

**City of West Palm Beach • Zoning Board of Appeals
April 1, 2021 Meeting Minutes**

Due to the COVID-19 virus, and pursuant to the City of West Palm Beach's Executive Orders 2020-05 and 2020-09, the April 1, 2021, Zoning Board of Appeals meeting was held virtually with Board members, staff, and applicants participating via Zoom video conferencing.

The Public Hearing was streamed live and available for viewing in the City Commission Chambers located at City Center - 401 Clematis Street, and the ability to make public comment was available in the adjacent Flagler Gallery.

Access to the meeting was also available remotely through Zoom, as well as the City's other usual media channels. Those participating remotely and wishing to make public comment were able to do so through voicemail, email, online form submittal, or directly through Zoom.

MEMBERS PRESENT (via video conference):

- Christopher Heggen, Chairperson
- Malaika Barlow, Member
- Michael Hyman, Member
- Michael Wood, Member
- Alfred Fields, 1st Alternate

MEMBERS ABSENT:

- Christopher Kammerer, Vice-Chairperson
- Jonathan Burgess, 2nd Alternate

STAFF PRESENT (via video conference):

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

BOARD ATTORNEY (via video conference):

- 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 Hyman made a motion to APPROVE the minutes from March 4, 2021.

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

Due to the absence of Vice-Chairperson Christopher Kammerer, Mr. Alfred Fields became a voting member for the duration of the meeting.

III. REPORT FROM PLANNING AND ZONING STAFF

Mr. John Roach, Principal Planner, indicated that there was nothing to report at this time.

IV. REMARKS BY THE CHAIRPERSON

Chairperson Heggen read into the record the Script for the Virtual Public Meeting (*this is an excerpt from the Script*):

Pursuant to Mayor Keith A. James' Executive Order No. 2020-05 issued on April 2nd, 2020, the City of West Palm Beach's Boards and Committees are conducting meetings through media technology and have released the requirements to have a quorum of its members physically present at City Hall. He stated that on April 14th, 2020, Mayor Keith A. James issued Executive Order No. 2020-09, which specifically provides the rules of procedure for conducting City Meetings, including requirements for quasi-judicial hearings.

After the applicant presents their case, Staff will provide a presentation and then the public will have an opportunity to speak or have their comments read into the record from previously received correspondence; the Board will then go into Executive Session. Prior to rendering a decision, the Board will confirm no additional public comments have been received by Staff.

V. EX-PARTE COMMUNICATION

Chairperson Christopher Heggen disclosed he had a virtual meeting with Ele Zachariades [ZBA Case No. 3382]. He indicated the meeting was informational in nature and would not impact his ability to render a decision on the case, based on the competent substantial evidence of testimonies and the material in the Staff report.

Ms. Malaika Barlow disclosed that she received an email from Kelly Quinn, Executive Assistant to Ele Zachariades [ZBA Case No. 3382], to have discussions on the case but that she did not respond and was not able to accept the invitation.

Mr. Michael Hyman disclosed that he had been contacted by Kelly Quinn requesting a

meeting [ZBA Case No. 3382]. He indicated he had responded, but that he was not available for a meeting prior to the hearing.

Mr. Michael Wood disclosed that he was contacted by Kelly Quinn regarding having a telephone conversation with Ele Zachariades [ZBA Case No. 3382]. He stated he was able to speak with Ms. Zachariades (the morning of the hearing), but this would not affect his ability to vote at the meeting.

Mr. Alfred Fields disclosed that he had spoken with Ele Zachariades the day before the hearing, but that his vote would not affect his ability to participate in the discussion of ZBA Case No. 3382.

VI. PUBLIC HEARING

A. SWEARING IN OF THE SPEAKERS

With the video conferencing procedures in place, Ms. White, Board Secretary, swore in the applicants, Staff, and members of the public who wished to speak prior to the start of each case.

B. CONTINUED CASES

None.

C. ZONING BOARD OF APPEALS CASES

1. Zoning Board of Appeals Case No. 3385

Ms. White, Board Secretary, swore in the following for the case:

- Mr. Cameron Ennis (Applicant);
- Mr. Tom Ramlall (Applicant)
- Mr. Richard Greene, Director of Development Services;
- Mr. John Roach, Principal Planner; and
- Ms. Alana Wooten, Planner.

Ms. White, Board Secretary, read into the record the case description for Zoning Board of Appeals Case No. 3385: A request by Jon Schmidt, on behalf of Mark Buller, for a variance from Sec. 94-174.b.6. of the City's Zoning and Land Development Regulations (ZLDRs) to reduce the overall landscape requirement of 15% and a variance from Sec. 94-443.b.1. of the ZLDRs to waive the ten (10) foot landscape buffer requirement on Division Avenue for a property located in the Industrial (I) district.

The applicant, Cameron Ennis, gave a presentation on behalf of Jon Schmidt.

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

- Clarification regarding the reduction of minimum landscape buffer along Division Avenue;
- Clarification if the applicant was in agreement with the conditions [hedges] proposed by Staff;
- Additional trees; and
- Maintenance of hedge height.

Ms. Angella Jones-Vann, Planning & Zoning Administrator (sworn in before speaking) provided additional clarification regarding the hedge, its species, and maintained height.

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

Staff recommended APPROVAL with conditions based on the findings that the petition meets all of the required standards found in Section 94-38.d.6. of the City of West Palm Beach ZLDRs. The recommendation was made subject to the following condition(s):

1. The proposed hedge along Division Avenue, planted where possible in between the existing metal shelving and the adjacent right-of-way, must be in place and maintained at a height of ten (10) feet at all times.
2. Applicant shall maintain the existing 6-foot chain-link fence that surrounds the property and treat it with an opaque material that will serve as screening for outdoor storage at all times, as required in Section 94-315.b. of the ZLDRs.

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

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

- The intended use of the storage racks and if they were to remain in their present location.

Chairperson Heggen opened the floor to public comment. Ms. White, Board Secretary, read into the record a letter received by Staff, and two (2) members of the public came forward for public comments (both were in opposition of the project).

Mr. Ennis, the applicant, provided a rebuttal for concerns raised during public comment.

There was continued conversation between the Board, the Applicant, and Staff regarding the following:

- The placement of the storage racks;
- Dust and paving of the site; and
- Height of the hedge (at time of installation and maintained height).

Ms. Barlow desired her statement to be entered into the record that members of the Board were not opining on whether the applicants were good neighbors, nor the traffic on public roads.

There was additional discussion between the Board, Staff and the applicant regarding landscaping concerns.

Mr. Ennis added that regarding the previous objection to the ten (10) foot hedge, Section 94-302.c. of the ZLDRs restricts the height of hedging to eight (8) feet, but if the Board wanted the hedge to be maintained at ten (10) feet, the applicant would be amenable to this.

Mr. Michael Wood made a motion to APPROVE Zoning Board of Appeals Case No. 3385, a request by Jon Schmidt, on behalf of Mark Buller, for a variance from Section 94-174.b.6. of the City's Zoning and Land Development Regulations (ZLDRs) to reduce the overall landscape requirement of 15% and a variance from Sec. 94-443.b.1. of the ZLDRs to waive the ten (10) foot landscape buffer requirement on Division Avenue for a property located in the Industrial (I) district. 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 (ZLDRs) have been met. In addition, the granting of the variance is made conditional upon the restrictions, stipulations and/or safeguards listed in the Staff report, dated April 1, 2021, which 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. The conditions include the following:

1. The proposed hedge along Division Avenue, planted where possible in between the existing metal shelving and the adjacent right-of-way, must be in place and maintained at a height of ten (10) feet at all times.
2. Applicant shall maintain the existing 6-foot chain-link fence that

surrounds the property and treat it with an opaque material that will serve as screening for outdoor storage at all times, as required in Section 94-315.b. of the ZLDRs.

Mr. Alfred Fields seconded the motion, with the addition to Staff's recommended condition #1 that the hedge reach a height of ten (10) feet within one (1) year.

Mr. Michael Woods accepted the amended motion.

Ms. Malaika Barlow requested that condition #1 be further modified to require the hedge to be installed at a height of at least four (4) feet.

Mr. Michael Woods and Mr. Alfred Fields, as members who made and seconded the motion, respectively, accepted the modification. The revised conditions are as follows:

1. The proposed hedge along Division Avenue, planted where possible in between the existing metal shelving and the adjacent right-of-way, must be installed at a minimum height of four (4) feet, and achieve and maintained at a height of ten (10) feet within one (1) year of planting.
2. Applicant shall maintain the existing 6-foot chain-link fence that surrounds the property and treat it with an opaque material that will serve as screening for outdoor storage at all times, as required in Section 94-315.b. of the ZLDRs.

The motion PASSED, 5-0.

2. Zoning Board of Appeals Case No. 3382

Ms. White, Board Secretary, swore in the following for the case:

- Ms. Ele Zachariades (Applicant);
- Mr. Richard Bartlett (Applicant);
- Mr. John Donaldson (Applicant);
- Mr. Paul Doss (Applicant)
- Ms. Angella Jones-Vann, Planning and Zoning Administrator;
- Mr. John Roach, Principal Planner; and
- Ms. Alana Wooten, Planner.

Ms. White, Board Secretary, read into the record the case description for Zoning Board of Appeals Case No. 3382: A request by Ele Zachariades, of Dunay, Miskel & Backman, LLP, on behalf of Sailfish Real Estate, LLC, for a Class B Special Use Permit to allow a convenience store with a fast

food component and accessory automotive fuel sales in the Neighborhood Commercial (NC) zoning district as prescribed by Sec. 94-273.d.12. of the Zoning and Land Development Regulations (ZLDRs); waivers from the Additional Standards are being requested.

The applicant, Ms. Zachariades, gave a presentation.

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

- Clarification on the distance separation from an existing house of worship and outreach to the existing church.

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

Staff recommended APPROVAL with conditions based on the findings that the petition meets all of the required standards found in Sections 94-36.e.3. and 4., Section 94-273.a.2., and Section 94-273.d.12. of the City of West Palm Beach Zoning and Land Development Regulations (ZLDRs). The recommendation of approval was made subject to the following condition(s):

1. All the conditions of approval for Informal Site Plan Review Case No. 21-04 shall be satisfied.

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

There was discussion between the Board and the applicant (Ms. Zachariades and Mr. John Donaldson) regarding traffic ingress/egress concerns, and the pathway along the canal was discussed with Staff.

Chairperson Heggen opened the floor to public comment. No members of the public came forward for public comments.

Mr. Alfred Fields made a motion to APPROVE the waivers for Zoning Board of Appeals Case No. 3382, as listed in the Staff report dated April 1, 2021. The motion is based upon a determination that the testimony presented at this hearing along with the application submitted, constitute a preponderance of competent, substantial evidence. The Board hereby makes findings of fact that the waiver requested satisfies all of the criteria of the City of West Palm Beach Zoning and Land Development Regulations (ZLDRs), Article II, Section 94-36 and Article IX, Section 94-273.a.2.

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

Mr. Alfred Fields made another motion to APPROVE Zoning Board of

Appeals Case No. 3382, a request by Ele Zachariades of Dunay, Miskel & Backman, LLP on behalf of Sailfish Real Estate, LLC. for a Class B Special Use Permit to allow a convenience store with a fast food component with accessory motor vehicle fuel sales to locate within the Neighborhood Commercial zoning district. 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 Section 94-36.e.3. and 4., and also the standards in Section 94-273.d.12. and Section 94-273.a.2. of the City of West Palm Beach Zoning and Land Development Regulations (ZLDRs), have been met. In addition, the granting of the Class B Special Use Permit is made conditional upon the restrictions, stipulations and/or safeguards listed in the Staff report, dated April 1, 2021, which I move are necessary to insure 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. The condition includes the following:

1. All the conditions of approval for Informal Site Plan Review Case No. 21-04 shall be satisfied.

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

D. ADMINISTRATIVE APPEALS

None.

VII. UNFINISHED BUSINESS

None.

VIII. NEW BUSINESS

None.

IX. OTHER BUSINESS

None.

X. ADJOURNMENT

Chairperson Heggen adjourned the meeting at 3:20 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 **April 1, 2021** meeting of the **Zoning Board of Appeals**, dated this 3rd day of JUNE, 2021.

Cybil W. H.
Chairperson (or designee)