structure as indicated on the submitted plans, was allowed on the condition that the entire structure was turned to comply with the restrictive covenants. The Defendants' modified plan, which slightly increases the square footage of the building and changes the configuration of the front of the building so that only one wall is turned, would constitute a new plan which would require submission to the board. Modification, however slight, of the building as configured on the plan submitted to the Court in the trial, would be a different plan.
>
> The Court recognizes the effect of this ruling, which is made in an effort to enforce the governing restrictive covenants. Counsel for the Defendants has set forth practical reasons why this new plan would actually be less visible from the roadway of the subdivision than the original building if it were turned. The Court also is mindful of the emotions existing in the subdivision.
>
> The Defendants are fearful that the current Architectural Control Committee will summarily reject any proposed plans, even if they comply in all aspects with the restrictive covenants. As pointed out at the hearing, an unreasonable rejection of a reasonable plan is actionable. The Court would encourage the parties to resolve this issue prior to any further litigation.

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

2. While the Griffins believed any effort to obtain approval of the ACC for the garage would be futile, on the same day, October 13, 2017, the Griffins, by and through their attorney, submitted a "revised" garage plan to the ACC for approval with the amended floor plan and elevation drawings showing the changes.

3. On October 16, 2017, the ACC sent a letter to the Griffins denying the approval of the plans on the basis, of among other things, that the submission did not contain a detailed plan for landscaping and grading and because the plans do not do not call for the "entire structure [to be] repositioned so that it is in compliance with the Arden Chase Covenants and the orders of Judge Sprouse.".

4. On October 26, 2017, after a second hearing with Judge Sprouse seeking clarification, the Griffins, by and through their attorney, re-submitted the "new" garage plans to the ACC for approval and this time included a google earth aerial site map and copy of the landscaping plan that was submitted with the original garage plans drawing in the front wall angle change (as the Griffins did not intend to make any changes to the proposed landscaping plan).

5. After Summary Judgment was granted the Griffins began construction of the garage in accordance with the "revised" drawings submitted on October 16 and again on October 26th.

6. On October 30, 2017 the ACC again denied the request for approval this time citing that the google earth site plan was insufficient (despite the fact that the garage structure was framed at this time and the ACC was invited to come to the site and review same), that the landscaping plan was insufficient because it did not show the hardscape and grading changes (as a result of the turning of the front wall), and because the entire structure was not "turned in accordance with Judge Sprouse's order."

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

7. On December 1, 2017, the ACC notified the HOA in writing that the Griffins had constructed a detached garage on their lot that was not approved by the ACC, that was constructed in violation of the covenants, and that did not comply with Judge Sprouse's Order. Thereafter the HOA, on December 5, 2017, delivered a letter to the Griffins citing the findings of the ACC, and demanding that the entire slab and building be reoriented, or that the structure be removed in its entirety from the premises within thirty (30) days, or the HOA would have the Right of Abatement.

8. On December 12, 2017, the Griffins again submitted a revised submittal to the ACC with the intent of curing any alleged deficiencies in the submittals, this time including the following:

1. The revised floor/foundation plan prepared by Tim Strickland Drafting (the foundation is shown on the floor plan);
2. The revised elevation drawings prepared by Tim Strickland Drafting (the materials to be used are specified on the elevation drawings);
3. A detailed landscaping plan by Stepping Stone Landscaping overlaid on the site plan; and
4. A complete site plan prepared by Professional Land Surveying Solutions, LLC.

9. Despite the Griffins being requested to submit more formal documentation than has ever been required in Arden Chase, on December 22, 2017 the HOA and the ACC again denied the Griffins' request for approval stating that the ACC nor the HOA will approve a "six-sided building" that is not in compliance with the Covenants and Judge Sprouse's Order.

LEGAL ARGUMENT

I. There are no covenants or restrictions contained in the Declaration of Covenants, Conditions and Restrictions for Arden Chase, a Residential Community that prohibit the Plaintiffs' garage as constructed.

The ACC's denial of the Griffins' revised plan submissions is arbitrary, malicious, and is based on an incorrect assertion that a) the Griffins failed to submit plans to the ACC (which it did

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

on May 31, and again on October 13, October 26 and on December 12), and that the only garage that the Griffins can build that would comply with the Covenants must be rectangular and must be constructed with the wall containing the garage door facing Concord Road

The Griffins assert that the detached garage structure on their property, which was completed in late November, complies with the Covenants for Arden Chase in that there are no restrictions in the Covenants that disallow or prohibit the angling of a portion of a structure to aid functionality and to add architectural detail, and the structure complies with the Court's prior ruling that *any* detached garage in Arden Chase will be in compliance when a straight line from each corner of the wall containing the garage door does not intersect any part of Arden Chase street. The Court held:

> 26. There are no challenges to any other existing structures in the subdivision and it appears that all other existing structures are in compliance as to Paragraph 6.06, in addition to the other provisions in the Restrictive Covenants. **In order to aid the parties with an answer to the declaratory judgment portion of the case, future construction in the subdivision can be compliant regarding this provision *if a straight line drawn from the front corners of a proposed structure intersects a neighboring lot line, Concord Road, or the outer boundary of the subdivision prior to intersecting Arden Chase street.*** (emphasis added)

The Plaintiffs herein assert that their detached garage is in full compliance with the Covenants and Court's directive, and that there can be no factual dispute that when a straight line is drawn from each corner of the wall containing the garage door of the garage as built the line intersects Concord Road instead of Arden Chase (see Affidavit of Benjamin Beck, Land Surveyor). Further supporting this, the Plaintiffs submit the Affidavit of John "Jack" Jones, contractor (see Affidavit of John "Jack" Jones, Residential Builder).

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

In addition, there are simply no restrictions contained in the Covenants that disallow or prohibit the angling of a portion of a structure to aid functionality, to add architectural detail to the structure, or to assist the contractor with fitting the structure into the space.

"The historical disfavor of restrictive covenants by the law emanates from the widely held view that society's best interests are advanced by encouraging the free and unrestricted use of land. Hamilton v. CCM, Inc., 274 S.C. 152, 263 S.E.2d 378 (1980). "Restrictive covenants are contractual in nature." Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). "The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it *at the time of execution*." Taylor v. Lindsey, 332 S.C.1, 4, 498 S.E.2d at 864 (1998). "The paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Id.* at 4. "A restriction on the use of property must be created in express terms or by plain and unmistakable implication and all such restrictions are to be strictly construed, *with all doubts resolved in favor of free use of the property*, although the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants." Hamilton at 152, 263 S.E.2d 378 (1980).

"The court may not limit a restriction, nor will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms, even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written." Taylor at p.4, S.E.2d 862, 863 (1998). "Restrictive covenants will be enforced unless they are indefinite or contravene public policy." Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987). "An action to

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

enforce restrictive covenants by injunction is in equity." Seabrook Is. Property Owners Ass'n v. Marshland Trust, Inc., 358 S.C. 655, 661, 596 S.E.2d 380, 383 (Ct. App. 2004).

In Palmetto Dunes, the South Carolina Court of Appeals held that "a refusal to approve plans for aesthetic reasons will be upheld where the *covenant or appropriate authority* has provided guidelines for enforcement and expressed the purpose of the restrictive covenant." Palmetto Dunes v. Brown, 287 S.C. 1, 336 S.E.2d 15 (1985). "Although... not expressly named and prohibited, a particular use or structure may be forbidden by the covenant's general language without an express designation or label." *See, eg.* Nance v. Waldrop, 259 S.C. 69, 187 S.E.2d 26 (1972).

Accordingly, the Plaintiffs request that the Court declare the disapproval by the ACC and the HOA improper, unjustifiable, arbitrary and malicious; and that the Court declare the detached garage structure as constructed and where constructed by the Griffins to be in compliance with the Restrictive Covenants and allowed as a matter of law. Further, the Plaintiffs request an Order of the Court enjoining and restraining the Defendant from abating, demolishing, destroying, or removing the Plaintiffs' detached garage, or any attempts to do so.

II. There is no factual dispute that Plaintiffs were the prevailing party in the second lawsuit filed in this matter, and that they were granted Summary Judgment as to Plaintiff's claims.

On September 8, 2017, the Honorable R. Lawton McIntosh granted the Griffins' Motion for Summary Judgment, denied Plaintiff's request for an injunction, and dismissed HOA's Complaint in the matter *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin, Jr., et al.*, C/A No. 2017-CP-04-1244. The HOA nor the Griffins appealed the Order granting the Defendants Summary Judgment and denying the Plaintiffs' request for an injunction and same therefore constitutes a final adjudication of the matter on Summary Judgment in favor of the Griffins.

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

In the lawsuit, the Plaintiffs asserted that counsel for the HOA, Ernest C. Trammell, Esq. and J. Franklin McClain, Esq. are both owners in Arden Chase subdivision and were well aware of the prior lawsuit against the Defendants with regard to this very same garage structure filed by James W. Logan, Jr., Esq., another attorney that is also an owner in Arden Chase subdivision, and of the Court's prior Order at the time they filed the aforementioned action.

The Plaintiffs assert that the HOA's filing of that lawsuit was an abuse of process and constitutes malicious prosecution on the part of the HOA. The HOA attempted to (and is continuing to) threaten and to coerce the Defendants, through the filing of the aforementioned lawsuit, into not building their proposed detached garage structure, by causing additional delays in the construction process, by causing increased construction costs, and by increasing litigation expenses.

As there are no facts in dispute with regard to the summary dismissal of the Plaintiff's action in *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin, Jr., et al.,* C/A No. 2017-CP-04-1244, the Plaintiffs are entitled to a judgment as a matter of law on their claims that that the Defendant HOA engaged in abuse of process and malicious prosecution. Accordingly, the Plaintiffs request that the Court enter judgment on behalf of the Plaintiffs and against the Defendant on their abuse of process claims, and that the Court set a hearing to establish the amount of Plaintiffs' damages suffered as a result thereof.

CONCLUSION

Based upon the foregoing, on the express language of the Restrictive Covenants, and on the prior Orders of this Court applicable to this matter, the Plaintiffs are entitled to an Order granting their Motion for Summary Judgment, and for an award of the costs of this action,

attorney's fees as sanctions, and for such other and further relief as this Court may deem just and appropriate in such amounts as may be determined at a damages hearing held for such purpose.

Respectfully submitted,

KRAUSE, MOORHEAD AND DRAISEN, P.A.

s/Daniel L. Draisen
DANIEL L. DRAISEN (SC Bar# 13536)
207 East Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
(864) 964-0788 facsimile
ddraisen@kmdlawyers.com
ATTORNEYS FOR THE PLAINTIFFS

April 30, 2018
Anderson, South Carolina

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

EUGENE L. GRIFFIN, JR., and BETH KING GRIFFIN, Plaintiffs, -vs- **ARDEN CHASE HOME OWNERS' ASSOCIATION, INC.,** Defendant.	**AFFIDAVIT OF BENJAMIN BECK, LAND SURVEYOR** C/A No 2017-CP-04-01244

PERSONALLY APPEARED BEFORE ME, Benjamin Beck who, being first duly sworn, states that he is over the age of eighteen (18) years, and that he freely and voluntarily gives the following statement:

1. I am employed as a land surveyor by PLS Solutions, LLC and work under the direction of T. Lloyd Sylva, a South Carolina Licensed Professional Land Surveyor holding license number 28142.

2. PLS Solutions was hired by the Griffin's contractor, Jack Jones, to perform a site survey of Lot 23 Arden Chase subdivision and the surrounding roadway to determine the precise location and direction of the detached garage constructed on Lot 23.

3. PLS was also tasked to determine if, when a straight line is drawn from each corner of the wall containing the garage door on the garage constructed on Lot 23, any portion of those lines intersect Arden Chase road.

4. I performed the surveying work on the property and Mr. Silva did the drafting. The attached Survey of Arden Chase Subdivision, Lot 23, dated December 1, 2017, fairly and accurately depicts the precise location of the completed detached garage structure built on Lot 23, and the lines marked "sight view from garage" show the locations of straight lines drawn from each corner of the wall containing the garage door.

5. I certify and attest that when straight lines are drawn from each corner of the wall containing the garage door as constructed the lines do not intersect any portion of Arden Chase road, and that such lines intersect Concord Road only.

FURTHER AFFIANT SAYETH NOT.

BENJAMIN BECK

I, Benji Beck, by signing below, state that I have read the foregoing Affidavit and all matters alleged therein are true and correct to the best of my knowledge. Further, I acknowledge and understand that: **A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL PENALTIES AS PROVIDED BY LAW.**

WITNESS #1

BENJAMIN BECK

WITNESS #2

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA)
) **ATTESTATION**
COUNTY OF ANDERSON)

PERSONALLY appeared before me Brianna Lynch and made oath that (s)he witnessed BENJAMIN BECK, sign the foregoing Affidavit and that (s)he saw Jessica Buchanan witness the execution thereof. The witness further certifies that s/he is not an interested party to the transaction and that s/he personally witnessed the affiant sign the within document.

WITNESS #1

SWORN TO AND SUBSCRIBED BEFORE
ME this 20 day of April, 2018.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: April 4, 2022

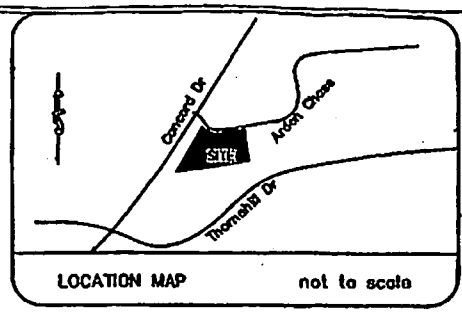
BRIANNA LYNCH NOTARY PUBLIC SOUTH CAROLINA

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

EXEMPTION FROM REVIEW PROCESS
This Plat is a RESURVEY of an existing lot of record with no changes to existing lot-lines.

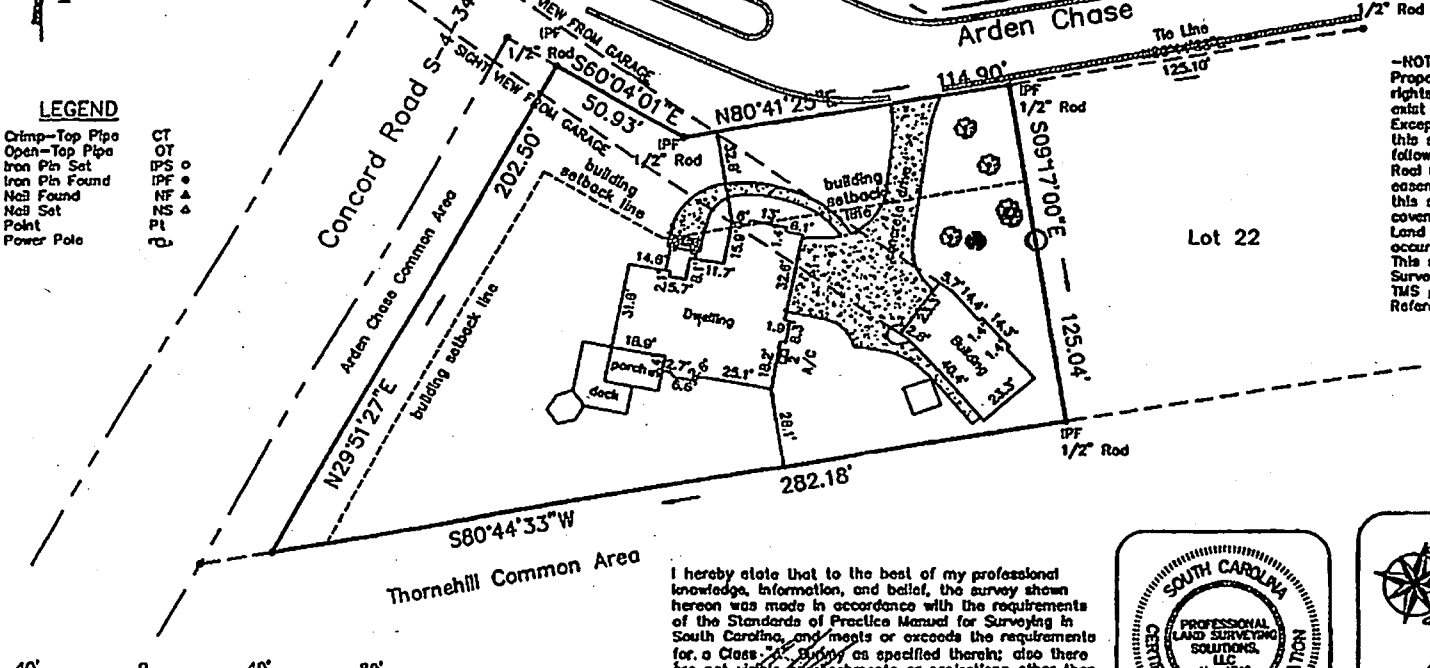
T. Lloyd Silva PLS No. 28142

Survey of
Arden Chase Subdivision, Lot 23
for
Eugene L. Griffin
and
Beth King Griffin
100 Arden Chase
Anderson County, South Carolina 29621
1" = 40' December 01, 2017



LOCATION MAP not to scale

Magnetic



LEGEND

Crimp-Top Pipe	CT
Open-Top Pipe	OT
Iron Pin Set	IPS ○
Iron Pin Found	IPF ●
Nail Found	NF ▲
Nail Set	NS △
Point	Pt
Power Pole	PP

-NOTES-
Property & areas shown subject to any and all rights-of-way, easements, and restrictions that may exist of record, above or on the ground.
Except as specifically stated or shown on this Plat, this survey does not purport to reflect any of the following which may be applicable to the subject Real Estate: Easements, other than possible easements that were visible at the time of making this survey; Building setback lines; Restrictive covenants; Subdivision restrictions; Zoning or other Land use regulations and any other facts than an accurate and current Title Search may disclose. This survey does not constitute a Title Search by Surveyor.
TMS # 1471701057
Reference: Plat Book S134, Page 7
Plat Book S1178, Page 58

40' 0 40' 80'
scale Graphic Scale feet

I hereby state that to the best of my professional knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Standards of Practice Manual for Surveying in South Carolina, and meets or exceeds the requirements for a Class "A" Survey as specified therein; also there are not visible encroachments or projections other than shown.

T. Lloyd Silva PLS No. 28142

SOUTH CAROLINA PROFESSIONAL LAND SURVEYING SOLUTIONS, LLC No. 4765 CERTIFICATE OF AUTHORIZATION

PLS SOLUTIONS, LLC
107 PINE LANE
ANDERSON, SOUTH CAROLINA 29621
PHONE: (864) 630-9627

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

EUGENE L. GRIFFIN, JR., and BETH KING GRIFFIN,

Plaintiffs,

-vs-

ARDEN CHASE HOME OWNERS' ASSOCIATION, INC.,

Defendant.

AFFIDAVIT OF JOHN "JACK" JONES, RESIDENTIAL BUILDER NO. 3276

C/A No 2017-CP-04-01244

PERSONALLY APPEARED BEFORE ME, John "Jack" Jones, who, being first duly sworn, states that he is over the age of eighteen (18) years, resides at 403 Concord Avenue, in Anderson, South Carolina, and that he freely and voluntarily gives the following statement:

1. I am a South Carolina Licensed Residential Builder holding license number 3276.

2. I was the original developer of Arden Chase subdivision, and I had John Stathakis, Esq. write the Declaration of Covenants, Conditions and Restrictions for Arden Chase, a Residential Community (the "Covenants"), dated February 1, 1990 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina on May 29, 1990 in Book 1010 at Page 88.

3. It was never my intention to prevent or to restrict any owner in Arden Chase from building detached garages. To the contrary, and as is specified in the Covenants, it was my intent that any owner be allowed to keep a trailer, boat, motorhome, or other equipment on their property so long as same are housed within an enclosed garage.

4. I was hired by Gene and Beth Griffin to construct a detached garage on Lot 23, Arden Chase, to house their Recreational Vehicle.

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040632

5. I am familiar with the litigation surrounding the construction of the garage, and am aware of the rulings contained in Judge Sprouse's Orders.

6. As stated above, as the developer of the subdivision I am familiar with the Covenants for Arden Chase. None of the Covenants or restrictions prohibit a structure from having a turn or angle along a wall. Such turns or angles in walls add architectural detail to the structure, and angles can provide the contractor with functional options for making a structure fit into a designated space. In addition, none of the Covenants or restrictions place any limitation on the number of square feet a detached garage can have.

7. I hereby certify and attest that the detached garage constructed on Lot 23 for the Griffins does not violate any of the Covenants, and that in compliance with Judge Sprouse's Order when straight lines are drawn from each corner of that wall containing the garage door no portion of those lines intersect any portion of Arden Chase road.

8. Other than the minor change made to angle the front wall so that in accordance with the March 28, 2017 Order when straight lines are drawn from each corner of that wall containing the garage door no portion of those lines intersect any portion of Arden Chase road (which added approximately 50 square feet), the plans and specifications, as well as the materials to be used, are the same as those submitted previously to Judge Sprouse in the litigation surrounding the construction of the subject garage.

9. It was readily apparent to me when the Griffins were required to re-submit their garage plans to the Architectural Committee as a result of the decision to change the angle of the wall which resulted in some added square footage (rather than to dig up and re-pour the foundation), after the homeowners had elected a new Architectural Committee made up of all owners that

opposed the construction of the garage, that any plans submitted by the Griffins for a detached garage would be rejected no matter what we did. This is exactly what happened despite the detailed drawings, site plan, landscape plan, foundation plan, and other submissions provide to the Architectural Committee.

FURTHER AFFIANT SAYETH NOT.

JOHN JONES

John Jones, by signing below, states that he has read the foregoing Affidavit and all matters alleged therein are true and correct to the best of his knowledge. Further, he acknowledges and understands that: **A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL PENALTIES AS PROVIDED BY LAW.**

WITNESS #1

JOHN JONES

WITNESS #2

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

ATTESTATION

PERSONALLY appeared before me DANIEL L DRAIGEN and made oath that (s)he witnessed JOHN JONES sign the foregoing Affidavit and that (s)he saw Kathy B. Campbell witness the execution thereof. The witness further certifies that s/he is not an interested party to the transaction and that s/he personally witnessed the affiant sign the within document.

WITNESS #1

SWORN TO AND SUBSCRIBED BEFORE
ME this 25th day of April, 2018.

Kathy B. Campbell
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 07-24-2018

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

EUGENE L. GRIFFIN, JR., and BETH KING GRIFFIN,

Plaintiffs,

-vs-

ARDEN CHASE HOME OWNERS' ASSOCIATION, INC.,

Defendant.

AFFIDAVIT OF GEORGE STEPHEN CRAIN

C/A No 2017-CP-04-01244

PERSONALLY APPEARED BEFORE ME, George Stephen Crain who, being first duly sworn, states that he is over the age of eighteen (18) years, resides in Anderson, South Carolina, and that he freely and voluntarily gives the following statement:

1. At the time the Griffins' submitted their original detached garage plans to the Architectural Control Committee I was and had been a member of the ACC for some time.

2. I, along with Larry Rowland, constituting two of the three members of the ACC reviewed the floor plan drawing and the single elevation drawing, reviewed the Declaration of Covenants, Conditions and Restrictions for Arden Chase, considered the other structures in the neighborhood, and approved the detached garage plans submitted.

3. I am familiar with the litigation surrounding the construction of the garage, and am aware of the rulings contained in Judge Sprouse's Orders.

4. Having served on the ACC for a number of years, and having reviewed the submittals the current ACC required the Griffins to provide when re-submitting their detached garage plans, I can state with certainty that the ACC has never required any other owners to provide such detailed

drawings, site plans, landscaping plans, or the like.

5. When the Griffins were required to re-submit their garage plans to the Architectural Committee as a result of the decision to change the angle of the wall which resulted in some added square footage (rather than to dig up and re-pour the foundation), it was obvious to me that the newly elected Architectural Committee made up of all owners that opposed the construction of the garage would reject the plans no matter what was submitted. This is exactly what happened despite the fact that the detached garage does not violate the Restrictive Covenants.

FURTHER AFFIANT SAYETH NOT.

GEORGE STEPHEN CRAIN

George Stephen Crain, by signing below, states that he has read the foregoing Affidavit and all matters alleged therein are true and correct to the best of his knowledge. Further, he acknowledges and understands that: **A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL PENALTIES AS PROVIDED BY LAW.**

WITNESS #1

GEORGE STEPHEN CRAIN

WITNESS #2

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Apr 30 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

ATTESTATION

PERSONALLY appeared before me DANIEL L. DRAISEN and made oath that (s)he witnessed GEORGE STEPHEN CRAIN sign the foregoing Affidavit and that (s)he saw Kathy B. Campbell witness the execution thereof. The witness further certifies that s/he is not an interested party to the transaction and that s/he personally witnessed the affiant sign the within document.

WITNESS #1

SWORN TO AND SUBSCRIBED BEFORE
ME this 25th day of April, 2018.

Kathy B. Campbell
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 07-24-2018

ELECTRONICALLY FILED - 2018 May 01 3:56 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
EUGENE L. GRIFFIN, JR. AND BETH KING GRIFFIN,	)	C/A No. 2017-CP-04-02632
Plaintiffs,	)	DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANT'S MOTION
vs.	)	
ARDEN CHASE HOME OWNERS' ASSOCIATION, INC.,	)	
Defendant.	)	

Both parties have filed Motions for Summary Judgment in this matter. The Defendant ("HOA") respectfully presents this Memorandum in support of its Motion and in opposition to Plaintiffs' (Griffins) Motion.

FACTUAL AND PROCEDRUAL BACKGROUND

In the case of *R. Dean Price, et al. vs. Eugene Griffin, et al.* (Case Number 2016-CP-04-02028) some members of the Arden Chase Subdivision brought an action to enjoin the construction of the Griffins' detached garage.

Judge Sprouse issued his Order granting the injunction and providing that the "Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street."

The HOA agrees with the Plaintiffs that the Court's ruling is *res judicata*.

The Griffins informed the Architectural Control Committee (ACC) that they were proceeding with construction with some modifications. Despite the request of the ACC, the attorney for the Griffins refused to submit plans for the garage.

ELECTRONICALLY FILED - 2018 May 01 3:56 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

(*See,* Trammell letter dated June 5, 2017; Draisen e-mail dated June 5, 2017)

The HOA filed suit seeking an injunction on June 14, 2017. Judge Lawton McIntosh denied the request and granted Summary Judgment without prejudice to either party to have Judge Sprouse clarify his Order.

By Order filed October 13, 2017, Judge Sprouse clarified that his intent was that the entire structure would need to be turned in order to comply with the covenants and that a modified plan would require submission to the ACC. This Order is also *res judicata.*

After Judge Sprouse ruled, the Griffins submitted plans to the ACC for approval of the garage which had been modified based upon their incorrect reading of Judge Sprouse's Order. The ACC denied these plans and advised the Griffins of the reasons. The Griffins made no request for review by the ACC.

As stated in the Griffins' Motion for Summary Judgment (p. 26), they were notified on December 5, 2017 that the HOA had agreed with the ACC that the building was in violation of the covenants and Judge Sprouse's Order.

On December 27, 2017, the Griffins filed this action seeking a declaratory judgment that "the Plaintiffs' detached garage structure is in compliance with the Covenants, is in conformity with other structures in the neighborhood, and complies with the Court's prior Order."

The HOA filed an Answer and Counterclaim seeking a declaratory judgment, that:

a. The Plaintiffs have constructed their garage in violation of the Order of Judge Sprouse, dated March 28, 2017 and clarified by Order dated October 13, 2017.

b. The Plaintiffs have constructed their garage without the approval of the ACC as required by the Covenants and are therefore in violation of the Covenants.

ELECTRONICALLY FILED - 2018 May 01 3:56 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

c. The Plaintiffs must comply with the decision of the Homeowners Association requiring the demolition of the garage.

LEGAL ARGUMENT

I. Judge Sprouse's Orders of March 28, 2017 and November 13, 2017 are *res judicata*.

In his Order of 3/28/2017, Judge Sprouse found that the garage was in violation of the covenants and to comply the structure would have to be turned so that the door did not open to Arden Chase Street. The Judge clarified this Order on October 13, 2017 and clearly indicated that the modifications of the front of the garage by the Griffins did not comply with his Order and that the new plan would have to be submitted to the ACC.

Therefore, it should be clear that the garage is not in compliance with Judge Sprouse's Order.

II. The Griffins' garage has been constructed in violation of the covenants.

Section 5.05 of the Covenants of Arden Chase Subdivision provides as follows:

"No structure shall be commenced, erected, placed, or permitted to remain…unless plans have been submitted to and approved in writing by the ACC."

It is undisputed that the plans for the modified garage have not been approved by the ACC.

One of the reasons for the denial was the lack of a complete site plan. As stated in the Griffins' Motion herein, the complete site plan was not submitted until December 12, 2017, a week after receiving notification to abate the violation.

Section 5.03(b) of the covenants provides that the decision of the ACC shall be final and binding subject to review and modification on its own Motion or appeal by the

applicant. The Griffins failed to file an appeal of the ACC's decision. Therefore, the decision is final and binding as provided in Section 5.01(b).

The HOA is therefore entitled to an Order declaring that the garage is in violation of the covenants and should be removed.

CONCLUSION

For all the forgoing reasons, the HOA respectfully requests that this Court deny the Motion of the Plaintiffs and grant the Motion of the HOA.

Respectfully submitted

/s/ Ernest C. Trammell
Ernest C. Trammell (SC Bar # 0005619)
Trammell & Mills Law Firm, LLC
1650 East Greenville Street (29621)
PO Box 1656
Anderson, South Carolina 29622
864-231-7171
864-231-7488 (Fax)
ernie@trammellandmills.com

/s/ J. Franklin McClain
J. Franklin McClain (SC Bar # 0003735)
401 South Main Street
Anderson, South Carolina 29624
864-231-1137
fmcclain@cityofanderson.com

ATTORNEYS FOR DEFENDANT

May 1, 2018
Anderson, SC

ELECTRONICALLY FILED - 2018 May 01 3:56 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 May 01 3:56 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2017 Jun 14 11:38 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244
ELECTRONICALLY FILED - 2017 Sep 05 12:34 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244

TRAMMELL & MILLS

LAW FIRM, LLC

ERNEST C. TRAMMELL*
FLOYD S. MILLS III
BRADLEY W. BLEDSOE*
ROY N. TRAMMELL
*ALSO MEMBERS OF GEORGIA BAR

1650 EAST GREENVILLE STREET
ANDERSON, SOUTH CAROLINA 29621

P.O. BOX 1656
ANDERSON, SC 29622
PHONE: (864) 231-7171
FAX: (864) 231-7488

June 5, 2017.

Daniel L. Draisen, Esq.
KRAUSE MOORHEAD & DRAISEN, P.A.
207 East Calhoun St.
Anderson, SC 29621
(Via Electronic Mail and U.S. Mail)

RE: CONSTRUCTION OF RV GARAGE AT 100 ARDEN CHASE

Dear Daniel:

We have been asked, as the attorneys for the Arden Chase Homeowners Association ("HOA"), to respond on its behalf and on behalf of the Architectural Control Committee ("ACC") of Arden Chase to your letter of May 31, 2017 to the ACC in view of the fact that this matter is now governed, not only by the Restrictive Covenants for Arden Chase ("Restrictive Covenants"), but also by the Order of Judge Sprouse dated March 28, 2017 ("Order").

It is the opinion of the ACC, in which we concur, that neither the information contained in your letter nor the attached "Griffin Garage Plans" (sample drawing) contain sufficient information to enable the ACC to determine whether or not your clients' proposal complies with either the Restrictive Covenants or the Order. By way of example, you state that the garage placement will be on the existing pad yet the sample drawing appears to show a new wall extension at an angle, an "adjustment" to the roof, as well as a new location for the garage door. These new details were not shown on the original drawings submitted previously and thus were not part of the proposed garage "currently planned" on which the Court based its findings and conclusions. Therefore, as required by the Restrictive Covenants, plans and specifications regarding this new structure must be submitted to the ACC for their review before the ACC can properly determine whether this new structure can be approved or disapproved.

We would also point out that, based upon our review of the Order of Judge Sprouse, this proposed new structure, as presented, does not comply, in our opinion, with the Court's Order and we have so advised the ACC. Judge Sprouse clearly stated that ..."The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the side of the garage containing the door intersects Concord Road instead of Arden Chase Street." (Emphasis added). The concrete pad on which the proposed garage referenced in said Order is located is a part of that structure. In the sample drawing enclosed with your letter, it appears that the corners of that pad still face in that same direction which was

found by the Court to be in violation of the Covenants. It is our interpretation of this Order that compliance requires that the existing concrete pad must be completely re-configured so that a straight line from <u>each</u> corner of the side of the garage containing the door, i.e. both sides, intersects Concord Road instead of Arden Chase Street. This has not been done.

Finally, we respectfully ask that you remind your client of the Provision 5.05 of the Arden Chase Restrictive Covenants.

Yours Very Truly,

Ernest C. Trammell

J. Franklin McClain

cc: Dr. Collin Bryant
Dr. Matt Elliott
Mr. Tom Smith
Mrs. Marlene McClain

ELECTRONICALLY FILED - 2018 May 01 3:56 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2017 Jun 14 11:38 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244
ELECTRONICALLY FILED - 2017 Sep 05 12:34 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244

ELECTRONICALLY FILED - 2018 May 01 3:56 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632
ELECTRONICALLY FILED - 2017 Jun 14 11:38 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244
ELECTRONICALLY FILED - 2017 Sep 05 12:34 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244

From: Daniel Draisen
To: Ernie Trammell
Cc: "ggarif@aol.com"
Subject: RE: Construction of RV garage at 100 Arden Chase
Date: Monday, June 05, 2017 5:13:08 PM
Attachments: Image001.png

Ernie: My client will not entertain any further interference from the ACC on the garage matter. Approval from the prior ACC was obtained and the Final Court Order was not appealed. We believe the Order is clear and that we are complying with same. The corners on the door side will be adjusted so the door faces Concord Road as required by the Judge. We do not believe the Judge ordered that we take up the existing pad and re-pour it. If we can adjust the door angle without doing so, that is approved. What he ruled was based on a finding that the door cannot face any part of Arden Chase. We are not going through any other approval process just to be back where we were before. Take whatever action you believe is necessary on behalf of the ACC. This time we will seek fees and costs. If the Court needs to "clarify" its order with regard to what we plan, so be it.

Alternatively, if the owners want to pay the Griffins back every cent they have in the matter including their legal fees and the cost to remove the pad (probably some $50,000), the Griffins would consider not building the garage, removing the pad, and building it elsewhere. In the absence of this, the garage is going to be built.

Regards, Daniel

DANIEL L. DRAISEN
ATTORNEY
KRAUSE MOORHEAD & DRAISEN P.A.
207 E. CALHOUN ST.
ANDERSON, SOUTH CAROLINA 29621
TEL (864) 225-1000
FAX (864) 964-0788
EMAIL: DDRAISEN@KMDLAWYERS.COM
WWW.KMDLAWYERS.COM

LIFE MEMBER
MILLION DOLLAR ADVOCATES FORUM
The Top Trial Lawyers In America™

****This electronic communication and any attachment(s) are intended only for the person or entity to which it has been sent. Since the message originated or is associated with a lawyer or law firm, it may contain information that is confidential and that is subject to attorney-client privilege, as well as work product protections. If this message has been received by someone other than the intended recipient, you are requested to immediately notify us by replying to the message and deleting it from your computer. Further, you are advised that any dissemination, copying or distribution of this message, or anything associated with this message, is strictly prohibited.****

ELECTRONICALLY FILED - 2018 Aug 09 5:09 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

EUGENE L. GRIFFIN, JR. and BETH KING GRIFFIN, Plaintiffs, -vs- **ARDEN CHASE HOMEOWNERS' ASSOCIATION, INC.,** Defendant.	C/A No. 2017-CP-04-2632 **NOTICE OF MOTION AND MOTION TO RECONSIDER, ALTER OR AMEND JUDGMENT**

TO: THE HONORABLE R. LAWTON McINTOSH, CIRCUIT COURT JUDGE, Tenth Judicial Circuit, Anderson County Courthouse, P.O. Box 8002, Anderson, South Carolina 29622; and

ERNEST C. TRAMMELL, ESQ. and J. FRANKLIN McCLAIN, ESQ., ATTORNEYS FOR THE DEFENDANT.

COME NOW the Plaintiffs, Eugene L. Griffin, Jr. and Beth King Griffin, and, pursuant to the South Carolina Rules of Civil Procedure, Rule 59, make their Motion to Reconsider as follows:

PROCEDURAL HISTORY

This matter came on for hearing before this honorable Court on May 11, 2018 pursuant to cross motions for Summary Judgment filed by the parties. At the conclusion of the hearing, the matter was taken under advisement by the Court. The Court issued its Order granting Defendant's Motion for Summary Judgment on August 9, 2018 and the Order was electronically filed with the Clerk of Court that same date. The Order was received electronically by counsel for the Plaintiffs on August 9, 2018. The Court does not address Plaintiffs' Motion for Summary Judgment in the Order. Plaintiffs hereby file their Motion for Reconsideration within ten (10) days from the date of

ELECTRONICALLY FILED - 2018 Aug 09 5:09 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

electronic receipt of Order.

QUESTIONS PRESENTED

I. **Did the Court err in finding that the Griffins did not make a written request for the ACC to reconsider its decision rejecting the Griffins' revised garage plans?**

II. **Did the Court err in limiting its consideration to only whether the Griffins complied with Judge Sprouse's Order in regard to the originally submitted garage plans, or should the Court have also considered whether the ACC wrongfully disapproved the Griffins *revised* garage plans which Plaintiffs assert comply with both Judge Sprouse's Order and the Covenants?**

II. **Did the Court err in ordering, prior to the complete adjudication of Plaintiffs' claims, that the Defendant is entitled to require the demolition of the garage and may exercise the Right of Abatement if Plaintiffs do not tear down the garage?**

Under Rule 56(c), SCRCP: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers,* 355 S.C. 104, 584 S.E.2d 375 (2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sauner v. Public Serv. Auth.,* 354 S.C. 397, 581 S.E.2d 161 (2003); *Hendricks v. Clemson Univ.,* 353 S.C. 449, 578 S.E.2d 711 (2003). If triable issues exist, those issues must go to the jury. *Baril v. Aiken Reg'l Med. Ctrs.,* 352 S.C. 271, 573 S.E.2d 830 (Ct.App.2002).

I. **Did the Court err in finding that the Griffins did not make a written request for the ACC to reconsider its decision rejecting the Griffins' revised garage plans?**

The ACC's denial of the Griffins' **revised plan submissions** is based on an incorrect

ELECTRONICALLY FILED - 2018 Aug 09 5:09 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

assertion that a) the Griffins failed to submit plans to the ACC. The Griffins initially submitted revised garage plans to the ACC on May 31, 2017, supplemented their submissions on October 13, 2017, supplemented their submissions on October 26, 2017, and on December 12, 2017, the Griffins again submitted a revised submittal to the ACC with the intent of curing any alleged deficiencies in the submittals, this time including the following:

1. The revised floor/foundation plan prepared by Tim Strickland Drafting (the foundation is shown on the floor plan);
2. The revised elevation drawings prepared by Tim Strickland Drafting (the materials to be used are specified on the elevation drawings);
3. A detailed landscaping plan by Stepping Stone Landscaping overlaid on the site plan; and
4. A complete site plan prepared by Professional Land Surveying Solutions, LLC.

At every instance of re-submission (and the express purpose of such additional submissions) the Griffins asked (whether explicitly or impliedly) that the ACC reconsider its denial of the Griffins' revised garage plans. Each time, the ACC and/or the HOA replied that the only garage the Griffins can build that would be approved must be rectangular and must be constructed with the wall containing the garage door facing Concord Road.

II. Did the Court err in limiting its consideration to only whether the Griffins complied with Judge Sprouse's Order in regard to the originally submitted garage plans, or should the Court have also considered whether the ACC wrongfully disapproved the Griffins *revised* garage plans which Plaintiffs assert comply with both Judge Sprouse's Order and the Covenants?

The Griffins assert that the detached garage structure on their property, which was completed in late November 2017, complies with the Covenants for Arden Chase. There are no restrictions in the Covenants that disallow or prohibit the angling of a portion of a structure to aid functionality and to add architectural detail. Further, the structure complies with Judge Sprouse's

ELECTRONICALLY FILED - 2018 Aug 09 5:09 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040232

prior Order that *any* detached garage in Arden Chase will be in compliance when a straight line from each corner of the wall containing the garage door does not intersect any part of Arden Chase street.

While Judge Sprouse ruled that for the original garage plans submitted (and the only plans before the Court at the time of his ruling) to be in compliance with his Order and the Covenants the entire building structure would have to be turned, Judge Sprouse also **specifically** ruled that revised plans would have to be resubmitted to the ACC and held that:

> 26. There are no challenges to any other existing structures in the subdivision and it appears that all other existing structures are in compliance as to Paragraph 6.06, in addition to the other provisions in the Restrictive Covenants. **In order to aid the parties with an answer to the declaratory judgment portion of the case, future construction in the subdivision can be compliant regarding this provision *if a straight line drawn from the front corners of a proposed structure intersects a neighboring lot line, Concord Road, or the outer boundary of the subdivision prior to intersecting Arden Chase street.*** (emphasis added)

In doing so, Judge Sprouse gave the Plaintiffs the opportunity to either a) turn the entire building and use the original plans, or b) to re-design the building and then re-submit plans to the ACC for approval. The Plaintiffs chose the latter.

The Plaintiffs herein assert that their detached garage is in full compliance with the Covenants and Court's directive, and that there can be no factual dispute that when a straight line is drawn from each corner of the wall containing the garage door of the garage as built the line intersects Concord Road instead of Arden Chase. In support of such assertions, the Plaintiffs submitted the Affidavit of John "Jack" Jones, contractor, and the signed and sealed Survey of Arden Chase Subdivision, Lot 23, prepared by PLS Solutions, LLC, T. Lloyd Silva, PLS No. 28142, showing that when a straight line is drawn from the front corners of the garage structure (as

ELECTRONICALLY FILED - 2018 Aug 09 5:09 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

built) the line intersects Concord Road or the outer boundary of the subdivision and no part of Arden Chase street. The Defendant has presented no evidence to the contrary from any opposing experts.

In addition, there are simply no restrictions contained in the Covenants that disallow or prohibit the angling of a portion of a structure to aid functionality and to add architectural detail to the structure. "The historical disfavor of restrictive covenants by the law emanates from the widely held view that society's best interests are advanced by encouraging the free and unrestricted use of land. Hamilton v. CCM, Inc., 274 S.C. 152, 263 S.E.2d 378 (1980). "Restrictive covenants are contractual in nature." Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). "The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it *at the time of execution.*" Taylor v. Lindsey, 332 S.C.1, 4, 498 S.E.2d at 864 (1998). "The paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Id.* at 4. "A restriction on the use of property must be created in express terms or by plain and unmistakable implication and all such restrictions are to be strictly construed, *with all doubts resolved in favor of free use of the property*, although the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants." Hamilton at 152, 263 S.E.2d 378 (1980).

"The court may not limit a restriction, nor will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms, even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written." Taylor at p.4, S.E.2d 862, 863 (1998). "Restrictive covenants will be enforced unless they are indefinite or contravene public policy." Sea

ELECTRONICALLY FILED - 2018 Aug 09 5:09 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040263

Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987). "An action to enforce restrictive covenants by injunction is in equity." Seabrook Is. Property Owners Ass'n v. Marshland Trust, Inc., 358 S.C. 655, 661, 596 S.E.2d 380, 383 (Ct. App. 2004).

In Palmetto Dunes, the South Carolina Court of Appeals held that "a refusal to approve plans for aesthetic reasons will be upheld where the *covenant or appropriate authority* has provided guidelines for enforcement and expressed the purpose of the restrictive covenant." Palmetto Dunes v. Brown, 287 S.C. 1, 336 S.E.2d 15 (1985). "Although... not expressly named and prohibited, a particular use or structure may be forbidden by the covenant's general language without an express designation or label." *See, eg.* Nance v. Waldrop, 259 S.C. 69, 187 S.E.2d 26 (1972).

III. Did the Court err in ordering, prior to the complete adjudication of Plaintiffs' claims, that the Defendant is entitled to require the demolition of the garage and may exercise the Right of Abatement if Plaintiffs do not tear down the garage?

Finally, in its Order the Court did not specifically rule on Plaintiffs' Motion for Summary Judgment. Assuming, arguendo, that the Court intended to deny Plaintiffs' Motion, such denial would serve to indicate that the Court believes there are questions of fact and that the issues asserted in Plaintiffs' Complaint must be tried. The denial of a Motion for Summary Judgment is not a complete adjudication of the case.

If, after a trial of the case on the merits, it is ultimately determined that the Plaintiffs' revised garage plans, as submitted to the ACC (with all subsequent additional submissions), should have been approved by the ACC, and that the revised garage plans otherwise comply with Judge Sprouse's Order and the Covenants, but the Defendant is allowed to demolish the Plaintiffs' garage prior to such adjudication, the Plaintiffs would be irreparably harmed in that

the Defendant Home Owners' Association does not possess assets sufficient to pay to rebuild Plaintiffs' garage.

Based on the foregoing, the Plaintiffs respectfully request that the Court reconsider its Order granting summary judgment in Defendant's favor, and more particularly that the Court reconsider its ruling in the portion of its Order authorizing the Defendant to exercise the Right of Abatement prior to complete adjudication of the Plaintiffs' claims in this matter.

The Plaintiffs will, within the time allowed by the SCRCP submit additional grounds, basis for their motion, and memoranda in support of their Motion for Reconsideration.

Respectfully submitted,

KRAUSE, MOORHEAD AND DRAISEN, P.A.

s/Daniel L. Draisen
DANIEL L. DRAISEN (SC Bar No. 13536)
207 E. Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
(864) 964-0788 facsimile
ddraisen@kmdlawyers.com
ATTORNEYS FOR THE PLAINTIFFS

August 9, 2018
Anderson, South Carolina

ELECTRONICALLY FILED - 2018 Aug 09 5:09 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Oct 08 11:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

EUGENE L. GRIFFIN, JR. and BETH KING GRIFFIN, Plaintiffs, -vs- **ARDEN CHASE HOMEOWNERS' ASSOCIATION, INC.,** Defendant.	C/A No. 2017-CP-04-2632 **MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO RECONSIDER**

COME NOW the Plaintiffs, Eugene L. Griffin, Jr. and Beth King Griffin, and, in support of their Rule 59 Motion to Reconsider submit the following:

ARGUMENT

Judge Sprouse found in his Original Order the following:

1. **Detached garages are allowed in Arden Chase;**

a. Do the Arden Chase Subdivision restrictive covenants prohibit the construction of a detached garage and, if so, is the detached garage subject to the same rules as an attached garage?

A detached garage is not prohibited, per se, by the Restrictive Covenants and would be subject to the same restrictions as the mandatory, attached garage.

2. **The express wording of the Covenants require that if an owner wants to house a motor home at his residence, it must be kept in a fully enclosed garage;**

ELECTRONICALLY FILED - 2018 Oct 08 11:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP040263

The Plaintiffs made references to Paragraph 6.03 as well, which reads, "Restrictions of Use. Home sites may be used for single-family residences only and for no other purpose...." I find that this paragraph is not applicable to this situation since there is no evidence that the Defendants are planning to use this proposed garage for anything other than storage of an RV for their personal use. The restrictive covenants clearly contemplate lot owners having additional vehicles and boats for personal use. I find that the housing of RVs of this type are not prohibited per se, by the restrictive covenants.

3. **The size of the proposed Griffin garage is allowed in Arden Chase;**

b. Do the Arden Chase Subdivision restrictive covenants prohibit a certain size of garage, garage doors or the housing of recreational vehicles (RVs)?

The Restrictive Covenants do not restrict the size of any garage except for the mandatory minimum square footage nor do they specify any particular size of garage door. The housing of recreational vehicles (RVs) is not prohibited by the Restrictive Covenants.

4. **The height of the proposed garage door on the Griffin garage is allowed in Arden Chase;**

17. One does not have to delve deeply into the intent of the developer when ascertaining the meaning of the pertinent provisions in the restrictive covenants regarding this issue. The restrictive covenants themselves clearly provide for the housing of RVs in the subdivision. As shown above, Section 6.21 is entitled "*Recreational Vehicles* and Trailers." It also uses the term "motor homes" in the body of the paragraph. No interpretation of this paragraph is necessary beyond reading it in light of its plain, ordinary language.

ELECTRONICALLY FILED - 2018 Oct 08 11:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP040263

5. **The materials proposed to be used on the Griffin garage are in conformity with the quality and character of the materials used on other structures in Arden Chase.**

Jones testified that the modified plans were in compliance with the restrictive covenants. The Court notes that the challenge to this proposed structure comes not from its anticipated exterior appearance but from its size, purpose, detachment and direction it faces.

6. **The garage door may not face any part of Arden Chase road.**

c. How is "open to the roadway in front of the residence" defined?

"Open to the roadway" shall be defined as meaning that a straight line drawn from at least one of the two front corners of the proposed structure intersects Arden Chase Street prior to intersecting a neighboring lot line, Concord Road or the outer boundary of the subdivision.

***THE ONLY ELEMENT OF THE STRUCTURE NOT APPROVED BY JUDGE SPROUSE WAS THE DIRECTION OF THE PROPOSED GARAGE DOOR.**

Judge Sprouse's Order allowed the Griffins **two (2) options**:

1. **Turn the entire building structure so that the garage door does not face any part of Arden Chase road;**

25. The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street.

or

2. **Modify the building plan so that the garage door does not face any part of Arden Chase road. By subsequent "clarification" Judge Sprouse indicated that this option would require re-submission of the plans to the ARB for approval.**

ELECTRONICALLY FILED - 2018 Oct 08 11:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

26. There are no challenges to any other existing structures in the subdivision and it appears that all other existing structures are in compliance as to Paragraph 6.06, in addition to the other provisions in the Restrictive Covenants. In order to aid the parties with an answer to the declaratory judgment portion of the case, future construction in the subdivision can be compliant regarding this provision if a straight line drawn from the front corners of a proposed structure intersect a neighboring lot line, Concord Road, or the outer boundary of the subdivision prior to intersecting Arden Chase Street.

This ruling is for the express purpose of providing interpretation of the restrictions in dispute so as to guide future board members of the ACC when they evaluate future projects submitted to them for approval. Nothing in this Order shall be construed to exempt any future project from any other restriction or standard set forth in the Restrictive Covenants. The Restrictive Covenants shall remain in full force and effect, subject to the provisions of this Order.

Based upon the "clarification" ruling, the Griffins and their contractor, Jack Jones, determined that the garage door could be made not to face any part of Arden Chase road if the wall containing the garage door was angled slightly so that **"if a straight line is drawn from the front corners of a proposed structure intersect a neighboring lot line, Concord Road, or the boundary of the subdivision prior to intersecting Arden Chase street." (This language is in the Original Order)**

The minor modification proposed by the Griffins would also leave the building structure in a more aesthetic location whereas turning the entire structure would make it more parallel to and therefore more visible to Arden Chase road.

Below is a list of all of the communication that then followed between the Griffins and the ARB:

1. Letter of 5-24-17 to Griffins from ACC asking the Griffins intentions with regard to building the proposed garage;

2. Letter of 5-31-17 from attorney to ACC indicating it is the intention of the Griffins to build the garage on the existing pad with the front wall angled slightly to make sure the door does not face any part of Arden Chase road including a sample drawing;

ELECTRONICALLY FILED - 2018 Oct 08 11:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

3. Email from attorneys of 6-5-17 with attached letter stating position of the HOA and ACC regarding the construction of the Griffin garage and that the concrete pad would have to be completely reconfigured to support any garage in compliance with Judge Sprouse's Order;

4. Email of 6-5-17 from attorney to ACC attorneys in response to the position letter of same date from ACC attorneys advising that the ACC's position is viewed as continued interference with the Griffins' ability to build a garage that is not prohibited by the Covenants, and indicating Griffins' position that the garage can, in fact, be built without completely reconfiguring the concrete pad by making a simple angle adjustment to the walls;

5. Email Correspondence of 9-8-17 asking ACC and HOA to decide whether they prefer the original design and placement of the garage, or the most recent revised design with the slight wall extension (**offering to build the garage either way the ACC preferred**);

6. Email Correspondence of 9-13-17 again asking for an answer from the ACC and HOA about the preferred design and placement;

7. Email Correspondence of 9-13-17 from attorney stating that the altered plan does not comply with the Judge's Order and the original plan does not comply with the covenants;

8. Email Correspondence of 9-13-17 advising that Griffins will likely begin construction of garage that meet Judge Sprouse's requirements;

9. Email Correspondence of 9-14-17 regarding the two proposed options and the benefits to the homeowners of one plan versus the other;

10. Email from attorney attaching copy of Plaintiff's Motion for Clarification of Court Order;

11. Email Correspondence of 9-26-17 advising that Defendant's Motion for Clarification appears to have been filed in the wrong case;

12. Email with attached letter to Judge Sprouse sent on behalf of Griffins 10-9-17;

13. Letter in response from attorney to Judge Sprouse dated 10-10-17;

14. Email to attorneys for ACC of 10-13-17 submitting a letter and **FIRST** "revised" plans for consideration to ACC pursuant to Judge Sprouse's Order issued same date;

15. Order of 10-13-17 denying Plaintiff's Motion for Temporary Injunction and Clarifying Court's Original Order;

ELECTRONICALLY FILED - 2018 Oct 08 11:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

16. Email from attorneys of 10-16-18 containing the decision of the ACC denying Griffins' revised garage plans on basis that a) no landscaping plan was provided as required by 5.05, and b) the assertion that the "small modification/angulation of side walls does not materially change the appearance and/or orientation of the garage, and, as a result the garage door has not moved and its opening still faces Arden Chase street;

17. Email of 10-17-17 to Judge Sprouse advising the Court that, as anticipated, the ACC denied the revised plans submitted, and advising the Court that a second Motion to Reconsider, Alter or Amend had been filed by the Griffins seeking additional clarification;

18. Email to Chairman of ACC of 10-26-17 submitting a letter and a **SECOND** revised plan submission for the Griffin garage for consideration correcting the deficiency in the first submission by adding and areal site plan and a landscape plan;

19. Email from attorneys dated October 31, 2017 with letter dated 10-30-17 from Chairman of the ACC denying Griffins' SECOND revised garage plans on the basis that a) the garage door opening faces Arden Chase street in violation of the Covenants and Judge Sprouse's Order, b) that the landscape plan needs updating to clearly show all existing and proposed hardscaping as well as any shrubbery or trees, and c) the committee needs a complete, accurate and detailed site plan including all criterial listed in 5.05a;

20. Email to Dr. Bryant, Chairman of ACC, of 11-1-17 responding to the 10-30-17 denial, advising that attorney cannot speak directly to the Chairman as the ACC is represented by counsel, and that advising that the Griffins would submit the requested updated landscaping plan and site plan, but that the issue of whether the door as shown on the revised plans faces Arden Chase street needs to be resolved first;

21. Letter from ACC to HOA dated 12-1-17 informing the HOA Board that the Griffins have constructed a garage without the approval of the ACC;

22. Email from attorneys dated 12-6-17 with copy of letter from HOA Board to Griffins about constructing a non-approved garage and HOA's right of abatement;

23. Email to Chairman of ACC of December 12, 2017 submitting a letter and a **THIRD** revised plan submission for the Griffin garage seeking approval of the constructed garage and resolving all prior alleged deficiencies by including a) the revised floor/foundation plan by Tim Strickland, b) the revised elevation drawings prepared by Tim Strickland, c) a detailed landscaping plan by Stepping Stone Landscaping overlaid on the site plan, and a complete site plan prepared by Professional Land Surveying Solutions, LLC;

24. Affidavit of Benjamin Beck, Land Surveyor, certifying that "when a straight line is drawn from each corner of the wall containing the garage door on the Griffin garage as constructed on

ELECTRONICALLY FILED - 2018 Oct 08 11:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

Lot 23, the lines do not intersect any portion of Aden Chase road, and such lines intersect Concord Road only";

25. Affidavit of John "Jack" Jones, Residential Builder No. 3276, stating his intent regarding the Restrictions he placed on Arden Chase subdivision as the developer, his opinion that the Griffin garage as constructed does not violate any of the Covenants, that the garage was constructed in compliance with Judge Sprouse's Order, that when straight lines are drawn from each corner of the wall containing the garage door no portion of those lines intersects any portion of Arden Chase road, and that other than the minor change made to the angle of the front wall which added approximately 50 square feet the garage was substantially the same as the garage plan that was submitted to Judge Sprouse;

26. Affidavit of George Stephen Crain, former ACC member, stating that in his experience and during his tenure on the ACC for Arden Chase, the ACC has never required any other owner to provide such detailed drawings, site plans, landscape plans, or the like, as the Griffins were required to provide, and that it was obvious that the newly elected ACC, made up of all owners that opposed the construction of the garage, would reject the plans no matter what was submitted;

27. Section of the Original Garage plans that were submitted to the Arden Chase ACC in June 2016 that were signed off as "Approved" by 2 of the 3 then acting members of the ACC (these Approved plans were then challenged by the first lawsuit filed in this matter Dean and Price v. Griffin, et al., C/A No. 2016-CP-04-2028 resulting in Judge Sprouse's Order of 3-28-17);

28. Griffin Garage plans as revised by Jack Jones and submitted to Judge Sprouse in the original lawsuit;

29. Nine (9) Color Photos of the completed Griffin garage as constructed on Lot 23; and

30. The physical site, 100 Arden Chase, Lot 23, where the garage is located.

CONCLUSION

Despite Attorney McClain's representations to the Court wherein he asserted that the Griffins said "we are going to build it anyway," and that the Griffins did not seek approval of the garage or ask for reconsideration of the denial, the Griffins did, in fact, submit **THREE** separate requests for approval of the modified garage. According to a former ACC member, no other owner has ever been required to submit the detailed plans and drawings that were required of the Griffins.

ELECTRONICALLY FILED - 2018 Oct 08 11:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

While there is no disagreement that the Griffins did not get approval from the ACC to build the detached garage, there is ample evidence to support the Griffins' claims (when viewed in a light most favorable to the Griffins) that the denial and refusal to approve the plans by the ACC was arbitrary, specious, malicious, and in bad faith.

Accordingly, the Court should hold that part of its ruling regarding abatement of the structure in abeyance pending final adjudication of the Griffins' claims in this matter.

Respectfully submitted,

KRAUSE, MOORHEAD AND DRAISEN, P.A.

s/Daniel L. Draisen
DANIEL L. DRAISEN (SC Bar No. 13536)
207 E. Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
(864) 964-0788 facsimile
ddraisen@kmdlawyers.com
ATTORNEYS FOR THE PLAINTIFFS

October 8, 2018
Anderson, South Carolina

ELECTRONICALLY FILED - 2018 Oct 15 2:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2017-CP-04-2632
	)	
Eugene L. Griffin Jr. and Beth King Griffin, Inc.,	)	
	)	
Plaintiffs,	)	
	)	**DEFENDANT'S RETURN TO PLAINTIFFS' MOTION TO RECONSIDER, ALTER OR AMEND JUDGMENT**
v.	)	
	)	
Arden Chase Homeowners' Association, Inc.,	)	
	)	
Defendant.	)	

TO: Daniel L. Draisen, Attorney for Plaintiffs

The Defendant, in making return to Plaintiffs' Motion to Reconsider, Alter, or Amend Judgment would respectfully show unto this Honorable Court as follows:

This Court heard this matter on May 11, 2018 and issued its order granting Summary Judgment to the Defendant by Order dated August 9, 2018. The Judge found that there was no genuine issue of material fact that the Griffins did not comply with the approval requirements of the covenants and did not comply with Judge Sprouse's unappealed order.

In Judge Sprouse's Order dated March 28, 2017, the Court enjoined the Plaintiffs from constructing the proposed garage because it did not comply with the Restrictive Covenants. The Court ordered that the Plaintiffs can "bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the side of the garage containing the door intersects Concord Road instead of Arden Chase Street." The Plaintiffs did not appeal the Order and therefore, this is the law of the case.

Instead of changing the direction of the garage as ordered, the Plaintiffs reconfigured the front and proceeded with construction without submitting the new plan to the Architectural Control Committee (ACC). The Plaintiffs basically relied upon their contractor and attorney, both of whom were employed by them, to certify that the plan was in compliance with the Court Order and the Restrictive Covenants. When the ACC requested that the plan be submitted, the Plaintiffs informed them that "no revised site plan is necessary."

The Plaintiffs submitted a revised plan to the ACC after Judge Sprouse reiterated that to comply with the Restrictive Covenants the entire building would have to be turned. The ACC disapproved the plan because the building was not turned as ordered. In addition, no site plan was submitted as required by the Covenants. Section 5.05 of the Covenants requires "a site plan

showing the location of all proposed and existing structures on the Home Site including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures."

Although the ACC requested submission of the new plans in May, 2017, no plan was submitted until Judge Sprouse's Order of October 13, 2017. These plans were denied by the ACC because the building was not turned as ordered and because no site plan as required by the Covenants was included. Although the Covenants provide that an applicant can make a written request to have the matter reviewed by the ACC, the Plaintiffs never sent such a request. Section 5.03(b) of the Covenants provides that the "decision of a majority of the members of the ACC with respect to such matter shall be final and binding." The Plaintiffs did submit revised plans but did not include the requested site plan until after they were notified by the Homeowners Association that they were in violation of Judge Sprouse's Order and the Restrictive Covenants.

The Plaintiffs continue to rely on their blatant and intentional misinterpretation of Judge Sprouse's Order. Although submitted too late, the site plan shows that the garage does not even comply with the Plaintiffs' interpretation of the order.

The present order includes a footnote (p.5) that provides "Nothing in this Order is intended to address whether the Arden Chase Architectural Control Committee (ACC) or the Home Owner's Association's conduct in this matter is actionable."

Section 5.07(a) of the Covenants provides that the ACC "shall have the right to disapprove any plans ... submitted that fail to include information in such plans as may have been reasonably requested." The Defendant submits that the denial of the plan is not arbitrary but clearly based upon the Restrictive Covenants and Court Order. In addition, the ACC advised the Plaintiffs that they stood ready to assist in bringing the plans into compliance. Again, the Plaintiffs continued to ignore the ACC and the Court.

Based upon the foregoing and in the interest of judicial economy, the Defendant requests that the Plaintiffs' Motion to Reconsider be denied and that the order be amended to delete the footnote on page 5 from the order.

Wherefore, Defendant respectfully requests that the Plaintiffs' Motion to Reconsider be dismissed, that the prior order be amended to delete the footnote on page 5, and that the Plaintiffs be directed to comply with the order.

Respectfully submitted

Anderson, South Carolina
October 15, 2018

ELECTRONICALLY FILED - 2018 Oct 15 2:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2018 Oct 15 2:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

s/ Ernest C. Trammell
Ernest C. Trammell (SC Bar # 0005619)
Trammell & Mills Law Firm, LLC
1650 East Greenville Street (29621)
PO Box 1656
Anderson, South Carolina 29622
864-231-7171
864-231-7488 (Fax)
ernie@trammellandmills.com

s/ J. Franklin McClain
J. Franklin McClain (SC Bar # 0003735)
401 South Main Street
Anderson, South Carolina 29624
864-231-1137
fmcclain@cityofanderson.com

ATTORNEYS FOR DEFENDANT

ELECTRONICALLY FILED - 2018 Oct 23 12:32 PM - ANDERSON - COMMON PLEAS - CASE#2017CP040263

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2017-CP-04-2632
	)	
Eugene L. Griffin Jr. and Beth King Griffin, Inc.,	)	
	)	
Plaintiffs,	)	**MEMORANDUM IN SUPPORT OF DEFENDANT'S RETURN TO PLAINTIFFS' MOTION TO RECONSIDER, ALTER OR AMEND JUDGMENT**
	)	
v.	)	
	)	
Arden Chase Homeowners' Association, Inc.,	)	
	)	
Defendant.	)	
	)	

The Defendant ("HOA") respectfully submits this memorandum in support of its response to Plaintiffs' Motion to Reconsider, Alter or Amend Judgment.

ARGUMENT

The Plaintiffs continue to rely on their misinterpretation of Judge Sprouse's Order, which enjoined them from constructing the garage unless the entire building was turned. That was the only option given by Judge Sprouse.

Section 5.03 of the Covenants allows the applicant 10 days after receipt of notice of an unsatisfactory decision, "to file a written request to have the matter reviewed by the ACC." This was never done. The Plaintiffs simply submitted revised plans, none of which included a site plan requested by the ACC and required by the Covenants. A site plan was not submitted until more than 30 days after the denial by the ACC and more than 6 months after the plans were requested.

Section 5.05 specifically provides that the submissions of plans to the ACC shall include "site plans showing the location of all proposed structures on the Home Site including building

ELECTRONICALLY FILED - 2018 Oct 23 12:32 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

setbacks, open space, driveways, walkways, and parking spaces including the number thereof and all siltation and erosion control measures."

Section 5.07 of the Covenants provides that the ACC shall have the right to disapprove any plans for "the failure to include information in such plans and specifications as may have been reasonably requested."

Clearly, pursuant to the Covenants, the ACC had the right to request a site plan and the right to disapprove a submittal that did not have a site plan.

Below is a time line supported by all documents and evidence previously submitted:

1. June 2016 - Original plans submitted - footings installed.
2. July 20, 2016 - Griffins notified by S. Crain that approval was defective and unlikely that project would be approved – Griffins proceeded to have slab poured.
3. Price, et al vs. Griffin, et al – filed.
4. Judge Spouse Order of March 28, 2017 filed. Found that proposed garage is not in compliance and enjoined Griffins from constructing the garage as planned.
5. May 2017 - ACC wrote the Griffins concerning their intentions. When Griffins stated they were moving forward with construction with modification, ACC asked that the new plans be submitted for ACC approval.
6. June 5, 2017 - D. Draisen email stated the Griffins will not entertain any further interference from the ACC on the garage matter and proceeded with construction without approval of the modified plan by the ACC.
7. June 14, 2017 - Suit filed by HOA asking that construction be stopped.
8. September 8, 2017 - Judge McIntosh granted Summary Judgment and denied HOA's request for injunction without prejudice to either party to have Judge Sprouse clarify his Order.
9. September 13, 2017 - Draisen email stated they were moving forward with construction. In return email, Draisen was advised that the ACC opposed it and was going to ask that Judge Sprouse's Order be clarified. Griffins proceeded with construction.

ELECTRONICALLY FILED - 2018 Oct 23 12:32 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

10. By Order of Judge Sprouse filed October 13, 2017, the prior order was clarified and Judge Sprouse stated that his intent was to turn the entire structure in order to comply with the covenants. The modification plan would require submission to the ACC.

11. October 13, 2017 - Plans submitted to ACC by Griffins. These plans were not approved by ACC and the Griffins were notified.

12. October 26, 2017 - Judge Sprouse denied Griffins' Motion to Reconsider.

13. October 26, 2017 - Griffins submitted plan to ACC for approval.

14. October 30, 2017 - ACC notified Griffins that plans were denied and informed the Griffins that the ACC stood ready to work with them.

15. November 29, 2017 - ACC notified HOA Board that Griffins were in violation of Judge Sprouse's Order(s) and the restrictive covenants.

16. December 5, 2017 - Griffins notified by HOA that they were in violation of the Covenants.

17. December 5, 2017 - Draisen submitted amended plans to ACC.

18. December 27, 2017 - Suit filed by Griffins against HOA asking declaration that garage is in compliance with prior Order and Covenants.

19. August 9, 2017 - Judge McIntosh orders Griffins must comply with decision of HOA.

20. August 11, 2018 - Griffins file Motion to Reconsider.

CONCLUSION

Based upon the undisputed facts and the relevant provisions of the Covenants, there should be no question that the ACC had the right to require a site plan and the right to disapprove a presentation that did not include a site plan. Therefore, the disapproval of the plans by the ACC could not have been arbitrary, capricious, malicious, or in bad faith.

The Defendant respectfully requests that the Plaintiffs' Motion to Reconsider be denied and that the Order be amended to delete the footnote on page 5 concerning whether the conduct of the ACC or HOA is actionable.

Respectfully submitted.

Anderson, South Carolina
October 23, 2018

s/ Ernest C. Trammell
Ernest C. Trammell (SC Bar # 0005619)
Trammell & Mills Law Firm, LLC
1650 East Greenville Street (29621)
PO Box 1656
Anderson, South Carolina 29622
864-231-7171
864-231-7488 (Fax)
ernie@trammellandmills.com

s/ J. Franklin McClain
J. Franklin McClain (SC Bar # 0003735)
401 South Main Street
Anderson, South Carolina 29624
864-231-1137
fmcclain@cityofanderson.com

ATTORNEYS FOR DEFENDANT

ELECTRONICALLY FILED - 2018 Oct 23 12:32 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402632

ELECTRONICALLY FILED - 2017 Sep 25 4:23 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON)	CASE NO.: 2017-CP-04-1244
)	
Arden Chase Homeowners' Association, Inc.,)	**NOTICE OF MOTION AND MOTION TO CLARIFY AND COMPEL COMPLIANCE WITH THE COURT'S ORDER**
Plaintiffs,)	
v.)	
Eugene L. Griffin Jr. and Beth King Griffin,)	
Defendants.)	

TO: Daniel L. Draisen, Attorney for Defendants

You are hereby notified that the Plaintiff, Arden Chase Home Owners Association, will move before the Honorable R. Scott Sprouse within ten (10) days of the date of filing this Notice of Motion or as soon thereafter as is convenient to the Court for an Order to Clarify and Compel Compliance by Defendants with the Court's Order dated March 28, 2017.

The Plaintiff moves for an Order to clarify and compel compliance with this Court's Order dated March 28, 2017 based on the following grounds:

1. On March 28, 2017, the Honorable R. Scott Sprouse held, with regard to Defendant's proposed detached garage at issue in this matter, "the Defendants are enjoined from building the garage as currently planned.... The Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the side of the garage containing the door intersects Concord Road instead of Arden Chase Street." (Exhibit 1, p.14).

2. The Judge did not change the Restrictive Covenants – Section 5.05 of the covenants provides that no structure or alteration shall be done unless plans are submitted.

ELECTRONICALLY FILED - 2017 Sep 25 4:23 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0401244

3. Based on the sketch provided by the Defendants to the Arden Chase Architectural Control Committee, the direction has not been changed. The plans have been altered to reconfigure the doors and square footage has been increased. The plans do not comply with the Judge's Order. (Exhibit 2).

WHEREFORE, Plaintiff prays for an Order of this Court clarifying the Court's Order dated March 28, 2017 and compelling the Defendants to comply with that Order, and for such other and further relief as this Court deems just and proper.

Anderson, South Carolina
September 25, 2017

/s/ Ernest C. Trammell
Ernest C. Trammell (SC Bar # 0005619)
Trammell & Mills Law Firm, LLC
1650 East Greenville Street (29621)
PO Box 1656
Anderson, South Carolina 29622
864-231-7171
864-231-7488 (Fax)
ernie@trammellandmills.com

/s/ J. Franklin McClain
J. Franklin McClain (SC Bar # 0003735)
401 South Main Street
Anderson, South Carolina 29624
864-231-1137
fmcclain@cityofanderson.com

ATTORNEYS FOR PLAINTIFF