

**City of West Palm Beach • Zoning Board of Appeals
November 4, 2021 Meeting Minutes
Commission Chambers**

MEMBERS PRESENT:

- Christopher Heggen, Chairperson
- Christopher Kammerer, Vice-Chairperson
- Malaika Barlow, Member
- Michael Hyman, Member
- Michael Wood, Member
- Alfred Fields, 1st Alternate
- Jonathan Burgess, 2nd Alternate

MEMBERS ABSENT:

- None.

STAFF PRESENT:

- Rick Greene, Development Services Director
- Angella Jones-Vann, Planning and Zoning Administrator
- John Roach, AICP, Principal Planner
- Linda Louie, AICP, Senior Planner
- Hope White, Board Secretary

BOARD ATTORNEY

- Samuel Thomas, Senior Assistant City Attorney

I. CALL TO ORDER/ROLL CALL/PLEDGE OF ALLEGIANCE

Chairperson Christopher Heggen called the regular meeting of the Zoning Board of Appeals (ZBA) to order at 1:31 p.m. Ms. Hope White, Board Secretary, called the roll and it was determined that a quorum was present.

Board members recited the Pledge of Allegiance.

II. APPROVAL OF THE MINUTES

Ms. Malaika Barlow made a motion to APPROVE the minutes from October 7, 2021.

Mr. Michael Wood seconded the motion; the motion PASSED, 5-0.

III. REPORT FROM PLANNING AND ZONING STAFF

Mr. John Roach, Principal Planner, indicated for the second item on the agenda [under Continued Cases – ZBA Case No. 3393], Staff had received an email from the applicant requesting that the application be withdrawn.

Mr. Roach stated that Board members should have easier access to the Motion pages in their digital packets which had been bookmarked.

IV. REMARKS BY THE CHAIRPERSON

Chairperson Heggen stated that the matters before the public are quasi-judicial in nature. Anyone wishing to speak, including members of the public who wished to offer public comment, would need to be sworn in. The applicant(s) would then make a presentation and answer questions from the Board, followed by Staff presentations. Members of the public would then be given the opportunity to provide comment, with each person receiving up to three (3) minutes. City Staff will also insert any public comment received in advance of the meeting (emails, voicemails, etc.) into the record. The applicant(s) would have time for a rebuttal at the discretion of the Chairperson. The floor would then be closed and the Board would go into Executive Session for discussion, a motion and decision. The Chairperson reminded everyone that four (4) votes were required for approval.

V. EX-PARTE COMMUNICATION

- Mr. Jonathan Burgess: None.
- Mr. Michael Hyman: None.
- Ms. Malaika Barlow: None.
- Vice-Chairperson Christopher Kammerer: None.
- Mr. Michael Wood: None.
- Mr. Alfred Fields: None.
- Chairperson Christopher Heggen: None.

VI. PUBLIC HEARING

A. SWEARING IN OF THE SPEAKERS

Ms. White, Board Secretary, swore in everyone who wished to speak on the cases on the agenda.

B. CONTINUED CASES

1. Zoning Board of Appeals Case No. 3396

Mr. Jonathan Burgess recused himself from ZBA Case No. 3396 at approximately 1:36pm and left the Commission Chambers for the duration of the meeting. [Form 8B: Memorandum of Voting Conflict for County,

Municipal, and Other Local Public Officers, is attached]

Ms. White, Board Secretary, read into the record the case description for Zoning Board of Appeals Case No. 3396:

A request by Jon Schmidt of Schmidt Nichols, on behalf of Southern Boulevard Holdings, LLC, for a variance to the required rear setback for the placement of an outdoor canopy.

The applicant, Mr. Jon Schmidt, gave a presentation on behalf of Southern Boulevard Holdings, LLC, along with Leon Pults and Zach Pults.

Mr. Jon Schmidt submitted letters of support of the project [which were entered into the record].

The members of the Board discussed the following with the applicant:

- Clarification of the applicant’s representative’s statement of: “this is not a hardship; this was created by the applicant”.
- Inquiry of how the applicant had completed their due diligence with Staff to make sure all requirements were addressed, ensuring that all of the Standards had been met [to address a compromise between Staff and the applicant].
- Inquiry of how the applicant would address all of the open space, with parking lots, that could be reconfigured where the structure was or follow through with the compromised reached, by moving a portion back. Inquiry of why not give up the 16 feet by complying or put up outdoor tables.
- Clarification from the applicant regarding seating being possible without the canopy.
- Clarification of the alternative and why the remaining 16 feet was needed at the site.

Ms. Linda Louie, Senior Planner, gave a presentation on behalf of the City’s Planning Division.

Staff recommended DENIAL based on the finding that the petition does not meet all of the required Variance Standards found in Section 94-38(d)(6) of the City of West Palm Beach Zoning and Land Development Regulations (ZLDRs).

See the Staff Report for Staff’s detailed history, background and analysis information pertaining to this case.

Ms. Louie played one (1) voicemail message received by Staff in support of the project.

There was additional discussion between the Board and Staff to include:

- What is permissible in the City's Code requirements;
- Alternatives to the outside seating;
- Parking difficulties with handicap parking entering/exiting the building;
- The positioning of the canopy; and
- Inquiry whether there was any relief for Board members to make a logical decision as opposed to one that was solely based upon the restrictions that exist.

Mr. Samuel Thomas, Senior Assistant City Attorney, indicated that the Board was required to base their decision on whether or not the application meets all of the Standards presented in their meeting material. He stated the Board did not have the latitude to relax or amend those Standards. Chairperson Heggen opened the floor to public comment.

There were no members of the public providing public comments.

Additional discussion during Executive Session included whether the applicant met all ten (10) Standards in addition to conditions.

Mr. Thomas reiterated for clarity, in terms of the Board making their decision, that the Board was required to consider all of the competent substantial evidence presented at this hearing; whether it comes from Staff, the applicant, or members of the public.

Mr. Michael Wood made a motion to APPROVE Zoning Board of Appeals Case No. 3396, a request by Jon Schmidt of Schmidt Nichols, on behalf of Southern Boulevard Holdings, LLC, for a variance from Section 94-145(2)(d) of the Zoning and Land Development Regulations to allow an outdoor canopy within the required rear setback of the property located at 330 Southern Boulevard within the General Commercial zoning district. The motion is based upon the testimony presented along with the application submitted and the Staff report, which constitute competent, substantial evidence. The Board hereby makes findings of fact that each of the criteria in Article II, Section 94-38(d)(6) of the City of West Palm Beach Zoning and Land Development Regulations (ZLDRs) have been met. In addition, the granting of the variance is made conditional upon the following restrictions, stipulations and/or safeguards that I move are necessary to ensure compliance with the purpose and intent of the Zoning and Land Development Regulations and consistent with the Comprehensive Plan of the City of West Palm Beach:

1. Lighting under the outdoor canopy shall be kept to a minimum. Any lighting provided shall be required to be shielded from the abutting residential use to minimize light spillover and glare. Lighting shall not

exceed 0.5 foot-candles when measured at the south property line.

2. No amplified sound, including audio and live music shall be permitted under the outdoor canopy.
3. The outdoor seating area under the canopy shall be clearly defined and separated from the vehicular use area with the installation of a permanent and attractive barrier around the seating area for added safety. The applicant will be required to apply for the necessary building permit(s).

Vice-Chairperson Christopher Kammerer seconded the motion. The motion FAILED, 3-2. (Note: Four (4) affirmative votes are required for a motion to pass.)

Ms. Malaika Barlow opposed the motion due to the following Standards not being met:

- *Standard A – Peculiar to land, structure, or building;*
- *Standard B – Action of the applicant;*
- *Standard E – Minimum request; and*
- *Standard G – Public welfare.*

Mr. Michael Hyman opposed the motion due to the following Standards not being met:

- *Standard A – Peculiar to land, structure, or building; and*
- *Standard E – Minimum request.*

2. Zoning Board of Appeals Case No. 3393

A request by Joan Garrick Murray, of West Palm Beach Professional Center, LLC, on behalf of Chris Garoosi, for a variance from Sec. 94-408(e)(2) of the City's Zoning and Land Development Regulations (ZLDRs), to permit a 25-foot high monument sign, along 45th Street where ten (10) feet is the maximum height allowed for a monument sign in the Industrial Light (IL) zoning district.

This application was withdrawn by the applicant.

C. ZONING BOARD OF APPEALS CASES

None.

D. ADMINISTRATIVE APPEALS

None.

VII. UNFINISHED BUSINESS

None.

VIII. NEW BUSINESS

None.

IX. OTHER BUSINESS

None.

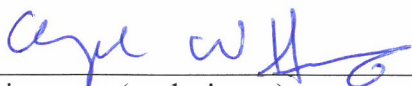
X. ADJOURNMENT

Chairperson Heggen adjourned the meeting at 2:58 P.M.

Please be advised the minutes are not verbatim. A recording of the meeting may be requested through the City of West Palm Beach City Clerk's office at 822-1210. There is a fee.

* * * * *

This signature is to attest that the undersigned is the Chairperson, or designee, of the **Zoning Board of Appeals** and that the information provided herein is the true and correct Minutes for the **November 4, 2021** meeting of the **Zoning Board of Appeals**, dated this 2 day of DECEMBER, 2021.



Chairperson (or designee)

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME BURGESS JONATHAN TAYLOR	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ZONING BOARD OF APPEALS
MAILING ADDRESS 1409 GEORGIA AVE	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="checked" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY COUNTY WEST PALM BEACH PALM BEACH	NAME OF POLITICAL SUBDIVISION: WEST PALM BEACH
DATE ON WHICH VOTE OCCURRED 11-4-2021	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input checked="checked" type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, JONATHAN BURGESS, hereby disclose that on NOVEMBER 4, 20 21 :

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____ ;
- inured to the special gain or loss of my relative, _____ ;
- inured to the special gain or loss of _____ , by whom I am retained; or
- inured to the special gain or loss of FLANIGANS ENTERPRISES , which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

MY LANDSCAPE ARCHITECTURE COMPANY, PARADELO BURGESS DESIGN STUDIO LLC, DOES PERFORM REGULAR BUSINESS WITH THE APPLICANT'S PARENT ORGANIZATION, UNRELATED TO THE APPLICATION BEFORE THE BOARD (ZBA CASE 3396) OR THE SUBJECT PROPERTY.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

NOVEMBER 4, 2021
Date Filed


Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.