



**GUNSTER**  
FLORIDA'S LAW FIRM FOR BUSINESS

Our File Number: 55392.00001  
Writer's Direct Dial Number: (561) 650-0652  
Writer's E-Mail Address: [jcrowley@gunster.com](mailto:jcrowley@gunster.com)

February 4, 2022

**VIA EMAIL AND HAND DELIVERY**

Pat Gayle-Gordon  
Town Clerk (Acting)  
Town of Palm Beach  
360 S. County Road  
Palm Beach, FL 33480

**Re: Appeal of Architectural Review Commission ("ARCOM") Denial of Application No. B-65-2021 (the "Application") on behalf of Seven Ocean Lane LLC ("Appellant")**

Dear Ms. Gayle-Gordon:

Pursuant to Section 18-177 of the Town of Palm Beach ("Town") Code of Ordinances ("Code"), this letter is an appeal ("Appeal") of ARCOM's denial of the Application referenced above, which sought approval for construction of a single-family residence (the "Project") at 7 Ocean Lane, Palm Beach, FL (the "Property").

As set forth below, the Appeal should be granted and the Project approved because (i) ARCOM's decision was not based on competent, substantial evidence; (ii) ARCOM's decision did not meet the essential requirements of law; and (iii) the quasi-judicial proceeding at which ARCOM denied the Application did not afford due process. Specifically, the motion to deny the Project was not supported in the evidence, as no findings of fact nor any other evidence was introduced to support a denial of the Project. To the contrary, all of the evidence and testimony presented by the Project architect, Rafael Portuando, and the testimony provided by Rick Gonzalez, an architect hired by a neighboring property owner, established that the criteria for approval of the Project had been met. No contrary evidence was introduced by the Town or any other party in support of a motion to deny the Project, and the Appellant's due process rights were violated by the nature of the proceeding.

**I. STATEMENT OF FACTS**

**A. The Property**

The Property is a vacant lot located within the jurisdictional limits of the Town. Pursuant to the Town Comprehensive Plan, the Property has a future land use designation of single family. According to the Comprehensive Plan, appropriate uses under this future land use designation

include “estates, single-family homes, residential PUD's and cluster development up to a maximum density of four dwelling units per gross Palm Beach acre (40,000 square feet). Public uses and facilities, public and private schools, group homes and foster care facilities, essential services, and private group uses and cultural uses are also permitted within this category on a limited basis.” Thus, the proposed single-family residence is permitted by, and furthers the intent of, the Comprehensive Plan.

Similarly, the Property has a zoning designation of R-B, or low-density residential. Pursuant to Section 134-886 of the Town Code, “the purpose of the R-B zoning district is to provide for low density single-family residential use...of moderately spacious character.” Pursuant to Section 134-887(1), single family residences are a permitted use in the R-B zoning district subject to the lot, yard and area requirements discussed in detail below.

### **B. June 23, 2021 ARCOM Meeting**

In 2021, 7 Ocean Lane LLC filed the Application, seeking to construct a new two-story residence with pool, final hardscape, and landscape. After reviewing the Application, staff determined that it conformed to the requirements of Chapter 134 and that no variances or special exception allowances would be required for approval of the Project. Therefore, the Project was scheduled for review by ARCOM in accordance with Chapter 18 of the Town Code.

The original Project plans were designed by Harold Smith of Smith & Moore Architects, Inc., a venerable local architecture firm, with assistance from consulting architect Andrew Kotchen of Workshop APD. The Project landscape plans were prepared by Keith Williams of Nievera Williams, another well-respected local firm with a long history of project design in the Town.

On June 23, 2021, Mr. Smith led the presentation during ARCOM’s first review of the Project. Mr. Smith indicated that the Project height as designed was one foot higher than one of the neighboring properties to the north and three feet lower than the property to the south. Mr. Smith explained that the proposed Project was located between a “fairly large 13,594 square foot modern house at 6 Ocean lane” and a “5,300 plus square foot home to the north at 1 Ocean Lane.” Mr. Smith testified that the Project lot coverage was 20.4%<sup>1</sup> and landscaped open space for the Project as proposed was 56.71%.<sup>2</sup> Mr. Smith also testified that building height was 20 feet.

After Mr. Smith and his team concluded their presentation, several neighboring property owners spoke in opposition to the Project during public comment. One of the neighbors, Elizabeth Ailes, hired attorney John Eubanks and architect Rick Gonzalez of REG Architects, Inc. to present objections to the project based on, among other things, the siting of the Project eastward of neighboring properties, privacy concerns, compatibility with the architecture of neighboring properties, and the glazing on the east elevation of the proposed residence. Mr. Eubanks and Mr. Gonzalez discussed specific criteria from Chapter 18 of the Town Code that, in their opinion, the

---

<sup>1</sup> The R-B zoning district allows up to 30% lot coverage for two-story buildings per Code Section 134-893(11)(b)

<sup>2</sup> The R-B zoning district requires a minimum of 45% landscaped open space per Code Section 134-893(12)(a)

Project did not meet. Several other neighbors voiced similar concerns about a proposed pergola in the back yard of the Project and the Project's impact on privacy, air, and light.

At the conclusion of public comment, Paul Castro, the Town's Zoning Manager, testified that the house "meets the zoning code." He explained that the location of the house was permitted by code and the height of the house was lower than what is allowable by Code. He also clarified that the finish floor elevation was mandated by DEP regulations and the point of measurement for height was based upon those regulations.

After Mr. Castro concluded staff's comments, ARCOM members began their discussion of the Project. While the reviews were generally favorable, describing the Project as "very attractive" and "exciting" with a "workable" design that was "not excessive," ARCOM members also expressed concerns about the siting of the proposed residence, the massing from the street, the amount of glass / glazing on the east elevation. Because of those concerns, a motion carried to defer review of the Project to the July ARCOM meeting.

### **C. July 28, 2021 ARCOM Meeting**

On July 28, 2021, the Project team once again presented to ARCOM, with Angela Lehman of Smith and Moore offering testimony about the depth of the Property in comparison to neighboring properties, the change in grade from the street to the required finish floor elevation, the location of other beachfront properties in the area, and the way in which the Project architecture was in harmony with other properties in the immediate vicinity. Importantly, the Project plans had been updated to remove the pergola that was the subject of neighbor complaints. Ms. Lehman also clarified that the Project's proposed glazing was 65.8%, which was less than the 69.7% glazing at an adjacent Property.

Mr. Kotchen then explained that the landscape plans had been "open[ed] up" to make sure that "we are maximizing the open sky condition to the end of ocean lane," which had been a concern of ARCOM members and neighbors at the June 23 ARCOM meeting. Corey Meyer of Nievera Williams elaborated on this point by explaining that the Project had been adjusted to reduce hardscape and planting materials that might adversely affect the flow of air and light, and to maximize the amount of sunlight experienced by neighboring property owners.

During public comment, neighbors once again expressed objections to the Project based on a lack of communication from the Project team, respect for the character of the neighborhood, landscaping, and the flow between the properties along Ocean Lane. Mr. Eubanks and Mr. Gonzalez reiterated their objections based upon the siting of the proposed residence, the "edge of development" along the beach, and the perceived lack of compatibility with the existing structures in the neighborhood. Attorney Paul Rampell spoke in favor of the Project on behalf of his wife and a neighborhood association, arguing that it met the criteria for approval and applauding the Project team for offering to beautify and improve an existing easement that provides access from Ocean Lane to the beach.

At the conclusion of public comments, ARCOM members again provided feedback on the Project, with comments ranging from outright support of the Project and a statement that “we all like this design,” to concerns about siting, massing, and landscaping. In fact, a majority of the voting members expressed support for the design of the project, but also expressed concerns about the location of the garage, the amount of glass on the east elevation, and the siting of the proposed residence. A motion was made to deny the Project based on a perceived lack of responsiveness to previous concerns about siting, but that motion failed for lack of a second. Subsequently, a motion carried to defer the Project to the September 29 ARCOM meeting in order to study moving the house to the west, reducing the size of the house, reducing the fenestration on the east windows, and reducing the garage size (or putting it in the basement).

#### **D. September 29, 2021 ARCOM Meeting**

On September 29, 2021, the Project team returned to present the modified Project to ARCOM. The plans had been modified to address the concerns of ARCOM members and neighbors by, among other things, moving the house 12’2” further west at the east façade, reducing the size of the garage, removing 948 cubic feet from massing, and removing windows from the east elevation, which resulted in a reduction of second-floor glazing by 11.5% and a reduction of total glazing to below 60%. Mr. Castro, the Zoning Manager, once again testified that the Project as presented met and exceeded code with respect to rear setbacks.

During public comment, Mr. Eubanks continued to object on behalf of neighboring property owners based on a lack of natural vistas, the bulk and size of the house, and privacy issues. He also cited the review criteria in Section 18-205 of the Code as they pertain to urban beauty and preservation of existing aesthetics. Other neighbors similarly objected to the Project, citing privacy issues and the siting of the proposed residence and the imposition the residence as proposed would create on existing views. Mr. Smith offered rebuttal testimony as to why the Project as presented met the review criteria set forth in Section 18-205, most notably with respect to the compatibility of the Project’s style with the existing structures in the neighborhood.

ARCOM members then provided their comments about the revised Project, with comments again ranging from total support and an acknowledgement that the zoning code should guide what is “compatible” in terms of size, siting, and massing on the one hand to continued concerns about similarity with neighboring homes and siting of the residence. Members also acknowledged the “west elevation is very successful” and the “east elevation is looking better,” while also complimenting the Project team on moving the house further to the west “in extremely good faith.” One of the architect members stated that “I think a contemporary house belongs in that spot” and that a Bermuda or Mediterranean house would not fit with the existing character of the street. At the same time, members thought the house “still needs a little more work.”

A motion was made to defer the Project, recognizing that “we do have a majority that feels a contemporary generally style house is ok in that area, so we’ve kind of cleared that issue as to the design of the actual house,” but also stating that the screening at the front of the house and the glazing on the east side needed further study. The motion carried.

## **E. Assignment of Application and Neighbor Outreach**

On October 22, 2021, the prior owners of the Property entered into a contract for the Sale and Purchase of the Property with an affiliate of the Appellant, which included the assignment of the pending Application. Shortly thereafter, on November 4, 2021, Appellant's representatives conducted a Zoom meeting with Town staff to discuss desired modifications to the Project which would address neighbor concerns and conform with current Code requirements. Staff confirmed that, from a zoning standpoint, the Project complied with Code and that the assignment of the Application was permitted.

Appellant's representatives were aware of the concerns raised by neighbors not only concerning the prior design of the Project, but also by the perceived lack of communication and responsiveness to neighbor issues. Proceeding in good faith, Appellant's representatives began the process of reaching out to the affected neighbors to seek resolution of the concerns that had been raised at prior ARCOM meetings. Appellants commissioned Rafael Portuando of Portuando Perotti Architects to restudy the Project and to adjust the design to address concerns raised by ARCOM members and the neighbors throughout the review process. Dustin Mizell of Environment Design Group also joined the Project team with respect to landscape design. Both Mr. Mizell and Mr. Portuando are well respected design professionals with deep understanding of the Town Code.

Messrs. Portuando and Mizell revised the Project plans to address all of the concerns raised throughout the review process, including shifting the siting of the house an additional 5 feet to the west, reducing square footage by 10%, reducing cubic content by 12%, reducing building height by 8%, and reducing lot coverage by 15%. It is important to note that these reductions were made to a Project that already complied with all lot, yard and area requirements of the Town Code. The amount of glass on the east elevation was also reduced by an additional 10.9% and the garage was relocated underground as had previously been requested by multiple ARCOM members.

The new Project team had numerous meetings with neighbors to hear their concerns and to solicit input on design solutions to offset any potential impacts of the Project design on neighboring properties. Most notably, on January 11, 2022, the Project team met with Elizabeth Ailes, John Eubanks, Rick Gonzalez, Caren Marder and Gary Marder to present the revised Project design that had addressed all concerns raised by ARCOM members and neighbors. These neighbors and their representatives would subsequently appear in support of the Project.

## **F. January 26, 2022 ARCOM Meeting**

Mr. Portuando presented the revised Project plans to ARCOM on January 26, testifying that he had studied the neighboring properties to provide context for compatibility and harmony of design. He testified that he "look[ed] at neighboring houses and how our house is actually going to impact their views," and that the house had been moved further west from the 12'2" modification previously made by Mr. Smith. Mr. Portuando testified that lines of sight and views were being protected for both of the adjacent neighbors, and the landscape design of the Project

engaged the gardens of these neighbors into a coherent whole. He testified that he also engaged the architecture of neighboring homes and set the proposed Project further back, resulting in a front yard setback of 30 feet and a rear yard setback of approximately 55 feet.<sup>3</sup>

Mr. Portuando testified that he had studied local materials and employed an architectural style that “is grounded locally.” He explained that by relocating the garage underground, as requested by ARCOM members at numerous meetings, the massing of the house was adjusted and softened in favor of a garden feel. Screens and louvers, Mr. Portuando explained, created more privacy between the homes, a major concern of neighbors throughout the process. He provided architectural context citing specific examples of Palm Beach architecture that had served as a basis for material selection that would be harmonious with neighboring properties and the community at large.

Mr. Mizell then explained how the landscape plan had been restudied to incorporate existing landscaping on adjacent properties in order to create harmony and compatibility. He explained that every effort was made to preserve and enhance the views that the neighbors have historically enjoyed. Mr. Mizell explained that the side gardens “are incredibly architectural” and how studying the neighbors’ landscaping resulted in a design that is consistent with the step-down feel of the existing plantings. In addition, previously proposed trees had been taken off the plans and replaced with lower plantings at the request of neighbors.

Following the conclusion of the Project team’s presentation, Architect Rick Gonzalez provided testimony during public comment. He explained that he had met with Mr. Portuando and Mr. Mizell and that “we are very happy with the change in the architecture,” that “they sat down and they listened to us, they worked together with us.” Importantly, he testified that “this is no longer a modern house that belongs in Long Island; this is a modern house inspired by classic and contextual Palm Beach architecture.” Mr. Gonzalez also applauded “that the garage was sunken to the basement level and that you now have what is three gardens [across the three separate properties] on the west side working as one, which is what Ocean Lane is all about.” Finally, he stated that “the stepping back of the three houses in order is exactly what we were looking for the last time around, and I appreciate [Mr. Portuando’s] extra efforts to accommodate our needs and we are here to fully support this application.”

Mr. Eubanks and several neighbors also spoke in support of the application, stating that “we’re happy to see this new design; it’s much better than the old designs” and that “this was a welcome opportunity to see exactly what we’d hope we would see which is neighbors come to the neighbors.”

Following public comment, Town staff once again reiterated that “the design professionals made every effort to mitigate” neighbor concerns, that the Project does not require variances, and that the Project does comply with the zoning code.” Staff also applauded the new design team for

---

<sup>3</sup> For context, as further addressed below, the resulting front yard setback was approximately 17% greater than what is allowed by code and the rear setback that is more than 3 times greater than what is required by code



“immediately reach[ing] out to staff to do their due diligence and worked with us to refine the design, particularly as it would come to any zoning and accuracies.”

During ARCOM member comments, one member stated that “any objections that I would have to this are purely me struggling with putting personal taste aside, because the design itself is beautiful.” Another member was “glad” the garage was relocated underground as he previously suggested, and that “overall I think it’s a very good design...we’ve come a long, long way. I think there are just a few tweaks that I would love for you to address.”

Another member cited the conforming side-yard setbacks as an area of concern, despite Town staff’s repeated confirmations that the Project met the zoning code, and also incorrectly cited neighbor’s privacy concerns (that had been withdrawn) as a reason to set the house further back along the side yards. Nevertheless, this member also stated that the west façade “was successful, I think, having the garage and a big successful tree.” Other members mentioned that glazing “would be more attractive,” that a different style would be “better,” that the plans were “a gross max out of things” and that “with every new modern project we continue to erode the character” of Palm Beach. The voting member architects had minor comments about building permit issues such as windload requirements and egress from second story rooms.

In response to ARCOM member comments about size, massing, and setbacks, Mr. Portuando explained that he had to design about “what we are giving up and where” and how the modifications to the plans resulting from neighbor outreach affect the design of the home, and that the design of the home was a “conscious effort to respond to neighbors and existing contexts.” Mr. Portuando went into great detail about the architectural philosophy reflected in the design, why certain decisions regarding design elements were made, and how the discussions with neighbors impacted choices that were made in order to achieve a cohesive context between the properties.

Despite these responses, a motion was made to deny the project based on “privacy concerns” and because “I think the house will look odd and non-contextual in this location” The motion to deny passed 4-3, with both voting member architects and the chair voting against the denial. The alleged basis for the motion to deny was Section 18-205(a)(1), Section 18-205(6)(c), and Section 18-205(6)(d).

## **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.” Seven Ocean Lane LLC as the contract purchaser and owner of Application B-65-2021 thus has standing to bring this timely appeal. The Town Council has jurisdiction to consider this Appeal pursuant to Section 18-177 of the Code. This Appeal is based upon the record of the proceedings before ARCOM and incorporates the complete record of proceedings herein by reference.

### 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). As set forth below, this appeal must be granted because ARCOM's conduct during the quasi-judicial proceedings did not meet these criteria.

### IV. ARGUMENT

#### A. There is no competent, substantial evidence to support ARCOM's decision

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 is no evidence whatsoever to support ARCOM's denial of the Application. To the contrary, all evidence introduced by the Project team and staff establishes that the Code provisions cited in the motion to deny the Project were met. All of the evidence and testimony offered by Project design team, consisting of experienced and well-respected design professionals, testimony from the well-known architect hired by the neighbors, and testimony from Town staff established on the record that the Project meets all requirements of the zoning Code and the criteria found in Chapter 18-205 governing ARCOM's consideration of the Application. Town staff unequivocally concluded that the Project meets all requirements of the zoning Code, which regulates the allowable size, layout, and location of the proposed house. It is undisputed that setbacks exceed the minimum requirements of the Code, especially the front and rear setbacks. And Mr. Gonzalez, an expert in his field, testified that "this is a modern house inspired by classic and contextual Palm Beach architecture."

Code Section 18-205(a)(1), cited in the motion to deny the Project, provides that "The plan for the proposed building or structure is in conformity with good taste and design and in general contributes to the image of the town as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality." The undisputed testimony from Mr. Portuando, Mr. Gonzalez and Mr. Mizell establishes that the Project meets this standard. As was made abundantly clear during the Project team's presentation at the January 26, 2022 ARCOM meeting, the design of the Project as presented resulted from concerns previously expressed by neighbors and their architect with



respect to the design, architecture, and layout of the proposed residence. The design as presented clearly provided beauty (“the design itself is beautiful”), spaciousness (“it’s a very good design”), balance (“you now have what is three gardens [across the three separate properties] on the west side working as one”), taste, fitness, charm, and high quality. The choice of materials and landscaping were lauded by members of ARCOM during the January 26 ARCOM meeting. The only legitimate concerns that were raised would be addressed during the building permit process: *i.e.*, windload requirements, egress, and mechanical equipment siting. This standard was clearly met.

The other conclusory statement used to justify the motion to deny cited Section 18-205(a)(6) of the Code. Section 18-205(a)(6) requires that “[t]he proposed building or structure is not excessively dissimilar in relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features: (c) compatibility; and (d) arrangements of the components of the structure.” Once again, there is no evidence in the record that the building proposed during the January 26, 2022 ARCOM meeting was incompatible with other structures within 200 feet. Both Mr. Portuando and Mr. Gonzalez explained why the design of the house was appropriate in the context of the neighborhood and compatible with existing structures. Mr. Gonzalez testified as follows in relation to the arrangement of the structure: “the stepping back of the three houses in order is exactly what we were looking for the last time around.” He also testified that “we are very happy with the change in the architecture.” Importantly, the neighbors who once objected to the Project now expressed their support. It was thus inexplicable that the ARCOM member’s enunciation of “privacy concerns” was the factual basis for his motion to deny when all objections concerning privacy had been withdrawn and the neighbors were supporting the Project.

Mr. Portuando, also an expert in his field, went to great lengths to testify regarding the way in which compatibility impacted design choices that were made in consultation with Mr. Gonzalez and the neighbors. Mr. Portuando testified as to how the style, design, and materials chosen actually complimented the modern architecture at neighboring properties while offering subtle differences to distinguish the Project from other nearby homes. Finally, Mr. Portuando explained that the side yard setbacks were studied to provide context with neighboring properties. No contrary evidence or testimony was presented, other than conclusory and often inaccurate statements by ARCOM members. The contrary evidence introduced at prior meetings by neighbors and their advocates was rendered moot by the design changes to the Project, and those neighbors withdrew their objections and supported the Project as presented during the January 26, 2022 meeting. The standards enumerated in Section 18-205 of the Code were met, and it was error for ARCOM to deny the Application when all evidence presented established that the applicable criteria were met.

## **B. ARCOM’s decision failed to meet the essential requirements of law**

Under Florida law, a departure from the essential requirements of law results when a lower tribunal fails to apply the correct law and that failure results in a miscarriage of justice. *See BMS*

*Enterprises LLC v. City of Fort Lauderdale*, 929 So. 2d 9 (Fla. 4<sup>th</sup> DCA 2006). In this case, ARCOM's complete failure to consider any of the zoning district regulations governing lot, yard, area, and massing is a departure from the essential requirements of law which results in a miscarriage of justice: the improper infringement on constitutionally protected property rights to use and enjoy property.

As set forth above, it is undisputed that the Project as presented to ARCOM met all requirements of the zoning code. These zoning code requirements, set forth in Chapter 134 of the zoning Code, should form a basis for what is "compatible" with other structures in the R-B zoning district. According to Section 134-1 of the Code, "the purpose of this chapter is to establish comprehensive controls for the development of land in the town based on the comprehensive plan for the town." Section 134-1(c)(1) directs the Town Council to establish zoning districts for the purposes of regulating, determining, and establishing, among other things, "height, number of stories, size, bulk, location, erection, construction, repair, reconstruction, alteration and use of buildings and other structures," "size of yards and other open spaces," "percentage of lot that may be occupied," and "performance standards for use of property and location of structures thereon."

The Town Council has done so through the adoption of zoning district regulations governing site development standards such as setbacks, lot coverage, landscaped open space, and cubic content ratio. These zoning district regulations are intended to provide property owners, and Town staff, with certainty as to the expectations for development within a zoning district and to ensure that property owners within various zoning districts are treated equally when applying for development order approvals. Without such certainty, development restrictions become entirely meaningless, unpredictable, and unconstitutional.

It is also true that the Town Council adopted regulations governing the aesthetics of proposed development and empowered ARCOM to review development applications in order to ensure that the Town maintains its reputation as a place of beauty, charm, and elegance. However, the regulations found in Chapter 18 of the Code must be viewed in concert with the zoning district regulations found in Chapter 134; otherwise, the provisions of the zoning code are without meaning and the provisions of Chapter 18 are entirely subjective. A useful analogy exists where, for instance, governmental agencies establish one law prohibiting speeding and another prohibiting reckless driving. An important factor to consider when adjudicating whether someone was driving recklessly is to determine whether they were exceeding the clearly established speed limit. The specific regulation provides context, meaning and enforceability to the more subjective regulation.

Similarly, when determining whether a proposed structure is in "harmony" or "compatible" with other structures in a zoning district, ARCOM must at least consider whether the zoning district regulations governing size, location, massing, height, and setbacks are met. Failure to do so renders the zoning code meaningless and the ARCOM review criteria impermissibly subjective. At very minimum, ARCOM must compare the size, location and massing of other adjacent properties when determining more subjective concepts such as "compatibility" and "harmony."

In this case, ARCOM completely failed to consider the zoning code, and its failure to do so affected the design of the Project. ARCOM also failed to recognize the difference in the depth of the Property in comparison to adjacent properties and the change in grade that affects the perceived massing of the building from the street. Mr. Portuando explained that the house was lowered to reduce the perceived massing and the side setbacks were activated with gardens to achieve what Mr. Gonzalez referred to as “three gardens working as one.” Finally, Mr. Portuando testified that the proposed setbacks provided context in relation to the existing architecture on adjacent properties, and Mr. Gonzalez applauded the step-back of the three houses along the rear setback, which is evidence of compatibility.

ARCOM’s failure to consider either the criteria of the zoning code or the siting, location, size, massing, and height of adjacent structures departed from the essential requirements of law resulting in a miscarriage of justice. ARCOM’s decision must be quashed on that basis.

### **C. Due Process**

Appellant reserves its right to argue whether the nature of the proceeding violated due process in light of Chapters 286 and 166, Florida Statutes.

### **D. The Application should be approved**

This Appeal, and the record before ARCOM, clearly establishes that the criteria found within Section 18-205(a)(1), (a)(6)(c), and (a)(6)(d) were met. The record of the proceedings also establishes that all of following additional criteria were clearly met, and the Application should now be approved by the Town Council.

**18-205(a)(2) - The plan for the proposed building or structure indicates the manner in which the structures are reasonably protected against external and internal noise, vibrations, and other factors that may tend to make the environment less desirable.**

The Project team addressed the way in which the size and location of the structure protect against environmental conditions by providing light, air, and flow between the properties on Ocean Lane. The screening proposed on the Project windows was provided to enhance environmental conditions and ensure privacy between properties. The garden walls and water features also function to reduce noise and other environment factors.

**18-205(a)(3) - The proposed building or structure is not, in its exterior design and appearance, of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value.**

The record clearly established that the materials chosen were done for the purpose of enhancing beauty and improving the aesthetics of the Project. They were chosen based on their inclusion within other development order applications that have been reviewed and approved by ARCOM and their use at other projects in Town.

**18-205(a)(4) - The proposed building or structure is in harmony with the proposed developments on land in the general area, with the comprehensive plan for the town, and with any precise plans adopted pursuant to the comprehensive plan.**

The testimony from the Project team and Mr. Gonzalez clearly establish harmony with adjacent developments and land in the general area. The setbacks from the ocean were designed to be compatible with existing development and the style and materials chosen further establish harmony and compatibility as required by Chapters 18 and 134 of the Town Code and the Town Comprehensive Plan.

**18-205(a)(5) - The proposed building or structure is not excessively similar to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features of exterior design and appearance....**

There was ample testimony in the record concerning the balance between respecting the modern character of the neighborhood while also distinguishing the Project architecture from the modern style of adjacent structures, and the way in which the design of the Project as presented on January 26, 2022 met this requirement.

**18-205(a)(6) - The proposed building or structure is not excessively dissimilar in relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features....**

The evidence presented to ARCOM established that the modern style of the Project, while distinguishable from adjacent structures, was compatible and in harmony with those structures. Testimony from Mr. Portuando and Mr. Gonzalez establishes compliance with this criterion.

**18-205(a)(7) - The proposed addition or accessory structure is subservient in style and massing to the principal or main structure.**

The proposed accessory structure was removed from the Project plans at the request of the neighbors, thus this criterion is not applicable.

**18-205(a)(8) - The proposed building or structure is appropriate in relation to the established character of other structures in the immediate area or neighboring areas in respect to significant design features such as material or quality or architectural design as viewed from any public or private way (except alleys).**

As previously addressed above, and as testimony from Mr. Portuando and Mr. Gonzalez confirms, the structure is appropriate in relation to adjacent structures. Height, massing, siting, style, and interconnectivity of garden features were cited as evidence of compliance with this criterion.

**18-205(a)(9) - The proposed development is in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.**

As previously addressed above, the evidence and testimony before ARCOM, including the testimony of Mr. Portuando, Mr. Gonzalez, and Mr. Castro, establish that all requirements of Chapter 134 were met. Mr. Portuando and Mr. Gonzalez provided testimony regarding compliance with Chapter 18-205. This criterion was met.

**18-205(a)(10) - The project's location and design adequately protects unique site characteristics such as those related to scenic views, rock outcroppings, natural vistas, waterways, and similar features.**

There was ample testimony during the January 26 ARCOM meeting establishing that the Project's location and design, including setbacks from the street and ocean, materials, and massing, protected light, air and vistas from neighboring properties and Ocean Lane. This criterion was met.

## **V. CONCLUSION**

For the reasons set forth herein, the undersigned respectfully requests that the Town Council quash ARCOM's decision to deny the Project based upon the lack of any competent substantial evidence to support a denial and ARCOM's departure from the essential requirements of law. Moreover, as mandated by Section 18-205(b) of the Code, the undersigned respectfully requests that the Town Council approve the Application because all of the criteria set forth in Section 18-205 and Chapter 134 of the Town Code, as well as the Comprehensive Plan, have been met.

Respectfully submitted,



James M. Crowley, Esq.

cc: Honorable Mayor and Council Members (via email)  
John C. Randolph, Esq. (via email)  
Wayne Bergman (via email)  
James Murphy (via email)  
Paul Castro (via email)  
Kelly Churney (via email)