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May 6, 2022

VIA E-MAIL

Ms. Pat Gayle-Gordon, Acting Town Clerk
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: ARCOM Application ARC-21-101 ("Application")
425 Chilean Avenue ("Subject Property")
Palm Beach, FL 33480
Lorraine Charman ("Applicant")

Dear Ms. Gayle-Gordon;

The Applicant, as owner of the Subject Property, hereby appeals the denial of the above Application made at the April 27, 2022 Town of Palm Beach ("Town") Architectural Review Commission ("ARCOM") meeting, to Town Council.

We ask that this appeal be placed on the next available Town Council agenda.

BACKGROUND

The Applicant is the owner of the Subject Property located within the Town, as evidenced by the Warranty Deed attached hereto as Exhibit A.

The Applicant constructed a house and improvements on the Subject Property for which the Applicant received a certificate of occupancy.

Once the Applicant occupied the Subject Property, it became apparent that two (2) trees on either side of the site wall from the Subject Property, adjacent to the public sidewalk and Chilean Avenue, created visibility issues when users of the garage and driveway on the Subject Property attempted to back out from the garage and driveway on the Subject Property on to the adjacent public sidewalk and Chilean Avenue, which in turn created a safety issue not only for those users, but those using the public sidewalk and Chilean Avenue.

Without knowledge of Town of Palm Beach Code Section 66-236 and with no intention to violate same, but with the specific intention of providing for the safety of those using both the public sidewalk and Chilean Avenue, the Applicant removed the Trees so as to mitigate the "unsafe vision clearance" set forth in subsection (b)(1) thereof.

REPLY TO:

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Subsequent to the foregoing, in support of the Applicant's actions and in furtherance of the Applicant's concern for said "unsafe vision clearance" the Applicant submitted Application, along with the plans of Dustin Mizell of landscape architect Environment Design Group attached hereto as Exhibit B.

A transcript of the December 17, 2021 ARCOM meeting (the "December Meeting") at which the above Application was presented to ARCOM is attached hereto as Exhibit C.

Based on the comments received from ARCOM made at the December Meeting, ARCOM deferred the Application, and the Applicant submitted that letter to ARCOM dated February 7, 2022, a copy of which is attached hereto as Exhibit D.

A transcript of the March 25, 2022 ARCOM meeting (the "March Meeting"), at which an informal discussion of the Application was held, is attached hereto as Exhibit E.

A video depicting the difficulty backing out of the garage towards the street is attached as Exhibit F.

A transcript of the April 27, 2022 ARCOM meeting (the "April Meeting") is attached hereto as Exhibit G.

The Applicant appeals such denial, pursuant to Code Section 18-177, as not based on competent and substantial evidence.

FACTS

At the ARCOM Meetings, the following was uncontroverted:

1. the improvements on the Subject Property received a certificate of occupancy from the Town,
2. once the Applicant moved in to the Subject Property and the trees adjacent to the public sidewalk and Chilean Avenue matured, it became apparent to the Applicant that those trees created a visual impairment to those backing out of the Subject Property across the public sidewalk and onto Chilean Avenue, which from the Applicant's perspective, created an "unsafe vision clearance",
3. as a result, and without knowledge of Code Section 66-236, the Applicant removed the trees,
4. there is no code prohibition of front facing garages,
5. there is no requirement of sight screening for front facing garages,

6. the Applicant's home otherwise meets the requirements of the town code,
7. in the 400 block of Chilean Avenue, there are seven (7) homes on the north side of the street,
8. in that block, five (5) of the seven (7) homes have front facing garages, all of which have landscaping perpendicular to the garage,
9. that landscaping does not serve to sight screen the garages for those homes from the public right of way,
10. across the street from the Subject Property, there is a five (5) story condominium at 434 Chilean, which has little, if any, landscape material to sight screen its parking lot,
11. there exists public parking within approximately ten feet (10.0') of the driveway for the Subject Property,
12. parking is permitted on both sides of Chilean Avenue, leaving no margin for error in the event a person or vehicle had to swerve to avoid hitting a vehicle exiting the Subject Property,
13. in addition to the foregoing, the Subject Property is subject to the following conditions that are exacerbated by an "unsafe vision clearance":
 - a. a dense mature hedge on the adjacent property to the west, not owned or controlled by the Applicant that all but eliminates any view to the west,
 - b. a site wall on the Subject Property, approved by ARCOM, with an opening of approximately fourteen feet (14.0'), narrower than the width of the garage doors, which also does not align with the garage doors, forcing one backing out of the garage to navigate within the small driveway apron before backing out onto Chilean Avenue and
 - c. an incline to navigate before reaching Chilean Avenue, which results from the deed to raise the finished floor of the house to eight feet (8.0') NAVD to meet the FEMA requirements, and
14. the ARCOM members indicated that safety is not within the purview of its review.

APPLICABLE CODE SECTIONS

Section 18-177	Appeals and review
Section 66-236	Application Procedure for Vegetation Removal Permit
Section 18-205	Criteria for building permit
Section 18-146	Statement of Findings and Purpose

ARCOM's FUNDAMENTAL ERRORS

1. FAILURE OF ARCOM TO CONSIDER "OTHER FACTORS" WHICH RESULTED IN DENIAL

Town Code Section 18-205(a)(2), one of the provisions upon which the motion to deny the Application was made, seconded and unanimously approved, provides:

"(2) The plan for the proposed building or structure indicates the manner in which structures are reasonably protected against . . . other factors that may tend to make the environment less desirable."

In its presentation, the Applicant asserted that the trees created an "unsafe vision clearance" in accordance with Town Code Section 66-236, which the Applicant asserted, created a safety hazard not only for those pedestrians and others using the public sidewalk adjacent to the Subject Property but also for vehicles using Chilean Avenue. This safety concern also impacts those using the driveway and garage on the Subject Property when backing across the sidewalk and on to Chilean Avenue. The Applicant submits that safety of both those exiting the Subject Property and using the public right of way is among those "other factors" that ARCOM is required to consider in approving a project. Unfortunately, ARCOM felt it did not have to make a determination as to the safety issue, only the appearance. Based on the "other factors" language of the aforementioned code section, the failure to consider the safety issue the existence of the trees creates, results in fundamental error, leading to the failure on ARCOM's part to consider competent and substantial evidence presented by the Applicant in support of her Application. This resulted in a denial of the Application, which denial was, we believe, in error.

ARCOM approved a front-facing garage, consistent with many homes on this block and consistent with its authority under the code. It approved a home with a garage within approximately twenty-five feet (25') of a public right of way, on which parking is permitted on both sides of the street with public parking spaces located approximately ten feet (10') on either side of that driveway. The Applicant's home is located immediately

across the street from a five (5) story condominium building with an uncovered parking lot. These are all among the "other factors" ARCOM considered in originally approving the house.

Once moving into the house and giving time for the trees to mature, the Applicant found that those trees created an "unsafe vision clearance" leading to the Applicant's concerns not only for herself, her family and her guests, but also the general public using the street and sidewalk. This safety concern was not considered by ARCOM among the "other factors" to be considered under Code Section 18-205. Safety is a critical "other factor" and cannot be ignored by ARCOM in its consideration of a project. Unfortunately, in this instance, this critical "other factor" was ignored, resulting in the denial of the Application, which we believe was in error.

2. FAILURE OF ARCOM TO ADDRESS OR CONTROVERT UNSAFE VISION CLEARANCE OR APPLICANT'S ISSUE RECOMMENDING SAFETY

Town Code Section 66-236(b)(4) empowers ARCOM to address specifically:

"(a) Removal permits. Vegetation removal permits, not sought in conjunction with building permits, shall be obtained prior to removal

(b) Circumstances justifying issuance. Vegetation removal permits shall be issued in the following circumstances:

(i) Where a tree, due to natural circumstances, . . . creates unsafe vision clearance . . .

4. Where landscape buffers (plant material), 30 inches in height or greater and directly adjacent to any side, rear, rear street-side or street-rear property line, are removed and result in the loss of opacity of the existing screening, approval from the architectural commission . . . must be obtained . . ."

Despite the foregoing, ARCOM did not address the "unsafe vision clearance" issue, or the safety issue the trees created, specifically declining to do so. Again, in light of the foregoing code provisions, we believe it was fundamental error on the part of ARCOM to refuse to consider the "unsafe vision clearance" issue, which was uncontroverted before ARCOM.

It is uncontroverted that ARCOM declined to address the "unsafe vision clearance" issue.

The code sections established for ARCOM's review of an application brought before it are in derogation of a property owner's rights and, as such, must be strictly construed. Code Section 18-205 establishes ARCOM's review criteria for approval which includes the review of "The plan

for the proposed building or structure indicates the manner in which the structures are reasonably protected against . . . **other factors that may tend to make the environment less desirable**" (Section 18-205(a)(2)).

Safety is among those "other factors" that make the environment more or less desirable. The two (2) trees the Applicant sought ARCOM approval to remove created, from the Applicant's perspective, an "unsafe vision clearance" endangering not only Mrs. Charman, her family and guests, but also those using the public sidewalk and Chilean Avenue. The ARCOM record is devoid of any review by or position on the part of ARCOM that an "unsafe vision clearance" was not created, which is the subject of the Application. However, while there is nothing in town code prohibiting a front-facing garage, ARCOM has made the avoidance of a front-facing garage among the "other factors it considers. Regardless, in this particular instance, ARCOM approved a front-facing garage. Similarly, there is nothing in the town code that requires that a front-facing garage be screened from view of the public right of way, but again, ARCOM has included within its "other factors" this site screening requirement among its "other factors" in granting its approval. In addition, there exist other factor supporting the ARCOM position that sight screening of the garage be required, specifically:

- a. the neighbor's tall hedge to the west, which the Applicant has no control over,
- b. the proximity of the Applicant's garage to the sidewalk and street,
- c. the elevation of the garage and slope of the Subject Property from the garage to the sidewalk and street creates a visual impairment and
- d. that the opening in the site wall does not align with the garage, forcing vehicles to maneuver while in the twenty-five foot (25') front yard setback

all create a visual impairment which is exacerbated by the trees the Applicant removed.

Yet, while ARCOM required this site screening as a part of its approval, in function, this condition created an "unsafe vision clearance" which is the subject of the Application. To avoid a potentially serious situation, the Applicant, who personally acknowledged before ARCOM that this was the first home she built in Palm Beach and was unaware of the existence of Section 66-236, elected to remove two (2) trees to alleviate this issue.

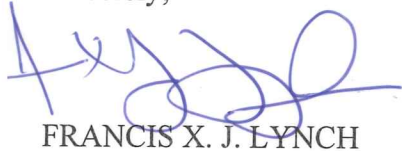
The ARCOM criteria require that any proposed development must be in harmony with existing development. It is within ARCOM's purview to review an application to determine its level of similarity and dissimilarity of the properties within the stated 200 foot radius but also the general area which includes five (5) of seven (7) homes and one (1) five story condominium, all of which have front-facing garages, or open parking lots and none of which include sight screening between the garage or parking lot and the public right of way.

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Accordingly, ARCOM was without competent and substantial evidence to deny the Application based on Code Section 18-205(a)(1) and (2).

Based on the foregoing, the Applicant requests that Town Council overturn the ARCOM decision to deny ARCOM Application ARC-21-101 and approve said Application as submitted and presented at the April 27, 2022 ARCOM meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read 'FXJL', is written over the printed name.

FRANCIS X. J. LYNCH

FXJL/kh
Attachments