

Local Government

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Difficult by Design

There are First World problems and then there is Palm Beach — where not even rich and famous homeowners get a pass from the Architectural Commission.

Like a lot of people in the pandemic, Sylvester and Jennifer Stallone came to Florida and bought a home. The house they purchased via a trust has five bedrooms, six full baths, 10,539 square feet under air, an elevator and key-shaped pool. It sits on a one-acre lot fronting the Intracoastal near the northern tip of the island of Palm Beach.

At \$35.4 million, it's hardly a fixer-upper. But like a lot of buyers, the Stallones wanted to make a few changes. Some windows leaked. The south gate, a chain-link affair, afforded passersby a gander at the grounds all the way to the hot tub. They wanted to replace the chain-link and one on the north with matching camel-back, solid wood gates. They also wanted to remove columns along the house's back that interfered with their view of the Intracoastal, expand the cabana and enclose a loggia so that it could be air-conditioned.

They hired an architect who drew up plans and took them for approval to the Town of Palm Beach. There, they hit a snag — the town Architectural Commission, known as ARCOM.

New people and money flooded into Palm Beach in the pandemic. "We had what I thought was a healthy market, and then COVID hit, and everything went ballistic," says Premier Estate Properties real estate broker Jim McCann. Total sales dollar volume tripled in 2021 to \$3.6 billion, up from \$1.2 billion pre-pandemic. The average sales price — \$14.6 million last year — has risen to \$18.8 million already this year.

Setting a Precedent

Regulations governing a home's appearance vary:

Homeowner Associations

State law gives HOAs their powers — one of which is establishing how properties look. When you buy a house governed by an HOA, you agree to live by its rules, says Julia Mandell, a GrayRobinson real estate and land-use lawyer who is board-certified in city, county and local government law. It's quite possible that a home project that meets local government code can be refused by the HOA for not meeting its design criteria.

Historic Districts and Properties

There's established authority to adopt regulations for designated areas and properties as worthy of protection on historic grounds. It's also well established that government can require new construction in those areas and renovations to existing historic properties to meet design standards, Mandell says.

Non-historic Districts and Properties

To an extent, municipalities set some basic guidelines for the benefit of the overall community, Mandell says. They might require certain amounts of landscaping or ban chain-link fences around residences or set allowable building size and siting to prevent "McMansions" going up.

Palm Beach

Palm Beach brings HOA- and historic-district like power to non-historic properties. The town's Architectural Commission was established with broad authority to ensure exterior renovations and new construction meet town wishes for harmony and aesthetics. The risk of such an

approach is that a court could find it “void for vagueness” — a legal doctrine that says laws must be sufficiently clear so that the typical person can know what to expect

When the 11th U.S. Circuit Court of Appeals upheld the town’s position in the federal lawsuit brought by homeowner Don Burns after his modern-style home was rejected, it set a new precedent. Mandell says the decision opens the way for other local governments to establish similar authority over the looks of exterior renovation and new building construction.

New owners sought to maximize their enjoyment and use of their property — whether a developer planning a tear-down and new build or a homeowner who just wanted to add a pergola. In most municipalities, a plan that meets city code for size, setbacks and other objective measurements gets a permit.

That’s not the case in Palm Beach. The very rich are different from you and me — they have to get by ARCOM. “The sophisticated buyer understands Palm Beach is a special place,” says ARCOM chairman and prominent architect Jeffery Smith. “It’s not going to be easy to get something passed. We don’t look like other communities. I don’t care where you go in the state, we are unique.”

The rarified town, with its walls and high hedges, holds about 2,300 homes — Mediterranean Revival, Georgian Regency, Bermuda, Spanish Colonial, contemporary, ranch, even Tudor. Showplaces are works by the Big Five in the society architect pantheon: Addison Mizner, Maurice Fatio, Howard Major, John L. Volk and Marion Sims Wyeth. Some of that group used to meet to critique each other’s designs — the Art Jury, it was called.

In 1970, the town council decided it needed to control what owners might do to their properties. It created ARCOM to rule on whether minor and major exterior renovations and new construction meet the town’s high standards. Very few cities and towns — Beverly Hills and Nantucket are two examples — have boards with the sweeping purview of ARCOM. (The town also has a separate historic properties commission that oversees several hundred landmark properties protected by town law.).

ARCOM was designed, according to the town council declaration establishing it, to secure the “image of Palm Beach as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality.” The commission has the power — and uses it — to thwart plans for new houses and exterior renovations, even those screened from public view, that don’t measure up. A house that for the 99% would be the stuff of dreams to ARCOM might be a style nightmare.

“Palm Beach has made a decision. They are going to look out for the community as a whole, sometimes at the expense of individual property owners,” says Jamie Crowley, a land-use attorney with law firm Gunster who has represented owners before ARCOM. “It’s a delicate balance. If you want to get your project approved, you have to work with them,” he says, adding, “a lot of times, the project turns out better.”

Try again

The seven-member commission, by law, must include two or three architects, one landscape architect or master gardener and others qualified by artistic training, development experience or sheer civic interest. A former ARCOM chairman: Palm Beach resident and home improvement guru Bob Vila.

The Who’s Who of supplicants through the years has included billionaire hedge-fund manager Ken Griffin, casino magnate Steve Wynn, Blackstone private equity CEO Stephen Schwarzman, publisher Conrad Black, talk show host Sean Hannity, author James Patterson, former Apple CEO John Scully, sex offender Jeffrey Epstein, singer Jimmy Buffett, fashion designer Tommy Hilfiger, rocker Jon Bon Jovi, investment managers, CEOs, Manhattan law firm name partners, heirs, heiresses and the Stallones.

Six months after their Southpaw Trust closed on the Lake Way house in December 2020, Jennifer Stallone, a skin care products entrepreneur, signed the application for renovations. ARCOM took up the request the next month.

In its early years, ARCOM met with architects in a golf cottage at The Breakers, says ARCOM chairman Smith, who's lived on Palm Beach since his teens and has spent 17 of the last 38 years on the panel. Today, ARCOM meetings are formal. The body meets in the second-floor town council chambers in the island town hall. Attendees are lawyers, architects and other professionals in a mix of suits, sport coats and shirtsleeves, wingtips and loafers worn without socks. A clerk swears in anyone speaking. The Stallones didn't attend — actual owners appearing is a rarity. Instead, at the July 2021 meeting, Deerfield Beach architect Tom Benedict presented his changes on behalf of the "owner." (Also uncommon is dropping a client's name.) He said the owner wanted to replace a few white-framed windows with bronze-framed ones, remove the view-blocking columns, expand the cabana by 15 feet and enclose that loggia. The project landscape architect, Dustin Mizell, had a plan to replace brownish cast stone edging around the pool with an "elevated" material — St. Croix limestone. Mizell said the new entry gates would be of ipe, a hardwood native to South America.

Commission members weighed in. Member Betsy Shiverick worried that the limestone was too "contemporary" for the house, built in 2014. She thought enclosing the loggia would detract from the property's "airy" Caribbean style. Member John David Corey disliked the gates as too tall and foreboding. "For me, the gates, I think, are a miss," he said. Smith, then a member but not chairman, couldn't stomach removing the columns as it would leave the upper floor seemingly "hanging in space."

"Just sounds ridiculous to me," agreed member and architect Richard Sammons, who wasn't sympathetic to the desire to open the view. "You can't look around a column?" he said.

Objections were voiced about having a mix of white- and bronze-framed windows.

ARCOM's unanimous verdict: Try again. "Re-study" the windows, column removal, gates, pool stone and loggia.

ARCOM has a well-earned reputation for long meetings that can stretch into a second day. In May alone, 21 proposals for new houses were on the agenda — let alone renovations. No detail appears too small. At one meeting, Shiverick dived deep into — if not the weeds — landscaping choices. She didn't like a landscape plan that called for colorful bougainvillea. Green plants would be "more English, more formal," she suggested.

Members comment a lot about fenestration and massing. They question why plans for casement windows have six panes instead of eight — or why an owner's landscape plan would open up the view of the water at the expense of shade pedestrians might enjoy. It's common to hear objections about features no one will see unless invited behind the high hedges. (Smith says ARCOM is tasked with judging a building regardless of landscaping.) Proposed houses can be dismissed as too large even if they meet town size requirements. All the requests to "refine" and "re-study" can keep a property owner's representatives returning for months before winning approval, if at all.

Don Burns, the former chairman of the internet phone company MagicJack, in 2016 sought ARCOM permission to tear down his oceanfront home of 18 years — described as traditional or Bermuda style — to replace it with a larger one described as mid-century modern, contemporary or international style. He explained he wanted a house with simple lines and a minimum of exterior decorative elements to reflect his personal evolution and "be a means of communication and expression of the person inside: Me."

ARCOM members thought it ugly. "There's not a person in Christendom who can convince me that this house is charming," one said. Burns submitted a compromise plan but lost 5-2. He went to federal court alleging a violation of his First Amendment right to self-expression. He lost and appealed to the 11th U.S. Circuit Court of Appeals in Atlanta. There, a two-judge majority ruled his planned house didn't qualify as protected speech because people wouldn't know what he meant to say and couldn't see it anyway. (Landscaping would have blocked the view of Burns' house from all but the east side, where it would be visible only to boaters and beachcombers.) Senior Judge Stanley Marcus in dissent was sympathetic. "Like a raised fist during the Pledge of Allegiance, seeing Burns' home among the other, more traditional homes on Ocean Boulevard

communicates a generalized message of difference, of individuality, and of modernity," he wrote. His take on ARCOM: "In Palm Beach, an owner's right to make full, enjoyable use of his own property turns on the extent to which his aesthetic views conform to those of the majority."

The libertarian Goldwater Institute, Cato Institute and the National Association of Home Builders supported Burns' appeal to the U.S. Supreme Court. In their brief to the high court, Cato and Goldwater argued the town had wrongfully infringed upon Burns' speech and property rights and that vague architectural guidelines lead to arbitrary decisions across the country.

"This is a pervasive problem, one that rarely reaches the appellate courts because architects and contractors virtually never find it worth their time to challenge arbitrary denials in court. Knowing they will need a permit for the next project, and fearful of antagonizing the licensing authorities, they typically give in," the two groups said.

In March, the U.S. Supreme Court declined to hear the case. By that time, Burns had sold the property for \$28 million after owning it for a couple of decades.

'Disheartening'

ARCOM can leave architects and owners raw. In 2017, the then commissioners were reproved by the town's elected leaders for crossing the line at meetings with "demeaning, rude and defamatory" comments.

Last September, ARCOM received an anonymous 12-page complaint from a writer who professed to represent most of the professionals appearing before the body. "Projects are increasingly subject to ARCOM members personal and inconsistent comments. This is creating a loss of design creativity, uniqueness and difference in exchange for obtaining a favorable vote," the letter said. "The intent of the approval process should be to encourage the best design possible from experienced professionals, not to design ARCOM members personal preferences." It added that "insulting and derogatory comments" shouldn't be permitted.

Developer Todd Michael Glaser says the ARCOM process can be "disheartening." In Miami Beach, Glaser's credits include luxury houses for the ultra-rich. He once flipped Al Capone's house and was a developer of 1000 Museum Tower, a Biscayne Bay-front building designed by renowned architect Zaha Hadid. In recent years, Glaser relocated to Palm Beach, where he and his wife, Kim, won honors from the town's Preservation Foundation for their restoration of an Art Moderne house. His numerous Palm Beach investments include paying \$85 million for Tarpon Island, an island estate connected to the main Palm Beach island. He spent \$18.5 million for Epstein's El Brillo Way house and tore it down. Glaser, who has won ARCOM approval for new house construction in the past, says he wanted to replace the Epstein house with a "really cool urban design" that would one day be a landmark. He hired famed Miami architect Kobi Karp to design it. Karp presented it to ARCOM in 2021.

"They just said no way," Glaser says. "There's no flamboyance. The people on ARCOM have to let the architects do their jobs. Let them get creative. Let them get whimsical." Glaser sold the property two months after the ARCOM rejection for \$25.8 million to venture capitalist David Skok and his interior designer wife, Mally. They recently sought ARCOM's blessing to build an 11,589-sq.-ft. Cape Dutch-style house. ARCOM wanted changes and told them to come back another time.

The right team

The key to ARCOM, professionals say, is to hire veterans of its process. "You really need to have the right team," says Premier Estate Properties sales associate Margit Brandt. "That means attorney. It means architect, builder. You just have to be realistic, too, in your expectations."

Conventional wisdom holds that it's best for an out-of-area architect to hire a local experienced at ARCOM. Projects done by architects whom ARCOM members know and respect have an easier time winning approval.

Town attorney John "Skip" Randolph, of Jones Foster in West Palm Beach, says the view in Palm Beach about ARCOM is positive. "It's felt they're doing a good job on behalf of the town," Randolph says.

The town is studying how to make the process more user-friendly and less lengthy, partly by giving the town staff the authority to approve more proposals, Randolph says. Commission chairman Smith agrees, "We don't need to see every little thing." ARCOM term limits led to some turnover this year and to Smith becoming chair. He readily acknowledges that at times ARCOM gets into too much detail. But, he also says, creativity isn't suffering. Some houses being built will one day be worthy of designation as town landmarks, he says. "For the most part, we do our job and a very good job, especially if it's not someone who's done work in Palm Beach before," Smith says. "I think we're going to get better and better."

McCann, the real estate broker, says that while some applicants get frustrated and sell their properties, ARCOM's a good regulator of the island aesthetic. "They're not going to allow something that looks like the Jetsons moved in right next to a historic Mediterranean home, as an example. That's the good news. The bad news is, yes, it can be an onerous process. It's not for the weak of heart."

After going back to the drawing board, Stallone architect Benedict and landscape architect Mizell returned the next month to ARCOM. This time, they brought a team — a construction manager, attorney M. Timothy Hanlon of Palm Beach and, hired as a consultant, West Palm Beach architect Harold Smith, who years earlier worked on the original design for the house. The Stallones — again, their name wasn't dropped — had changed their minds to conform to ARCOM's views, the commission members learned. Hanlon announced the columns blocking the view would stay. The Stallones would replace all the windows at the same time so they matched. The loggia would be opened up when weather permitted. The gates would be different, but still solid, Hanlon said. He said the owners "already experienced several invasions of privacy and need to protect themselves against future such occurrences."

Individual ARCOM members still had qualms. In the end, though, they voted unanimously to approve.

ARCOM's Greatest Digs

Palm Beach's Architectural Commission members let no detail slide and don't hold back.

"These lanterns are too colonial for this. They're too squatty. I would like to see a more Spanish style, perhaps longer, not quite as boxy." — Betsy Shiverick

"The front door is too skinny for this house. This is Estate Section. The tensions ... between the two sides sort of pushing and then you have this, like a pimple in the middle going to pop." — John David Corey

"Above the front door, I think that really seems like a miss. That should have shutters." — Kenn Karakul

"Those window panes look square to me. I would like them to look more rectangular if they're not already." — Maisie Grace

"I realize what you're doing is legally permissible, but it's not palatable, so I have problems with that." — Michael Small

"I think even the designer, when he was describing the style, called it Regency, modern, Deco. Pick one. Pick any one. Just stick with it. The house is basically schizophrenic. It doesn't know what it wants to be. I can't support this in any way." — Jeffery Smith