

Our File Number: 53286-00001
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July 8, 2024

Town of Palm Beach
360 S. County Road
Palm Beach, FL 33480

Re: LOI for 249 Seabreeze Ave - ARCOM Number: ARC-24-006

INITIAL REQUEST HEARD AT THE 2/28/24 ARCOM MEETING:

We are pleased to submit the accompanying documents and drawings in connection with our application for Development Review by the Architectural Commission for landscape and hardscape changes for an existing home located at 249 Seabreeze Avenue, Palm Beach, FL (the "Property"). As part of this application, we are proposing a new driveway that will include the removal of one of the two existing curb-cuts. A new vehicular gate is proposed for the remaining curb-cut, which will meet the code requirement of providing at least 18 feet of stacking from the gate to the edge of the street. New pedestrian gates are also proposed, as well as some minor modifications to the existing hardscape and landscape, including changing the previously staff-approved, but unbuilt seven (7)-foot masonry wall to a six (6) to 18-inch retaining wall with a four (4)-foot black vinyl chain link fence on top of the retaining wall that will be screened with landscaping. We are also proposing to keep the Areca Palm hedge along the northern half of the western property line in lieu of the previously staff-approved Calophyllum hedge that was approved to replace a damaged ficus hedge. Finally, as part of this application, we will be providing an update to the Architectural Commission regarding the design of a metal and glass front door, and the second-floor front balcony railing design, which were altered slightly from the original design presented and approved by the Architectural Commission (the "Project"). On a separate note, the window muntins for the home were damaged during the interior remodeling of the home and were removed. The owner was notified that these muntins would need to be replaced, or ARCOM approval for their removal would need to be secured. The owner has since replaced the window muntins, which match the previously existing muntins.

Please note the following as it relates to this application:

- A. Architectural Commission review in accordance with Section 18-205.
- (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:

- (1) The plan for the proposed building or structure is in conformity with good taste and design and in general contributes to the image of the town as a place of beauty, spaciousness, balance, taste, fitness, charm, and high quality.
- (2) The plan for the proposed building or structure indicates the manner in which the structures are reasonably protected against external and internal noise, vibrations, and other factors that may tend to make the environment less desirable.
- (3) The proposed building or structure is not, in its exterior design and appearance, of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value.
- (4) The proposed building or structure is in harmony with the proposed developments on land in the general area, with the comprehensive plan for the town, and with any precise plans adopted pursuant to the comprehensive plan.
- (5) The proposed building or structure is not excessively similar to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features of exterior design and appearance:
 - a. Apparently visibly identical front or side elevations;
 - b. Substantially identical size and arrangement of either doors, windows, porticos or other openings or breaks in the elevation facing the street, including reverse arrangement; or
 - c. Other significant identical features of design such as, but not limited to, material, roof line and height of other design elements.
- (6) The proposed building or structure is not excessively dissimilar in relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features:
 - a. Height of building or height of roof.
 - b. Other significant design features including, but not limited to, materials or quality of architectural design.
 - c. Architectural compatibility.
 - d. Arrangement of the components of the structure.
 - e. Appearance of mass from the street or from any perspective visible to the public or adjoining property owners.
 - f. Diversity of design that is complimentary with size and massing of adjacent properties.
 - g. Design features that will avoid the appearance of mass through improper proportions.
 - h. Design elements that protect the privacy of neighboring property.
- (7) The proposed addition or accessory structure is subservient in style and massing to the principal or main structure.
- (8) The proposed building or structure is appropriate in relation to the established character of other structures in the immediate area or neighboring areas in respect to significant

- design features such as material or quality or architectural design as viewed from any public or private way (except alleys).
- (9) The proposed development is in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.
 - (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.
- (b) If the above criteria are met, the application shall be approved. Conditions may be applied when the proposed building or structure does not comply with the above criteria and shall be such as to bring such building or structure into conformity. If an application is disapproved, the architectural commission shall detail in its findings the criterion or criteria that are not met. The action taken by the architectural commission shall be reduced to writing, and a copy thereof shall be made available to the applicant upon request.
- (c) A decision or order of the commission or the planning, zoning and building department director or his/her designee shall not become effective until the expiration of ten working days after the date upon which a ruling of the commission or the planning, zoning and building department director or his/her designee has been made.

The Project proposes landscape and hardscape modifications that are minor in nature, but include the use of quality materials that complement the existing home and adjacent neighborhood. The proposed landscape and hardscape modifications are not too similar, nor are they too dissimilar to the existing neighborhood homes. The proposed landscape materials soften the appearance of the overall property, which allows for the home to better blend into the Property and the neighborhood. Furthermore, the removal of one of the two curb cuts is proposed, as well as a reduction in hardscape, which will be replaced by additional landscape area. Finally, included in this application are details for the front metal and glass door and front second floor balcony railing, which were very slightly altered in design from the original approval, but are in the same size, material and color as previously approved. We feel that these minor alterations and upgrades to the site are in keeping with the high standards of the Town, and look forward to its approval.

MODIFICATIONS SINCE INITIAL REVIEW BY ARCOM ON 2/28/24:

The project was partially approved at the February 28, 2024 ARCOM meeting, and the approval included the proposed the landscape plan, the modification to the driveway and elimination of one curb cut, and the exfiltration system. However, the requested driveway gate and front pedestrian gate at the street were not approved, nor was the proposed balcony railing or front door. These unapproved items have been completely removed from the revised request.

The maintaining of the Areca hedge along the west side of the property, and the previously proposed drainage curb with chain link fence on top (that was changed to a solid 4-foot high metal fence) are no longer proposed. In its place, a 12-foot high Calophyllum hedge (matching the material along the north side of the property) is proposed along the west side of the property line from the northwest corner of the Property to the side yard pedestrian gate so that the neighbor to the west will only see the proposed hedge. Inward to the proposed large hedge will be the

drainage curb/retaining wall to maintain the stormwater on the property. The drainage curb/retaining wall will jog back to the property line at the point it reaches the side yard pedestrian gate, which is within the front yard setback. Inward of the drainage curb/retaining wall from the northwest corner to the side yard pedestrian gate will be a decorative metal picket fence; however, both the fence and the drainage curb/retaining wall from the northwest corner of the property to the side yard pedestrian gate will be obscured from the western neighbor's view by the proposed 12-foot high Calophyllum hedge. We believe this design will ensure that the stormwater will be maintained on the Property, and provide both the neighbor and Property owner the privacy they wish to have in their backyards in the most aesthetically pleasing way possible.

MODIFICATIONS SINCE REVIEW BY ARCOM ON 3/27/24:

The project was deferred at the March 27, 2024 ARCOM meeting for restudy, and to coordinate with the neighbors on the west side regarding the possible design of a wall. Unfortunately, discussions with the neighbours did not result in agreement (see attached e-mail from the owners of the 249 Seabreeze property, Joe and Beth Berger, to the individual members of the Architectural Commission on July 3, 2024).

The project now proposes white louvered metal pedestrian gates with a faux wood finish, and a decorative four (4)-foot black picket fence on top of the six (6) to 18-inch retaining wall on the north and west sides, adjacent to the west and north property lines. A 12-foot high Calophyllum hedge is also proposed that runs the length of the western property line to the front property line, and along the north property line, from the northwest corner of the property to the western edge of the garage driveway on the alley.

Sincerely,



James M. Crowley

From: Joe Berger <berger@brehotels.com>
Date: July 3, 2024 at 4:05:44 PM GMT+2
To: ARCOM Member
Cc: JOSEPH BERGER <j.berger3@me.com>, bethberger5@optonline.net
Subject: Berger - 249 Seabreeze Ave.

As the homeowners of 249 Seabreeze Ave., we are on your agenda for the July meeting because our neighbors have not accepted our offer to construct a wall, which we made to them on the condition that they fully release us and our contractor from liability for any potential damage to the structures on their property caused by wall construction. We have spoken to 2 insurance companies, and we were informed that they would not write an insurance policy to cover potential damages to the adjacent property. After receiving this information, our attorney informed the Clifford's and their attorney that we would be willing to build a wall if they fully released us and our contractor from damages to their property. They have not responded to our offer.

Because of the numerous verbal and written falsehoods that have been put forth by Emily Clifford, we would like to share some history prior to our meeting as it's been contentious between us and our neighbors directly to the west of our property.

Both 301 Seabreeze Ave. and our home were purchased in November of 2020. When the Clifford's bought their house, there was no wall on our property.

Our Home was built in 1999.

We completed an interior renovation, including refinishing the pool and pool deck from October 2021 to November of 2022. No additional doors or windows were added.

As required by the town, we replaced a 40' section of dead ficus of the west side (123' property line) and 60' north section facing the alley along with the chain link fence that was intertwined with it. Replaced "like for like" fence exactly where it had been for 25 years and planted areca palms and calophyllum. The notice we received from the Town demanding removal of the hedge did not inform us that permits were required for its removal.

Stop work order was then issued due to no permits for landscape replacement.

Our intentions were to build a wall on the west side and north side surrounding the pool / back yard. We asked the Clifford's to share in the cost of the west side of the wall as we would both benefit and it would make the construction much simpler. They declined.

After receiving ARCOM administrative approval which required neighbor consent, we began getting contractor bids.

Stop Work order lifted.

The town subsequently asked us to get neighbor consent on the construction process, which proved quite difficult to get. Once it was received, the stipulations were too onerous to attempt the construction, and required insuring their home.

The wall construction contractors came back and said the 100 year old home next door that is approx. 6' from the property line with a walkway that is 1' from the property line is too close to build a 7' wall with deep 5'x5' footers.

We had a professional engineer review the site and soil samples and the engineering firm concluded that the construction of the wall would likely put the foundation of the neighbor's house at risk. **(see attached report)**

In December of last year, the town informed us that there was a storm water issue next door. We met with Craig Hauschild at our home and reviewed the lot. We agreed to and installed a temporary storm water barrier on the west side of the property at considerable expense.

A permanent solution with a retaining wall and storm water drainage system that meets all code requirements and had been approved by Planning, Zoning and Building department was submitted to ARCOM.

As the Town requested, we paid a \$91,400 Surety Completion Bond to ensure the retaining wall and drainage system were completed.

ARCOM denied our plan for a retaining wall and requested the 7' wall for aesthetic reasons. It was stated that all the lots on Seabreeze Ally have walls. Only 2/3 of them do.

2nd ARCOM meeting. All of the ARCOM change requests to our broader plan were made except we resubmitted the retaining wall and changed the aluminum barrier installed on the retaining wall to a decorative black metal picket fence. The meeting was deferred when it was noted that the drawings had not been submitted on time for public comment.

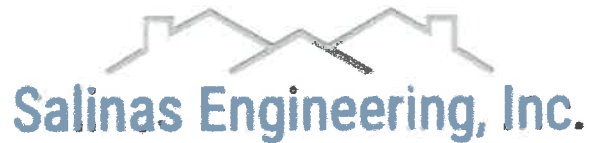
The Clifford's had an engineer issue a report on the storm water run off. The conclusion was a 7' wall was required. The engineer was never on our property nor were soil samples taken.

We have tried to be accommodating to the Clifford's and offered to build a wall if they signed a release of liability (given the risk to their foundation). They said they would if we took out a builder's risk insurance policy on their home. We researched this and found that builder's risk policies will not cover a 3rd party and only covers the actual builder construction issues. The Clifford's are insistent that a wall be built but have been unwilling to sign a release of liability that protects us from unintended consequences of a wall they are demanding. We will not build a wall without a release of liability, and the Town cannot legally compel us to do so.

We want to move forward, take responsibility for the storm water control by constructing the approved town plan in which we have already paid a surety completion bond. We would much appreciate your consideration of this plan so this can be implemented soon, and we can bring this matter to a close.

Regards,

Beth and Joe Berger



April 29th, 2024

VIA EMAIL: (jorge@ecobuildinginc.com)

Eco Building Solutions
1552 SW 13th Court
Pompano Beach, FL, 33069

Re: Site Wall Construction at Property located at 249 Seabreeze Avenue, Palm Beach,
Florida 33480

Mr. Fernandez:

Salinas Engineering, Inc. ("SEI") has completed its review of the construction of the above-referenced project (the "Project"). SEI's review included the following documents:

- Geotechnical Report performed by Blascom Engineering on May 27th, 2021.
- Boundary & Topographic Survey performed by Wallace Surveying on September 3rd, 2021.
- Site, Grading, and Drainage Plan Sheet C-1 drafted by Gruber Consulting Engineers, Inc., revision date December 15th, 2023.
- Site Plan Sheet L-1 drafted by Environmental Design Group, revision date May 30th, 2023.
- Site Plan Sheet L-2 drafted by Environmental Design Group on February 28th, 2023.
- Site Plan Sheet L-5 drafted by Environmental Design Group on December 13th, 2023.

Site Plan Sheet L-1 shows that the top of the foundation of the drainage curb and chain link fence along the southern portion of the western edge of the Property is to be constructed at least 24" below finished grade elevation. The foundation for this drainage curb and chain link fence is to be a continuous footing slab, 16" wide and 16" deep that will abut the adjacent property line to the west. Site Plan Sheet L-1 also shows the construction of a site wall along the northern half of the western edge of the Property with the top of the foundation approximately 36" below the finished grade of the Property. The foundation for this site wall is to be a continuous footing slab, 42" wide and 12" deep that will abut with the adjacent property line to the west.

The Geotechnical Report shows that the soil in this area is composed of loose, sandy material with a low N-value, corresponding to a low bearing capacity. Sandy soils have a very low plasticity index and are non-cohesive in nature, meaning that they do not retain their shape during earth-disturbing activities, such as excavations. Due to the nature of the soils in this area, the construction of the foundations of the drainage curb and chain link fence and the site wall along the western limit of the Property will likely cause the soils along the trench wall to not maintain

their integrity. This will result in caving in and washing out of the wall during excavation, encroaching into the adjacent property to the west and jeopardizing the foundation of the adjacent property.

The borings in the Geotechnical Report also show that the bottom of the trench will be within the water table. When the construction is within the water table, the Geotechnical Report suggests over-excavating the trench by 1' to construct a sump to dewater the trench and using adequate fill material. The dewatering process will result in the creation of additional voids within the sandy soils in the area, jeopardizing their structural integrity. The placement of the fill material along the bottom of the trench will also cause vibrations to the soils during the compaction process, which may cause additional damage to the soils adjacent to the operation.

To properly construct this footing while protecting the adjacent property, the contractor would need to encroach into the adjacent property to place sheet piles along the foundation of the adjacent property and to properly form and brace the footing during construction. Without the ability to encroach into this adjacent property, SEI does not recommend, in its reasonable engineering opinion, continuing with the construction of the footing slab as a foundation for the site wall or of the drainage curb with chain link fence. Alternative foundation methods should be explored, such as the use of auger cast piles, push piers, or helical piles.

Should you have any questions please do not hesitate to contact me.

Cordially,

Guillermo Salinas, PE, CGC

