

TOWN OF PALM BEACH

Information for Town Council Meeting on: May 15, 2019

TO: Mayor and Town Council

VIA: Kirk W. Blouin, Town Manager

FROM: Joshua Martin, Director of Planning, Zoning & Building

RE: ARCOM Appeal
1236 South Ocean Boulevard
Case # B-046-2017 Modifications

DATE: May 3, 2019

STAFF RECOMMENDATION

Staff recommends that Town Council consider and rule upon the appeal of 100 Emerald Beach Way LLL, objecting to ARCOM's decision of March 27, 2019, approving two tennis courts at 1236 South Ocean Boulevard.

GENERAL INFORMATION

Response to Appeal

1. 100 Emerald Beach Way was not denied procedural due process. Although the tennis court was partially constructed based upon permits granted prior to 100 Emerald Beach having appealed this matter, construction was abated pending the resolution of this matter with the Town. ARCOM considered this matter as new, as if no construction had taken place, and made their decision based on the competent, substantial evidence in the record before the Commission.
2. ARCOM did not fail to consider the essential requirements of law. Appellants correctly state that ARCOM does not have jurisdiction to grant variances, nor does it have authority to grant special exceptions. That jurisdiction rests with the Town Council. In this case, however, the Town's zoning administrator had made a determination prior to this matter having been submitted to ARCOM that neither a variance nor special exceptions were required for the tennis courts. (As a matter of interest, the zoning administrator's decision in this regard was appealed to Town Council, the Town Council denied the appeal, thereby sustaining their decision of the zoning administrator and subsequently, 100 Emerald Beach Way appealed Town Council's decision to the circuit court by filing a petition for writ of certiorari.) ARCOM, therefore relied upon the decision of the zoning administrator in that regard. 100 Emerald Beach Way argues that ARCOM refused to even consider or determine whether a special exception or variance was required for what they refer to as a Tennis Court Complex. First, that was not their task. This application would not even be

ripe for consideration by ARCOM if the zoning administrator had determined a variance and special exceptions were necessary, that matter being within the jurisdiction of the Town Council. Secondly, although criterion (9) of section 18-204 of the ARCOM ordinance requires a finding that the “development is in conformity with the standards of this Code and other applicable ordinances as the location and appearance of the buildings and structures are involved,” Paul Castro’s testimony before ARCOM that no variances or special exceptions were necessary for the tennis courts was competent, substantial evidence to allow ARCOM to conclude that the criteria had been met. (See transcript, pg. 97 relating to Paul Castro’s testimony that the location and placement of the tennis courts, the tennis court parking, and the screening of the tennis court met code. See also transcript pg. 90 where Paul Castro disagreed with Amanda Quirke-Hand’s argument that special exceptions and a variance was necessary.)

Argument

- I. Ms. Hand argues that her client did not receive procedural due process because the ARCOM Commissioners were annoyed and angry that they had to hear the application that several commissioners felt they had already heard the application and should not have to waste their time hearing it again. Regardless of Ms. Hand’s characterization of the mood of the Commissioners, it is clear from the transcript that the Commission understood that this was a new application and indeed treated it as a new application, acting solely on the competent, substantial evidence contained within the record. In that regard, please see the explanation of Mr. Randolph relating to the status of the case at pgs. 5 through 11 of the transcript, i.e., that the court remanded this case with direction that the case be reheard in accordance with the decision of the court that there was no finding by ARCOM or Town Council or evidence in the record to suggest that the Thornton’s development would comply with Section 134-1759 of the Town Code. Paul Castro, in his testimony, confirmed that the application was in compliance with 134-1759, thereby satisfying that requirement.

Ms. Hand also argues that the Commission considered this application as though the tennis court had already been built. In that regard, however, see Mr. Randolph’s statement on pg. 17 of the transcript:

“you should consider [the application] based upon the presentation made to you today, not on the basis of the tennis court having been built or a permit having been granted because those went . . . that construction of that tennis court went forward at the owner’s risk during the appeal before the matter was quashed by the court.”

In recognition of this explanation, ARCOM proceeded, properly, to consider this a new application as though the tennis courts had not been constructed.

- II. Ms. Hand devotes nine pages of her argument to the propositions that ARCOM failed to follow essential requirements of law because the parking lot and tennis courts

required special exceptions, and a variance and that there was no competent substantial evidence in the record that the criteria required for approval of the application had been met.

The first part of this argument has already been addressed. Paul Castro testified that no special exceptions or variance was required in regard to the construction of this project. Therefore, there was competent, substantial evidence in the record to support ARCOM's decision that the application was in compliance with the Town Code. Ms. Hand further argues that there was no competent, substantial evidence in the record that the application met the criteria for building permit set for in Section 18-205(a) (1-9) of the Code. This, too, is a specious argument. One need only review the criteria set forth in the Code and the evidence in support of each of the criteria contained within the transcript to determine that ARCOM had before it competent, substantial evidence to support the criteria set forth in the Code. Recall that competent, substantial evidence is evidence which would allow a reasonable person to conclude that the evidence supported the decision to be made. It does not matter whether contrary evidence is introduced. As long as there is competent, substantial evidence in the record to support the decision of the quasi-judicial body, a court will not substitute its decision for the decision made by that body.

In this regard, a review of the transcript sustains the decision of ARCOM that the criteria had been addressed by competent, substantial evidence. See specifically Mr. Tim Hanlon's presentation to the Commission on behalf of the applicants; Thornton's, beginning at pg. 18, followed on pg. 23 by the testimony of Dustin Mizell with Environmental Designs, relating to the site plan; Mrs. Thornton's testimony beginning on pp. 29; and most importantly, Mr. Hanlon's argument beginning at pg. 35 and ending on pg. 46 where he addresses each and every one of the criteria required for the approval of the application; i.e., criteria 1 – 10 specifying evidence in the record supporting each of the criteria. Although, Amanda Hand presented evidence in rebuttal to this testimony, there was competent, substantial evidence in the record to support ARCOM's decision. After all the evidence on both sides of the issue was presented and considered, a motion was made including findings that the criteria set forth in Section 18-205 had been met. (See motion of Mr. Small and vote to approve on pgs. 98 and 99 of the transcript.)

On the basis of all of the above, Staff recommends approval of ARCOM's decision.

SPECIAL CIRCUMSTANCES

In addition to the appeal letter, Attorney Hand has submitted a transcript of the ARCOM meeting as well. Also, attached, please find an excerpt of the ARCOM meeting minutes from the March 27, 2019 meeting.

Attachments

CC: Jay Boodheshwar, Deputy Town Manager
John C. Randolph, Town Attorney
Architectural Commission