

# SNIFFEN & SPELLMAN, P.A.

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February 25, 2025

**Via E-mail**

Architectural Review Commission  
c/o Jeff Smith, Chair  
Town of Palm Beach  
360 South County Road  
Palm Beach, Florida 33480

**Re: ARC-24-0128; ZON24-0093 ("Application")  
Paul Z Okean as Trustee ("Applicant")  
203 Via Vizcaya, Palm Beach FL 33480 ("Property")  
Objection to Counting Dedicated Public Street as Landscape  
Open Space and Proposed Drainage Plan on Neighbor's Property**

Dear Mr. Smith:

Our office represents 854 So. County Road LLC ("Neighbor") whose property abuts the north side of the Applicant's Property. In that capacity, we have reviewed the Application filed by Mr. Okean as Trustee and the online backup documents. Upon review of the same the Neighbor objects to the request for a Variance from the overall landscape open space requirement to allow for a 42.98% open space in lieu of the 50% required by the Town Code. The neighbor further objects to **and requests ARCOM deny any review of the ongoing drainage issues**, as the Applicant's **proposed drainage plan relies on the use of Neighbor's property without any permission.**

In requesting the Variance, the Applicant is relying on three obvious issues known when the Property was purchased in an attempt to bootstrap itself into obtaining a Variance for a larger home to be constructed on the Property. In support of the Variance the Applicant points to a) the curvature of the front lot due to a meandering street; b) 10 linear feet across the front yard which is in the Via Vizcaya right of way and already paved; and c) the dedicated 10 foot wide Public Street ("Street") that runs across the rear yard of the Property that cannot be calculated as green space.

Along with the obvious curvature of Property, the Applicant was clearly aware of the paved portions of the front yard easement which is existing hardscape. There is no reason why, or offered, how the characterization of this area could be anything other than hardscape. Similarly, there can be no attempt to recharacterize the 10-foot strip located at the back of the Property to allow it to be used for landscaped open space given that it was dedicated "to the perpetual use of the public as public streets" in the original Plat and accepted by the Town back in May of 1940 (*See* attached plat and documents).

Therefore, the only use for the 10-foot strip is as a Street. While the Applicant has proposed installing grass pavers, our client objects to their use. The Neighbor simply wants the Street to be paved as there is no provision in the plat or Town Code for allowing a public Street to consist of grass pavers. As such, the Applicant cannot be permitted to count a dedicated Street which should be paved as part of its landscape calculations to artificially expand the open space and allow the Applicant to build a bigger house than permitted by Code.

**REPLY TO:**

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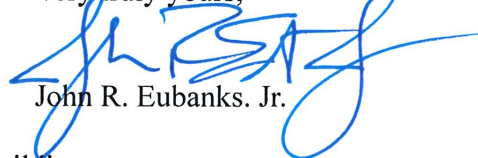
In addition to the above, any attempted Variance would fail as there is no competent substantial evidence to support it. There is no undue hardship to support the Variance as the Property can continue to be used for its intended purpose for which it is zoned, the construction of a residence. In addition, the owner clearly knew the size and restrictions on the empty Lots including the paved right of way in the front yard and the dedication and acceptance of the 10-foot Street yet created plans which did not meet the landscape open space calculations. As such, any potential "hardship" would be clearly self-created, and no doubt result in an appeal by way of Petition for Writ of Certiorari should the Town Council ultimately approve it.

Finally, ARCOM should be aware that there have been a series of **drainage issues** emanating from the 203 Via Vizcaya Property. *See* attached video of water runoff. Given that the Street was dedicated to and accepted by the Town as a public Street, the resolution of drainage issues on its own utility easement would appear to fall on the Town. In the meantime, the street continues to flood with no resolution. As a result, the Town should be integral to any resolution of the existing drainage issues on its public Street. Nevertheless, the Applicant is proposing a large new home with a proposed drainage system, which we had asked the Town to see, but did not receive a copy until this morning from the Applicant's counsel Jamie Crowley. Previously, the Neighbor proposed a solution to the drainage issues, but did not receive any response for months. As such, it was a shock to the Neighbor that the Applicant included in its drainage plan the use of an outfall pipe in the Neighbor's property with no permission or agreement for its use by the Owners of Lots 1,2,3,4 and 5. There cannot be an "approved drainage" plan for the Project without the Neighbor's approval. As a result, all of these drainage issues should be resolved, **before any ARCOM review, much less any approval.**

While ARCOM is tasked to review the architecture for a project, in this case the architecture is too large for the Property. It is up to the Applicant's architect to draw plans which fit the Code. This obligation cannot be avoided by manufacturing a Variance for landscape open space which does not meet the Code, will result in a larger home than permitted, and would be challenged by the Neighbor. Added to this is the continuous drainage system issue which cannot go forward as drawn without permission from the Neighbor prior to any consideration or approval.

While the Neighbor is more than willing to work through these issues, it cannot do so on the same day it found out that the Applicant is using its property (and most likely its engineering) to support its Application without permission to do so. Therefore, **ARCOM should defer this matter** until such time as the Applicant goes back to the drawing board and creates a home which is Code complaint and resolves the existing drainage issues.

Very truly yours,



John R. Eubanks, Jr.

cc: ARCOM Members  
Wayne Bergman, Director of Planning, Zoning & Building  
James Murphy, Assistant Director of Planning, Zoning & Building  
Craig Hauschild  
Bradley Falco  
JoAnne O'Connor, Esq., Town Attorney  
Kelly Churney, Acting Town Clerk