



PLANNING AND ZONING BOARD AGENDA

March 02, 2026 at 4:00 PM

Council Chambers – 340 Ocean Drive and YouTube

NOTICE: If any person decides to appeal any decision of the Planning & Zoning Board at this meeting, he or she will need a record of the proceedings and for that purpose, he or she may need to ensure that a verbatim record of the proceedings is made, such record includes the testimony and evidence upon which the appeal is to be based. The Town does not prepare or provide such record. *Persons with disabilities requiring accommodations in order to participate in the meeting should contact Caitlin E. Copeland-Rodriguez, Town Clerk, at least 48 hours in advance to request such accommodations.*

The meeting will be broadcast live on The Town of Juno Beach YouTube page and can be viewed any time at: <https://www.youtube.com/@townofjuno-beach477/streams>

HOW CITIZENS MAY BE HEARD: Members of the public wishing to comment publicly on any matter, including items on the agenda may do so by: Submitting their comments through the Public Comments Webform at: https://www.juno-beach.fl.us/towncouncil/webform/public-comments#_blank (all comments must be submitted by Noon on day of Meeting). Please be advised that all email addresses and submitted comments are public record pursuant to Chapter 119, Florida Statutes (Florida Public Records Law). Make their comment in-person; or participate from a remote location using Zoom – please contact the Town Clerk at ccopeland@juno-beach.fl.us by Noon on the day of the meeting to receive the Meeting ID and Access Code. (Please note that all members participating via Zoom must login at least 15 minutes prior to the meeting and will be muted upon entry until Public Comments is called).

**Please note that the Zoom meeting will lock for public comments at 4pm and no other entries will be permitted.*

All matters listed under Consent Agenda, are considered to be routine by the Planning & Zoning Board and will be enacted by one motion in the form listed below. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

CALL TO ORDER

PLEDGE ALLEGIANCE TO THE FLAG

ADDITIONS, DELETIONS, SUBSTITUTIONS TO THE AGENDA

COMMENTS FROM THE TOWN ATTORNEY AND STAFF

COMMENTS FROM THE PUBLIC

All Non-Agenda items are limited to three (3) minutes. Anyone wishing to speak is asked to complete a comment card with their name and address prior to the start of the meeting as well as state their name and address for the record when called upon to speak (prior to addressing the Board). The Board will not discuss these items at this time.

CONSENT AGENDA

1. Planning & Zoning Board Meeting Minutes - January 5, 2026

BOARD ACTION/DISCUSSION ITEMS

2. Appeal of Administrative Decision – 390 Jupiter Lane

COMMENTS FROM THE BOARD

ADJOURNMENT



PLANNING AND ZONING BOARD MINUTES

January 5, 2026 at 4:00 PM

Council Chambers – 340 Ocean Drive and YouTube

PRESENT: MICHAEL STERN, CHAIR
 JIM FERGUSON, VICE CHAIR
 JAMES EHRET, BOARDMEMBER
 JONATHAN BUTLER, BOARDMEMBER
 BRIAN COLE, BOARDMEMBER

ALSO PRESENT: FRANK M. DAVILA, DIRECTOR OF PLANNING & ZONING
 ZACKERY GOOD, TOWN ATTORNEY
 NICOLE LONG, ADMINISTRATIVE ASSISTANT TO TOWN CLERK
 STEPHEN MAYER, PRINCIPAL PLANNER
 DUNCAN CLARK, PLANNING TECHNICIAN

ABSENT: CAROL RUDOLPH, ALTERNATE BOARDMEMBER
AUDIENCE: 18

CALL TO ORDER

PLEDGE ALLEGIANCE TO THE FLAG

ADDITIONS, DELETIONS, SUBSTITUTIONS TO THE AGENDA

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COMMENTS FROM THE PUBLIC

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Public Comment Opened at 4:02pm.

Public Comments Closed at 4:20pm.

CONSENT AGENDA

1. Planning & Zoning Meeting Minutes for December 1, 2025

MOTION: Ferguson/Butler made a motion to approve the Planning and Zoning Board Meeting Minutes for December 1, 2025.

ACTION: The motion passed unanimously.

BOARD ACTION/DISCUSSION ITEMS

2. Variance Request – (Bates) Unaddressed Coconut Avenue

***MOTION:** Butler made a motion to recommend approval to the Town Council of the requested variance from Code Section 34-268 of the Town’s Code of Ordinances to reduce the minimum front setback from 25 ft. to 20 ft.*

***ACTION:** The motion failed for lack of second.*

***MOTION:** Ferguson/Ehret made a motion to recommend denial to the Town Council of the requested variance from Code Section 34-268 of the Town’s Code of Ordinances to reduce the minimum front setback from 25 ft. to 20 ft.*

***ACTION:** The motion passed 4-1 with Boardmember Butler opposed.*

3. Appearance Review - 451 Neptune Road

***MOTION:** Butler/Ferguson made a motion to approve the proposed new two-story single-family home at 3,736 square feet in size, to be located at 451 Neptune Road.*

***ACTION:** The motion passed 4-1 with Boardmember Ehret opposed.*

4. Ordinance No. 793 – Live Local Act amendment (Continuation)

***MOTION:** Ferguson/Ehret made a motion to recommend approval of Ordinance No. 793 to the Town Council.*

***ACTION:** The motion passed unanimously.*

5. ORDINANCE NO. 795

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF JUNO BEACH, FLORIDA, AMENDING DIVISION 4, “SITE PLAN AND APPEARANCE REVIEW,” OF ARTICLE II, “ADMINISTRATION AND ENFORCEMENT,” OF CHAPTER 34, “ZONING” OF THE TOWN CODE OF ORDINANCES TO PROVIDE FOR ADMINISTRATIVE REVIEW AND APPROVAL OF APPEARANCE FOR SINGLE FAMILY DWELLINGS; AND CLARIFYING COMPLIANCE OF APPEARANCE REVIEW WITH FLORIDA LAW; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

***MOTION:** Ferguson/Butler made a motion to recommend approval of Ordinance No. 795 to the Town Council.*

***ACTION:** The motion passed 3-2 with Boardmember Ehret and Boardmember Cole opposed.*

6. ORDINANCE NO. 796

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF JUNO BEACH, FLORIDA, AMENDING SECTION 34-115, “INTENT AND PURPOSE,” OF DIVISION 4,

“SITE PLAN AND APPEARANCE REVIEW,” OF ARTICLE II, “ADMINISTRATION AND ENFORCEMENT,” OF CHAPTER 34, “ZONING” OF THE TOWN OF JUNO BEACH’S CODE OF ORDINANCES TO CLARIFY THE STATED LEGISLATIVE INTENT OF SITE PLAN AND APPEARANCE, INCLUDING ARCHITECTURAL, REVIEWS WITH RESPECT TO SINGLE-FAMILY AND TWO-FAMILY DWELLINGS; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

***MOTION:** Ferguson/Butler made a motion to recommend approval of Ordinance No. 796 to the Town Council.*

***ACTION:** The motion passed 3-2 with Boardmember Ehret and Boardmember Cole opposed.*

7. ORDINANCE NO. 797

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF JUNO BEACH, FLORIDA AMENDING DIVISION 1, “GENERALLY,” OF ARTICLE II, “ADMINISTRATION AND ENFORCEMENT,” OF CHAPTER 34, “ZONING,” OF THE TOWN CODE OF ORDINANCES BY AMENDING SECTION 34-28, “PLANNING AND ZONING BOARD DUTIES,” TO REMOVE REVIEW OF PLATS AND REMOVE REVIEW OF SINGLE FAMILY SITE PLANS AND APPEARANCE (INCLUDING ARCHITECTURAL) FROM THE PLANNING AND ZONING BOARD TO ADMINISTRATIVE STAFF; PROVIDING FOR ADOPTION OF RECITALS; CONFLICTS, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

***MOTION:** Ferguson/Butler made a motion to recommend approval of Ordinance No. 797 to the Town Council.*

***ACTION:** The motion passed 3-2 with Boardmember Ehret and Boardmember Cole opposed.*

COMMENTS FROM THE BOARD

ADJOURNMENT

Chair Stern adjourned the meeting at 6:18PM



TOWN OF JUNO BEACH



PUBLIC COMMENT CARD

ANY CITIZEN WISHING TO SPEAK SHOULD COMPLETE THIS CARD AND GIVE IT TO THE TOWN CLERK PRIOR TO THE START OF THE MEETING.

AGENDA ITEM #: _____ DATE: 1/5/25

NAME: Ty Chivers PHONE NO.: _____

REPRESENTING (IF APPLICABLE): Kelly's

ADDRESS: _____

CHECK WHAT MAY APPLY:

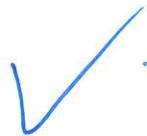
SUPPORT

OPPOSE

I WISH TO SPEAK



TOWN OF JUNO BEACH



PUBLIC COMMENT CARD

ANY CITIZEN WISHING TO SPEAK SHOULD COMPLETE THIS CARD AND GIVE IT TO THE TOWN CLERK PRIOR TO THE START OF THE MEETING.

AGENDA ITEM #:

DATE:

NAME:

Larry Sorsby

PHONE NO.:

732-996-9864

REPRESENTING (IF APPLICABLE):

ADDRESS:

120 Ocean Dr

CHECK WHAT MAY APPLY:

SUPPORT

OPPOSE

I WISH TO SPEAK



TOWN OF JUNO BEACH

Item #1.

PUBLIC COMMENT CARD

ANY CITIZEN WISHING TO SPEAK SHOULD COMPLETE THIS CARD AND GIVE IT TO THE TOWN CLERK PRIOR TO THE START OF THE MEETING.

AGENDA ITEM #: 5 DATE: 1-5-2026

NAME: Tom Kelly PHONE NO.: 260-433-1919

REPRESENTING (IF APPLICABLE): SELF

ADDRESS: 430 N. LYRA CIRCLE JUNO BEACH

CHECK WHAT MAY APPLY:

SUPPORT

OPPOSE

I WISH TO SPEAK



TOWN OF JUNO BEACH



PUBLIC COMMENT CARD

ANY CITIZEN WISHING TO SPEAK SHOULD COMPLETE THIS CARD AND GIVE IT TO THE TOWN CLERK PRIOR TO THE START OF THE MEETING.

AGENDA ITEM #:

DATE:

1-5-24

NAME:

John Stella

PHONE NO.:

1561-891-7378

REPRESENTING (IF APPLICABLE):

ADDRESS:

CHECK WHAT MAY APPLY:

SUPPORT

OPPOSE

I WISH TO SPEAK



TOWN OF JUNO BEACH

PUBLIC COMMENT CARD

ANY CITIZEN WISHING TO SPEAK SHOULD COMPLETE THIS CARD AND GIVE IT TO THE TOWN CLERK PRIOR TO THE START OF THE MEETING.

AGENDA ITEM #: Public Comments DATE: _____

NAME: Anne Boss PHONE NO.: _____

REPRESENTING (IF APPLICABLE): _____

ADDRESS: _____
51617

CHECK WHAT MAY APPLY:

SUPPORT

OPPOSE

I WISH TO SPEAK

Numbers don't lie:

I met with Frank Davila regarding an actual home in Juno Beach and how Ordinance 780 aka "Harmony" will affect the value of a specific property. The Subject home is located at 401 Sunset Drive. Below are the numbers. I believe they speak for themselves:

New homes in Juno Beach, those updated or brand new, built to today's market demands are selling for approximately \$1,000/SF of AC space therefore:

Underlying Zoning = 5,600 SF x \$1,000/SF = \$5,600,000

Staff's Interpretation = 4,900 SF x \$1,000/SF = \$4,900,000
(loss of \$700,000)

Using an Average = 2,900SF x \$1,000/SF = \$2,9000
(loss of \$2,700,000)



TOWN OF JUNO BEACH

#5

PUBLIC COMMENT CARD

ANY CITIZEN WISHING TO SPEAK SHOULD COMPLETE THIS CARD AND GIVE IT TO THE TOWN CLERK PRIOR TO THE START OF THE MEETING.

AGENDA ITEM #:

DATE:

NAME: Marcia Wolf

PHONE NO.: 561 371-0243

REPRESENTING (IF APPLICABLE):

ADDRESS:

CHECK WHAT MAY APPLY:

SUPPORT

OPPOSE

I WISH TO SPEAK



TOWN OF JUNO BEACH

PUBLIC COMMENT CARD

ANY CITIZEN WISHING TO SPEAK SHOULD COMPLETE THIS CARD AND GIVE IT TO THE TOWN CLERK PRIOR TO THE START OF THE MEETING.

AGENDA ITEM #: 5 ORD. 795 DATE: 1/5/2026

NAME: AWO ROVERE PHONE NO.: 631-335-4147

REPRESENTING (IF APPLICABLE): _____

ADDRESS: 400 UNO LAGO DR.

CHECK WHAT MAY APPLY:

SUPPORT

OPPOSE

I WISH TO SPEAK



TOWN OF JUNO BEACH

PUBLIC COMMENT CARD

ANY CITIZEN WISHING TO SPEAK SHOULD COMPLETE THIS CARD AND GIVE IT TO THE TOWN CLERK PRIOR TO THE START OF THE MEETING.

AGENDA ITEM #: ORD 795 DATE: 1-5-2026

NAME: Diana Davis PHONE NO.: 561-310-6130

REPRESENTING (IF APPLICABLE): _____

ADDRESS: 440 Sunset Way

CHECK WHAT MAY APPLY:

SUPPORT

OPPOSE

I WISH TO SPEAK



TOWN OF JUNO BEACH

PUBLIC COMMENT CARD

ANY CITIZEN WISHING TO SPEAK SHOULD COMPLETE THIS CARD AND GIVE IT TO THE TOWN CLERK PRIOR TO THE START OF THE MEETING.

AGENDA ITEM #: 795-7917 DATE: 4-5-24

NAME: John Galardo PHONE NO.: 561 891-7378

REPRESENTING (IF APPLICABLE): _____

ADDRESS: _____

CHECK WHAT MAY APPLY:

SUPPORT

OPPOSE

I WISH TO SPEAK



TOWN OF JUNO BEACH

Item #1.

PUBLIC COMMENT CARD

ANY CITIZEN WISHING TO SPEAK SHOULD COMPLETE THIS CARD AND GIVE IT TO THE TOWN CLERK PRIOR TO THE START OF THE MEETING.

AGENDA ITEM #: 5 DATE: _____

NAME: Jessy Wheeler PHONE NO.: _____

REPRESENTING (IF APPLICABLE): _____

ADDRESS: 460 Atlantic Blvd

CHECK WHAT MAY APPLY:

SUPPORT

OPPOSE

I WISH TO SPEAK

January 5, 2026

Dear Fellow Juno Beach Planning & Zoning Members, Town Council, and Staff,

I respectfully request that the Juno Beach P&Z Board votes down this recent ordinance that effectively eliminates Juno Beach's long-standing ability—through both the Planning & Zoning Board and staff—to conduct meaningful Architectural and Harmony Review for new single-family homes.

Why would a Planning & Zoning Member NOT care about Architectural Review? It is because you must be LOYAL to the person who appointed you which is very troubling to me if that is the case. Two of the council members will not be here in early Spring who wants to get rid of these logical controls – so I hope this is not the case here.

As a volunteer member of the Planning & Zoning Board for the past two years, I have seen firsthand how well the previous system worked. **The fact is 19 out of 20 residential applications were approved during that time.** In most cases, applicants welcomed reasonable design suggestions and projects were then resubmitted and improved as a result. The idea that homeowners were being blocked from renovating or expanding their homes was simply not supported by the record. This whole Property Rights mailer and statements is fear mongering at it's best.

At the October 2025 Council meeting, a motion was approved that dramatically reduced design oversight. By narrowing review primarily to setback compliance, the ordinance removed our ability to evaluate factors such as **scale, massing, bulk, proportion, and neighborhood compatibility.** These elements are fundamental to protecting community character.

The result is that homes of 5,000 to 8,000 square feet may now be constructed next to homes that are a fraction of that size—with no practical review of whether those projects fit their surroundings. This is not simply a procedural change; it represents a major shift in the physical future of Juno Beach.

What is being protected was Juno Beach's unique identity as a small-scale, coastal community.

Residents made that priority very clear this year. Large numbers attended meetings, wrote letters, and spoke out in favor of preserving neighborhood character and preventing over-scaled development. Yet the recent ordinance moves in the opposite direction, favoring a regulatory environment that encourages larger, more intensive construction with minimal community input.

We have already seen the consequences of that approach. The scale and massing of the Carretta development permanently altered the character of our primary entrance into town. Similar development pressures are now possible elsewhere, particularly on large parcels such as Plaza La Mer. Once these precedents are set, they cannot be undone.

As someone who has worked in high-end construction for more than 40 years, I can say with certainty that when design standards are weakened, the result is not better housing—it is simply bigger housing. And once a town begins down that path, it becomes increasingly difficult to preserve the qualities that made it special in the first place.

It totally puzzling to me that the two officials who are not going for reelection including the Mayor voted to approve gut out the Architectural Review / Harmony when so many of the residents want to keep it as spoken out at the last few meetings . It is totally irresponsible not to allow the new council elected by the residents to deal with this issue than get it passed on your way out of office

For these reasons, I respectfully have asked that a Council member introduce a motion to reconsider the elimination of full architectural and harmony review for single-family homes. Restoring that process would reaffirm Juno Beach's commitment to thoughtful planning, neighborhood compatibility, and resident-driven growth.

I remain committed to serving this community and to helping ensure that Juno Beach continues to reflect the character, scale, and livability that its residents value.

Thank you for your time and consideration.

Sincerely



Jim Ehret PE

Full Time Juno Beach Resident since 2019
Planning & Zoning Member 2024-2026



To: Planning and Zoning Board
Date: March 2, 2026
Prepared By: Frank M. Davila, CFM.
Item Title: Appeal of Administrative Decision – 390 Jupiter Lane

BACKGROUND:

On December 13, 2024, the Town of Juno Beach Building Department issued a permit for a new 5,866 sq. ft., two-story single-family residence at 390 Jupiter Lane, located within the Residential Single-Family (RS-2) zoning district. The original approved plans included a tower feature measuring 223.94 sq. ft. (see attachment #1).

On June 4, 2025, the applicant submitted a permit revision to modify the rooftop style and materials, proposing a Duradek vinyl membrane for the observation deck and a relocated railing system (see attachment #2). The Town’s Principal Planner reviewed the revision on June 23, 2025, and issued a comment letter stating that the proposed tower appeared to exceed the 225 sq. ft. limit mandated by Section 34-268 of the Town Code.

On February 18, 2026, the applicant responded with updated calculations showing a total tower area of 611 sq. ft., consisting of 150 sq. ft. of air conditioned space and 461 sq. ft. of open-air space (see attachment #3). Staff subsequently denied the revision, as the 611 sq. ft. total exceeds the maximum allowable area of 225 sq. ft. The applicant has since filed an appeal of this administrative decision (see attachment #4).

Note: The Town is currently involved in litigation with 390 Jupiter LLC regarding this matter in the U.S. District Court, Southern District of Florida (Case No. 9:25-cv-81053-EA). The position adopted by 390 Jupiter LLC is reflected in the attached document filed with the Court on February 9, 2026.

DISCUSSION:

The administrative denial is based on the following sections of the Town Code of Ordinances:

- Section 34-268: Establishes site plan review requirements for the RS-2 district, specifically limiting tower areas to a maximum of 225 sq. ft. (see attachment #5).

- Section 34-4: Defines a "Tower" as an open air or enclosed structural feature which is an integral part of the principal structure, and whose floor area, from outside wall to outside wall, is limited in size. Such structural feature is intended to provide additional scenic view opportunities.

The applicant's proposed tower feature includes stairs, a landing, and an open-air viewing area. This area is delineated and enclosed by walls, a guard railing system on raised concrete curbs, and a parapet wall. Based on the applicant's own calculations of 611 sq. ft., staff determined the tower feature fails to comply with the express size limitations set forth in the Code.

For the Board's review, staff highlighted the tower area transparent green for all plans that were submitted, approved and proposed. In addition, staff is also providing the approved roof plan from the initial building permit submittal that indicates the applicants understanding that the flat roof is not to be used as a roof deck or observation deck (Attachment #6).

STAFF RECOMMENDATION:

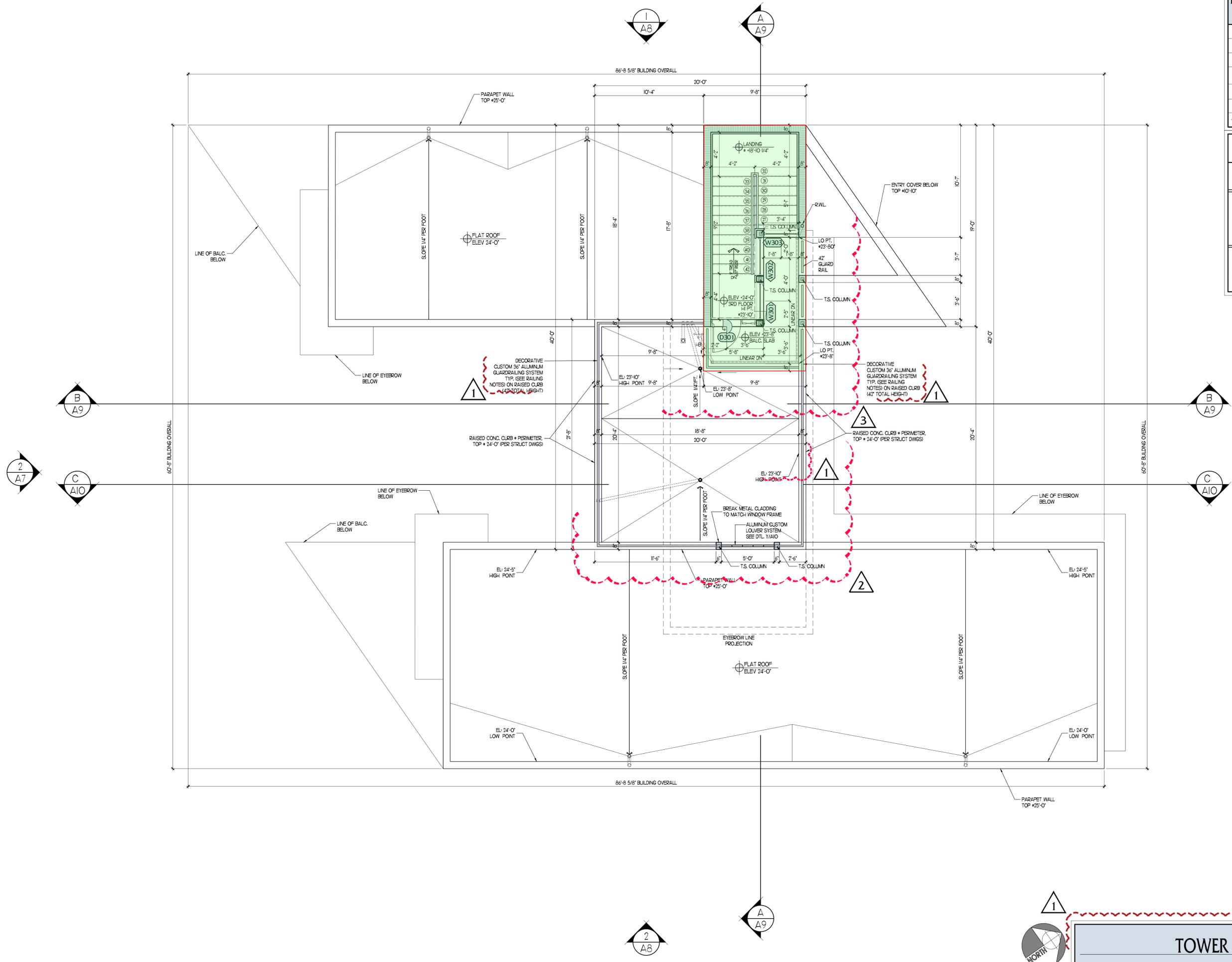
Staff recommends that the Planning and Zoning Board uphold the administrative decision and recommend to the Zoning Board of Adjustment and Appeals that the proposed tower feature does not comply with Section 34-268 (Maximum Tower Area) of the Town Code of Ordinances.

Attachment:

- 1) **Approved Plans:** Building Permit 24-11373, Sheet A-4.
- 2) **Proposed Revisions (June 4, 2025):** Sheet A-4 (Denied).
- 3) **Applicant Response (February 18, 2026):** Modified Sheet A-4 (Denied).
- 4) **Administrative Appeal Application:** Submitted by 390 Jupiter LLC.
- 5) **Code Reference:** Section 34-268 – Site Plan Review Requirements.
- 6) **Roof Plan:** Building Permit 24-11373, Sheet A-6.
- 7) **2/9/26 Document** filed by 390 Jupiter LLC with the Court.

LEGEND, SYMBOLS & ABBREVIATIONS	
	MASONRY CONST. TYPICAL
	POURED CONCRETE COLUMN
	GROUT FILLED CELL (SEE FOUNDATION PLAN)
	BEARING FRAME CONSTRUCTION
	NON-BEARING FRAME CONSTRUCTION
	FRAME CONSTRUCTION ABOVE OR BELOW
	DETAIL INDICATION
	DETAIL NO. 2
	SHEET NO. 170

DOOR/FINISHES NOTES	
NOTE: ALL DOOR, CASEWORK, BUILT-INS, CABINETS, INTERIOR FINISHES & FIXTURE SELECTION TO BE AS PER INTERIOR DESIGNER'S DWGS.	
	WINDOW DESIGNATION
	DOOR DESIGNATION
DESIGNATIONS ARE FOR EXT. DOORS & WINDOWS (SEE WINDOW/DOOR SCHEDULE ABOVE FOR WINDOWS/ EXTERIOR DOOR SIZES & TYPES). FOR INTERIOR DOORS, SEE FLOOR PLANS.	
CEILING HEIGHTS IN ALL ROOMS: BUILDER TO VERIFY & COORDINATE FINISHED CEILING HEIGHTS TO ALIGN WITH EXT. DOOR/ WINDOW HEADERS (AS PER DETAILS). ALL BEAMS/SLABS - BOTTOM TO BE 2" ABOVE CLG HT TO ALLOW FOR FINISHED LEVELING OF CEILING (IN FIELD).	



Revisions	
	10-19-23: CITY COMMENTS & REVISION
	02-12-24: CITY COMMENTS
	07-23-24: CITY COMMENTS

PERMIT SET	
Date	2/01/2023
Drawn Checked	pm LR
Date Approval	-
Date Permit	-
Date Construction	-

Seal:

AA0002340 © 2024

TOWER FLOOR PLAN
1/4" = 1'-0"

Revisions

1	10-19-23 : CITY COMMENTS & REVISION
2	02-12-24 : CITY COMMENTS
8	05-29-25 : REVISION

PERMIT SET

Date	2/01/2023
Drawn Checked	pm LR
Date Approval	-
Date Permit	-
Date Construction	-

Seal:

AA0002340 © 2025

LEGEND, SYMBOLS & ABBREVIATIONS

	MASONRY CONST. TYPICAL
	POURED CONCRETE COLUMN
	GROUT FILLED CELL (SEE FOUNDATION PLAN)
	BEARING FRAME CONSTRUCTION
	NON-BEARING FRAME CONSTRUCTION
	FRAME CONSTRUCTION ABOVE OR BELOW
	DETAIL NO.
	SHEET NO.

DOOR/FINISHES NOTES

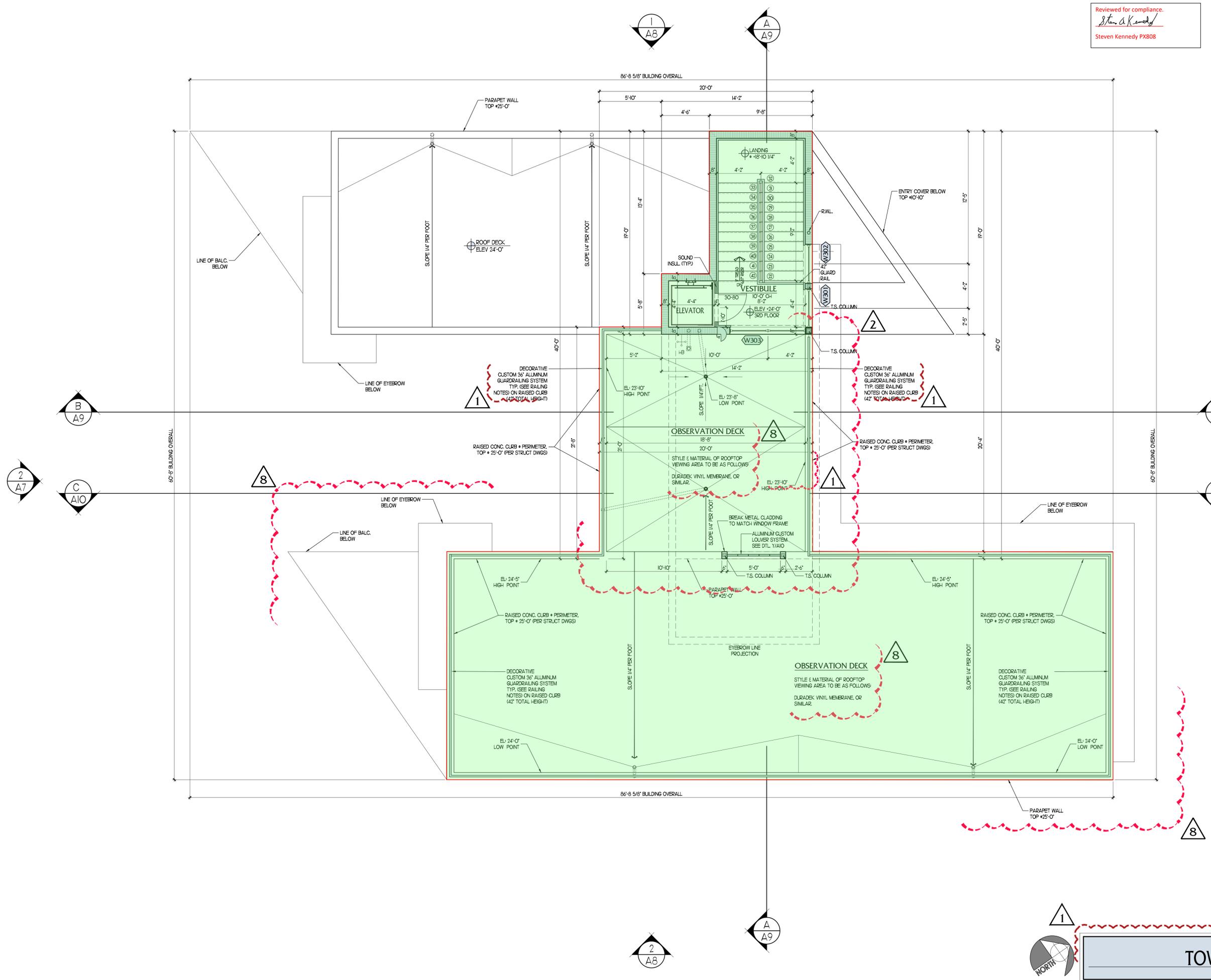
NOTE: ALL DOOR, CASEWORK, BUILT-INS, CABINERY, INTERIOR FINISHES & FIXTURE SELECTION TO BE AS PER INTERIOR DESIGNER'S DWGS.

- WINDOW DESIGNATION
 - DOOR DESIGNATION

DESIGNATIONS ARE FOR EXT. DOORS & WINDOWS (SEE WINDOW/DOOR SCHEDULE ABOVE FOR WINDOWS/ EXTERIOR DOOR SIZES & TYPES). FOR INTERIOR DOORS, SEE FLOOR PLANS.

CEILING HEIGHTS IN ALL ROOMS - BUILDER TO VERIFY & COORDINATE FINISHED CEILING HEIGHTS TO ALIGN WITH EXT. DOOR/ WINDOW HEADERS (AS PER DETAILS). ALL BEAMS/SLABS - BOTTOM TO BE 2" ABOVE C/LG HT TO ALLOW FOR FINISHED LEVELING OF CEILING IN FIELD.

Reviewed for compliance:
Steven Kennedy
Steven Kennedy PX808



TOWER FLOOR PLAN
1/4" = 1'-0"



Town of Juno Beach
340 Ocean Drive; Juno Beach, FL 33408
Phone: (561) 626-1122; Fax: (561) 775-0812

For Official Use Only
Date Stamp
TOWN OF JUNO BEACH
RECEIVED
FEB 19 P 1:30

Item #2.

Administrative Appeal Application

The Board of adjustment shall have the power to hear and decided appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative official in enforcement of any zoning ordinance or regulation. In exercising its power, the Board of Adjustment may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, decision or determination made by the administrative official, in the enforcement of any zoning resolution or regulation adopted pursuant to the Ordinance and make such order, recommendation, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken (Code Section 34-64 - Town of Juno Beach Comprehensive Zoning Ordinance).

Section I

Instructions for Completion:

1. Complete Section II of this application (you may wish to attach a separate sheet of paper for this item), and Section III.
2. Sign and date this application at the end of Section II. If appropriate, complete the power of attorney form on page 3 of this application.
3. A filing fee of \$500.00 must accompany each application upon submittal. The applicant will also be responsible for providing all property identification information and property owners within a 300' radius surrounding the subject property: and will be responsible for postage cost associated with mail-out materials and legal ads related to the petition.

Section II

Please Complete the Following:

Applicant/Agent Information:

Name of Applicant: 390 Jupiter LLC Contact Phone #: 772-287-3100
 Address of Applicant: clo Law Office of Rick Kozell 616 SE Dixie Hwy Stuart FL 34994

*If the applicant has an agent, or will be represented by anyone other than the applicant.

*Name of Agent: Rick Kozell Esq. Contact Phone #: 772-287-3100

*Address of Agent: 616 SE Dixie Hwy Stuart FL 34994



Town of Juno Beach
340 Ocean Drive; Juno Beach, FL 33408
Phone: (561) 626-1122; Fax: (561) 775-0812

For Official Use Only
Date Stamp

Item #2.

Regarding the Subject Location (where the variance is being requested):

Street Location: 390 Jupiter Lane Juno Beach FL 33408
Name of Subdivision: Juno Beach 1st Addition
Block: Lot: Lots 88-90

Regarding the Appeal:

Who made the decision/determination you are appealing?

Name: Frank Davila Title: Planning & Zoning Director
Date of Decision/Determination: February 18 2026

Please explain the appeal being made (include any ordinance references you feel support your position)

Davila rejected revised plan for proposed roof deck. Call Town Counsel, Jeff Hochman if questions; (954) 463-0100

[Signature] for 390 Jupiter LLC
Applicant's Signature As Authorized Representative Date 2/19/26

Rich Kogel
Print Name

[Signature] Date 2/19/26
Witness' Signature

Brittney Muleucis
Print Name



Town of Juno Beach
340 Ocean Drive; Juno Beach, FL 33408
Phone: (561) 626-1122; Fax: (561) 775-0812

For Official Use Only
Date Stamp
2026 FEB 19 P 1:35
TOWN OF JUNO BEACH
RECEIVED

Item #2.

Section III

Power of Attorney

Complete the "Appeal Power of Attorney" form.

Power of Attorney

Name of Applicant: 390 Jupiter LLC Contact Phone: 772-287-3100
Mailing Address: 616 SE Dixie Hwy Stuart FL 34994
Property Address (description): 390 Jupiter Lane Juno Beach FL 33408
Name of Agent: Rick Kozell Esq.
Contact Phone of Agent: 772 287-3100

The Undersigned, being the true Applicant for the real property described above, does hereby grant unto the Agent, stated above, the full right and power of attorney to make application to the Town of Juno Beach for an easement abandonment petition/request and act as the representing agent for any subsequent processes for said property. It is understood that limitations, conditions and restrictions may be placed upon the use or operation of the property. Misstatements upon application or in any hearing may result in the termination of any application/petition proceeding to limit the Applicant to only allow themselves the opportunity to apply for an abandonment petition/request. This power of attorney may be terminated only by a written and notarized statement of such termination effective upon receipt by the Planning & Zoning Department.

IN WITNESS WHEREOF THE UNDERSIGNED HAVE SET THEIR HANDS AND SEALS

THIS 19 DAY OF February 2026.

[Signature]
Applicant

[Signature]
Witness Jacqueline Molina

Applicant

Witness

Before me the undersigned authority personally appeared the owner(s) named above who upon being duly sworn acknowledged before me that they are the true owners of the real property described above and that they executed the power of attorney for the purposes stated therein.

Sworn and subscribed this 19 day of February 2026.

SEAL



[Signature]
Notary Public

5583	500.00			2/19	Andrew & Milla Russo PA	Admin Appeal Application	CCR
BANK TRANSIT NO.	\$ CHECKS	\$ CASH	NET	DATE	NAME	DESCRIPTION	RECEIVED BY
		IF (ENCIRCLED) INDICATES CASH RETURNED FOR ADJUSTMENT TO NET AMOUNT OF ACTUAL PAYMENT				68359	↑ INVALID WITHOUT SIGNATURE

RC231124-07/24

TOWN OF JUNO BEACH
 340 OCEAN DRIVE
 JUNO BEACH, FL 33408
 (561) 626-1122

RETAIN THIS RECEIPT FOR YOUR RECORDS

[Handwritten Signature]
 SIGNATURE

ANDREW AND MILLA RUSSO PA		5583
1304 PENINSULAR RD JUPITER, FL 33469		63-515/570 37
DATE <u>2/19/26</u>		<input checked="" type="checkbox"/> CHECK <input type="checkbox"/> AMOUNT
PAY TO THE ORDER OF <u>Town of Juno Beach</u>	\$ <u>500.-</u>	<input type="checkbox"/> PHOTO SAFE DEPOSIT
<u>Five hundred</u>	DOLLARS	
SeacoastBank SEACOAST NATIONAL BANK JUPITER, FLORIDA 33450	FOR <u>390 Jupiter - Variance Appl.</u>	<i>[Handwritten Signature]</i>

Sec. 34-268. Site plan review requirements.

A site plan review is required of all uses other than individual single-family detached dwellings, which shall be subject to review only by the town planning and zoning department.

	RS-1 Sea View Ridge (Apollo Dr.) (Diana Ln.) Ocean View Ridge (Sunset Way) (Starlight Ln.) (Sunrise Way) (Olympus Dr. & South And East) Tomkus Subdivision (N. & S. Lyra Cir.)	RS-2 First Addition (N. & S. Juno Ln.) (Jupiter Ln.) (Zenith Ln.)	RS-3 Malbo Subdivision (Mars Way)	RS-4 Juno Heights (Neptune Rd.)	RS-5 New Palm Beach Height (Cocoanut Ave.)
Minimum lot area	10,000 sq. ft.	8,000 sq. ft.	6,000 sq. ft.	5,500 sq. ft.	6,500 sq. ft.
Minimum lot width	75 ft.	75 ft.	75 ft.	75 ft.	65 ft.
Minimum lot depth	100 ft.	90 ft.	80 ft.	90 ft.	100 ft.
Maximum density	4 units/acre	4 units/acre	5 units/acre	5 units/acre	5 units/acre
Minimum front setback	25 ft. ^{(A), (B), (C)}	15 ft. ^{(A), (B), (C)}	20 ft. ^{(A), (B), (C)}	20 ft. ^{(A), (B), (C)}	25 ft. ^{(A), (C)}
Minimum side setback	10 ft. ^(A)	15 ft. total, 5 ft. per side ^(A)	15 ft. total, 5 ft. per side ^(A)	15 ft. total, 5 ft. per side ^(A)	7.5 ft. ^(A)
Minimum rear setback	10 ft. ^(B)	10 ft. ^(B)	10 ft. ^(B)	10 ft. ^(B)	12 ft.
Maximum height	2 stories, 30 ft. ^(D)	2 stories, 30 ft. ^(D)	2 stories, 30 ft. ^(D)	2 stories, 30 ft. ^(D)	2 stories, 30 ft. ^(D)
Maximum tower height	None, but must be in proportion with rest of building	None, but must be in proportion with rest of building	None, but must be in proportion with rest of building	None, but must be in proportion with rest of building	None, but must be in proportion with rest of building
Maximum tower area	225 sq. ft.	225 sq. ft.	225 sq. ft.	225 sq. ft.	225 sq. ft.

Maximum coverage	35%	35%	35%	35%	35%
Minimum ocean setback	50 ft. west of CCCL				
Minimum living area (habitable space)					
1-bedroom	1,000 sq. ft.				
2-bedroom	1,200 sq. ft.				
3-bedroom	1,400 sq. ft.				
Maximum building dimension	100 ft.				
Minimum landscaping requirement	25%	25%	25%	25%	25%
Minimum parking requirements	2 spaces/unit ^(C)				
Loading	N/A	N/A	N/A	N/A	N/A
High-rise setback	N/A	N/A	N/A	N/A	N/A
Minimum accessory structure setback	5 ft. ^(E)				
Accessory structure maximum height	12 ft.*	12 ft.*	12 ft.*	12 ft.*	12 ft.**
Accessory structure maximum building dimension	12 ft.** ^(F)				

NOTES:

* Screened pool enclosures are included.

** Screened pool enclosures are excluded.

^(A) Corner lots: section 34-899 is modified for the RS districts as follows: One street side: minimum 20-foot setback^{***}; Other street side: min. required front yard setback (see table above).

^{***} In the RS-2 district (first addition subdivision): A minimum 15-foot setback shall be required on both street sides when such corner lot abuts Zenith Lane.

^{***} Yard facing U.S. Highway 1 and/or Ocean Drive shall be set back a minimum of 20 feet.

^{***} In the RS-5 district: a minimum 15 foot setback.

^(B) Through lots: section 34-900 is modified for the RS districts as follows: Those through lots which have frontage on both U.S. Highway 1 and a local residential street shall have the principal building setback the required front yard setback on both frontages. However, accessory structures in yards facing U.S. Highway 1

may be set back according to the accessory structure setback requirements for a side and rear yard. Those lots in the RS-2 district (first addition subdivision) which front on both North Juno Lane and Diana Lane shall have the front yard setback requirement apply to the North Juno Lane frontage, while the frontage facing Diana Lane shall be treated and regulated as a rear yard.

(C) A minimum 19-foot-long driveway or parking area is required in front of a garage or carport for stacking depth.

(D) Building height is the vertical distance measured from finished grade to the highest exterior point of the building roof, exclusive of chimneys, aerials, and other similar appurtenances. See Finished Grade.

(E) If accessory structure is in the front yard, the front yard setback shall apply. However, see note (B) for exception.

(F) If accessory structure is set back a minimum of ten feet from the side or rear property line, then section 34-873 shall apply and there shall be no maximum building dimension requirement.

(Ord. No. 207, § 4.15, 8-8-1979; Ord. No. 371, 7-19-1989; Ord. No. 421, 2-19-1992; Ord. No. 466, 12-14-1994; Ord. No. 485, 9-4-1996; Ord. No. 689, § 6, 1-25-2017)

Revisions	
3	07-23-24 : CITY COMMENTS

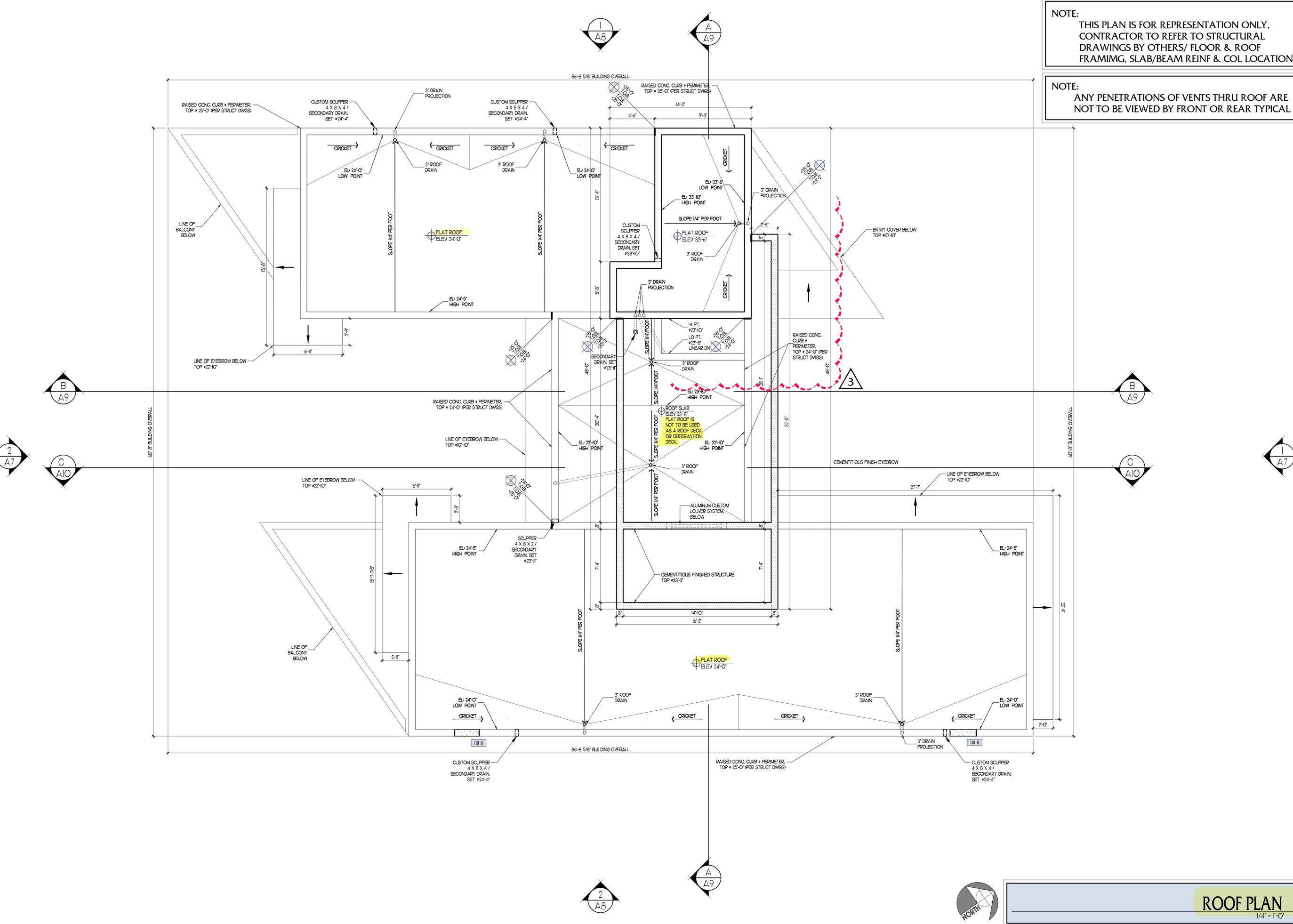
Date	2/01/2023
Drawn Checked	pm LR
Date Approval	-
Date Permit	-
Date Construction	-

Seal:

AA0002340 © 2024

NOTE:
THIS PLAN IS FOR REPRESENTATION ONLY,
CONTRACTOR TO REFER TO STRUCTURAL
DRAWINGS BY OTHERS/ FLOOR & ROOF
FRAMING, SLAB/BEAM REINF & COL LOCATION

NOTE:
ANY PENETRATIONS OF VENTS THRU ROOF ARE
NOT TO BE VIEWED BY FRONT OR REAR TYPICAL



ROOF PLAN
1/4" = 1'-0"



2
A8

A
A9

1
A8

A
A9

B
A9

2
A7

C
A10

B
A9

C
A10

1
A7

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 9:25-cv-81053-ARTAU

390 JUPITER, LLC, a Florida limited liability
company,

Plaintiff

v.

TOWN OF JUNO BEACH, a municipal
corporation,

Defendant.

_____ /

**PLAINTIFF’S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO COUNT I (VOID
FOR VAGUENESS, AS DRAFTED) AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, 390 JUPITER, LLC, by and through undersigned counsel and pursuant to Fed. R. Civ. P. 12(c) and S.D. Fla. L.R. 7,1, moves this Honorable Court for judgment on the pleadings as to Count I.¹ In support, Plaintiff states as follows:

I. SUMMARY AND BACKGROUND

Plaintiff is a property owner challenging the constitutionality of Sections 34-268 and 34-4 (together, the “Ordinance”) of the Juno Beach Municipal Code (the “Code”), a land use provision regulating scenic rooftop viewing areas. The Ordinance states that any **“open air...feature which is an integral part of the principal structure”** is deemed to be part of a rooftop “Tower” and therefore limited to 225 square feet.

Plaintiff contends the Ordinance is too vague to pass constitutional muster because it uses terms that are undefined, ambiguous, and conflict with other sections of the Town Code. Count I (Void for Vagueness, as Drafted) is a facial attack on the plain language of the Ordinance.

¹ Counts II through VI are not at issue in this motion

The pleadings are closed. While certain facts in this action are disputed, none of those facts are material to Count I, which can be adjudicated based on the pleadings and the strict language of the Ordinance. Plaintiff seeks judgment on the pleadings as to Count I.

II. ADMITTED FACTS, THE TEXT OF THE LAW, THE EXHIBITS, AND DOCUMENTS SUBJECT TO JUDICIAL NOTICE

Plaintiff is a property owner that submitted to the Town an application to construct a scenic rooftop viewing area with a floor area greater than 225 square feet. Compl. ¶ 27; Answer ¶ 27; Compl. Ex. A [ECF 1-1, public record refiled as ECF 9-2 for clarity and completeness]

Plaintiff's proposed rooftop feature had no walls or roof. [ECF 1-1, refiled as ECF 9-2]

Plaintiff asserted that in plain English, the proposed feature is aptly characterized as a roof *deck* or a rooftop *balcony*. Compl. ¶30.

The Town Code does not restrict the size of balconies or decks and, to the contrary, provides that decks and balconies are exempt from all floor area calculations:

For the purposes of this Chapter, the following terms and words are hereby defined.

...

Floor area, total, means the sum of the gross horizontal area of all of the floors of a building measured from the exterior faces of exterior walls and/or supporting columns. Such areas **shall exclude** a basement or subbasement as defined; open plaza, **balcony** or **deck areas**; and off-street parking within or under the building.

Section 34-4, Municipal Code of Juno Beach (emphasis added).

The Town denied Plaintiff's application, issuing the denial letter attached to the Complaint as Exhibit C. [ECF 1-3] The Town's denial letter reasoned that the proposed feature was a rooftop "Tower" rather than a roof deck or rooftop balcony, stating: "Staff has completed its review of plans for...390 Jupiter Lane...Tower features are limited to 225 square foot area limit, per Section 34-268. The proposed appears to exceed this limit... 'Tower' means an open air or enclosed structural feature which is an integral part of the principal structure..." [ECF 1-3]

The complete definition of “Tower,” set forth in Section 34-4, is as follows:

Tower means an **open air** or enclosed structural **feature which is an integral part of the principal structure**, and whose **floor area**, from outside wall to outside wall, is limited in size. Such structural feature is intended to provide additional scenic viewing opportunities.

(emphasis added).

Based on the conclusion that the floor area of the proposed feature exceeded 225 square feet, the Town disallowed the construction and instructed Plaintiff to “ensure that the tower area is no more than 225 square feet in area.” Compl. Ex. C [ECF 1-3]

At its core, the Town’s denial letter is based on the conclusion that Plaintiff’s proposed rooftop viewing area was “an open air...feature which is an integral part of the principal structure.” *Id.* It is that provision which Plaintiff challenges here, arguing a) the concept of an *open air feature* conflicts with the concepts of *balconies* and *decks*, which are not subject to any size limitation under the Code; and b) the term “an integral part of the principal structure,” as used to define a *Tower*, is vague and without any clear meaning or definition.

III. LEGAL STANDARD GOVERNING JUDGMENT ON THE PLEADINGS

“Federal Rule of Civil Procedure 12(c) provides that ‘[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.’” *IMX, Inc. v. E-Loan, Inc.*, 748 F. Supp. 2d 1354, 1356 (S.D. Fla. 2010) (granting partial judgment on the pleadings in favor of plaintiff). “Judgment on the pleadings is proper when no issues of material fact exist, and the movant is entitled to judgment as a matter of law.” *Id.* (citing *Ortega v. Christian*, 85 F.3d 1521, 1525 (11th Cir.1996)); *Edible IP, LLC v. Am. Zurich Ins. Co.*, 2025 WL 3254886, at *3 (N.D. Ga. Sept. 29, 2025) (granting judgment on the pleadings in favor of Plaintiff).

“A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.” Fed. R. Civ. P. 10(c). Thus, “[i]n resolving a motion for judgment on the pleadings,

the Court considers the entire pleadings: the complaint, the answer, and any documents attached as exhibits.” *Eisenberg v. City of Miami Beach*, 54 F. Supp. 3d 1312, 1319 (S.D. Fla. 2014).

Additionally, “In rendering judgment, a court may consider ...any judicially noticed facts. *Cunningham v. Dist. Attorney's Office for Escambia Cty.*, 592 F.3d 1237, 1255 (11th Cir. 2010); *see also Melendez v. Bank of Am. Corp.*, 2018 WL 1092546, at *1 (S.D. Fla. Feb. 2, 2018). “In particular, the Court may ‘take judicial notice of and consider documents which are public records.’” *Eisenberg*, 54 F. Supp. at 1319 (S.D. Fla. 2014) (citing *Day v. Taylor*, 400 F.3d 1272, 1275-76 (11th Cir. 2005)).

IV. THE TEXT: CONFLICTS, AMBIGUITY, AND CIRCULARITY WITHIN THE ORDINANCE

“The starting point for all statutory interpretation is the language of the ordinance itself.” *E.g. In re ACF Basin Water Litigation*, 467 F. Supp. 3d 1323 (N.D. Ga. 2020 (citing *United States v. DBB, Inc.*, 180 F. 3d 1281 (11th Cir. 1999)). Canons of construction may aid a Court’s construction “as presumptions about what an intelligently produced text conveys.” *Heyman v. Cooper*, 31 F. 4th 1315 (11th Cir. 2022). All pertinent provisions of a State or local law must be read together and Florida’s Supreme Court has held: “We have recognized as axiomatic the principle that all parts of a statute must be read together in order to achieve a consistent whole. When possible, we must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.” *Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006).

The Tower Ordinance recognizes two categories of scenic viewing areas: open air features *which are* an integral part of the principal structure; and open air features which *are not* an integral part of the principal structure. A separate provision of the Code, the definition of “Floor area” quoted *supra*, recognizes two more types of scenic viewing areas: *decks* and *balconies*, which are recognized 22 separate times throughout the Code and are widely permitted throughout the Town,

including on rooftops.² Read as a whole, the Code therefore recognizes that four (4) separate categories of scenic viewing areas exist: 1) *balconies*; 2) *decks*; 3) open air features which are *not* an integral part of the principal structure; and 4) open air features which *are* an integral part of the principal structure.

Only the fourth category falls within the definition of a *Tower* and is limited to 225 square feet. The other three categories are not subject to the Tower Ordinance, which only applies to those features meeting the definition of a Tower. No other Code provision imposes any separate size limitation on *decks* or *balconies* or *open air features* not an integral part of a principal structure.

To understand what the Code requires and prohibits, a reader must be able to understand what makes a scenic rooftop viewing area an “open air feature” rather than a *deck* or *balcony*. Likewise, a reader must be able to understand what makes a particular feature “*an integral part of the principal structure*.” Otherwise, a reader has no way of knowing how to build a scenic rooftop viewing area in excess of 225 square feet as the Code contemplates. There is no way for a reader to understand those distinctions here because the text of the Ordinance is totally unclear.

The term *open air feature* is not defined in the Ordinance or anywhere else within the Code. Neither are the terms *deck* and *balcony*, even though they are referenced 22 times throughout the Code and permitted throughout the Town. *See* n. 2 *supra*. The same is true for the term “integral part of the principal structure” – it is not defined anywhere in the Code, and the Code provides no context to aid a reader in understanding what makes a particular feature “integral” to a principal structure. A reasonable reader has no textual basis in the Code to distinguish or understand the pertinent terms.

² Exhibit E to the Complaint shows a rooftop *deck* measuring 913 square feet. [ECF 1-5, refiled as ECF 9-6]. Exhibit D to the Complaint [ECF 1-4, refiled as ECF 9-5] shows a rooftop *balcony* measuring 486 square feet. Those documents are properly considered on a motion for judgment on the pleadings. Fed. R. Civ. P. 10(c); *Eisenberg*, 54 F. Supp. at 1319 (S.D. Fla. 2014).

A reasonable reader fares no better by resort to the plain meaning of those terms. Merriam Webster's Thesaurus describes the terms "Deck" and "Balcony" as follows:

"Deck, noun
as in *balcony*
A flat roofless structure attached to a building.
Synonyms and similar words: balcony, porch, terrace, verandah, sundeck, veranda, stoop, gallery, lanai."

"Balcony, noun
as in *deck*
A flat roofless structure attached to a building.
Synonyms and similar words: deck, terrace, porch, verandah, sundeck, veranda, gallery, stoop, lanai."

Those concepts are in direct conflict with the concept of an *open air feature* as a reasonable person would understand it – that is, as an outdoor feature exposed to the open air.

The plain meaning of the term "integral" is equally unhelpful, with Merriam Webster's thesaurus defining "integral" as:

"Integral, adjective
...
Essential to completeness...Lacking nothing essential: Entire"

There is also nothing in the plain meaning of the term "integral" to aid a reader in understanding when or why a particular scenic rooftop viewing area might be deemed "integral" to a single-family home and therefore part of the Tower. Indeed, an *open air* rooftop feature without any roof, plumbing, air conditioning, walls, or windows, could not be described as *integral* to a single-family home in any common English sense of the word.

Further compounding the uncertainty, the separate definition of *Floor area* quoted *supra* expressly states that balconies and decks are **excluded** from all calculations of floor areas under the Code. See Section 34-4 ("*Floor area, total, ...shall exclude...balcony or deck areas...*"). A reasonable reader could not be blamed for reading the definition of "Floor area", recognizing that

his or her proposed rooftop feature meets the basic meaning of a *deck* or *balcony*, and concluding that the feature is not counted toward floor area calculations, i.e. it will not be subject to any floor area limitation. That reasonable conclusion would be reinforced by the fact that the terms in question are undefined within the Code itself.

Viewed slightly differently, if a reader were to read the Tower Ordinance and the definition of “Floor area” together, he would reasonably conclude that the term “Tower” is totally circular. That is, the term “Tower” purports to measure the *floor area* of open air features – more commonly described in plain English as decks or balconies, which are expressly excluded from all floor area calculations based on the definition of “Floor area.” Stated even more simply, there is no way to measure the floor area of a feature which – by definition – *is not counted when measuring floor areas*. A reader could not be blamed for being unable to reconcile the conflicts.

To be sure, the Code is crystal clear that *at least some* scenic outdoor features are allowed to exceed 225 square feet: those that are deemed *decks*, *balconies*, and *open air features* not an integral part of the principal structure. *See n. 2 supra*. But the Code fails to provide any basis for a reader to understand what distinguishes the terms. Accordingly, a Town resident has no idea how to design a home to ensure an outdoor feature is not inadvertently deemed *an open air feature which is an integral part of the principal structure* and therefore restricted in terms of size.

In sum, property owners have no objective way to understand the requirements of the law or conform their conduct to the requirements of the law. They are at the mercy of government officials to construe the Code as they see fit on a case-by-case basis.

V. MEMORANDUM OF LAW

a. The Void for Vagueness Doctrine

“Vague laws contravene the first essential of due process of law...” *United States v. Davis*, 588 U.S. 445, 451 (2019). Indeed, “[i]n our constitutional order, a vague law is no law at all.” *Id.* at 447. “[The Supreme Court’s] doctrine prohibiting the enforcement of vague laws rests on the twin constitutional pillars of due process and separation of powers.” *Id.* at 451.

“The void-for-vagueness doctrine reflects the principle that a statute which either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process law.” *Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301, 1310 (11th Cir. 2009). “It is a basic principal of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). “The vagueness doctrine applies to non-legislative enactments and those that do not carry criminal penalties.” *Ross v. Orlando*, 141 F. Supp. 2d 1360, 1364 (M.D. Fla. 2001); *Boyce Motor Lines v. United States*, 342 U.S. 337 (1952).

A law may be void for vagueness for two (2) reasons: “(1) the contested law is so unclear that no person of ordinary intelligence would be able to read the law and understand what conduct it prohibits, or (2) the law is so unclear that it effectively empowers police officers, judges, and juries to enforce the law on an ad hoc, subjective, arbitrary, or discriminatory basis.” *Fl. Action Committee v. Seminole Cty.*, 212 F. Supp 3d 1213, 1224 (M.D. Fla. 2016).

First Consideration: Notice to A Person of Ordinary Intelligence

While “we can never expect mathematical certainty from our language,” it must be “clear what the ordinance as a whole prohibits.” *Grayned*, 104 U.S. at 110. “[B]ecause we assume that

man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *Id.* at 108. “Vague laws may trap the innocent.” *Id.*

“It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits...” *Harris*, 564 F. 3d at 1311. Especially fatal is vagueness within *the definitions* of what, precisely, is prohibited. *Id.* (distinguishing void for vagueness cases based on critical distinction of whether the parties cited “any vagueness in the definition of the prohibited conduct.”).

It is the definitions (and lack thereof) which are at issue here and create uncertainty as to what is prohibited and what is allowed.

As set forth in Section III *supra*, a property owner undeniably has a right to build a *balcony* or a *deck* on his roof in excess of 225 square feet, as well as an *open air feature* in excess of 225 feet provided it is not “an integral part of the principal structure.” However, the Code provides no guidance, context, or definitions as to what makes a particular feature a *deck* or *balcony* rather than an *open air feature*; or what makes a feature *an integral part of the principal structure*.

Like the text of the Code, the plain meaning of the terms is totally unhelpful, as discussed in Part III above. A scenic rooftop feature like Plaintiff’s proposed feature here meets the plain English definition of both *balcony* and *deck*, and a reasonable person could not be blamed for expecting such a feature would not be subject to any size limitation. That conclusion is only bolstered by the separate definition of *floor area*, which expressly provides that *balcony* and *deck areas* will not be counted when calculating floor areas under the Code. Likewise, as described in Part III above, the plain meaning of the term “integral” is of no aid in understanding when or why a scenic rooftop viewing area might be deemed an *integral part of the principal structure*.

Taken as a whole, even when aided by the plain meanings of the terms in question, the Code simply does not allow a person building a home to distinguish roof decks, rooftop balconies, open air features which are *not* an integral part of a principal structure, and open air features which *are* an integral part of a principal structure. For failing to provide notice as to what is prohibited and what is permitted, the Ordinance is void for vagueness as drafted.

Second Consideration: the Risk of Ad Hoc, Subjective, and Discriminatory Enforcement

“Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.” *Grayned* at 108. “A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” *Id.*; *Harris*, 564 F. 3d at 1311. That is, a law may “authorize[] or even encourage[] arbitrary and discriminatory enforcement.” *Wollschlaeger*, 848 F. 3d 1293, 1319 (11th Cir. 2017).

A law may not “leave[] determination of what is legal behavior to the unfettered and arbitrary discretion of the individual person in authority...” *Gardner v. Ceci*, 312 F. Supp. 516, 518 (E.D. Wis. 1970). Such a law “does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat.” *Id.*

Critical to this Motion, a finding that a law violates Due Process does not require that the government actually exercise its unfettered discretion in an arbitrary and capricious manner but, rather, it merely requires that the challenged law create such an opportunity. *Sears, Roebuck & Co. v. Forbes/Cohen Fl. Properties, L.P.*, 223 So. 3d 292, 301 (Fla. 4th DCA 2017) (“For a government policy to be unconstitutional, it is not necessary that the record reveal that the governing body or its members have in fact acted capriciously or arbitrarily. It is the opportunity,

not the fact itself, that will render an ordinance vulnerable.”); *see also Drexel v. City of Miami Beach*, 64 So. 2d 317 (Fla. 1953).

Sears Roebuck, decided by Florida’s Fourth District Court of Appeal, is especially compelling here, invalidating a local land use law because it placed unbridled discretion in the hands of the local government. *Id.* While *Sears Roebuck* is a State Court decision, it applied federal Due Process jurisprudence and is analogous factually and analytically to the present case.

Sears Roebuck involved a local law that required certain tenants to obtain city approval before subdividing their rental spaces, “but fail[ed] to identify any standards or criteria that would govern when approval is to be granted or withheld.” 223 So. 3d at 302. “The [law], in other words, grant[ed] the City...unbridled discretion in the matter.” *Id.* The Court deemed the law violative of Plaintiff’s substantive Due Process rights. *Id.*

Like in *Sears Roebuck*, the Ordinance here vests the Town with unbridled, unfettered discretion to apply the Ordinance on an ad hoc basis – namely, the subjective discretion to decide 1) whether a rooftop feature is “an open air...feature” rather than a roof deck or rooftop balcony; and 2) whether a rooftop feature is “an integral part of the principal structure.” In both respects, Town officials possess the unfettered discretion to decide when, why, and on what terms a scenic rooftop viewing area will be permitted to exceed 225 square feet. Such “standardless and discriminatory determination only lends itself to the mischief associated with an unconstitutionally vague statute that allows for arbitrary and discriminatory enforcement.” *Florida Decides Healthcare Inc. v. Byrd*, 785 F. Supp. 3d 1086, 1103 (N.D. Fla. 2025).

The second void for vagueness element, just like the first, is violated here and the Ordinance should be deemed void for vagueness as drafted.

b. To Withstand Plaintiff's Challenge Here, the Town Must Offer Some Fair Construction of the Ordinance which is Readily Apparent on its Face and which Does not Require the Court to Re-Write the Law With New Terms

When analyzing a void for vagueness claim as to a local ordinance or state law, principals of Federalism caution that a federal court should not attempt to re-write the law but, rather, evaluate whether a fair construction is readily apparent from the face of the law. *Florida State Conference of Branches and Youth Units of NAACP v. Byrd*, 680 F. Supp. 3d 1291, 1315 (N.D. Fla. 2023).

This presents a markedly different analysis than when a court analyses a *federal* statute:

“[A] Court has a duty to construe statutes as constitutional if it can. However, the nature of th[e] Court’s duty to narrowly construe a challenged statute varies depending on whether the challenged statute is state or federal law. When a federal law is at issue, [a] Court has a duty to avoid constitutional difficulties by [adopting a limiting construction] if such a construction is fairly possible...If, on the other hand, a state law is at issue, th[e] Court cannot adopt a narrowing construction...unless such a construction is reasonable **and** readily apparent...”

So, the question before th[e] Court is not whether there is any reading that would render the statute constitutional. Nor is it whether there is a possible, plausible, or simply reasonable reading that would render the statute constitutional. Instead, the question is whether there is a constitutional reading of the statute that is both *reasonable* and *readily apparent* and, thus, does not require th[e] Court to rewrite the statute.”

Id. at 1315 (emphasis added); *Dimmitt v. City of Clearwater*, 985 F. 2d 1565, 1572 (11th Cir.1993)

(“[A]s a federal court, we must be particularly reluctant to rewrite the terms of a statute.”). No defensible reading of the Ordinance can be discerned from the text here.

c. Affirmative Defenses

The Town’s Answer includes paragraphs numbered 170-186, which are not labeled as affirmative defenses but appear intended to function as such. All of those arguments are insufficient to foreclose Plaintiff from obtaining judgment on the pleadings as to Count I.

Paragraphs 170, 171, 172, and 177 of the Answer: Overlapping Arguments of Ripeness, Standing, Exhaustion of Remedies, and Finality

In overlapping arguments, the Town argues four (4) separate times that Plaintiff's action is premature because Plaintiff did not pursue this action before the Town Council and a mere staff denial lacks *finality*. Paragraphs 170 and 171, respectively, couch that argument in terms of ripeness and standing. [ECF 44 ¶¶ 170-171] The Town then reframes the prematurity argument again through language of *exhaustion*, arguing Plaintiff did not exhaust its remedies. [ECF 44 ¶ 172] Finally, the Town reframes the prematurity argument a fourth time by arguing that Plaintiff was required to pursue its case to a *final decision maker*, i.e. the Town Council. [ECF 44 ¶ 177] The Town previously raised all four of those arguments in its Motion to Dismiss the Complaint. All are unsupportable as a matter of law.

Regardless of the phraseology utilized by the Town, the Town's prematurity arguments all fail for the same reason: "[A] property owner's rights are violated the moment a governmental decision affecting his or her property has been made in an arbitrary and capricious manner..." *Doty v. City of Tampa*, 947 F. Supp. 468, 472 (M.D. Fla. 1996). The requisite degree of injury, i.e. finality, occurs the moment that "the **initial decisionmaker** has arrived at a definitive position on the issue that inflicts an actual, concrete injury ..." *Doty*, 947 F. Supp. at 472 (emphasis added). That rule is equally applicable when the argument is framed as a question of ripeness or exhaustion of remedies. *Doty*, 947 F. Supp. at 471 (holding that neither finality, nor exhaustion, nor ripeness bars a plaintiff's right to challenge a facially unconstitutional law once there has been an initial decision by an initial decision maker).

Here, the Code vests the Town staff with authority to review permit applications, providing that "single family detached dwellings...[are] subject to review only by the town planning and zoning department." *See* section 34-268. Town staff reviewed the application and denied it, issuing

a denial letter which stated: “Staff has **completed its review** of [your] plans...Tower features are limited to 225 square foot [sic] area limit, per Section 34-268. The proposed appears to exceed this limit.” Compl., Ex. C [ECF 1-3] (emphasis added). The requisite degree of action by the Town staff – the initial decision maker - is sufficient as a matter of law.

The separate but related concept of “final decision-making authority,” as addressed in the Town’s paragraph 177, is also no bar here. The Town cites *Monnell v. Dept. of Social Services*, 436 U.S. 658 (1978) for the proposition that a plaintiff must show action by a “final decision maker” or “final policy maker” before bringing a constitutional challenge. However, the Town misreads *Monnell*, which only requires a plaintiff to show action by a final decision maker or final policy maker when challenging an **unofficial custom** of the defendant; that requirement is wholly inapplicable when a plaintiff challenges an **official policy** like a legislative enactment. *Chabad Chayil, Inc. v. Sch. Bd. Of Miami-Dade Cnty.*, 48 F. 4th 1222, 1229 (11th Cir. 2022) (analyzing *Monnell* and explaining: “a plaintiff can establish municipal liability [by] identifying an official policy...or...identifying a municipal official with final policymaking authority... Chabad does not contend that [the defendant] has an official policy...”); *see also Monnell*, 436 U.S. at 690-691 (distinguishing “official policy” from a “custom [which] has not received formal approval...”).

Here, Plaintiff has challenged an official policy – a legislative enactment. The concept of a final policy maker is simply not germane, and Plaintiff was sufficiently aggrieved the moment “the initial decisionmaker” – the Town staff - arrived at its decision. *Doty*, 947 F. Supp. at 472.

Paragraph 173: No Constitutional Harm

Paragraph 173 asserts Plaintiff “has not asserted a constitutional harm, a constitutional injury, an infringement of a liberty interest, or the infringement of another fundamental right...” [ECF 44 ¶ 173] The Town previously raised this same argument in its Motion to Dismiss, arguing

this case involves a land use matter implicating only State created rights and not constitutional rights. That argument fails because this action involves a challenge to a legislative act – the Ordinance as drafted. As explained by the Eleventh Circuit Court of Appeals:

To th[e] general rule that ‘areas in which substantive rights are created only by state law are not subject to substantive due process protection,’ there is an exception...: Where an individual’s state-created rights are infringed by legislative act, the substantive component of the Due Process Clause generally protects him from arbitrary and irrational action by the government.

Lewis v. Brown, 409 F. 3d 1271, 1273 (11th Cir. 2005); see also *Dibbs v. Hillsborough County*, 67 F. Supp. 3d 1340, 1352 (M.D. Fla. 2014) (“An exception to the general rule applies when an individual’s state created rights are infringed by legislative act.”).

Paragraphs 174 and 175: Failure to State a Claim

Paragraph 174 asserts the Complaint “fails to state a claim” because “No controversy now exists as to the Plaintiff’s rights to procedural due process...” Plaintiff’s Complaint does not contain any cause of action for violation of procedural due process and the Town’s Paragraph 174 is wholly inapplicable here.

Similarly, Paragraph 175 asserts “The Complaint fails to state a valid claim. No equal protection claim exists.” Plaintiff’s Complaint does not contain any cause of action for violation of equal protection and Paragraph 175 is wholly inapplicable.

Paragraph 176: Lack of Jurisdiction

The Town’s Paragraph 176 argues “The Court lacks jurisdiction to issue relief because the Complaint does not frame a valid federal claim.” For the reasons already discussed *supra* the Ordinance is void for vagueness, presenting a federal claim grounded in due process.

Paragraph 178: Denial that Ordinance is Vague on its Face

The Town's Paragraph 178 is a mere denial, denying that the Ordinance is unconstitutionally vague. A mere denial is not an affirmative defense. *E.g. Dionisio v. Ultimate Images, Inc.*, 391 F. Supp. 3d 1187, 1193 (S.D. Fla. 2019). Moreover, the Town's denial fails here based on the plain language of the Ordinance as discussed *supra*.

Paragraph 179: Greater Tolerance Doctrine

The Town's reliance on the greater tolerance doctrine, the notion that courts should tolerate more vagueness in a civil law than a criminal law, is misplaced here. While it is true that criminal laws are held to an even more exacting standard than civil laws, the void for vagueness standard described *herein* represents a minimum standard of due process and is not limited to criminal laws. *Ross v. Orlando*, 141 F. Supp. 2d 1360, 1364 (M.D. Fla. 2001) ("The vagueness doctrine applies to non-legislative enactments and those that do not carry criminal penalties."); *Boyce Motor Lines v. United States*, 342 U.S. 337 (1952). As explained by Justice Gorsuch, the greater tolerance doctrine does not excuse a violation of the minimum level of due process – even in a civil context:

What degree of imprecision should this Court tolerate in a statute before declaring it unconstitutionally vague? For its part, the government argues that where (as here) a person faces only civil, not criminal, consequences from a statute's operation, we should declare the law unconstitutional only if it is 'unintelligible.' But in the criminal context this Court has generally insisted that the law must afford ordinary people fair notice of the conduct it punishes. And I cannot see how the Due Process Clause might often require any less than that in the civil context either.

First principles aside, the government suggests that at least this Court's precedents support adopting a less-than-fair-notice standard for civil cases. But even that much I do not see...This Court has made clear...that due process protections against vague laws are 'not to be avoided by the simple label a State chooses to fasten upon its conduct or its statute.' *Giaccio v. Pennsylvania*, 382 U.S. 399, 402 (1966). So the happenstance that a law is found in the civil or criminal part of the statute books cannot be dispositive...[T]he Court has sometimes 'expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe.' But to acknowledge these truisms does

nothing to prove that civil laws must always be subject to the government's emaciated form of review....

Today's 'civil' penalties include confiscatory rather than compensatory fines, forfeiture provisions that allow homes to be taken, remedies that strip persons of their professional licenses and livelihoods, and the power to commit persons against their will indefinitely. Some of these penalties are routinely imposed and are routinely graver than those associated with misdemeanor crimes—and often harsher than the punishment for felonies. And not only are 'punitive civil sanctions ... rapidly expanding,' they are 'sometimes more severely punitive than the parallel criminal sanctions *for the same conduct*....' Given all this, any suggestion that criminal cases warrant a heightened standard of review does more to persuade me that the criminal standard should be set *above* our precedent's current threshold than to suggest the civil standard should be buried *below* it.

Sessions v. Dimaya, 584 U.S. 148, 175–85, (2018) (Gorsuch concurring) (citations and quotations omitted) (emphasis in original).

Paragraph 180: Rational Basis Scrutiny

Paragraph 180 argues the Ordinance should be subjected only to rational basis scrutiny, an argument which the Town previously raised in its Motion to Dismiss. However, the rational basis test is inapplicable because it is the text of the Ordinance, not the purpose, which is at issue here. A defendant's claim that a law has a plausibly rational purpose does not save a law which is textually insufficient to satisfy due process. *E.g. Sears, Roebuck & Co. v. Forbes/Cohen Fl. Prop., L.P.*, 223 So. 3d 292, 301 (Fla. 4th DCA 2017) ("The City argues that it had a rational basis...[However,] [a]lthough the interests described may be a legitimate government interest, the [law's] total lack of guidance would allow for arbitrary and capricious enforcement..."). The controlling standard here is not the rational basis test but, rather, the void for vagueness analysis discussed throughout.

Paragraphs 181-182: The Town Argues the Ordinance Does Not, in Fact, Create a Risk of Arbitrary Application and Enforcement

Paragraphs 181 and 182 merely deny that the Ordinance is constitutionally suspect, asserting the Ordinance does not, in fact, create a risk of arbitrary enforcement. Such arguments

amount to mere denials of liability and are squarely foreclosed by the plain language of the Ordinance as discussed *supra*.

Paragraphs 183-184: Various Equitable Doctrines

In a conclusory manner, the Town’s Paragraphs 183 and 184 list ten (10) different equitable and legal doctrines: unclean hands; inequitable conduct; issue preclusion; *res judicata*; collateral estoppel; equitable estoppel; judicial estoppel; estoppel by judgment; waiver; and merger. The entire conclusory list of doctrines is based on the same immaterial factual argument, which states in pertinent part that “The issues raised in the Complaint were litigated previously in a code enforcement action and determined with finality in favor of the Defendant...The circumstances include the participation of the Plaintiff’s principle [sic] in the prior code enforcement matter...”

The fact that an individual, who now holds an interest in the Plaintiff entity, has previously been cited by Code Enforcement officers in Juno Beach has no bearing whatsoever on the pending Motion, which challenges the constitutionality of a local law as drafted. Indeed, as stated by this Court in its Order dated January 12, 2026, “[Plaintiff’s] principals are not parties to this suit...” [ECF 42, p. 7 (*citing Ezeamama v. In re Estate of Chibugo*, 390 So. 3d 189, 191 n. 4 (Fla. 3d DCA 2024) (“[A]n LLC is an entity separate from its members[.]”)]

Paragraph 185: Laches

In Paragraph 185, the Town argues Plaintiff’s action is “time barred or barred by laches [because] the Plaintiff acquired title on or about June 28, 2021 and waited more than four years before filing suit.” The Town’s timeliness argument here is almost unbelievable given that the Town has separately argued in Paragraphs 170-172 that this action *remains premature*. More importantly, however, Plaintiff’s injury occurred when the Town issued its denial letter on June 23, 2025.

Paragraph 186: Sovereign Immunity

The Town's Paragraph 186 alleges the Town "is entitled to sovereign immunity...with respect to any potential claim for damages under state law." Plaintiff has not sought damages here and Paragraph 186 is squarely inapplicable to this action as pled.

VI. CONCLUSION

For the foregoing reasons, the Court should grant judgment on the pleadings as to Count I.

VII. REQUEST FOR HEARING

In accordance with S.D. Fla. L.R. 7.1(b), Plaintiff requests a hearing of one (1) hour to present the issues discussed herein. Oral argument will be helpful to the Court given the already-convoluted nature of the Tower Ordinance itself, including the conflicting provisions and circularity within it. Moreover, the Constitutional case law discussed herein, as it applies to the questions of statutory construction here, is extensive and often complex. Oral argument will aid the Court in evaluating and analyzing the extensive legal framework at issue.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Plaintiff's Motion for Judgment on the Pleadings as to Count I; hold that the Ordinance is void for vagueness as drafted; reserve jurisdiction to consider remaining issues including Plaintiff's right to recover attorneys' fees and costs; and award any other and further relief the Court deems appropriate.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing is being filed with the Clerk of Court and served this 9th day of February 2026 via the CM/ECF portal on the following counsel of record:

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