



A Home’s Architecture Isn’t Protected ‘Free Speech’?

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MARCH 29, 2022

Claiming he had a “free speech” right to tear down a mansion and build the mid-century modern home of his dreams, a Palm Beach man went to court. He lost in appeals and the U.S. Supreme Court refused to reconsider that decision.

TALLAHASSEE, Fla. – The U.S. Supreme Court on Monday refused to take up an appeal by a telecommunications entrepreneur who contended his First Amendment rights were violated when plans for a mansion were rejected in Palm Beach.

The court, as is common, did not explain its reasons for turning down the case filed by Donald Burns, who applied in 2014 to tear down a 10,063-square-foot oceanfront home and replace it with a larger mansion with a “mid-century modern” design, according to court documents.

Burns filed a federal lawsuit after Palm Beach’s Architectural Review Commission turned down the plan. He went to the Supreme Court after a sharply divided panel of the 11th U.S. Circuit Court of Appeals last year rejected arguments that his First Amendment rights had been violated.

In a petition filed in November, Burns’ attorneys wrote that the proposed design “communicated that his new home would be clean, fresh, independent and modern – a reflection of his evolved philosophy of simplicity in lifestyle and living with an emphasis on fewer personal possessions, and communicated his message that he was unique and different from his neighbors. The traditional style of his home no longer reflected his views or his identity.

“Architectural design, especially the design of one’s own home, is an expressive form of art that can – and for Burns’ proposed design, should – be entitled to robust First Amendment protection,” the petition said.

But attorneys for the town disputed that the case presented First Amendment issues and urged the Supreme Court to reject it. A brief filed by the town last month said Burns sought to build a nearly 20,000 square-foot home.

“Petitioner’s ongoing effort to invoke fundamental constitutional rights in an otherwise straightforward zoning case involving the municipal denial of a new, oversized house on an undersized lot in accordance with stated architectural review criteria fails to present any grounds for review by this (Supreme) Court,” the brief said. “This court has never reviewed zoning criteria with the higher level of scrutiny given fundamental rights protected by the First Amendment.”

Burns sold the home as the lawsuit played out, but he continued to have standing to pursue it because of “significant financial damages,” according to the petition filed by his attorneys.

Burns drew support at the Supreme Court from two libertarian organizations, the Goldwater Institute and the Cato Institute, and from the National Association of Home Builders of the United States.

The groups argued in friend-of-the-court briefs that architecture is a form of expression protected by the First Amendment, citing famed architects such as Frank Lloyd Wright.

“This court has never specifically addressed the status of architecture as expressive conduct,” attorneys for the home builders association wrote. “Amicus (the association) believes that architecture is expressive conduct protected by the First Amendment, no different than other mediums portraying or otherwise involving architecture, such as Edward Hopper’s painting ‘House by the Railroad’ ... or the Simon & Garfunkel song, ‘So Long Frank Lloyd Wright.’”