

# KOCHMAN & ZISKA PLC

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## VIA EMAIL

December 1, 2020

Mayor and Town Council  
Town of Palm Beach  
360 South County Road  
Palm Beach, FL 33480

Re: Vickar Residence – Appeal of Addition Approved for 1045 South Ocean Boulevard, Palm Beach (B-043-2020)

Dear Madam Mayor and Members of the Town Council:

I represent Kerry and Simone Vickar, who own the property located at 1045 South Ocean Boulevard in Palm Beach. On October 28, 2020 the Architectural Review Commission approved an addition to the existing residence and specifically stated the project met the criteria of Town Code Section 18-205. The motion was made by Ms. Shiverick and seconded by Mr. Garrison. The project passed 5-2 with a condition to have the architect come back the following month to review the existing front doors. The property owner across the street at 1030 South Ocean Boulevard appealed the ARCOM decision and the appeal will be heard at the December 9<sup>th</sup> Town Council meeting.

As you know, an appeal must be based on the “record” and no new evidence can be presented before you that was not first presented at the ARCOM meeting. In response to Frank Lynch’s appeal letter dated November 6, 2020, I submit the following as a point-by-point response to the grounds for appeal:

1. The appeal stated that the application should not have been considered as the appellant believes a Building Height Plane variance was required. This is untrue. The Building Height Plane as well as all aspects of the project met the zoning code. I have attached an email confirmation from Paul Castro stating that the building height plane meets code.
2. The appeal stated that the project failed to meet the Code Section 18-205 because the project did not preserve a view of the ocean. It has long been decided by the courts that a property owner across the street from the ocean does not have a legal right to a view across the neighbor’s ocean front property. Furthermore, after all

Mayor and Town Council

December 1, 2020

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arguments, evidence and testimony, the vote by the commission specifically included language that the project DID meet the criteria of Section 18-205 of the Code, thus, it would be difficult to argue that the commission did not apply this criteria when the vote specifically included it. I have attached the ARCOM minutes and language of the vote for confirmation.

3. The appeal states that the project meets the "near" maximum of the zoning calculations. This is untrue as there are many aspects of the project that are under the allowable zoning requirements such as the front yard setback to the addition is well in excess of what is required and the north side yard setback is almost 70 feet from the property line when only 15 feet would be required by code.
4. The appeal argues an additional curb-cut should not be allowed. This argument was not made at the October 28<sup>th</sup> meeting and should not be considered as "new evidence".
5. The appeal questions whether a model was required. A model was not required. This is confirmed in the attached email from Laura Van Onna at the Town.
6. The appeal argues the amount of construction in the vicinity. This is not a grounds for an appeal and should not be considered. Furthermore, the Town Building Department has strict guidelines on construction projects and parking of construction vehicles.

Based on the above responses and supporting evidence attached, the subject appeal should be dismissed. Should you have any questions please call me.

Very truly yours,



Maura Ziska

/maz

Attachments

cc: John C. Randolph, Town Attorney  
Wayne Bergman, Director of Planning, Zoning and Building  
Paul Castro, Zoning Administrator  
Kelly Churney

## Maura Ziska

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**From:** Lauren Urquhart <Lauren@daileyjanssen.com>  
**Sent:** Thursday, November 19, 2020 8:02 AM  
**To:** Maura Ziska  
**Subject:** FW: 1045 S. Ocean Blvd\_B-043-2020\_Building Height Plane

FYI

Best regards,

**Lauren Urquhart**

DAILEY JANSSEN ARCHITECTS, P.A.  
400 Clematis Street, Suite 200  
West Palm Beach, FL 33401

Phone: (561) 833-4707  
Fax: (561) 833-4705  
E-mail: [lauren@daileyjanssen.com](mailto:lauren@daileyjanssen.com)

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**From:** Paul Castro <PCastro@TownofPalmBeach.com>  
**Sent:** Thursday, November 19, 2020 7:51 AM  
**To:** Lauren Urquhart <Lauren@daileyjanssen.com>  
**Subject:** RE: 1045 S. Ocean Blvd\_B-043-2020\_Building Height Plane

Lauren,

As I advised Maura, we do not provide written determinations on zoning but it appears to meet Code.

*Paul Castro, AICP*  
**Zoning Manager**

360 South County Road  
Palm Beach, FL 33480  
(561)227-6406  
[pcastro@townofpalmbeach.com](mailto:pcastro@townofpalmbeach.com)

**From:** Lauren Urquhart <[Lauren@daileyjanssen.com](mailto:Lauren@daileyjanssen.com)>  
**Sent:** Wednesday, November 18, 2020 4:24 PM  
**To:** Maura Ziska <[MZiska@floridawills.com](mailto:MZiska@floridawills.com)>; Paul Castro <[PCastro@TownofPalmBeach.com](mailto:PCastro@TownofPalmBeach.com)>; Bradley Falco <[bfalco@TownOfPalmBeach.com](mailto:bfalco@TownOfPalmBeach.com)>  
**Cc:** Roger Janssen <[roger@daileyjanssen.com](mailto:roger@daileyjanssen.com)>  
**Subject:** RE: 1045 S. Ocean Blvd\_B-043-2020\_Building Height Plane

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Maura/Paul/Brad,

Can you please confirm via return email the project meets BHP?

Best regards,

Lauren Urquhart

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**From:** Maura Ziska <[MZiska@floridawills.com](mailto:MZiska@floridawills.com)>  
**Sent:** Tuesday, November 17, 2020 11:30 AM  
**To:** Lauren Urquhart <[Lauren@daileyjanssen.com](mailto:Lauren@daileyjanssen.com)>; Paul Castro <[PCastro@TownofPalmBeach.com](mailto:PCastro@TownofPalmBeach.com)>; 'Bradley Falco' <[bfalco@TownOfPalmBeach.com](mailto:bfalco@TownOfPalmBeach.com)>  
**Cc:** Roger Janssen <[roger@daileyjanssen.com](mailto:roger@daileyjanssen.com)>  
**Subject:** RE: 1045 S. Ocean Blvd\_B-043-2020\_Building Height Plane

Paul: Per our conversation and your review the Building Height Plan sketch we sent you, please confirm by email that the project at 1045 So. Ocean meets the BHP. Thanks, Maura

Maura A. Ziska, Esq.  
Kochman & Ziska PLC  
222 Lakeview Avenue, Suite 1500  
West Palm Beach, FL 33401  
561-802-8960 (telephone)  
561-802-8995 (fax)

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**dedicate and record a utility easement, or enter into an agreement ensuring said easement, if necessary to facilitate utility undergrounding in the area.**

**E. MAJOR PROJECTS – NEW BUSINESS**

**1. B-043-2020 Additions/Modifications**

Address: 1045 S. Ocean Blvd.

Applicant: Kerry Vickar (Lionel Kerrin Vickar)

Professional: Roger Janssen/Dailey Janssen Architects

Project Description: New construction of a two story addition with basement.

New pool and pool deck. New hardscape and landscape, including civil/storm water management.

Call for disclosure of ex parte communication: Disclosure by several members.

Mr. Janssen presented the architectural plans proposed for the new addition to the existing home.

Dustin Mizell, Environment Design Group, presented the landscape and hardscape modifications proposed for the existing home.

Mr. Small asked if the owner did voluntarily agree to dedicate a utility easement supporting the undergrounding project subject to the satisfaction of the Town. Mr. Janssen agreed to the easement.

Ms. Groves van Onna and Mr. Falco provided staff comments.

Mr. Small called for public comments.

Frank Lynch, attorney for the owners at 1020 and 1030 S. Ocean Blvd., stated his concerns for the proposed project.

Ms. Ziska provided rebuttal arguments to the arguments made by Mr. Lynch.

Kerry Vickar, owner, spoke about the proposal and some of the issues raised by the neighbors.

Mr. Janssen and Ms. Ziska provided further rebuttal to arguments raised by Mr. Lynch.

Mr. Garrison thought the landscape proposed was better than existing. He thought the addition would look like it had always been there once built. He was supportive of the project.

Mr. Ives questioned the aluminum panels on the second floor but otherwise supported the project.

Ms. Grace was concerned about the view when driving down S. Ocean Blvd but thought the architecture was acceptable.

Mr. Corey expressed concern that the existing home had some warmth and the proposed was rather harsh. He stated he could not support the aluminum panels proposed. He also thought the addition was competing with the main house and thought it should be more subservient. He thought the proposed design needed more charm and warmth. He was in favor of the landscape and hardscape proposal.

Ms. Shiverick was in favor of the eyebrow over the front door. She liked the clear glass walkway on the second floor and liked how the addition was stepped back. She supported the home.

Mr. Smith thought that Mr. Janssen did a good job. He was in favor of the addition. He was not in favor of the existing front door.

Ms. Catlin was in favor of the addition and of the project.

Mr. Floersheimer thought Mr. Janssen did an excellent job. Mr. Floersheimer inquired about the height plane issue raised by Mr. Lynch. Mr. Janssen responded and stated that he addressed the issue with the Town. Mr. Floersheimer inquired about the front site wall and its heights. Messrs. Janssen and Mizell responded.

Mr. Cooney was supportive of much of the project. He agreed with Mr. Smith and thought the front doors could be restudied.

Mr. Smith thought the addition was architectural compatible with the area.

Mr. Lynch responded to a comment about the length of the homes of the owners he represented.

**Motion made by Ms. Shiverick and seconded by Mr. Garrison that the proposed project at 1045 S. Ocean Blvd. has met the criteria for approval listed in Sec. 18-205 of the Town's code of ordinances, and therefore make a motion to approve the project as presented with the caveat that the existing front doors would return to the November 20, 2020 meeting. Motion carried 5-2, with Mr. Corey and Ms. Grace opposed. This application was approved with the condition that prior to the issuance of a building permit, the applicant shall either dedicate and record a utility easement, or enter into an agreement ensuring said easement, if necessary to facilitate utility undergrounding in the area.**

*Please note: The Commission broke for the evening at 5:57 p.m. The meeting resumed on October 29, 2020 at 9:00 a.m.*

## Maura Ziska

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**From:** Laura Groves van Onna <lvanonna@TownOfPalmBeach.com>  
**Sent:** Wednesday, November 25, 2020 2:54 PM  
**To:** Lauren Urquhart  
**Cc:** Roger Janssen; Maura Ziska; Wayne Bergman; Kelly Churney; Paul Castro; Bradley Falco  
**Subject:** RE: B-043-2020 1045 S. Ocean Blvd\_Appeal Response

Hi Lauren,

Thank you for reaching out. As I understand, historically physical models have been a requirement – but they have not recently proven helpful due to the virtual nature of meetings. Therefore, we are not requiring them during virtual presentations. And further, I believe you are correct – a physical model is noted as a requirement for any project involving 10,000 square feet or more of new construction (Sec. 18-207(16)).

Kind regards,  
Laura

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**From:** Lauren Urquhart <Lauren@daileyjanssen.com>  
**Sent:** Wednesday, November 25, 2020 10:27 AM  
**To:** Laura Groves van Onna <lvanonna@TownOfPalmBeach.com>  
**Cc:** Roger Janssen <roger@daileyjanssen.com>; Maura Ziska <MZiska@floridawills.com>  
**Subject:** B-043-2020 1045 S. Ocean Blvd\_Appeal Response

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Hi Laura,

B-043-2020 1045 S. Ocean Blvd received ARCOM approval for a proposed 2 story structure on October 28<sup>th</sup>, 2020.

We would like to confirm, in response to an appeal letter from Attorney Francis Lynch (dated 6 November 2020 – point 5), that a physical model was not required to be presented to ARCOM. We did provide a 3D digital model and our understanding was that this was sufficient due to the current COVID protocols in place, and in addition the proposed addition is 4,590 sq ft which is less than the 10,000 SF requirement for a physical model.

Kindly confirm asap so we may respond to Francis Lynch and the Town Council.

Best regards,

Lauren Urquhart

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