

EXHIBIT "C"

TRANSCRIPTION OF
TOWN OF PALM BEACH
ARCOM MEETING
DECEMBER 17, 2021
ITEM D(6) - 425 CHILEAN AVENUE
ARC 21-101

Transcribed by Louanne Rawls

Notary Public, State of Florida

Esquire Deposition Solutions, #J8152389

T R A N S C R I P T I O N
- - -

CHAIRMAN SMALL: Okay. Moving on now to the last major, for the record, Mr. Smith, rejoining us. We're on ARC 21-101, 425 Chilean Avenue.

MR. LYNCH: Good morning. For the record, Frank Lynch, 605 North Olive Avenue, West Palm Beach. I have not been sworn.

CHAIRMAN SMALL: Okay. And you're appearing on behalf of the applicant?

MR. LYNCH: On behalf of the applicant. Yes, sir.

CHAIRMAN SMALL: Okay. You need to be sworn in. Who else is appearing with you, Mr. Lynch?

MR. LYNCH: Dustin Mizell. I believe he's been sworn.

CHAIRMAN SMALL: Dustin Mizell has been sworn. Okay.

CLERK: If there's anybody that needs to be sworn in, you can stand and do so at this time.

Do you swear or affirm that the testimony which you're about to give is the truth, the whole truth, and nothing but the truth so help you God?

MR. LYNCH: I do.

CHAIRMAN SMALL: Good. Okay. At this time, then, we'll take ex-parte, starting with Mr. Kirchhoff.

COMMISSIONER KIRCHHOFF: Yes. I reviewed the plans that were distributed by the Town and I read the letter from the neighbor and from Frank Lynch.

1 CHAIRMAN SMALL: Okay. We have to make sure we're
2 speaking up. We're getting some comments that -- for
3 example, Mr. Sammons, they're having difficulty hearing you
4 online and on telephone. So all of us have to speak up, as
5 well.

6 Ms. Grace?

7 COMMISSIONER GRACE: Same. And I went by the site

8 CHAIRMAN SMALL: Okay. Mr. Smith.

9 COMMISSIONER SMITH: I reviewed the plans.

10 CHAIRMAN SMALL: Okay. And I went by the site, also
11 reviewed the mini set, and the staff report and a letter
12 from Mr. McCoun.

13 Am I pronouncing that correctly, McCoun? Capital M-c,
14 Capital C-O-U-N? No? All right.

15 UNIDENTIFIED COMMISSIONER: I have reviewed the plans
16 and the staff report and the letter.

17 COMMISSIONER SHIVERICK: I reviewed the plans, the
18 staff memo, I walked by the site, and I read the letter rej
19 -- objection, as well as the rebuttal letter from Mr. Lynch.

20 COMMISSIONER CATLIN: I reviewed the plans, staff memo,
21 and the correspondence to the Town.

22 CHAIRMAN SMALL: Mr. Floershemier?

23 COMMISSIONER FLOERSHEMIER: I reviewed the mini set,
24 the staff memo, and visited the site.

25 CHAIRMAN SMALL: And Mr. Sammons?

1 VICE CHAIR SAMMONS: I did get the correspondence and
2 other than that, no.

3 CHAIRMAN SMALL: Okay.

4 UNIDENTIFIED COMMISSIONER: I have to add, I received
5 the correspondence, as well, and read it.

6 CHAIRMAN SMALL: Mr. Lynch, as you've heard, if you've
7 been present during the course of the meeting, it's
8 customary now to ask whether the applicant will agree to
9 dedicate the utility easement for underground if requested
10 to do so by the Town.

11 MR. LYNCH: Mr. Chair, this is a -- a house that's
12 recently been built. I believe we may have dedicated the
13 easement already. That's -- that's my only concern with that
14 request, is that this is new construction, been completed
15 within the last two years, and I believe, underscore
16 believe, that we've already granted --

17 CHAIRMAN SMALL: Maybe Dustin knows.

18 Do you know, by chance, Dustin?

19 CHAIRMAN SMALL: No.

20 MR. LYNCH: Keith Williams was the landscape architect.

21 CHAIRMAN SMALL: I'm sorry. My apologies.

22 MR. LYNCH: No, on the first project. On the previous.

23 CHAIRMAN SMALL: Okay.

24 MR. LYNCH: I'm not sure that the -- so --

25 CHAIRMAN SMALL: Well, go ahead and proceed if you

1 don't know.

2 MR. LYNCH: I'm not sure I made the cut. Good morning.

3 425 Chilean Avenue. I'm here on behalf of the property
4 owner, Lorraine Charman.

5 This is a situation in which we're seeking to modify an
6 existing landscape plan. That landscape plan was approved,
7 installed. The house was issued a certificate of occupancy
8 based on an approved plan.

9 And in practice we've found that two trees adjacent to
10 the driveway created a safety issue for my client when she
11 backs out of the driveway onto Chilean Avenue. She saw that
12 her view was blocked of not only the street but also of the
13 sidewalk and, unfortunately, took it upon herself to remove
14 those two trees prior to receiving approval. She accepts
15 responsibility for that.

16 This is a matter before code enforcement and the
17 outcome of that code enforcement action is pending what
18 happens here today with our application.

19 As I said, we have removed two trees. That's all that
20 was removed from the approved landscape plan. Mr. McCoun,
21 his letter refers, we believe, to a landscape plan that was
22 previously submitted but not approved and not installed.

23 Again, I will tell you that we did receive a
24 certificate of occupancy based on the landscape plan as it
25 exists today with the inclusion of those two trees which

1 were subsequently removed and are the subject of our
2 application today.

3 Without any further discussion, I will turn the
4 microphone over to Mr. Mizell to address the changes that
5 have been made. Thank you.

6 MR. MIZELL: Good afternoon. Dustin Mizell, Environment
7 Design Group, Palm Beach.

8 As Mr. Lynch prefaced it, just to continue the
9 conversation post that, if you -- let me go back to the
10 right here. If you look at the -- this was the last staff
11 approval. It certainly is different than -- in the letter
12 that was presented to you. Those were earlier designs. As
13 the project evolved and it went through ARCOM several times,
14 the project thinned itself out a little bit and the staff
15 approval actually brough the citrus and this little parterre
16 lay back in. So it's even, currently, more enhanced than was
17 originally approved by ARCOM.

18 These are the two trees in question, right here, at the
19 entrance to the motor court and the driveway. So our current
20 application in front of you requests the removal of these
21 two Ficus trees. They were installed at 25 feet. They had
22 subsequently grown more significantly. So that's why we're
23 before you today, for this little area.

24 And here's some existing condition, just for context,
25 if you did not have the opportunity to visit the site. Here

1 are the plantar areas. There's a small site wall, a raised
2 curb. And then this dimension, you can see, it's about 46
3 and three-quarter inches between the inside to the site wall
4 and the raised curb.

5 There's a footer under the site wall, type D sunken
6 footer, as well, for the raised curb. And we just don't have
7 the area. Obviously, it's not sustainable for large gate
8 trees in there. So we have a very, very limited area.

9 So this existing view looking back towards the street,
10 this is the current view looking towards the front façade.

11 So what we're proposing before you today is to go ahead
12 and put a tall hedge behind the existing wall, six foot
13 height, remove the Bougainvillea, which have not been
14 sufficient to cover the façade with very large mature ones
15 to completely cover it.

16 So this is our proposal to go ahead and raise the
17 landscaping behind the site wall, which currently does not
18 even pop above it, replace all the Bougainvillea, it will do
19 very well there, it faces the south, full sun, and this
20 would be our proposal in front of you.

21 Again, as Mr. Lynch mentioned, the technical visibility
22 triangles are up to the asphalt. The true visibility issue
23 is with our client, as you can see in the site photos,
24 really begins way before the street for concern about
25 pedestrians traversing, but also vehicles.

1 So we don't think that the trees, though originally
2 approved, are appropriate. They certainly don't have the
3 room for it to be sustainable. And the bigger issue is the
4 safety for our client. Thank you.

5 CHAIRMAN SMALL: Thank you. Anything further from the
6 applicant?

7 MR. LYNCH: No.

8 CHAIRMAN SMALL: There being none, anything from the
9 public, either in person or virtual?

10 CLERK: There is no public comment on Zoom.

11 CHAIRMAN SMALL: Okay. Anything further, then, from
12 staff?

13 STAFF REPRESENTATIVE: Staff has no additional comments
14 to add.

15 CHAIRMAN SMALL: Okay. Now from my fellow
16 Commissioners, Mr. Kirchhoff, followed by Ms. Grace.

17 COMMISSIONER KIRCHHOFF: I understand your issue with
18 the space between the wall and the curb. I think you need
19 something taller and help break up this garage façade. I
20 don't agree with just putting a hedge there. That's my
21 comments.

22 CHAIRMAN SMALL: Ms. Grace?

23 COMMISSIONER GRACE: Yes. Thank you.

24 I like it much better the way it was, I guess,
25 previously planned to be. I would like to have much more

1 screening of the garage and any of the house, itself, I'd
2 like to see increased greenery.

3 CHAIRMAN SMALL: Ms. Catlin followed by Ms. Shiverick.

4 COMMISSIONER CATLIN: Dustin, I'm just a little bit
5 confused and, you know, it's because I'm using a point of
6 reference that's personal.

7 I know that where I live, and I have to back out onto
8 the street, and I have a hedge and the hedge is high, and
9 it's not as high as the one that you've proposed here, that
10 I have issues seeing around the hedge. So I'm not sure hedge
11 versus tree that I have -- that I'm buying into that,
12 eliminating the safety issue there.

13 And I'm wondering if there isn't a way to do something
14 that is -- is higher. And it's like -- and I'm not
15 suggesting that this is the answer, but it -- like, you know
16 when we see the pleached trees, there's a thin trunk and
17 then shade above, that maybe something that's more along
18 those lines might be an answer so that it leaves the visual
19 area open to be able to see site lines for the cars to back
20 out, that addresses the safety issue, and then also
21 potentially screens a little bit more, which is kind of what
22 the neighbors are asking.

23 MR. MIZELL: Yes, ma'am. And I appreciate that.

24 We actually had done some 3D studies with the client of
25 pleached trees, palms, maybe even conical conifers and

1 things and -- to see if we could mitigate it at all and the
2 -- the reaction always to it was this doesn't relieve any of
3 the safety issues. That's why I had to remove it. I mean,
4 I'm closed in, I can't see anybody walking by.

5 And the height of the hedge was a little bit of even a
6 stretch to try to convince them to include that because, you
7 know, they were happy with existing conditions. Obviously,
8 it came up in code enforcement

9 So, you know, we're okay with a hedge but anything
10 taller than that just was always responded with it's -- I
11 can't see around it, it's very dangerous, I'm very
12 concerned.

13 COMMISSIONER CATLIN: Yeah. See, I just don't see --

14 MR. MIZELL: Understand.

15 COMMISSIONER CATLIN: I don't see the hedge resolving
16 that.

17 MR. MIZELL: Understand.

18 CHAIRMAN SMALL: Thank you. Ms. Shiverick followed by
19 Mr. Smith.

20 COMMISSIONER SHIVERICK: I agree with Ms. Catlin as to
21 these proposed changes not really addressing the issue here.

22 I walk by this house a lot and I always wonder why such
23 a big piece of property has such a small little driveway. To
24 me the solution might be, and I don't know if the owner
25 would consider this, but a circular driveway that goes --

1 she's got so much property there. Another curb cut would
2 eliminate the safety issue. You could screen the house with
3 all kinds of trees, then, because you have the safety issue
4 resolved.

5 I don't -- I would start all over. And -- and these
6 little hedges you want to put in, I don't get it. I don't
7 know what they do or will do, with your problem here.

8 And I also want to ask you, in the letter of objection,
9 there was a mention of the statute being over lighted. Do
10 you have any comments about that? We saw photos in the
11 letter.

12 MR. LYNCH: Yeah, I understand that. And that was a
13 subject of a staff approval that was given prior to
14 certificate of occupancy by Mr. Martin. So that was
15 addressed with staff and approved.

16 And like I said, what you see --

17 CHAIRMAN SMALL: I'm sorry. Sir, you were muffled. What
18 did you say?

19 MR. LYNCH: I'm sorry. That was the subject of a staff
20 approval given by Mr. Martin.

21 CHAIRMAN SMALL: Martin?

22 MR. LYNCH: Josh Martin. Uh-huh.

23 CHAIRMAN SMALL: All right.

24 MR. LYNCH: Prior to certificate of occupancy. So what
25 was -- what's installed minus those two trees was what was

1 approved.

2 COMMISSIONER SHIVERICK: Well, judging from the photo,
3 and I would actually make a point to walk by this house at
4 night to see that lighting, I had -- the lighting on that
5 statute was very bright.

6 MR. LYNCH: Understood.

7 COMMISSIONER SHIVERICK: And I don't know if it was
8 approved or not, but it sounds like it was and it should be
9 adjusted, in my opinion.

10 But I do think that you have to dig deeper here for a
11 better solution. I think you have room to do a nice circular
12 driveway. The house is set back well enough from the street.
13 I -- yeah. That's all I have. Thank you.

14 MR. LYNCH: Thank you.

15 CHAIRMAN SMALL: Thank you.

16 COMMISSIONER SMITH: I actually think that raising the
17 hedge height up exacerbates the problem. You're not going to
18 be able to see anything.

19 And I think, Ms. Catlin, the idea of pleached trees,
20 that you can keep clear from the wall height to
21 approximately six feet and then let the hedge bloom up, I
22 think that would solve most the problem. But another
23 solution would certainly be to have a crescent driveway.

24 CHAIRMAN SMALL: Yeah. That's a good -- good point.

25 Ms. Grace, did you want to speak again?

1 COMMISSIONER GRACE: Yeah. I was just wondering could
2 you explain it to me? I don't -- what was the problem with
3 the trees that you removed? I mean, it seemed like those
4 could be cut underneath and --

5 MR. LYNCH: Well, as they were installed and as they
6 began to grow, when the client would back down out of the
7 driveway she had difficult seeing and she had a couple of
8 close calls with both pedestrians, people on the sidewalk,
9 and also vehicular traffic.

10 Keep in mind, too, that about 80 feet to the west is a
11 very tall hedge for the condominium that's there. So that's
12 -- that's the problem that she had was visibility coming out
13 of the driveway.

14 COMMISSIONER GRACE: Those trees, they look like
15 they're pretty high at the base, so it doesn't -- it must
16 have been the hedge that created the problem.

17 MR. LYNCH: I believe it was the trees. That's why she
18 took those out.

19 CHAIRMAN SMALL: Thank you, Ms. Grace.

20 Mr. Floershemier?

21 COMMISSIONER FLOERSHEMIER: Thank you, Mr. Chair.

22 I'm not sure why you keep referring to backing out of
23 the driveway. She -- L2 clearly shows a car path where you
24 back up into the driveway and then pull out headfirst. So
25 there's plenty of room to, you know, inch your way out

1 slowly with good visibility.

2 I think the north façade needs a lot more planting and
3 I would go the other way. I would -- I would make that hedge
4 six or eight feet high and have the hedge grow over to make
5 an archway to, you know, soften the hard lines of the house.
6 But those are my comments.

7 CHAIRMAN SMALL: Thank you.

8 And from the Chair, I joint my fellow commissioners. I
9 think there's a sparsity of landscaping. I think it's
10 definitely a distraction from the structure which gives an
11 appearance of it being overly massive.

12 As I recall, this was two townhouses that were combined
13 to a single home, is that correct?

14 MR. LYNCH: That's correct, yeah.

15 CHAIRMAN SMALL: So you have all that mass from what
16 was intended as the two townhouses and it needs to really be
17 landscaped.

18 And I think Ms. Shiverick's comment with regard to a
19 circular driveway is excellent. It gives the opportunity to
20 do that and do it safely. So I certainly cannot favor this
21 proposal as is presented.

22 If there's no other further comment, then the floor is
23 open for a motion.

24 COMMISSIONER CATLIN: I make a motion to defer to
25 January.

1 CHAIRMAN SMALL: Does that give you enough time,
2 Dustin?

3 MR. MIZELL: Yes, sir.

4 COMMISSIONER GRACE: Second.

5 CHAIRMAN SMALL: Did you say yes?

6 MR. MIZELL: Yes, sir.

7 CHAIRMAN SMALL: Thank you. Okay. I have a second from
8 Ms. Grace.

9 All in favor signify by saying aye.

10 COMMISSION: Aye. (Affirmative response in unison).

11 CHAIRMAN SMALL: Any opposed? There being none, passes
12 unanimously.

13 Thank you.

14 MR. LYNCH: Thank you.

15 (AGENDA ITEM CONCLUDED)

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C E R T I F I C A T E

I, LOUANNE RAWLS, certify that I was authorized to and did listen to and transcribe the foregoing proceedings and that the transcript is a true and complete record to the best of my ability.

Dated this 23rd day of April, 2022.



LOUANNE RAWLS, #J8152389



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