



August 4, 2021

**VIA EMAIL AND HAND DELIVERY**

Queenester Nieves, MBA, CMC  
Town Clerk  
Town of Palm Beach  
360 S. County Road  
Palm Beach, FL 33480

**Re: Appeal of ARCOM's Denial of Application No. A-051-2021 (the "Application") -  
The Breakers Palm Beach, Inc.**

Dear Ms. Nieves:

Pursuant to Section 18-177 of the Town of Palm Beach ("Town") Code of Ordinances ("Code"), this letter is an appeal of ARCOM's denial of the Application referenced above, which sought approval to extend an existing awning structure at The Breakers driving range that had previously been reviewed and approved by Town staff and the Town Council. A copy of the Application is attached hereto as Exhibit "A". The Application was heard at the June 24, 2021 ARCOM meeting,<sup>1</sup> during which ARCOM deferred the Application to its July 28 meeting. At the July 28 ARCOM meeting, ARCOM denied the Application. As set forth herein, ARCOM's denial of the Application must be overturned by the Town Council because Town staff and the Town Council previously reviewed and approved an identical awning at The Breakers driving range while also determining that no referral to ARCOM was necessary for such a utilitarian structure. In doing so, there was a finding that the driving range awning met all of the criteria for approval under the Code. ARCOM therefore had no discretion to reject the Application, which merely proposed to extend an awning that is not visible from any street and for which a building permit had been issued just 3 years ago.

**I. STATEMENT OF FACTS**

**A. Prior Awning Approval**

The Breakers is constantly investing in capital improvement projects in order to maintain its reputation as a Palm Beach icon and world class resort hotel. During 2017 and 2018, The

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<sup>1</sup> Although the ARCOM meeting was noticed for June 23, 2021, this meeting was extended to June 24 after ARCOM could not complete its review of pending projects on the June 23 agenda.

Breakers sought and received approval from the Town Council to significantly upgrade its entire golf course through the filing of zoning petitions Z-17-00055 and Z-18-00126. The first petition, Z-17-00055, authorized the realigning and enlarging most of the course tees, relocating of bunkers, and the shifting and reconfiguring the golf course greens. These improvements, designed by noted golf course architect Rees Jones, ensured that the golf course would remain viable and that the open space in the Breakers PUD would continue to be preserved. As a part of that renovation, The Breakers also proposed an addition to the existing golf training building that would enlarge it from 697 square feet to 2,366 square feet, and the replacement of an existing free-standing bathroom building of 250 square feet with a new bathroom building of 267 square feet. Staff determined that none of these improvements required a full ARCOM review as evidenced in the Zoning Checklist<sup>2</sup> for the project, attached as Exhibit “B.” These improvements were subsequently approved by a unanimous decision of the Town Council on January 18, 2018.<sup>3</sup>

During the renovation process for the golf course, The Breakers also determined that, in keeping with the standards observed by other world class golfing facilities, it was necessary to provide shelter from the elements for those members and guests utilizing the driving range facility. Therefore, The Breakers filed zoning petition Z-018-00126, which sought approval for a 12.5 by 64 foot awning structure over the golf course driving range. As was the case with petition number Z-17-00055, staff determined that no referral to ARCOM was required for the proposed awning structure, as evidenced by the Zoning Checklist for the project, attached hereto as Exhibit “C,” and the project was routed for staff ARCOM approval.

The Breakers made a detailed presentation to the Town Council on September 12, 2018, providing plans, specs, and renderings for the proposed awning. A copy of the September 12, 2018 presentation is attached hereto as Exhibit “D.” After hearing the evidence and testimony in support of the project, the Town Council unanimously approved petition Z-18-00126. In reliance upon this development order approval, the existing awning structure was constructed, permits were issued, and members and guests began enjoying the shade and shelter that the awning continues to provide.

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<sup>2</sup> The Zoning Checklist was marked “n/a” under the section that would require referral to ARCOM for these improvements, meaning that a Staff approval was the appropriate routing under the ARCOM Project Designation Manual.

<sup>3</sup> At the time these golf course improvements were proposed, even minor additions to the property were reviewed as a special exception modification to the Breakers Planned Unit Development (“PUD”), because the hotel and golf course uses were special exception uses under the PUD. The Town Council subsequently approved Ordinance 1-2020, which authorized the hotel and golf course uses as permitted uses, and eliminated the need for Town Council review of minor modifications to the PUD. The intent of Ordinance 1-2020 was to provide flexibility to the Breakers for capital improvement projects, such as the Application, that have no impact on neighboring properties or Town facilities.

## **B. Consideration of the Current Application and Record of Proceedings before ARCOM**

Due to the popularity of the renovated golf course facilities, including the awning, The Breakers subsequently determined that it was necessary to extend the previously-approved awning, and sought approval to do so through the filing of the Application, which was initially heard by ARCOM at its June 24, 2021 meeting. During that meeting, design professional Jon Schmidt, ASLA, provided evidence and testimony sufficient to demonstrate that the awning proposed in the Application met all requirements for Town approval. Mr. Schmidt specifically referenced the prior approvals of the existing awning and the fact that the awning would not be visible from any street. ARCOM members made comments suggesting that the awning was “unattractive,” and that The Breakers should take down the existing awning structure to provide an “entirely new” awning that would be “less industrial.”

When asked which structures Mr. Schmidt considered to be appropriate references for compatibility during review of the awning proposed in the Application, Mr. Schmidt correctly responded that the existing awning and the golf academy building should be the only structures utilized as a point of reference for compatibility (the existing awning structure would be extended by the awning proposed in the Application, and the golf academy building is located approximately 115 feet from the new awning structure). ARCOM members instead referenced the “restaurant,” presumably a reference to the Flagler Steakhouse, and the main historic hotel structure, as points of reference they were considering for purposes of structural compatibility despite the different uses contained within these structures and the physical distance between them and the proposed awning. The Flagler Steakhouse is located approximately 411 feet from the proposed awning structure, and the main hotel structure is even more remote: approximately 1,627 feet from the proposed awning structure. These comments from ARCOM members formed the basis of the decision to defer the project to the July 28, 2021 meeting and to ultimately deny the Application.

Thereafter, on July 21, 2021, undersigned counsel sent a letter to Town staff and ARCOM members in order to explain the historic approvals of the existing awning and setting forth the legal position that the prior approvals made by staff and the Town Council precluded ARCOM from rejecting the awning proposed in the Application, because a determination had been made that no ARCOM routing was necessary for such structures and that those structures met the criteria for issuance of a building permit under the Town Code. A copy of the July 21, 2021 letter is attached hereto as Exhibit “E.”

At the subsequent July 28, 2021 ARCOM meeting, Mr. Schmidt again presented evidence and testimony in support of the Application, referencing the golf academy and existing awning, as well as the prior Town Council and staff approvals referenced above. ARCOM members again stressed their opinion that the structure was unattractive, but sought and received confirmation

that the structure proposed was an “exact match” of what the Council and staff previously approved in 2018. One ARCOM member said they should not support the Application because they were there “to judge beauty,” and she did not find this awning attractive. Several ARCOM members acquiesced that the awning structure was “typical,” “hidden,” and a “bought product.” When asked if additional landscaping or breaks in the structure would be provided, Mr. Schmidt pointed out that the awning is a sport structure under which professionals are teaching golfers and the design of the awning is driven by its athletic function. After again suggesting The Breakers should demolish the entire existing structure and redesign it (despite the prior Town Council and staff approvals), ARCOM denied the project based on the assertion that the awning “was not in conformity with good taste.” No reference to the specific criteria for approval or denial of the application were provided. Town staff subsequently provided a notice of denial to the undersigned on August 2, 2021, a copy of which is attached hereto as Exhibit “F”.

## **II. JURISDICTION AND LEGAL AUTHORITY FOR APPEAL**

Section 18-177 of the Code provides that an “applicant or any interested party may file an appeal to the Town Council on any ruling by the architectural commission...” which “shall take the form of a letter addressed to the Town Clerk.” Appeals from the architectural commission “shall be filed or made within ten calendar days of the date of the meeting at which the decision of the commission is rendered.” The Breakers as the applicant for Application No. A-051-2021 thus has standing to bring this timely appeal, and the Town Council has jurisdiction to consider the appeal pursuant to Section 18-177 of the Code.

## **III. STANDARD OF REVIEW**

Since ARCOM is an administrative tribunal under Florida law, its consideration of the site specific Application for development order approval was a quasi-judicial in nature. Therefore, the Town Council must determine on appeal whether all of the following criteria were met: (1) whether due process was afforded during the quasi-judicial proceeding; (2) whether the administrative findings and judgment of the quasi-judicial tribunal are supported by competent substantial evidence; and (3) whether the essential requirements of law were observed. *Haines City Community Dev. v. Heggs*, 658 So. 2d 523 (Fla. 1995); *City of Deerfield Beach v. Valliant*, 419 So. 2d 624 (Fla. 1982). This appeal focuses on the second and third factors—lack of competent substantial evidence to support ARCOM’s denial of the Application and its failure to observe the essential requirements of law.

## **IV. ARGUMENT**

### **A. ARCOM’s Decision was not Supported by Competent Substantial Evidence**

In order to uphold ARCOM’s denial of the application, the record must contain competent substantial evidence to support ARCOM’s conclusion that the Application did not meet the

requirements for approval. *See Broward County v. G.B.V. Intern., Ltd.*, 787 So. 2d 838, 846 (Fla. 2001). Competent substantial evidence is “evidence sufficiently **relevant and material to the ultimate determination** that a reasonable mind would accept it as adequate **to support the conclusion reached.**” *City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc.*, 857 So. 2d 202, 204 (Fla. 3d DCA 2003) (emphasis added).

In this case, there was no evidence presented to establish the conclusion reached. All of the evidence presented established that (1) the awning being proposed was identical to the awning previously approved by the Town Council and staff; (2) the awning is not visible from any public rights-of-way; (3) the awning is consistent with nearby structures for which permits were previously issued; (4) the awning structure was a typical structure utilized in the golfing industry and its design must support its intended athletic use.

Rather than focusing on this evidence, ARCOM members focused solely on the “industrial” appearance of this athletic structure and offered as solutions designs that would preclude the intended use of support for golf practice and instruction. There was no evidence that the awning would be a departure from “good taste” other than one conclusory remark during the making of the motion to deny the Application. Town staff did not rebut any of the evidence and testimony provided by the Applicant. The opinion that the utilitarian golf support structure is large and unattractive should be rejected based on the context of its athletic function and the recognition by several ARCOM members that the structure is “typical” of what is needed and provided in the golfing industry. Could ARCOM deny a 10-foot regulation basketball hoop which is not visible from the right-of-way or neighboring properties because it is “too tall,” “pre-bought” and “unattractive,” despite the fact that it, too, is “typical?”

The only evidence provided during the hearing supported approval, not denial, of the Application. Therefore, the Town Council should reverse the decision of ARCOM and direct staff to issue an administrative approval of the Application as has been done in the past and in keeping with the ARCOM Project Designation Manual.

## **B. ARCOM’s Decision did not Meet the Essential Requirements of Law**

ARCOM’s decision did not meet the essential requirements of law because it misapplied the Code and failed to base its decision upon the prior controlling approvals made by the Town Council and staff. First, ARCOM members focused only on the perceived “attractiveness” of the proposed awning in comparison to restaurant and hotel structures that are over 400 and 1600 feet away, respectively, while ignoring existing structures for golf uses in the immediate vicinity. Chapter 18-205 establishes 200 feet as the appropriate reference point for determining compatibility. Therefore, ARCOM should have viewed the awning proposed in the Application in the context of its compatibility with, and relative beauty when compared to, the existing approved awning and golf academy building. This point was made at both meetings before

ARCOM and in the July 21, 2021 letter attached hereto. Instead, comparisons to the distant hotel and restaurant structures clearly formed the basis for the deferral and subsequent denial of the Application.

Second, ARCOM ignored the precedent set by the Town Council's approval of the existing awning and the subsequent staff approval, which clearly establish the precedent that the awning structure is appropriate at this location within the PUD and meets all criteria for issuance of a permit. Under the Code, the Town Council has ultimate authority on all matters concerning site plan modification and architectural approvals, and the Town Council has determined that the existing awning structure meets all requirements for approval. Based on the Town Council's endorsement of the presentation made in support of Z-18-00126, staff provided an administrative ARCOM approval for the existing awning in keeping with the ARCOM Project Designation Manual.

Which leads to the final point: ARCOM should not have heard this project in the first place. Such minor modifications have always been staff approved if they are not visible from public rights-of-way and the ARCOM Project Designation Manual identifies this sort of project as a staff approval that does not require referral to ARCOM.

Based on the foregoing, we respectfully request that the Town Council overturn ARCOM's denial of the Application and direct staff to approve the Application in keeping with prior approvals, controlling law and precedent.

Sincerely,



James M. Crowley, Esq.

Shareholder

JMC/op

Enclosures

cc: Honorable Maggie Zeidman (via email)  
Wayne Bergman (via email)  
James Murphy (via email)  
Skip Randolph, Esq. (via email)  
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