

MEMORANDUM

To: Kennie Hobbs, Assistant City Manager/Finance Director

From: W. Earl Hall *WEH*

Date: July 9, 2019

Re: 3351 W. Broward Boulevard,
Drive thru use

You requested an opinion whether a drive thru use that existed prior to the adoption of Ordinance 18O-07-125 is a non-conforming or grandfathered use.

The specific facts at issue are as follows:

The subject property is located at 3351 W. Broward Boulevard. The property was annexed into the City of Lauderhill in 2006. At the time of annexation, the property operated as a drive thru restaurant. The commercial property is physically built to include a drive through lane.

The current owner, 3351 W. Broward Blvd, LLC, purchased the property on July 23, 2018. A copy of the warranty deed on file with the Broward County Property Appraiser is attached as Exhibit A. Following the purchase, the owner applied for and obtained building permits for an interior demolition, electrical repairs, interior renovation and a reroof. The list of permits is attached as Exhibit B. Staff has further advised, that at all times, the owner made clear he intended to make improvements and reopen the building and operate a drive thru restaurant.

On July 9, 2018, the Lauderhill City Commission considered Ordinance 18O-07-125 on first reading. However, the proposed ordinance became final after the second reading on August 27, 2018. See Exhibit C. Among other things, the new ordinance imposed a 1000 feet distance separation for free standing drive through restaurants. There is an existing Popeyes drive thru restaurant located within 1000 feet of the subject property.

It has long been held that a use that existed when zoning regulations change or are amended, becomes a nonconforming or grandfathered use. See *Lewis v. City of Atlantic Beach*, 467 So2d 251, 1st DCA, 1985. Attached as Exhibit D. The Land Development Regulations for the City of Lauderhill state that a nonconforming use can continue so long as the use is not abandoned, changed, enlarged or suffers damage to 75% of the structure. See LDR Schedule H.

Based on the facts presented, a review of the building permits and the representations of staff, it's clear the owner did not and has not abandoned the drive thru use. Therefore, it is my opinion that the drive thru restaurant use located at 3351 W. Broward Boulevard is a nonconforming or

grandfathered use and can continue so long as the use is not abandoned, changed, enlarged or suffers damage to 75% of the structure.

cc. Chuck Faranda, City Manager
Sean Henderson, CRA Director
Steve Tawes, Planning Director
Molly Howson, Associate Planner

