



MAY 2, 2025

APPEARANCE REVIEW WORKSHOP

HARMONY DISCUSSION

Sec. 34-116 (3)

Single-family detached dwellings not located within an approved Planned Unit Development (PUD) are subject to appearance review and approval or denial, approval with modifications by the Town Planning and Zoning Board.

PLANNING AND ZONING
TOWN OF JUNO BEACH

Problem Statement

The current Appearance Review section of the code, including its intent, does not align with State Statute. More specifically, the term *Harmony* is too subjective and lacks clarity for implementation purposes. Additionally, codified implementation standards are lacking in the current regulatory framework.

There are concerns by residents, property owners, and developers, such as lack of regulatory clarity, impinging on property rights and diminishing property values, the risk of losing our small-town charm, and the proliferation of large, out-of-scale houses.

Discussion

Following the workshop, staff hopes that both the Town Council and the Planning and Zoning Board will have a comprehensive understanding of the Town's current regulations regarding Appearance Review (Section 34-116(3)(b)) for single-family homes that are not part of a Planned Unit Development (PUD). Our goal is to ensure clarity for both current and future residents, eliminating any ambiguity in project approvals or denials. Please note that using the current regulation as applied, the square footage (top of the range and average) of homes will continue to increase and eventually build out to the maximum size permitted under the zoning district's Building Site Area Regulations.

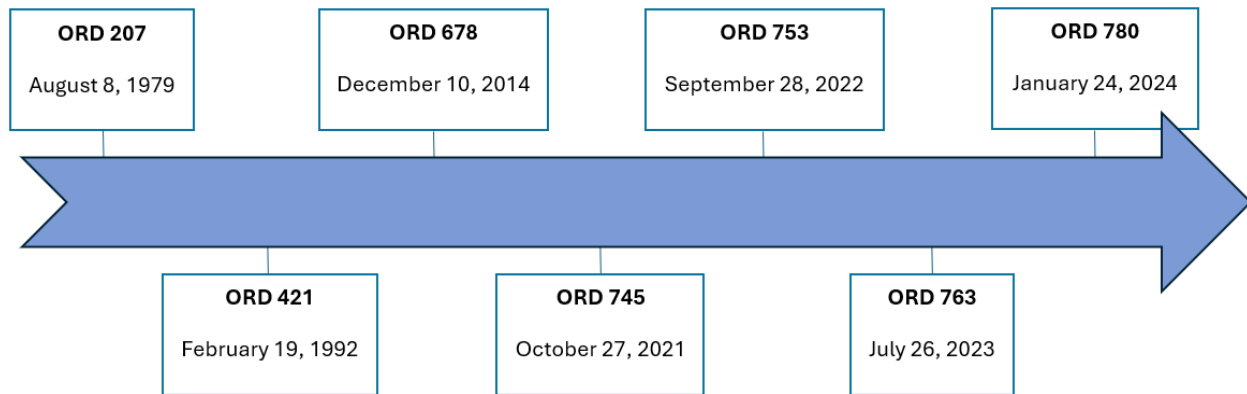
Should the Town Council determine that the current implementation of the Appearance Review Criteria, inclusive of harmony, is not satisfactory and has led to unintended outcomes, staff can offer solutions to align with the Council's objectives and desired community outcomes. These potential solutions may include refining the Building Site Area Regulations (such as setbacks for second floors, FARs, and the allowance of tower features), incorporating quantitative assessments for elements of Harmony (like mass, bulk, and scale), and reconsideration of review authorities.

History of Ordinances for Appearance Review and Harmony

From October 27, 2021, and the Town Council adoption of Ordinance No. 745, the Town has amended the appearance and harmony code section an additional 3 times. These include:

- Assigning Site Plan and Appearance review of detached single-family dwellings to the Town's Planning and Zoning Board.
- The Site Plan review of single-family homes was returned to the Planning and Zoning department.
- Define *Harmony, bulk, mass, proportion, and scale*.
- Clarified "Harmony within the area" to "structures within 300 feet from the proposed site of the same zoning district".

Timeline of Ordinances for Appearance and Harmony



A summary of each ordinance is provided in attachment #1.

Site Plan and Appearance Review Intent and Summary of Criteria

Division 4. – Site Plan and Appearance Review, intent and purpose, states that the intent of site plan and appearance review is:

- To ensure the best use and the most appropriate development and improvement of each lot in the town;
- To protect the owners of lots to ensure that the use of surrounding lots will maintain or improve property values;
- To ensure the erection thereon of well-designed and proportioned structures built of appropriate materials;
- To preserve, as far as practicable the natural features and beauty of said property;
- To obtain harmonious architectural themes; to encourage and secure the erection of attractive structures thereon, with appropriate locations thereof on lots;
- To secure and maintain proper setbacks from streets and adequate open spaces between structures; and
- In general, to provide adequately for a high type and quality of improvement in said property, and thereby enhance the property values and the quality of life in the town.

Division 4. – Site Plan and Appearance Review, required criteria, states that *single-family detached dwellings not located within an approved planned unit development shall be subject to appearance review and approval or denial, or approval with modifications by the Town Planning and Zoning Board, with site plan review by the Town Planning and Zoning department.*

Staff's determination of which projects are required to be reviewed by the Planning and Zoning Board is based on "substantial improvement", which is any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure taking place during a ten-year period, the cumulative cost of which equals or exceeds 50 percent of the fair market value of the building or structure as determined by the Palm

Beach County Property Appraiser before the improvement or repair is started. For each building or structure, the ten-year period begins on the date of the first permit issued for improvement or repair of that building or structure.

This definition has not been codified but it is the same definition used for the Floodplain Regulations section of the Town's Code of Ordinance. If staff were not to make this determination, any type of construction would require an appearance review. Staff proposes to codify the definition into Code Section 34-4.

Code Section 34-116(3)(b)

The Town's current appearance review criteria encompass 7 criteria. For Council's review, staff will expand on each of them individually to allow a clear understanding of staff's current review process when an application is submitted for the Planning and Zoning's Board review and approval.

- 1. Is of an architectural style representative of or reflecting the vernacular of Old Florida style which is indigenous to the town and which is commonly known and identified by its late Victorian (Key West Cracker), Spanish revival (Mediterranean), Modern (early to mid-20th century), or combination thereof style of architecture. Summarized briefly, common features of the vernacular of Old Florida style that identify the Victorian (Key West Cracker), and Spanish revival (Mediterranean) architectural style include wood or concrete block with stucco siding; simple pitched roofs; tile, metal, or asphalt roofs; ornate details such as but not limited to exposed soffits, individualized vent and louver shapes, reliefs, and detailed window and door treatments; lush landscaping with private yards; and use of porches, balconies and patios. Common features of the vernacular of Old Florida Style that identify the Modern (early to mid-20th century) architectural style include clean geometric lines, often at right angles; an emphasis on function; materials such as glass, steel, iron, and concrete; and the use of natural light through large and expansive windows;**

The Town Staff does not, since July 1st, 2023, regulate the architectural style of homes due to section 163.3202 of the Florida Legislature which was amended to *allow local governments to regulate building design elements for single-family detached dwellings if the local government had a design review board or architectural review board created before January 1, 2020*. Please note that the Town did not delegate the appearance review of single-family homes to the Planning and Zoning Board until October 27, 2021.

As directed by the Town Council, Town Attorney Rubin, conducted an analysis to determine if the Town could continue to regulate building design elements (architectural style) for single-family homes not located within a planned unit development. Please see

below the conclusion of Mr. Rubin's analysis. Please see attachment 2 for the complete analysis on "Regulation of Architectural Styles for Single-Family Detached Dwellings".

CONCLUSION:

As fully discussed above, applying the rules of statutory construction does not lead to any definitive conclusion regarding the Town's ability to regulate architectural styles for detached single-family (and two-family) dwellings. Neither the plain language of the statute nor the legislative history gives any clear indication as to whether the Planning and Zoning Board's historical duties as an appearance review board satisfies the statutory criteria for the continued regulation of building design elements or architectural styles for detached single-family dwellings as set forth in Section 163.5202(5)(a), Florida Statutes. The Town Council could request an advisory opinion from the Attorney General seeking additional guidance regarding the statutory interpretation. However, even if the Attorney General issues such an opinion, it is advisory only. Consequently, it is ultimately up to the Town Council to assess the importance of architectural review of single-family (and two-family) dwellings and determine the appropriate course of action based on the potential risks and benefits of each approach.

2. **Is of a design and proportion which enhances and is in harmony with the area. The concept of harmony shall not imply that buildings must look alike or be of the same style. Harmony can be achieved through the proper consideration of setback, scale, mass, bulk, proportion, overall height, orientation, site planning, landscaping, materials, and architectural components including but not limited to porches, roof types, fenestration, entrances, and stylistic expression. For the purpose of this section, the comparison of harmony between buildings shall consider the preponderance of buildings or structures within 300 feet from the proposed site of the same zoning district;**

Staff's analysis for the application of harmony is identified below:

Study Area

- Defined: For the purpose of this section, the comparison of harmony between buildings shall consider the **preponderance of buildings or structures within 300 feet from the proposed site of the same zoning district**
- Buffer map: Staff uses the Palm Beach County Property Appraisers office mapping service to create a buffer 300 feet around the property. Staff remove any properties that are not in the same zoning district.

Harmony Definition

- Harmony means a quality which produces an aesthetically pleasing whole as in an arrangement of varied architectural and landscape elements. Harmony can be achieved through the proper consideration of **scale, mass, bulk, proportion, height, orientation, site planning, landscaping, materials and architectural components**, including, but not limited to, porches, roof types, fenestration, entrances and stylistic expression.
 - **Scale** means the proportions of a building in relation to its surroundings, particular other buildings in the surrounding context.
 - **Mass** means the relationship and sizes between different volumes of a building or structure.
 - **Bulk** means the overall size and volume of a building or structure.
 - **Proportion** means the visual effect of relationship of one portion to another, or of a portion to the whole, or of one thing to another.
 - **Building height** means the vertical distance measured from finished grade to the highest exterior point of the building roof, exclusive of chimneys, aerials, and other similar appurtenances.
 - **Landscaping** means any of the following or combination thereof: materials such as, but not limited to, grass, ground covers, shrubs, vines, hedges, trees or palms, and other materials such as rocks, pebbles, sand, wall or fences.
 - **Architectural Components** including, but not limited to, porches, roof types, fenestration, entrances and stylistic expression.
 - **Orientation** can be defined by the direction a structure faces.
 - **Site planning** can be defined as an in-depth analysis of a project's site's existing and proposed conditions.
 - **Materials** can be defined as a physical substance that things can be made from.

Creation of Comparative Table

- Components of the table. To analyze the proper consideration of harmony, staff obtains the following information from Palm Beach County Property Appraisers office website.
 - Total square footage and square footage under air (for Bulk, Scale, Mass)
 - Lot size (to compute Lot Size to Total Square Feet ratio, aka Floor Area Ratio)*
 - Number of Stories (for scale and height)
 - Presence of a Tower Structure (for scale)

**FARs are not part of the Town's Building Site Area Regulations. Staff utilizes FAR as a tool to compare the building's floor area (volume) in relation to the size of the lot. Since all lot sizes are not equal, this allows staff to compare a standard measurement of the mass and bulk from one building to another.*

Analysis of Comparative Table

- Identifies the ranges of total square footage (gross), square feet under air, and FAR of the structures within the study area.
- Calculates the average of total square footage (gross), square feet under air, and FAR of structures within the study area.
- Calculates the percentage of buildings with 2 stories or more (if the proposed is 2 stories or more)
- Calculates the percentage of buildings with a tower structure (if the proposed includes a tower structure)
- Compares the proposed with the ranges, maximum and averages within the study area with the proposed structure.

Staff's professional implementation of harmony by the numbers

Please note that this procedure is not codified.

- Test One for Bulk and Mass: If the proposed total square footage and FAR is within the range of the total square footage of the study area, and less than double the average total square footage, then the proposed is harmonious in bulk and mass.
- Test Two for Bulk and Mass: If the proposed total square footage and FAR is outside of the range, but maintains less than double of the average, then other factors such as setbacks, orientation of the building, landscaping and architectural components like balconies may be considered in the recommendation of approval/denial.
- Test Three for Bulk and Mass: If the proposed total square footage and FAR is over twice as much as the average and over the range of the study area, staff would recommend denial of the application.
- Test One for Scale: If more than half (majority) of the houses are the same number of stories or higher, then the proposed is harmonious in scale.
- Test Two for Scale: If the proposed height or the presence of a tower feature is not harmonious with more than half (majority) of the study area, the immediate adjacent houses shall be considered in the recommendation of approval/denial.

Examples:

- The proposed home is located immediately between homes that are 2-stories, other factors may be considered in the recommendation of approval/denial.
- The proposed home is located immediately between one home that is 2-stories and the other home is 1-story, the size and orientation of the second story and/or tower feature may be considered in the recommendation of approval/denial.

- Test One for Proportion: If the architectural elements such as doors, garage doors, windows and roof design (pitch) are consistent, then the proposed is harmonious in proportion.

3. Elevator and stairwell shafts and other modern operations and features of a building shall be either completely concealed or shall incorporate the elements of the architectural style of the structure; rooftop equipment and elevator and mechanical penthouse protrusions shall be concealed; and parking garages and other accessory structures shall be designed with architectural features and treatments so that they are well proportioned and balanced and in keeping with the architectural style of the principal structure;

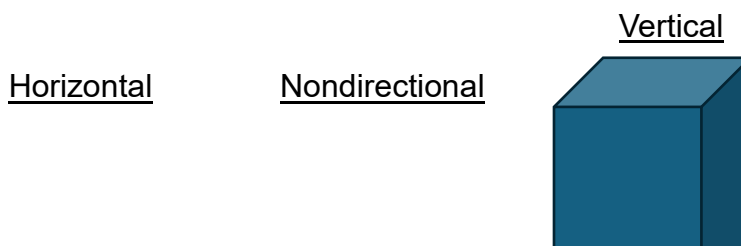
Staff's analysis is comprised of reviewing the elevation drawings and renderings to visually inspect any component listed above is concealed or incorporated properly with the proposed architectural style of the structure. The leniency staff provides is dependent on the architectural style as some aspects of the style may promote an extravagant appearance.

4. Shall have all on-site structures and accessory features (such as but not limited to light fixtures, benches, litter containers, including recycling bins, traffic and other signs, letter boxes, and bike racks) compatible in design, materials, and color;

Staff's analysis is comprised of reviewing the site plan to visually inspect any component listed above is compatible with the proposed design, materials and color of the proposed project. Please note that this criterion is more suitable for projects other than single family homes not in a PUD or as part of a bigger site plan (Caretta, Dunes at Juno Beach, Plaza la Mer, etc.).

5. Shall have a design in which buildings over 40 feet in height shall appear more horizontal or nondirectional in proportion rather than vertical, accomplished by the use of architectural treatments as described in these criteria;

Staff's analysis comprises of the review of elevation drawings to review the proposed height and width of the structure. For structures without a tower feature and those located in the Residential, Transient and Multiple-Family – Moderate Density (RMT) zoning district, this criterion does not apply as single-family use structures are limited to a maximum 30 ft. in height. Please see sample below.





6. Shall locate and design mechanical equipment with architectural treatments so that any noise or other negative impact is minimized;

Staff's analysis comprises of the review of the site plan and renderings to review the location of the mechanical equipment, and the methods used to minimize noise or visual impacts from public view. Staff looks for landscape buffers, fencing, walls, or other non-translucent materials to be used as screening.

7. Complies with the town's community appearance standards (see article IV, division 14 of this chapter).

The Town's community appearance standards set forth in Division 14 excludes its applicability to individual single-family or duplex residence.

Sample of Harmony Review (451 Neptune Rd.)

Below are the steps staff follow when performing a review of Harmony, as defined by criterion #2 of the Appearance Review for substantial improvements or new single-family homes. Please note that the processes have changed as the ordinances have changed. This process is for the review of Harmony as described in Ordinance No. 780 (January 2024).

Step 1

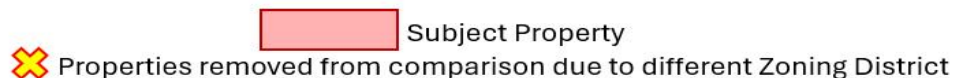
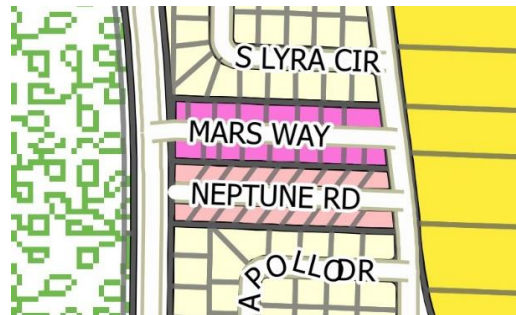
Verify Applicant has provided the necessary information to be able to compare the proposed project with the surrounding structures within 300 ft (same zoning district). These include Total Square Feet (Gross Square Footage), Square Feet under Air, Lot Size, and Number of Stories.

Please note that staff are requesting (as of 4/2024) cubic feet to be included in the site data table. In addition, depending on the design of the home, some architectural components such as porches, balconies, entrances that are open air may not be considered under gross square footage.

Step 2 - Define Study Area

Using the PBC Property Appraiser Website, the staff creates a 300 ft. buffer from the subject property (highlighted in blue). Staff uses the Town's Zoning Map to determine

which properties are within the same zoning district. In the case for 451 Neptune, the zoning is RS-4. As can be seen from the Zoning map below, only the properties along Neptune are within the same zoning district. All other properties are then removed from the study area.



Step 3 – Comparative Table

Using PBC Property Appraiser, the staff creates a comparative table of the properties with all available information in the study area. Staff verifies this information is accurate using the Town's Building Permit software. The staff also creates and populates the Floor Area Ratio (FAR) column.

The subject property and the proposed improvement are highlighted in blue.

<i>Address</i>	<i>Lot Total Square Feet</i>	<i>Tower Feature</i>	<i>Lot Size to Total Square Feet Ratio (FAR)</i>	<i>Total Square Feet</i>	<i>Square Feet Under Air</i>	<i>Story</i>
390 Neptune	5,662.8	No	0.36	2,079	1,470	1
391 Neptune	5,662.8	No	0.49	2,804	1,798	2
491 Neptune	6,969.6	No	0.31	2,177	1,671	2
490 Neptune	5,662.8	Yes	0.32	1,820	1,573	1
481 Neptune	5,662.8	No	0.33	1,879	1,392	1
480 Neptune	5,662.8	No	0.33	1,920	1,424	1
471 Neptune	5,662.8	No	0.34	1,945	1,553	1
460 Neptune	5,662.8	No	0.56	3,185	2,364	2
451 Neptune	5,662.8	Yes	0.70	3,961	3,234	2
450 Neptune	5,662.8	No	0.28	1,606	1,254	1
441 Neptune	5,662.8	No	0.29	1,660	1,316	1
430 Neptune	5,662.8	No	0.38	2,174	1,265	1
421 Neptune	5,662.8	No	0.30	1,704	1,210	1
420 Neptune	5,662.8	No	0.35	1,970	1,646	1
411 Neptune	5,662.8	No	0.46	2,589	1,956	2
400 Neptune	5,662.8	No	0.34	1,919	1,176	1
531 Ocean Drive	6,098.0	No	0.27	1,648	1,553	1
Average	N/A	N/A	0.36	2,067	1,539	N/A

Step 4 – Analysis of Harmony

- The existing Total Square feet range is 1,606 (bottom) to 3,185 (top). The proposed is 3,961. **The proposed is outside the top of the existing range by 776 square feet.**
- The existing Lot Size to Total Square Feet Ratio (FAR) range is 0.27 (bottom) to 0.56. (top) The proposed is 0.70. **The proposed is outside the top of the existing range by a ratio of 0.14.**
- The average total square footage is 2,067 square feet. The proposed is 3,961 square feet. The proposed is **1.9 times** the average, just under double the average threshold.
- 1 of the 16 houses have tower features, or **6.25%**.
- 4 of the 16 houses are 2 stories, or **25%**. **Neither of the 2 immediately adjacent homes are 2 stories.**

Step 5: Tests for Harmony components

Test One for Bulk and Mass: **FAILS** because the proposed is not within the range.

Test Two for Bulk and Mass: **FAILS**. Since the proposed is not within the range, but it is less than double (1.9 times) the average of the total square footage, staff reviewed other

factors of harmony. The other factors (setbacks, orientation, landscaping) did not enhance the harmony of the home. Setbacks were maxed out on all boundaries, the orientation of the second story was designed to maximize the size not in keeping with harmony, and there was no indication of landscaping enhancements.

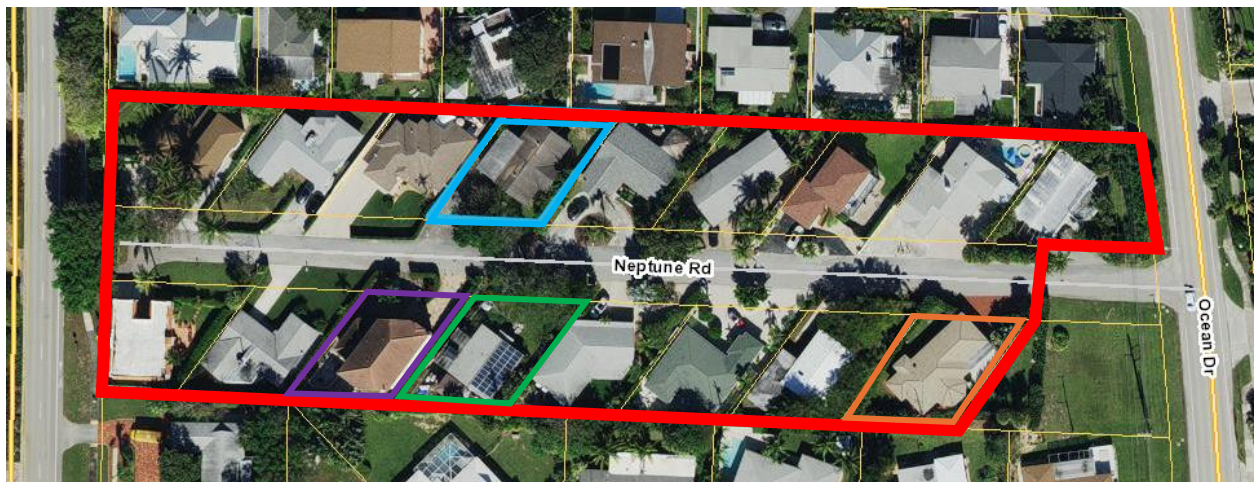
Test One for Scale: **FAILS** because the percentage of houses with a tower feature is only 6.25%, and the percentage of houses with a second story is 25%, which are well below 50%.

Test Two for Scale: **FAILS** because neither of the 2 immediately adjacent homes are 2 stories and the proposed home did not incorporate a better transition between the properties.

Proposed fails all applicable tests for bulk, mass, and scale.

Scenarios

If the Town continues to enforce the Appearance Review of Single-Family homes not located in a PUD as currently codified, as current trends continue to show, staff notes that the homes will likely start to show incremental growth in bulk and mass. To illustrate what may happen to existing homes that currently vary in size (smallest, average, and largest) within the study area of the [451 Neptune Road](#) that proposes a major remodel or new construction, the staff is providing the following scenarios for Council's discussion.



Scenario 1: If we take the smallest house in the study area, [450 Neptune Road](#) at 1,606 square feet, it will gain staff support for an increase to the top of the range (3,185 sq. ft.). It may meet test two for bulk and mass if the area of the home (1,606 sq. ft) is increased to twice the average (4,134 sq. ft.) and if other parts of harmony (landscape, orientation, setbacks, architectural features) are being met. This is a maximum potential increase of 2,528 square feet.

Scenario 2: If we take the closest house to the average, **390 Neptune Road** at 2,079 square feet, it will gain staff support for an increase to the top of the range (3,185 sq. ft.). It may test two for bulk and mass if the area of the home (2,079 sq. ft.) is increased to twice the average (4,134 sq. ft.) and if other parts of harmony (landscape, orientation, setbacks, architectural features) are being met. This is a maximum potential increase of 2,055 square feet.

Scenario 3: If we take the largest home in the study area, **460 Neptune Road** at 3,185 square feet. It will not gain staff support for any increase in size but may meet test two for bulk and mass to twice the average (4,134 sq. ft.) if other parts of harmony (landscape, orientation, setbacks, architectural features) are being met. This is a maximum potential increase of 949 sq. ft.

Attachment #1 - History and Background

- Ordinance No. 207. August 8, 1979.

First adoption of the Zoning Code of Ordinances for the Town of Juno Beach.

Ordinance No. 207 included a site plan review requirement for construction or clearing of land within specific zoning districts. The language was brief and did not include an appearance review requirement. (see attachment #1)

- Ordinance No. 421. February 19, 1992

Created the RS-1, RS-2, RS-3, and RS-4 Residential Zoning Districts and site plan regulations. Provided site plan and architectural appearance review criteria and procedures for all uses other than individual single-family detached dwellings, which shall be subject to review only by the Town of Juno Beach Planning, Building and Zoning Department.

Ordinance No. 421 was considered a cleanup ordinance as it aimed to rezone areas of the town to a new zoning district that had a better fit for the community. In the creation of residential zoning districts, the creation of site plan regulations (building site area regulations) was also required. (see attachment #2)

- Ordinance No. 678. December 10, 2014.

Added Mid-Century Modern as a permitted Architectural Style.

Prior to Ordinance No. 678, the Town only permitted the Architectural styles of Victorian (Key West Cracker), Spanish Revival (Mediterranean) or a combination thereof. This was the result of an administrative appeal (September 9, 2014) where the Town Staff has denied the construction of a single-family home that had a Modern Architectural Style. On September 23, 2014, Town Council meeting, Council discussed the Town's current Architectural Styles and directed staff to amend the Code to include modern and modern contemporary architectural styles. During the discussions, Council decided to only add Modern (early to mid-20th century) architectural style. (see attachment #3).

- ORD 745. Oct. 27, 2021

Added site plan and appearance review of single-family homes to the Planning and Zoning Board duties.

The Planning and Zoning Board shall have final decision-making authority on site plan and appearance review, specifically including architectural review, of detached single-family dwellings not located within an approved planned unit development.

- ORD 753. Sept. 28, 2022

Removed the site plan review of single-family homes from the Planning and Zoning Board and returned it to the Planning and Zoning Department.

- ORD 763. July 26, 2023

Created definitions for terms: harmony, bulk, mass, proportion and scale.

Bulk means the overall size and volume of a building or structure.

Harmony means a quality which produces an aesthetically pleasing whole as in an arrangement of varied architectural and landscape elements. Harmony can be achieved through the proper consideration of scale, mass, bulk, proportion, height, orientation, site planning landscaping, materials and architectural components including, but not limited to, porches, roof types, fenestration, entrances and stylistic expression.

Mass means the relationship and sizes between different volumes of a building or structure.

Proportion means the visual effect of relationship of one portion to another, or of a portion to the whole, or of one thing to another.

Scale means the proportions of a building in relation to its surroundings, particular other buildings in the surrounding context.


- Ord 780. January 24, 2024

Amended Sec. 34-116 to expand on “of harmony within the area”.

For the purpose of this section, the comparison of harmony between buildings shall consider the preponderance of buildings or structures within 300 feet from the proposed site of the same zoning district.

MEMORANDUM

TO: Mayor Peggy Wheeler
Vice Mayor John Callaghan
Members of the Town Council

FROM: Leonard G. Rubin, Town Attorney 

RE: Regulation of Architectural Styles for Single-Family Detached Dwellings

DATE: April 21, 2025

CC: Robert Cole, Town Manager
Frank Davila, Planning and Zoning Director
Caitlin Copeland-Rodriguez, Town Clerk

BACKGROUND:

For well over thirty years, the Town has regulated the architectural style of all buildings and structures erected within the Town as part of its site plan and appearance review procedures. Buildings were required to be of an architectural style representative of or reflecting the "Old Florida" style of architecture indigenous to the Town and commonly known and identified as late Victorian (Key West Cracker), Spanish revival (Mediterranean), or a combination thereof. In 2014, the list of architectural styles was expanded to include Modern (early to mid-20th century). All new commercial developments, mixed-use developments, and residential dwellings of two or more units were required to undergo site plan and appearance review, including architectural review. These applications were first considered by the Planning and Zoning Board and presented to the Town Council for final action with the Board's recommendation. However, single-family detached dwellings were subject to site plan and appearance review, including architectural review, only by the Town's Planning and Zoning Department.

During its 2021 session, the Florida Legislature amended Section 163.3202, Florida Statutes, to limit the ability of local governments to regulate "building design elements" for single-family and two-family dwelling units. The term building design elements refers only to the exterior appearance and layout of the structures, not the size or massing, and is defined by statute as follows:

[T]he external building color; the type or style of exterior cladding material; the style of material of roof structures or porches; the exterior nonstructural architectural ornamentation; the location or architectural styling of windows or doors; the location or orientation of the garage; the number and type of rooms; and the interior layout of rooms. **The term does not include the height, bulk, orientation, or location of a dwelling on a zoning lot; or**

the use of buffering or screening to minimize potential adverse physical or visual impacts or to protect the privacy of neighbors.

§163.3202(5)(b)1, Fla. Stat. (2024) (emphasis added). Section 163.3202(5)(a), Florida Statutes, did provide certain exceptions to this limitation on municipal regulation of single-family and two-family dwellings, including, but not limited to, dwellings located in planned unit developments or master planned communities or dwellings located within a jurisdiction of a local government that has a design review board or architectural review board.

As set forth above, prior to 2021, single-family detached dwellings were not considered by either the Planning and Zoning Board or the Town Council and were subject solely to site plan and appearance review and approval by the Planning and Zoning Department. To comply with the statutory amendment and to facilitate the Town's continued regulation of architectural styles for single-family detached dwellings, on October 27, 2021, the Town Council adopted Ordinance No. 745, amending the Town's Zoning Code to designate the Planning and Zoning Board as the Town's appearance review board for single-family detached dwellings. The Board was granted final decision-making authority on site plan and appearance review¹, specifically including architectural review, of detached single-family dwellings not located within an approved planned unit development, thereby invoking the statutory exception outlined above.

However, during its 2023 session, the Florida Legislature amended Section 163.3202 to only allow local governments to continue to regulate building design elements for single-family detached dwellings if the local government had a design review board or architectural review board created before January 1, 2020. As set forth above, the Town did not delegate appearance and architectural review of single-family dwellings to the Planning and Zoning Board until October 27, 2021. Consequently, effective July 1, 2023 (the effective date of the statutory change), the Town ceased regulating building design elements for single-family detached dwellings.

Recently, Councilmember Davis questioned whether the Town could continue to regulate building design elements because the Planning and Zoning Board has historically conducted appearance review, albeit on an advisory basis, of commercial developments, mixed use developments, and residential structures of two or more units. Councilmember Davis presented a letter from Nancy Stroud, a local land use attorney, opining that because the Planning and Zoning Board's duties included appearance review as of January 1, 2020 and because the terms "design review board" and "architectural review board" are not specifically defined by statute, the Town could continue apply its land development regulations relating to building design elements (or architectural styles) to single-family and two-family dwellings.

¹ Through the adoption of Ordinance No. 753 on September 28, 2022, the Town Council removed the site plan review component for single-family detached homes from the Planning and Zoning Board's purview and returned that function to the Planning and Zoning Department, thereby limiting the Board's authority solely to appearance review (including architectural review) only.

QUESTION PRESENTED:

Given the Planning and Zoning Board's historical appearance review duties as a recommending body for commercial developments, multi-family developments, and residential dwellings of two or more units, did the Town have an architectural review board or design review board in place prior to January 1, 2020 to enable the Town to continue to regulate building design elements (or architectural styles) for detached single-family dwellings and two-family dwellings not included within a planned unit development pursuant to Section 163.3203(5)(a), Florida Statutes?

SHORT ANSWER:

Neither the plain language of Section 163.3203(5)(a)7, Florida Statutes, nor the legislative history for the 2023 amendment gives any definitive indication of the Town's ability to continue to regulate architectural styles for detached single-family dwellings and two-family dwellings. Consequently, the Town Council may wish to seek an advisory opinion from the Attorney General. However, because Attorney General opinions are advisory and not legally binding, the Town must proceed to evaluate its options and determine the appropriate course of action based on the potential risks and benefits of each approach, taking into account the best interests of the Town and its residents.

ANALYSIS:

As set forth above, the Planning and Zoning Board has historically, and most certainly prior to January 1, 2020, acted as a recommending body for site plan and appearance review for commercial developments, mixed-use developments, and residential dwellings of two or more units. As set forth in Section 34-116(3)(b) of the Town Code, architectural style is a component of appearance review. The central question is whether given this appearance review function, the Town's Planning and Zoning Board satisfies the statutory requirement of an "architectural review board" or "design review board."

As pointed out in Ms. Stroud's letter, Section 163.3202(5)(a), Florida Statutes, does not define the terms "architectural review board" or "design review board." When attempting to discern the application of a statute, the first rule of statutory construction or interpretation is to give the statute its plain and ordinary meaning. *Weber v. Dobbins*, 616 So. 2d 956 (Fla. 1993). However, when a word or term is not defined and the statutory language is unclear or ambiguous, courts apply rules of statutory construction and explore legislative history to determine legislative intent. *Nicarry v. Eslinger*, 990 So. 2d 661 (Fla. 5th DCA 2008). See also *Longval v. State*, 914 So. 2d 1098 (Fla. 4th DCA 2005) (to discern legislative intent, courts must apply a "common-sense approach" which requires consideration of, among other things, legislative history). A statute is ambiguous when its language is subject to more than one reasonable interpretation and may permit more than one outcome. *Hess v. Walton*, 898 So. 2d 1046 (Fla. 2d DCA 2005).

Initially, it appeared that the Legislature's 2023 amendment to Section 163.3202(5)(a), Florida Statutes, preempted the Town's ability to review building design elements for detached single-family dwellings because prior to October 27, 2021, architectural review

was conducted solely by the Planning and Zoning Department and not by a board with design review or architectural review functions. However, upon closer examination, the statute does explicitly state that the Town was required to have a design review board or architectural review board actively reviewing such applications prior to January 1, 2020. The statute only requires that the "dwelling be located within a jurisdiction of a local government that has a design review board or an architectural review board created before January 1, 2020." §163.3202(5)(a)7, Fla. Stat. (2024). As fully set forth above, the Planning and Zoning Board has historically conducted appearance review and architectural review of development applications as a recommending body and was in place long before January 1, 2020. Because the statutory language is subject to more than one interpretation, the next step in the analysis would be to explore the legislative history of the 2023 revision to Section 163.3202(5)(a), Florida Statutes.

While the legislative history, like the statute itself, does not provide any specific definitions, the Florida Legislature's April 27, 2023 Bill Analysis and Fiscal Impact Statement for the 2023 revision to Section 163.3202(5)(a), Florida Statutes, does, in a footnote, give two examples of the types of local government architectural review boards or design review boards to which it was referring, namely, the Village of Wellington Architectural Review Board and the City of St. Petersburg Development Review Committee, which also functions as the City's Design Review Board. However, a deeper analysis of the roles of these two example boards or committees yields no additional clarity.

The stated duties of the Village of Wellington Architectural Review Board ("ARB") are to: (1) adopt by resolution various schedules of approved materials, designs, and charts of approved colors; (2) hear and decide appeals of administrative decisions of the planning, zoning and building department pertaining to approved materials, designs, and charts of approved colors; (3) hear and approve alternatives to the development and design criteria established by ordinance or resolution; and (4) review and approve plans for multifamily and non-residential development. Appointments to the Architectural Review Board are "based on experience or interest in the businesses and professions involved in building and development." The powers and duties of the Wellington ARB include adopting schedules of approved materials, designs, and colors and go far beyond mere recommendations regarding appearance review. The Wellington ARB conducts traditional architectural or design review in the same manner as many other local government boards that review the architectural elements of single-family homes, such as the Town of Bay Harbor Islands Design Review Board, the City of Miami Beach Design Review Board, and the City of Naples Design Review Board. Each of these municipalities has extensive design and/or architectural guidelines in place that are administered by a board whose members have specific expertise relating to architecture, engineering, and/or land use.

The City of St. Petersburg, on the other hand, has a Development Review Commission ("DRC") with duties very similar to a traditional planning board like the Town's Planning and Zoning Board. In appointing members to the DRC, Section 18.80.020.2(B) of the City Code requires that, where possible, the City Council should include members "qualified and experienced in the fields of architecture, planning, landscape architecture,

engineering, construction, and land use law and real estate.” While the City has developed very detailed architectural guidelines for its traditional neighborhoods, the architectural review of single-family homes is conducted by members of City Staff, with the St. Petersburg DRC’s role generally limited to reviewing architectural details and materials when a property owner is seeking a variance. In fact, a representative of the City Attorney’s Office confirmed that the City of St. Petersburg specifically added design review to the Commission’s duties after the 2021 amendment to Section 162.3202(5)(a), Florida Statutes, to ensure continued regulation of building design elements or architectural styles for detached single-family homes. The City’s approach to the 2021 legislation was very similar to Town’s approach; however, the City continued to regulate architecture after 2023 amendment, relying on the fact that the Development Review Commission was in existence prior to January 1, 2020.

Because the legislative history provides two divergent examples of the types of boards that would fall within the exception allowing local governments to continue to regulate building design elements, it provides no additional clarification of the Legislature’s intent.

Neither the plain language of the statute nor the legislative history provides clear direction as to whether the Town can continue to conduct architectural review of detached single-family homes. While the Town will not have a definitive answer until a court of competent jurisdiction rules on this issue or the Florida Legislature further clarifies the statutory language, the Town could, as interim step, request an advisory opinion from the Florida Attorney General. Attorney General Opinions serve to provide legal advice on questions of statutory interpretation. Attorney General opinions are advisory only and not law; however, they are persuasive and could provide additional guidance to the Town.

Irrespective of whether the Town Council seeks an Attorney General Opinion, the Town Council’s decision as to whether to continue to regulate architecture for single-family detached homes² ultimately hinges upon the Town Council’s risk tolerance and an evaluation of the potential benefits and consequences of each approach.

Option A – No regulation of architectural styles for detached single-family dwellings.

The first approach is to take a more conservative, restrictive interpretation of the statute and continue along the current path of not regulating building design elements or architectural styles of single-family detached dwellings. While this approach prevents the Town from requiring specific architectural styles for single-family detached dwellings, the Town can continue to address neighborhood compatibility issues through the application of other components of the appearance review process, such as harmony, or through the adoption of additional regulatory criteria, such as maximum floor area ratios. As explained above, Section 163.3202(5)(b)1, Florida Statutes, does not address size or massing and specifically excludes “bulk” from the definition of building design elements.

Additionally, the Town Council delegated final authority for appearance review of single-family detached homes to the Planning and Zoning Board for the sole purpose of allowing

² Whatever course of action the Town Council takes for single-family detached dwellings would also apply to two-family dwellings.

continued architectural review for these types of dwellings in response to the statutory amendment. However, the Board is not comprised of persons with specific qualifications or experience in the fields of architecture, design, engineering, or land planning, and some of the Boardmembers have expressed reluctance in applying appearance review criteria, some of which are inherently subjective in nature, to pending appearance review applications. If the Town is no longer regulating architectural review for single-family detached dwellings, the Town Council could delegate the appearance review function back to the members of the Planning and Zoning Staff, who do have the requisite expertise in the fields of architecture and land planning. Under this approach, if an applicant disagreed with Town Staff's application of the architectural styles or appearance review criteria, including harmony, that decision could be appealed to the Town Council sitting as the Zoning Board of Adjustment and Appeals, thereby vesting the Town Council with final decision-making authority over certain applications.

Option B – Reactivate regulation of architectural styles for detached single-family dwellings.

The second approach is to follow the lead of the City of St. Petersburg and take a more liberal interpretation of the statute, thereby reactivating the Town's regulation of building design elements or architectural styles for detached single-family homes in the same manner as the Town conducted such review prior to July 1, 2023. This option would expand the Planning and Zoning Board's review to include all aspects of appearance review, including harmony and architectural styles. The Board would continue to have final decision-making authority, and any person seeking to challenge the Board's determination would be required to file a Petition for Writ of Certiorari in the circuit court, without any potential for Town Council involvement in the process.

The potential risk associated with this approach is that applicants who are denied appearance review based on architectural style could raise the provisions of Section 162.3202(5)(a), Florida Statutes, as a basis for reversal of the Board's decision and the Town would be required to defend such an action. While there are various statutory provisions that allow for the recovery of attorney's fees for violations of a statutory preemption, these provisions are only generally applicable to challenges to ordinances and would not apply to an appeal of the denial of a development order application for appearance review. Furthermore, because the Town adopted the architectural review requirement prior to May 11, 1995, no cause of action would generally exist under the Bert J. Harris Private Property Rights Protection Act for enforcing mandated architectural styles. §70.001(12), Fla. Stat. (2024).

The Town Council could also consider returning both appearance review and architectural review of detached single-family dwellings to Planning and Zoning Staff. However, because a review board or architectural committee would not be performing this function, this approach would be more difficult to defend in the event of a challenge to the Town's authority to regulate building design elements (or architectural styles) based on Section 163.3202(5)(a), Florida Statutes.

CONCLUSION:

As fully discussed above, applying the rules of statutory construction does not lead to any definitive conclusion regarding the Town's ability to regulate architectural styles for detached single-family (and two-family) dwellings. Neither the plain language of the statute nor the legislative history gives any clear indication as to whether the Planning and Zoning Board's historical duties as an appearance review board satisfies the statutory criteria for the continued regulation of building design elements or architectural styles for detached single-family dwellings as set forth in Section 163.5202(5)(a), Florida Statutes. The Town Council could request an advisory opinion from the Attorney General seeking additional guidance regarding the statutory interpretation. However, even if the Attorney General issues such an opinion, it is advisory only. Consequently, it is ultimately up to the Town Council to assess the importance of architectural review of single-family (and two-family) dwellings and determine the appropriate course of action based on the potential risks and benefits of each approach.

Map of Applicable Areas

