

From: [Francis Lynch](#)
To: bvtvbob@gmail.com; mssmall@smallawpalmbeach.com; [Garrison, Robert N.](#); [Alexander; amginny@aol.com](#); betsyshiverick@gmail.com; johncorey84@gmail.com; [KT Catlin](#); dan.floersheimer@icloud.com
Cc: mziska@floridawills.com; [Joshua Martin](#); [Wayne Bergman](#); [Kelly Churney](#)
Subject: ARCOM Application # B-069-2019 ("Application") / 977 South Ocean Boulevard ("Subject Property") / 195 Phesten Associates LLC ("Applicant")
Date: Tuesday, January 28, 2020 4:48:55 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Mr. Chairman, Ladies and Gentlemen of the Architectural Review Commission and Town Staff:

Please be advised that I represent 1020 South Ocean, LLC, the owner of that property presently under construction at 1020 South Ocean Boulevard, located south and west of the Applicant's property.

My client objects to the Application for the reasons indicated below.

As you will recall, the Applicant previously voluntarily abandoned a plan that included a building footprint for the construction of improvements on Subject Property that met all town code requirements. The only thing that stood between this Applicant and a building permit was to present ARCOM with a satisfactory design for those improvements. Rather than work within that footprint and modify the design, the Applicant has elected scrap that plan in its entirety and present a plan, albeit now revised again, that requires no less than five (5) variances to build and asserts that it is somehow being deprived of its constitutional right to build this house on the Subject Property. This simply has no basis in fact or law.

At the last presentation of this Application at the October 30, 2019 ARCOM meeting, my client expressed its concerns that the improvements being proposed in this Application were simply too close to South Ocean Boulevard, too tall and too wide. The Applicant's changes since the October 30 meeting do very little, if anything, to address these concerns.

The Subject Property is an RB sized lot in the RA zoning district. The lot is significantly undersized, comprised of slightly less than 13,000 square feet while the RA minimum is 20,000 square feet. At the same time, the Applicant proposes to construct a house that would have a front yard setback (24') less than the 25 foot minimum required in the RB zoning district (in lieu of the 35 foot minimum required in RA) at a lot coverage (29.96%) consistent with the maximum allowed in the RB zoning district (30%), in lieu of the 25% maximum allowed in the RA zoning district. In essence, the Applicant is trying to shoehorn an RA-sized house onto an RB-sized lot.

The foregoing is exacerbated by the request for a height plane variance. The town code section governing height plane requires a two-foot setback for every one foot of building height. The Applicant proposes a building height of approximately 20 feet. This would require a front yard setback of approximately 40 feet to meet the height plane requirement, while the Applicant seeks a front yard setback of approximately 24 feet. This is precisely why the Town has a height plane

requirement - not just a building height requirement - so that a building's setback from the front property line is proportional with its height. Again, the Applicant proposes a structure that is too close to the property line for the building height proposed, enhancing, rather than avoiding, the appearance of mass through improper proportions as required by Code Section 18-205(a)(6)(g).

The next variance sought by the Applicant is to the angle of vision. The Applicant proposes an angle of vision for the proposed improvements of 131 degrees in lieu of the 116 degree maximum. This translates into a building that is approximately 36 feet wider than permitted by code.

The existing house has a large motor court. This allows those traveling to and from the property to avoid backing onto South Ocean Boulevard. The Applicant proposes a plan without a motor court that will all but require that vehicles back onto South Ocean Boulevard, creating an inherently dangerous condition, while providing no space on site for delivery or service vehicles. South Ocean Boulevard has no parking permitted along it to provide for deliveries, service personnel and overflow parking.

The Applicant asserts that a number of homes in the area do not meet code, however, the Applicant fails to address that all of the nonconforming houses were built prior to the enactment of the current zoning code. That is a significant omission. The Applicant cannot rely on surrounding noncompliant homes as a legal basis for the variances it seeks.

At the October 30 ARCOM meeting, the Applicant acknowledged that it was aware of the configuration of the property when it acquired the property, yet it still designed a house for that property. This is within the legal definition of a self-imposed hardship.

By the same token, my client and the surrounding property owners have the right to rely on the town's existing zoning code and have the right to the enforcement of that zoning code, absent a showing that a variance is appropriate. The Applicant has shown nothing but a number of self-imposed hardships which again, by definition, cannot be used as the basis for a variance. To the contrary, a hardship may not be found unless no reasonable use of the property can be made without the variance. The Applicant's previous "variance -free" application is Exhibit A that a use can be made of the Subject Property without the variances sought; a use, in fact, that was proposed, and then abandoned, by the Applicant.

This house will establish a precedent in this area east of South Ocean Boulevard. This stretch of road along South Ocean Boulevard is a very unique area within the town. For these reasons and those stated above, my client respectfully requests that the Application be denied.

Thank you
Frank Lynch

Francis X. J. Lynch, Esquire

SNIFFEN & SPELLMAN, P.A.

605 North Olive Avenue, 2nd Floor

West Palm Beach, Florida 33401
T (561) 721-4000 / F (561) 721-4001 / D (561) 721-4004
E-mail: flynch@sniffenlaw.com
Website: www.sniffenlaw.com / Twitter: @Sniffenlaw

AS OF OCTOBER 1, 2019, WE HAVE JOINED THE FIRM OF SNIFFEN & SPELLMAN, P.A. PLEASE NOTE THE CHANGE OF E-MAIL ADDRESS. OUR TELEPHONE NUMBER, FACSIMILE NUMBER AND ADDRESS REMAIN THE SAME.

IMPORTANT NOTICE REGARDING EMAIL COMMUNICATION: With changes in technology, the Firm is aware that email is a common method of communication; however, please keep in mind the following: **(1)** clients should never use computers maintained or monitored by others (e.g., work; public computers) when communicating about sensitive or attorney-client matters; **(2)** incoming emails may not be read immediately, because the intended recipient may be out of the office or otherwise unavailable; if your email communication is time-sensitive, please call our office to ensure we are aware of your email; and **(3)** the Firm uses automated filters to block viruses and unwanted emails. It is possible the Firm's network may not recognize your email address and prevent your emails from being properly delivered. Please call our office if we have not responded to your email within a reasonable time or if the matter is time-sensitive.

CONFIDENTIALITY NOTICE: Information in this email may be protected from distribution by law, confidential, or protected from disclosure by the attorney-client privilege. It is intended only for the use of the disclosed individual or entity. If you are not the intended recipient of this communication, you are hereby notified that the law may restrict or prohibit the unintended use, copying or distribution of this communication. If you have received this email in error, please email the sender immediately upon receipt for further instruction.

DISCLAIMER: Pursuant to Circular 230 issued by the United States Treasury Department and relating to practice before the Internal Revenue Service, any comment or opinion in this communication relating to a federal tax issue is not intended to be used, and cannot be used, by a taxpayer for the purpose of avoiding tax-related penalties that may be imposed on the taxpayer.

BEWARE OF CYBER FRAUD – BEFORE WIRING ANY FUNDS, CALL THE INTENDED RECIPIENT AT A NUMBER YOU KNOW IS VALID TO CONFIRM THE INSTRUCTIONS – AND BE VERY WARY OF ANY REQUEST TO CHANGE WIRE INSTRUCTIONS YOU ALREADY RECEIVED.