

TOWN OF PALM BEACH

Information for Town Council Meeting on: March 19, 2019

To: Mayor and Town Council

From: Josh Martin, Director of Planning, Zoning and Building

Re: Administrative Appeals relative to the Tennis Courts, Supplemental Parking and Required 10-Foot High Tennis Court Perimeter Fencing on the Lot at 1236 South Ocean Boulevard

Date: March 8, 2019

STAFF RECOMMENDATION

Staff recommends that the Town Council uphold Staff's administrative decisions on both appeals.

GENERAL INFORMATION

On December 28, 2018 and January 24, 2019, Amanda Quirke Hand, attorney representing 100 Emerald Beach, LLC, filed appeals of three administrative decisions related to the tennis court, supplemental parking and the tennis court fence located at 1236 South Ocean Boulevard (copies attached). The appeals are summarized as follows:

1. Staff's determination that the property owner of the approved tennis court at 1236 South Ocean Boulevard did not need a special exception with site plan review approval from the Town Council. The property owner erroneously filed a special exception application for the tennis court, and the Zoning Administrator determined the special exception was not required and allowed the applicant to withdraw the zoning application.
2. Staff's determination that the approved supplemental parking did not need a special exception with site plan review approval for supplemental parking; and
3. Staff's determination that 100 Emerald Beach, LLC, does not need a variance to have the required 10 foot high perimeter fence around the tennis court 30 feet from the side property line in lieu of the 10 foot previously approved.

Staff's justifications for each of the determinations above are as follows:

1. The only time a tennis court is required to obtain a special exception with site plan review based on Section 134-1759(d)(g)&(e) of the Code is if the tennis court has a backboard or rebound wall; is built upon a structure or is lighted. The Code reads as follows:

Sec. 134-1759. Tennis, shuffleboard and racquetball courts.

(a)...

....

- (d) The construction of any facility involving **the use of a ball backboard or rebound wall in any district of the town shall be subject to an application for special exception as specified in section 134-227 through section 134-233.**

- (e) The construction of any **tennis court, shuffleboard court or similar use upon any structure in the town shall be subject to an application for special exception as specified in section 134-227 through section 134-233.**

...

- (g) The **town council may permit, as a special exception with site plan review, minimal state of the art night lighting** from 9:00 a.m. to 9:00 p.m. for tennis, shuffleboard and racquetball courts, provided that the applicant shall demonstrate to the town council that the light and noise created by the tennis court, shuffleboard or racquetball court will be adequately mitigated as it relates to adjacent residential structures and vehicular right-of-way. All tennis, shuffleboard and croquet court lighting shall be equipped with a locked, light timer switch to ensure that the lighting will be controlled to operate only within the hours established in this subsection.

2. The Town has never required supplemental parking for a single-family home on the same lot to obtain special exception with site plan review approval; this interpretation is at least 25 years old. The subject property is in the R-AA zoning district. While Section 134-790(7) states “Supplemental parking, allowed only in a manner consistent with the zoning district in which it is located” is a special exception use, staff has for at least 25 years interpreted that to be for a principal use on a property. An example of supplemental parking as a special exception would be if a property owner bought a piece of property across the street from the main house, and pursued approval to build only supplemental parking on that residential lot for the use of the main property. Almost every single-family home in the Town has supplemental parking on the lot. The Town has never required special exception for that parking based on this language.

In 2017, when the appellant appealed ARCOM’s approval regarding the tennis court to the Town Council, they argued at that time on the public record that the property owner needed a special exception for supplemental parking. Staff stated that their long standing interpretation has been that the supplemental parking, which was required to obtain special exception approval, is only for a principal use on a property; this interpretation/decision was not appealed.

3. The approved tennis court, supplemental parking and its required ten-foot high perimeter fencing was reviewed by the Zoning Administrator in 2017, prior to the approval by ARCOM (B-0046-2017, approved June 29, 2017). At that time, Section 134-1759(a) & (b) (copy attached) allowed tennis courts and the required 10-foot high perimeter fence to be within required side and rear yards. Staff had a long-standing interpretation, however, that the tennis court fence had to meet the minimum setback requirement of an unenclosed accessory structure (10-foot setback).

After an unsuccessful appeal to Town Council of ARCOM’s approval, a building permit was issued on October 2, 2017, for among other items, the tennis court. The permit was based on the 2017 Zoning Code provisions for tennis courts. As construction was ongoing, the appellant appealed ARCOM’s decision to circuit court, which eventually remanded the case back to ARCOM for reconsideration. Also between the building permit issuance and court judgement to remand the case back to the ARCOM, the Code requirements for the tennis court fencing changed (May 12, 2018). The new Code changes provided inconsistencies and setback changes for tennis courts.

The new Section 134-1759(b) states that

“Tennis courts or shuffleboard courts and similar accessory uses, not enclosed by a structure, may be constructed within yard areas, except the required front yard, required street side yard and required street rear yard as prescribed by this chapter.

However, based on the new code provision below, a tennis court can never be within a yard area because the required 10-foot tall fence, which exceeds the maximum height of seven feet based on Sections 134-1666 through 134-1670 of the Code, has to have the same setback as the principal structure, which in this case is 30 feet.

“Tennis courts shall include as an integral part of the construction thereof proper fence or wall enclosures contiguous to the court. Such fence or wall enclosures are to be at least ten feet in height. **Said fence or wall enclosure shall be out of the required principal structure setback if said enclosure exceeds the maximum height allowed in section 134-1666 through 134-1670 of the Code.** Where visible from adjacent properties or the public or private street right-of-way, tennis courts shall be screened with plantings at least the same height as the tennis court fence.”

The tennis court, supplemental parking and required tennis court perimeter fence were reviewed for zoning compliance by Town staff, approved by ARCOM, and the tennis court and supplemental parking issued a building permit in 2017. The tennis court and supplemental parking on the lot does not need a special exception, and the perimeter fence is grandfathered as a required part of the tennis court and does not need a variance. To bring up new arguments and appeals after the fact that building permits have been issued, and the tennis court built, is unfair and is an estoppel issue.

In closing, staff would like to point out that each of these appeals should have been filed within thirty days of either the ARCOM, Staff approval or building permits issued in 2017. Therefore, staff does not believe they met the intent of Section 134-145 for timely filing an appeal of these administrative decisions which were made at that time. Nevertheless, even if timely filed, the appeals should be denied based on the facts and arguments set forth above.

cc: Kirk Blouin, Town Manager
Jay Boodheshwar, Deputy Town Manager
zf & pf