

**City of West Palm Beach • Zoning Board of Appeals
October 7, 2021 Meeting Minutes
Commission Chambers**

MEMBERS PRESENT:

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

MEMBERS ABSENT:

- Malaika Barlow, Member
- Michael Hyman, Member

Important: Due to the absences of Ms. Malaika Barlow and Mr. Michael Hyman, Mr. Alfred Fields and Mr. Jonathan Burgess were voting members for the duration of the meeting.

STAFF PRESENT:

- John Roach, AICP, Principal Planner
- Linda Louie, AICP, Senior Planner
- Alana Wooten, Planner
- Rafaela Thermidor, Associate 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 1:30 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

Mr. Michael Wood made a motion to APPROVE the minutes from July 1, 2021.

Vice-Chairperson Christopher Kammerer seconded the motion; the motion PASSED, 5-0.

III. REPORT FROM PLANNING AND ZONING STAFF

Mr. John Roach, Principal Planner, indicated the end of the agenda called for the election of officers. He indicated this election usually took place at the September meeting, but that meeting was cancelled.

Mr. Roach expressed that Board members should have received an email from him to complete a survey regarding the digital packets. He stated Staff needed feedback from Board members' experience on obtaining the packet, the ease of using the link and accessing the packet. Mr. Roach stated that the Motion page of the packet was updated. If the Board chooses to deny an application, the persons making and seconding the motion(s), would need to identify which Standards the application does not comply with.

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.
- 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

None.

C. ZONING BOARD OF APPEALS CASES

1. Zoning Board of Appeals Case No. 3396

Mr. Jonathan Burgess recused himself from ZBA Case No. 3396 at approximately 1:39pm and left the Commission Chambers for the duration of the case. [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 Zach Pults and Leon Pults.

Mr. Jon Schmidt submitted letters of support of the project [which were entered into the record] and played two (2) videos of support.

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

- Inquiry whether the intent was to leave the canopy at the site permanently or once all regulations/recommendations of the CDC and County had been lifted, if the intent would be to remove the awning.
- Inquiry whether canopy met hurricane and fire codes after construction.
- Inquiry whether a temporary variance could be obtained through Staff.
- Inquiry whether the concrete wall which runs along the length of the property was built against the property.

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

The members of the Board discussed the following with Staff:

- Inquiry whether the variance could be linked temporarily until the condition no longer existed.

Mr. Samuel Thomas, Senior Assistant City Attorney, indicated that the Board's first requirement was to determine if the application met all of the Standards for granting the variance [whether temporary/permanent is not the controlling factor]. He stated that the application has to meet all of the Standards for granting the variance and if it does, it is entitled to approval. Mr. Thomas stated if the Standards are not met, the Code requires the application be denied, without regards to the duration of its use.

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.

Chairperson Heggen opened the floor to public comment.

Ms. White read ten (10) public comments and one (1) email received by Staff. Ms. Louie played two (2) voicemails received by Staff.

Mr. Jon Schmidt provided a rebuttal to voicemails received by Staff.

Mr. Thomas provided clarification on the discussion of imposing a condition of temporary use by stating that, if the application meets all of the conditions for approval, then the applicant is entitled to a full approval, and the Board does not have the ability to limit the duration of that approval. He stated the Board can impose conditions if that condition makes it possible to meet a standard that would not otherwise have been met, but that the Board could not impose a condition that limits the duration of the approval [which has been established by the Code].

Vice-Chairperson Kammerer mentioned a case involving the Churchill properties [it has length to the width of Churchill Road], but there was a provision that if the width of Churchill Road be reduced, the variance would be null and void. He stated this was the reason for the line of his questioning; where the variance would be null and void, seemed to be a possibility.

Mr. Thomas expressed that in reducing Churchill Road, this would bring it out of compliance and the reason for the variance becoming null and void.

Mr. John Roach indicated that with regards to the application [Churchill Road Properties] Vice-Chairperson alluded to, that the basis of the condition of approval is that if the right-of-way for Churchill Road is narrowed, the facts of the variance change. He stated Staff did not want the understanding to be misconstrued where the variance, thereby, moves as a result in the changes of facts.

There was further discussion between the Board, the applicant and Staff.

Mr. Alfred Fields made a motion to CONTINUE Zoning Board of Appeals Case No. 3396 to the November 4, 2021 meeting.

Vice-Chairperson Christopher Kammerer seconded the motion. The motion PASSED, 4-0.

Chairperson Christopher Heggen directed the applicant to have additional dialogue with Staff to determine if an alternate canopy configuration can be settled upon, or convince Staff that the criteria had been met.

Mr. Burgess returned to the meeting at approximately 3:32pm.

2. Zoning Board of Appeals Case No. 3393

Ms. White, Board Secretary, read into the record the case description for 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.

Mr. John Roach stated that the applicant was not present at this meeting, nor were they available for a previous meeting. He stated Staff made attempts to contact the applicant on multiple occasions throughout the past week but had not received a response. Mr. Roach indicated that Staff had the following options on how to proceed:

- The Code does provide that failure to appear can be grounds for the Board to deny the request;
- Staff could continue with their presentation and the Board could make a decision based upon the presentation; or
- The Board could continue the item.

He stated that this item was pulled from the agenda two (2) months ago, after attempting dialogue with the applicant regarding Staff's recommendation of denial and that the item was returned to the agenda with the understanding that the applicant was asking Staff to move forward despite the recommendation.

Mr. Alfred Fields made the a motion to CONTINUE Zoning Board of Appeals Case No. 3393 to the November 4, 2021 meeting.

Mr. Christopher Kammerer seconded the motion. The motion PASSED, 5-0.

3. Zoning Board of Appeals Case No. 3398

Ms. White, Board Secretary, read into the record the case description for Zoning Board of Appeals Case No. 3398:

A request by Kevin McGinley, of Land Research Management, Inc., on behalf of Frederic R. Van Der Grift, for a variance from Section 94-72(a)(2)(a) of the City's Land Development Regulations, specifically regarding the required front yard setback for construction of a new single family residence.

The applicant, Mr. Kevin McGinley, of Land Research Management, Inc., gave a presentation on behalf of Frederic R. Van Der Grift.

Ms. Alana Wooten gave a presentation on behalf of the City's Planning Division.

Staff recommended APPROVAL based on the findings that the petition meets all ten (10) Variance Standards found in Section 94-38(d)(6) of the Zoning and Land Development Regulations (ZLDRs). The recommendation was made subject to the following condition(s):

1. If at any time the excess right-of-way on Churchill Road is abandoned, this variance shall become null and void and the required front setbacks, as required by the City's Zoning and Land Development Regulations (ZLDRs), shall be reinstated. Any structures existing at the time of the abandonment that do not conform to the required setbacks shall be deemed nonconforming and subject to the regulations in Article XIV of the City's Zoning and Land Development Regulations (ZLDRs).

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

There was much discussion between the Board and Staff regarding clarification of the condition for the application.

Chairperson Heggen opened the floor to public comment. There were no members of the public offering public comments.

Mr. Jonathan Burgess made the following motion to APPROVE Zoning Board of Appeals Case No. 3398:

I move that the Zoning Board of Appeals grant ZBA Case No. 3398, a request by Kevin McGinley, of Land Research Management, Inc., on behalf of Frederic R. Van Der Grift, for a variance from Section 94-72(a)(2)(a) of the Land Development Regulations for construction of a new single family residence with a two (2) car garage with a twelve (12) foot front setback where code requires a setback of 25 feet for a residential lot. The motion is based upon the testimony presented along with the application submitted and 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 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 (ZLDRs) and consistent with the Comprehensive Plan of the City of West Palm Beach. The conditions include the following:

- 1. If at any time the excess right-of-way on Churchill Road is abandoned, this variance shall be reduced accordingly, and the required front setbacks, as required by the City's Zoning and Land Development Regulations (ZLDRs), shall be reinstated. Any structures existing at the time of the abandonment that do not conform to the required setbacks shall be deemed nonconforming and subject to the regulations in Article XIV of the City's Zoning and Land Development Regulations (ZLDRs).*

Mr. Jonathan Burgess made another motion [for clarity] to APPROVE Zoning Board of Appeals Case No. 3398:

I move that the Zoning Board of Appeals grant ZBA Case No. 3398, a request by Kevin McGinley, of Land Research Management, Inc., on behalf of Frederic R. Van Der Grift, for a variance from Section 94-72(a)(2)(a) of the Land Development Regulations for construction of a new single family residence with a two (2) car garage with a twelve (12) foot front setback where code requires a setback of 25 feet for a residential lot. The motion is based upon the testimony presented along with the application submitted and 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 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(ZLDRs) and consistent with the Comprehensive Plan of the City of West Palm Beach. The conditions include the following:

1. *If at any time a portion of the Churchill Road right-of-way is abandoned, this variance shall be reduced by a corresponding amount, and the required front setbacks, as required by the City's Zoning and Land Development Regulations (ZLDRs), shall be reinstated. (condition modified)*

Mr. Alfred Fields seconded the motion. The motion PASSED, 5-0.

D. ADMINISTRATIVE APPEALS

None.

VII. UNFINISHED BUSINESS

None.

VIII. NEW BUSINESS

None.

IX. OTHER BUSINESS

- A. Nomination and Election of Officers

Chairperson Heggen requested nominations for Chairperson of the Board.

Mr. Alfred Fields made a motion to nominate Mr. Christopher Heggen for Chairperson of the Board.

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

Chairperson Heggen requested nominations for Vice-Chairperson of the Board.

Mr. Alfred Fields made a motion to nominate Mr. Christopher Kammerer for Vice-Chairperson of the Board.

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

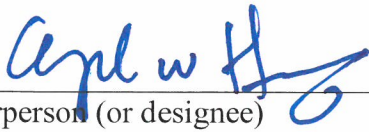
X. ADJOURNMENT

Chairperson Heggen adjourned the meeting at 4:02 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 **October 7, 2021** meeting of the **Zoning Board of Appeals**, dated this 4 day of NOVEMBER, 2021.



Chairperson (or designee)

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

LAST NAME—FIRST NAME—MIDDLE NAME <i>BURGESS JONATHAN</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>ZONING BOARD OF APPEALS</i>
MAILING ADDRESS <i>1409 GEORGIA AVE</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY COUNTY <i>WEST PALM BEACH PALM BEACH</i>	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED <i>10/07/2021</i>	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input 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 OCTOBER 7, 2021 :

(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 SOUTHERN BOULEVARD HOLDINGS, LLC DBA 'FLANIGAN'S', by whom I am retained; or
- inured to the special gain or loss of _____, 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:

CASE 3396

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.

10/7/2024
Date Filed

[Signature]
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.