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AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

Memo

To: Stephen Tawes, City Planner, City of Lauderhill

From: James E. White, AICP, Esq.
Chanae L. Wood, Esq.

Date: January 30, 2019

Re: Preliminary Zoning and Land Use Code Analysis for Potential Discount Tire

You have requested an interpretation of the City of Lauderhill's (the "City") Land Development Regulations (LDR) applicable to property located on West Commercial Boulevard, Folio Nos. 494116080240, 494116080250, and 494116080270 (the "Property") for the development of a Discount Tire Store (the "Proposed Use"). This memorandum summarizes the results of our research and analysis by (1) providing background information regarding the Property Use; (2) analyzing the applicable LDR; and (3) concluding that the Proposed Use is permitted by Special Exception in the Commercial –General ("CG") zoning district.

I. BACKGROUND

Proposed Use

Halle Properties, LLC (the "Applicant") proposes to develop a Discount Tire on the subject Property. The Applicant has asserted that Discount Tire would limit its services to tire sales, installation, and replacement of such parts. Automotive mechanical repair work such as fixing brakes, shocks, and batteries would not be services provided and Discount Tire would not handle any hazardous wastes, such as oil or antifreeze. Further, the Applicant has averred that all of the services or work provided by Discount Tire would be performed within the confines of the building.

II. LDR ANALYSIS

A. The Proposed Use is Automobile Repair - Permitted by Special Exception in the CG Zoning District.

The subject Property is located in the CG zoning district. Permitted uses in the CG zoning district are specified in LDR, Schedule B. – Allowable Uses, B-2 "Uses Allowed in Non-residential Districts." The LDR categories automobile uses as either: (1) Automobile repair, which is permitted by Special Exception; (2) Automobile sales, car rental (*outdoor*), which is permitted by Special Exception; and (3) Automobile sales, car rental (*indoor*), which is permitted by right.

Automobile sales and *Automotive repair* is defined as the following in LDR, Schedule A – Land Use Classifications:

AUTOMOBILE SALES: Display, sales or rental of new or used automobiles, trucks, motorcycles, recreation vehicles and trailers but where no repair, repainting or remodeling is done (see conditions Article III).

AUTOMOTIVE REPAIR: *general automobile repairs and preventive maintenance* including engine tuning and fluids, *tire changing and repairing* (but not including recapping), battery service, charging and replacement but not including repair or rebuilding, radiator cleaning and flushing, but not including repair or steam cleaning, lubrication, brake adjustment, replacement of brake cylinders, brake fluid lines, and brake shoes, front end and wheel alignment but shall not include straightening of automobile frames. All automobile repair and maintenance shall be conducted within an enclosed building (see conditions Article III). (emphasis added)

Automobile Repair is defined as the following in Article I – General Provisions, Section 1.5 “Definitions, general”:

Repair of automobile and truck bodies, ignition systems and radiators; automobile and truck painting and refinishing and repair and replacement of glass; *general* and specialized related *vehicle repairs*, including travel trailers, motorcycles, tractors, and similar automotive repairs. (emphasis added)

Analysis and review of the applicable code provisions must be reviewed using the rules of statutory construction established under Florida law.¹ While Discount Tire has proposed the sale of tires, it would also provide service to customers by installing, replacing and repairing tires. With the added service of tire replacing and repairing, the Proposed Use is further categorized as *Automobile Repair*, as defined by Section 1.5 “Definitions, general.” Under this definition, the Proposed Use would be considered “general . . . vehicle repairs.” Accordingly, the Proposed Use is permitted by Special Exception in the CG zoning district.

B. The Proposed Use Land Classification is Automotive – Automotive Indoor Maintenance.

The LDR specifies that certain permitted uses in the CG zoning district are subject to further regulation under Article III, Section 5.7, “Automobile, truck, trailer, motorcycle, boat, recreation vehicle.” Automotive Vehicular Land Use Classifications are categorized as either *Automotive Outdoors* or *Automotive Indoors*:

¹ The basic rule of interpretation is that City Codes are to be applied in a way that is logical and sensible. See, e.g., *Williams v. City of Jacksonville*, 118 Fla. 671(1935); *State v. Presidential Women’s Center*, 937 So.2d 114 (Fla. 2006). Florida case law requires that the intent of the Legislature in making any legislative change be analyzed primarily based on the plain language of the legislation itself. See *Golf Channel v. Jenkins*, 752 So. 2d 561, 564 (Fla. 2000); *Sieniarecki v. State*, 756 So. 2d 68 (Fla. 2000); *Rollins v. Pizzarelli*, 761 So. 2d 294 (Fla. 2000); *In re McCollam*, 612 So. 2d 572 (Fla. 1993). The starting point of this analysis is the actual language of the City Code. If the statutory language is clear and unambiguous, case law requires that the text be given its plain and obvious meaning, unless this would lead to an unreasonable result or a result clearly contrary to legislative intent. See *Lee Cnty. Electric Coop., Inc. v. Jacobs*, 820 So.2d 297, 303 (Fla.2002); *Daniels v. Fla. Dep’t of Health*, 898 So.2d 61, 64 (Fla.2005).

5.7.1. (Outdoors) Sales, display, storage or repairs, including repair garages, new and used car agencies and lots, car wash.

A. Any and all repair work shall be entirely conducted within the confines of the building wherein the business is licensed to operate

B. Repair garages and car washes shall store all motorized and ancillary vehicles, parts, and materials inside the building wherein the business is licensed to operate. . . .

E. This land use is prohibited in the General Commercial zoning district if the land use is located on property that abuts property zoned RS-4, RS-5, RM-5, RM-8, RM-10, RM-18, and RM-22 zoning districts or that abuts a water body zoned PO district and if the land use is located on property with a depth equal to or less than three hundred fifty (350) feet. This land use also is prohibited in the General Commercial zoning district if the land use is located on property where the front or rear property lines are three hundred fifty (350) feet or less from property zoned RS-4, RS-5, RM-5, RM-8, RM-10, RM-18, and RM-22 districts. Notwithstanding the above, this land use may be allowed if:

1. The premises were improved for a vehicular related use;
2. A substantial portion of the improvements (i.e., at least the main building) still exist; and
3. The existing improvements are substantially utilized in the operation of the land use.

5.7.2. (Indoors) Sales, display, storage or maintenance, excluding repair garages and car wash.

The maintenance of motorized and ancillary vehicles is permitted but the repair of motorized and ancillary vehicles is prohibited.

While the Proposed Use is permitted by Special Exception, as described above, further analysis is required under LDR, Section 5.7. As such, the Proposed Use is best characterized under these special requirements as *Automotive Indoor Maintenance*. LDR, Section 5.7.2 specifies, “the maintenance of motorized and ancillary vehicles is permitted, but the repair of motorized and ancillary vehicles is prohibited.”

It is important to note that *Automotive Indoor* regulations includes *Maintenance*, and the Proposed Use more closely aligns with *Automotive Repair*, as defined in LDR, Schedule A, which includes “general automotive repairs and preventive maintenance” and “tire changing and repairing.” Accordingly, the Proposed Use would be considered *Automotive Preventive Maintenance*, as Discount Tires limits its services solely to tire sales, installation, and replacement. This type of activity would not be considered and/or deemed an automotive “repair shop” under the LDR. As such, the use prohibition based on property depth and location, regulating *Automotive Outdoor* vehicular use and/or activities is inapplicable to the Proposed Use on the subject Property.

III. CONCLUSION

As described above, the Proposed Use is permitted by Special Exception in the CG zoning district. Based on the plain language of the code, *Automotive Repair* is allowed within the CG zoning district pursuant to a Special Exception. Additionally, the *Automotive Repair* land use classification permits “preventative maintenance,” which includes “tire changing and repairing” within an enclosed building. Furthermore, it is important to note that Automotive preventative maintenance operations occurring within an enclosed building is consistent with the “indoor maintenance” special requirements set forth within Article III of the LDR for Automotive land uses.