

# TOWN OF PALM BEACH

Information for Town Council Meeting on: December 9, 2020

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To: Mayor and Town Council

From: Wayne Bergman, Director of Planning, Zoning & Building



Cc: Kirk Blouin, Town Manager

Re: 1045 S. Ocean Blvd. Appeal of Arcom Decision to Approve New Addition, Pool, Hardscape and Landscape

Date: November 24, 2020

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## **GENERAL INFORMATION**

Property owner Lionel K. Vickar made an application to Arcom earlier this year to add a two-story addition, with a basement, to the existing home at 1045 S. Ocean Blvd.; along with a new pool and pool deck, and enhanced hardscape and landscape. The matter was heard at the October 28, 2020 Arcom meeting and was approved, with the exception of the front doors, which were scheduled to return to Arcom in November. During the meeting Attorney Francis X. J. Lynch, representing owners at 1020 and 1030 S. Ocean Blvd., spoke in opposition to the project. Please see the partial minutes of the Arcom meeting that summarize the discussion and approval.

The appeal of the Arcom decision was filed by Attorney Lynch on November 6, 2020, who is representing the owner of 1030 S. Ocean Blvd. The filing of the appeal was in compliance with Town Code 18-177, which allows appeals from Arcom decisions to be filed within ten (10) calendar days of the meeting at which the decision of the Commission is rendered.

Attached:

Chapter 18, Section 18-177 – Appeals and Review  
Attorney Lynch Letter, dated November 6, 2020  
Partial Minutes from the October 28, 2020 Arcom Meeting

Sec. 18-177. - Appeals and review.

An applicant or any interested party may file an appeal to the town council on any ruling by the architectural commission or the director of the planning, zoning and building department or his/her designee made pursuant to this article. The appeal shall take the form of a letter addressed to the town clerk. In the case of an appeal from the architectural commission, the appeals shall be filed or made within ten calendar days of the date of the meeting at which the decision of the commission is rendered. In the case of an appeal from the decision of the director of planning, zoning and building, the appeal shall be filed or made within ten calendar days of the date the director of the planning, zoning and building department or his or her designee renders the decision in writing. Appeals shall set forth the alleged inconsistency or nonconformity with procedures or criteria set forth in this article or standards set forth in or pursuant to this Code. The town council shall decide an appeal within 45 days of the filing of such appeal unless an extension of time is consented to by the applicant, and such filing shall suspend any building permit issued pursuant to the ruling of the architectural commission or director of the planning, zoning and building department or his/her designee until the town council has decided the appeal. The town council may review any decision of the architectural commission or the director of the planning, zoning and building department and its disposition of the matter shall be final. In addition to appeals, the town council shall consider major projects as defined in the ARCOM Project Designation Manual at the next regularly scheduled town council meeting, subsequent to the meeting of the commission. The disposition of such matters by the town council shall be final. Appeals filed pursuant to this section shall be based on the record of the proceedings below and shall not be presented de novo. The time allotted for presentation of an appeal shall be determined by the town council president.

(Ord. No. 11-2015, § 1(Att.), 4-15-15)

# SNIFFEN & SPELLMAN, P.A.

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Sender's direct line: 561-721-4004  
Sender's e-mail: [flynnch@sniffenlaw.com](mailto:flynnch@sniffenlaw.com)

November 6, 2020

VIA E-MAIL

[pgayle-gordon@townofpalmbeach.com](mailto:pgayle-gordon@townofpalmbeach.com)

Town of Palm Beach  
Town Clerk's Office  
360 South County Road  
Palm Beach, FL 33480  
Attn: Ms. Pat Gayle-Gordon, Acting Town Clerk

Re: ARCOM #B-043-2020/1045 South Ocean Boulevard

Dear Ms. Gayle-Gordon:

Please be advised that I represent the owner of 1030 South Ocean Boulevard (the "Appellant").

The Appellant wishes to appeal the above-referenced decision by the Town of Palm Beach Architectural Review Commission ("ARCOM") at its October 28, 2020 meeting to approve an addition to the existing single-family residence on the property along with landscape and hardscape changes (the "Decision") to the Town of Palm Beach Town Council ("Town Council").

The appeal is based on the following grounds:

1. Is a Building Height Plan Variance Required?

Upon commencing its presentation of its opposition to the Application, the Appellant questioned whether a Building Height Plane variance as required of the Applicant.

Town Code requires, in the RA Zoning District, the following:

"Sec. 134-843. – Lot, yard and area requirements-Generally.

(a) Schedule of regulations. In the R-A estate residential district, the schedule of lot, yard and area requirements is as given in this section . . .

(7) Building height plane. The building height plane regulations are as follows: two feet of front setback for each one foot in building height"

Building Height Plane is defined in Code Section 134-2(b) as follows:

**REPLY TO:**

605 NORTH OLIVE AVENUE, 2ND FLOOR  
WEST PALM BEACH, FL • 33401  
PHONE: 561.721.4000  
FAX: 561.721.4001

[WWW.SNIFFENLAW.COM](http://WWW.SNIFFENLAW.COM)

123 NORTH MONROE STREET  
TALLAHASSEE, FL • 32301  
PHONE: 850.205.1996  
FAX: 850.205.3004

*"Building height plane means a height limiting plane extending at an inclined angle from the intersection of the front yard property line as determined in Section 134-1636(2) and the zero datum as defined in "height of building" and "overall height of building", or the minimum floodplain elevation as established in Chapter 50 of this Code, whichever is higher."*

Obvious by its omission in the Applicant's Zoning Tabulation is any reference to the Town's Building Height Plane Requirement of two feet (2.0') of front yard setback for every one foot (1.0') of Building Height. Based on the Building Height proposed by the Applicant of 23'10", the proposed minimum front yard setback should be 47'8"; however, the Applicant, by its own admission on the Zoning Tabulation, proposed a front yard setback of 42'7". This, on its face, indicates that a variance is required, yet the Applicant had not filed a zoning application seeking same at the time of its presentation to ARCOM. At the ARCOM meeting, the Applicant's representatives addressed the building height plane issue, however, town staff did not confirm or refute the Applicant's position, nor was any representation made on the Application addressing this situation. Based on this, ARCOM had nothing to consider on the Building Height Plane issue, so the question remains, is a building plane variance required? Based on this, ARCOM should not have considered the Application.

2. Failure of ARCOM to consider Code Section 18-205(a)(10)

Town Code provides:

"Sec. 18-205. – Criteria for building permit.

(a) The architectural commission may approve, approve with conditions, or disapprove the issuance of a building permit in any matter subject to its jurisdiction only after consideration of whether the following criteria are complied with:

(10) The project's location and design adequately protects unique site characteristics such as those related to scenic views, rock outcroppings, natural vistas, waterways, and similar features."

The Appellant addressed the requirement that ARCOM consider the foregoing in making its decision, given that the Applicant was seeking to double the width of the existing house to almost 150 feet in length, equivalent to the maximum permitted length of a structure in the CTS Zoning District, a commercial zoning district. To counter this position, the Applicant's representatives chose to incorrectly assert a zoning ordinance to claim that an ocean vista was not required. As the Applicant's representatives were well aware, the zoning ordinance cited had no relevance whatsoever in the ARCOM proceedings. To the contrary, the aforementioned Code Section 18-205(a)(10) requires that ARCOM consider the preservation of one of the few remaining scenic views of the Atlantic Ocean from South Ocean Boulevard in the Town. This particular view as among the specific considerations made by ARCOM members in their review

of a recent application at 977 South Ocean Boulevard ("977"), for which ARCOM considered two (2) applications over a nearly two (2) year period before granting its approval. Discussed in reviewing the 977 application was that ARCOM was aware of the precedent 977 would set for one of the few remaining stretches of road in the Town from which the ocean was visible from Ocean Boulevard. As to this particular Application, ARCOM gave virtually no consideration to the preservation of this view.

The Applicant then took to compare the length of the structures at 1020 South Ocean Boulevard ("1020") and 1030 South Ocean Boulevard ("1030"), both of which lie west of South Ocean Boulevard, to the subject, ignoring the obvious fact that the lengths of neither 1020 nor 1030 impair the view of any person of the ocean, which is included in the criteria set forth in Section 18-205(a)(10).

Unfortunately, the Applicant's representatives placed nothing of relevance before ARCOM to counter the Appellant's contention that the Application adversely impacted a "scenic view . . . natural vista, waterways, . . .".

### 3. Code "Maximums" are not "Entitlements"

While the Applicant's representatives asserted that the house presented was undersized for the lot, the Zoning Tabulation tells a different story. This is a large lot, 32,120 square feet in area, well in excess of the minimum square footage required of a lot in the RA zoning district. Similarly, with a width north to south along South Ocean Boulevard of approximately 244 feet, this dimension significantly exceeds the 150-foot minimum required by code in this zoning district. Yet the proposed angle of vision for the house is at the maximum allowed by code of 120 degrees, indicating this is a very wide house, meaning most of the remaining existing vista of the ocean is now to be obscured by the approved addition. The lot coverage proposed is only 179 feet less than the maximum permitted by Code while the landscaped open space is less than 1.2%, or 379 square feet, more than the minimum required by Code. The Zoning Tabulation is replete with lot, yard or area amounts at, near or exceeding (as the existing portion of the house is non-conforming as to front yard setback, rear yard setback and building height) the maximum allowed by Code. When the possible need for a building height plane variance is included with the foregoing, the house that the Applicant has proposed is hardly undersized; to the contrary, the Applicant's Zoning Tabulation is replete with maximums for almost all of the lot, yard and area criteria of Code Section 134-843. ARCOM has long asserted that the code-stated maximums are not entitlements, especially for properties it considers important to the Town. This was the case for the homes approved for both 901 and 905 North Ocean Boulevard, and ARCOM scaled back the respective sizes of those homes prior to granting their approvals. In the instance case, the Applicant was granted the maximum, or near-maximum, permitted by Code.

4. Additional Curb Cut on South Ocean Boulevard

It was unclear in the Applicant's presentation and the Application if a third curb cut on South Ocean Boulevard was being proposed. The existing structure already has two (2) curb cuts; for years the Public Works Department has sought to reduce the number of curb cuts along both Ocean Boulevard and County Road for safety purposes. There would appear to be no need for an additional curb cut on a property on which two (2) curb cuts already exist. While the design of the additional may require it, it creates a potentially dangerous condition which the Town has sought to limit, not expand. This speaks to the design as not appropriate for the street. No other house on South Ocean Boulevard has two (2) cuts, let alone three (3) curb cuts that ARCOM approved. Absent confirmation from Public Works that a third (3rd) curb cut was acceptable to it, this Application should not have been considered by ARCOM.

5. Was the Applicant Required to Produce a Model?

The existing improvements on the property, which the Applicant is renovating, are shown as 7,245 air-conditioned square feet. The addition proposed by the Application is 4,590 air-conditioned square feet. Accordingly, the total square footage, both existing/renovated and proposed is 11,835 air-conditioned square feet. The ARCOM Application, under the heading "PROCEDURE FOR PRESENTING PROJECTS TO THE ARCHITECTURAL COMMISSION" provides:

"10. Models are required for projects over 10,000 square feet."

It would seem that, given that:

- a. renovations were being made to the existing structure,
- b. that the proposed addition is to be joined to the existing structure and
- c. the combined structures exceed 10,000 square feet,

the ARCOM Application requires that a model is required. It is the only way that ARCOM could consider the Application in its full context and not in a piecemeal fashion. The Applicant did not provide a model. Based on this, the Application was not complete and should not have been considered by ARCOM.

6. Coordination of Construction Effort

The Appellant raised concern that with 977, this property and the pending application for 1045 South Ocean Boulevard, it was possible that three (3) homes on South Ocean Boulevard would be under construction at the same time for at least a year or more. The Appellant is concerned

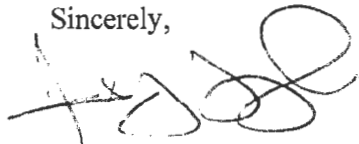
Town of Palm Beach  
Town Clerk's Office  
Re: ARCOM #B-043-2020/1045 South Ocean Boulevard  
November 6, 2020  
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that three (3) separate jobs with three (3) separate contractors along with their respective subcontractors and suppliers on a street with no on-street parking and smaller lots will mean that construction vehicles will back up on to South Ocean Boulevard will create a traffic, logistical and potential safety problem for the surrounding neighborhood. To this, the Applicant's representative replied that if it became a problem, staff would just "red tag" the job and shut down the project. It is this type of cavalier response to a legitimate concern that gives the Appellant significant concern for what lies ahead during construction. First, the neighbor would need to be upset enough to call the Town, then the staff would have to come out to review the situation and decide if the project was going to be shut down. This is not what the neighbors want nor is it anything the Town should encourage.

We ask that Town Council reverse the Decision, return the matter to ARCOM and direct that ARCOM consider the foregoing as it relates to the Applicant's Application.

Thank you for your consideration of this matter.

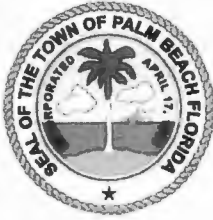
Sincerely,

A handwritten signature in black ink, appearing to read 'Francis X. J. Lynch', with a large, stylized loop at the end.

FRANCIS X. J. LYNCH

FXJL/kh

cc: Maura Ziska, Esq.  
John C. Randolph, Esq.  
Mr. Kirk Blouin  
Michael Small, Esq.



**TOWN OF PALM BEACH**  
**PLANNING, ZONING AND BUILDING**  
**DEPARTMENT**

**MINUTES OF THE REGULAR ARCHITECTURAL REVIEW COMMISSION**  
**MEETING HELD ON WEDNESDAY, OCTOBER 28, 2020**

Please be advised that in keeping with a recent directive from the Town Council, the minutes of all Town Boards and Commissions will be "abbreviated" in style. Persons interested in listening to the meeting, after the fact, may access the audio of that item via the Town's website at [www.townofpalmbeach.com](http://www.townofpalmbeach.com).

**I. CALL TO ORDER**

Mr. Small called the meeting to order at 9:00 a.m. All members participated via Zoom Webinar due to the COVID-19 situation.

**II. ROLL CALL**

Michael B. Small, Chairman	PRESENT
Robert N. Garrison, Vice Chairman	PRESENT
Alexander C. Ives, Member	PRESENT
Maisie Grace, Member	PRESENT
John David Corey, Member	PRESENT
Betsy Shiverick, Member	PRESENT
Jeffrey Smith, Interim Member	PRESENT
Katherine Catlin, Alternate Member	PRESENT
Dan Floersheimer, Alternate Member	PRESENT
Edward A. Cooney, Alternate Member	PRESENT

Staff Members present were:

Wayne Bergman, Director of Planning, Zoning and Building  
Laura Groves van Onna, Historic Preservation Planner  
Kelly Churney, Secretary to the Architectural Review Commission  
Bradley Falco, Zoning Technician  
John Randolph, Town Attorney

**III. PLEDGE OF ALLEGIANCE**

Chairman Small led the Pledge of Allegiance.

**IV. RULES OF ORDER AND PROCEDURE**

Mr. Small asked Jay Boodheshwar, Deputy Town Manager, to speak on the in-person meetings that will begin November and the safety measures that have been put in place.



**dedicate and record a utility easement, or enter into an agreement ensuring said easement, if necessary to facilitate utility undergrounding in the area.**

**E. MAJOR PROJECTS – NEW BUSINESS**

**1. B-043-2020 Additions/Modifications**

Address: 1045 S. Ocean Blvd.

Applicant: Kerry Vickar (Lionel Kerrin Vickar)

Professional: Roger Janssen/Dailey Janssen Architects

Project Description: New construction of a two story addition with basement.

New pool and pool deck. New hardscape and landscape, including civil/storm water management.

Call for disclosure of ex parte communication: Disclosure by several members.

Mr. Janssen presented the architectural plans proposed for the new addition to the existing home.

Dustin Mizell, Environment Design Group, presented the landscape and hardscape modifications proposed for the existing home.

Mr. Small asked if the owner did voluntarily agree to dedicate a utility easement supporting the undergrounding project subject to the satisfaction of the Town. Mr. Janssen agreed to the easement.

Ms. Groves van Onna and Mr. Falco provided staff comments.

Mr. Small called for public comments.

Frank Lynch, attorney for the owners at 1020 and 1030 S. Ocean Blvd., stated his concerns for the proposed project.

Ms. Ziska provided rebuttal arguments to the arguments made by Mr. Lynch.

Kerry Vickar, owner, spoke about the proposal and some of the issues raised by the neighbors.

Mr. Janssen and Ms. Ziska provided further rebuttal to arguments raised by Mr. Lynch.

Mr. Garrison thought the landscape proposed was better than existing. He thought the addition would look like it had always been there once built. He was supportive of the project.

Mr. Ives questioned the aluminum panels on the second floor but otherwise supported the project.

Ms. Grace was concerned about the view when driving down S. Ocean Blvd but thought the architecture was acceptable.

Mr. Corey expressed concern that the existing home had some warmth and the proposed was rather harsh. He stated he could not support the aluminum panels proposed. He also thought the addition was competing with the main house and thought it should be more subservient. He thought the proposed design needed more charm and warmth. He was in favor of the landscape and hardscape proposal.

Ms. Shiverick was in favor of the eyebrow over the front door. She liked the clear glass walkway on the second floor and liked how the addition was stepped back. She supported the home.

Mr. Smith thought that Mr. Janssen did a good job. He was in favor of the addition. He was not in favor of the existing front door.

Ms. Catlin was in favor of the addition and of the project.

Mr. Floersheimer thought Mr. Janssen did an excellent job. Mr. Floersheimer inquired about the height plane issue raised by Mr. Lynch. Mr. Janssen responded and stated that he addressed the issue with the Town. Mr. Floersheimer inquired about the front site wall and its heights. Messrs. Janssen and Mizell responded.

Mr. Cooney was supportive of much of the project. He agreed with Mr. Smith and thought the front doors could be restudied.

Mr. Smith thought the addition was architectural compatible with the area.

Mr. Lynch responded to a comment about the length of the homes of the owners he represented.

**Motion made by Ms. Shiverick and seconded by Mr. Garrison that the proposed project at 1045 S. Ocean Blvd. has met the criteria for approval listed in Sec. 18-205 of the Town's code of ordinances, and therefore make a motion to approve the project as presented with the caveat that the existing front doors would return to the November 20, 2020 meeting. Motion carried 5-2, with Mr. Corey and Ms. Grace opposed. This application was approved with the condition that prior to the issuance of a building permit, the applicant shall either dedicate and record a utility easement, or enter into an agreement ensuring said easement, if necessary to facilitate utility undergrounding in the area.**

*Please note: The Commission broke for the evening at 5:57 p.m. The meeting resumed on October 29, 2020 at 9:00 a.m.*