



Agenda Item No.

DEVELOPMENT REVIEW REPORT

The matter before the City Commission, sitting as the Board of Adjustment, is an Ordinance granting to G.I. of Commercial, LLC, a variance from the minimum separation distance requirements for Outdoor Menu Boards from any Residentially zoned properties. Land Development Regulations Article IV, Part 3.0., Subsection 3.1.3., prohibits the Board of Adjustment from granting a variance unless the Board finds that facts exist to support each of the five (5) standards. The Planning and Zoning Department recommends the City Commission adopt an Ordinance granting to G.I. of Commercial, LLC a variance from Land Development Regulations Article III., Sec 5.32.2.G, by allowing a variance from the minimum 200 foot separation distance requirements for Outdoor Menu Boards from any Residentially Zoned properties for an approximately 1.33 acre site zoned General Commercial (CG) district and legally described as Lots 10 and 11, COMMERCIAL BOULEVARD SHOPPES NO. 2, according to the Plat thereof, as recorded in Plat Book 107, Page 43, of the Public Records of Broward County and more commonly known as 7040-7050 W Commercial Blvd, Lauderhill, Florida., subject to conditions.

I. BACKGROUND

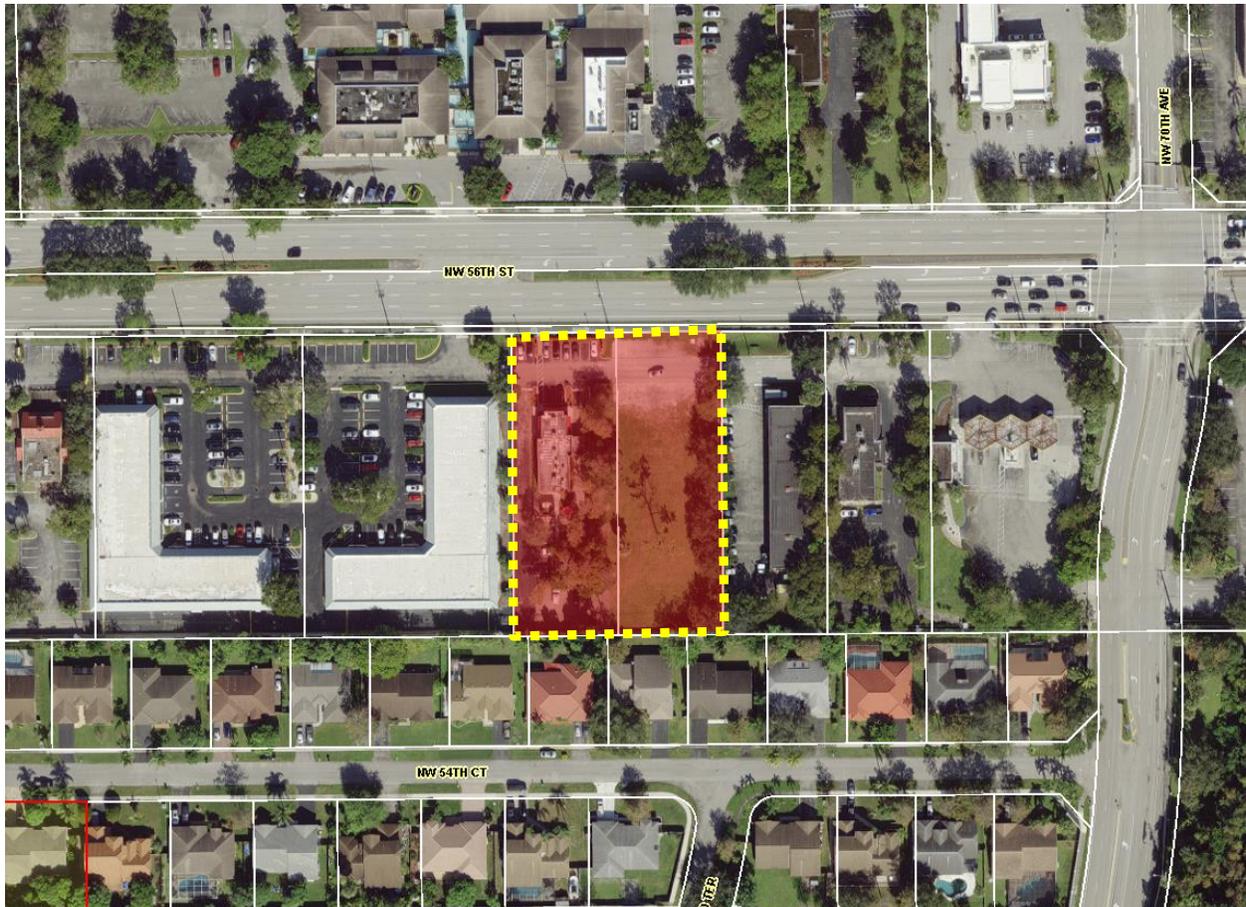
The subject site is located approximately 1,950 feet east of University Drive and 350 feet west of NW 70th Ave along West Commercial Blvd and consist of approximately 1.33 acres. The subject site is bounded to the North by the City of Tamarac, to the East and West by properties zoned General Commercial and to the South by properties zoned for Residential Single Family. The site is located within the General Commercial (CG) Zoning District.

The Applicant proposes to vacate the existing 2,266 square foot fast food restaurant with drive through located at 7050 W Commercial Blvd and construct a 2,977 square foot Fast Food Restaurant with a Double Drive-Through Lane located at 7040 W Commercial Blvd. The vacant building is intended to be used as a retail or restaurant use in the future but will not be able to be used as a fast food restaurant with drive through as there is a 1,000 foot separation requirement from other fast food restaurant with drive through pursuant Article III., Section 5.32.2.E.

In order to conform with the 1,000 foot distance requirement, the applicant shall submit a Recorded Deed Restriction before issuance of any Development Orders to condition that the property located at 7050 W Commercial Blvd shall subject to all Land Development Regulations governing Fast Food Restaurant with Drive Through Uses within the City of Lauderdale including separation requirements from the day that the proposed Popeye's Fast Food Restaurant located at 7040 W Commercial Blvd begins operation.

See Figure 1 below for an aerial of the Site:

Figure 1



The Property received Special Exception Use (SE) approval (Attachment A Res No. 20R-11-238) on November 30, 2020 to allow a Restaurant, Fast Food with Drive Through Use on the vacant lot located at 7040 W Commercial Blvd. A conceptual site plan was presented as part of the application that required a Variance due to the proposed proximity of the Menu Board from the Residentially Zoned District to the South. As such, a condition was placed on the approval of the Special Exception that a Variance would be required from the required minimum distance requirements for Outdoor Menu Boards from any Residentially Zoned properties pursuant Article III Section 5.32.2.G.

II. VARIANCE APPLICATION

The Applicant, G.I. of Commercial, LLC, filed an application (Attachment B) for a Variance from Land Development Regulations Article III., Section 5.32.2.G on January 06, 2021 to provide for an Outdoor Menu Board located approximately 99.42 feet from an abutting Residential Property where a minimum distance of 200 feet is required.

The intent of the proposed Variance is to provide an Outdoor Menu Board that can serve a double drive through and alleviate internal circulation congestion that is currently occurring at the Existing Popeye's site. It is also important to note that the Existing Popeye's Site has an existing Outdoor Menu Board (approximately 110 feet away from the abutting Residential Zoning District) that does not meet the 200-foot distance requirement from the Residentially Zoned properties to the South.

III. DATA & ANALYSIS

Land Development Regulations (LDR) Article IV generally addresses provisions on a pre-application conference for persons proposing to submit land development order applications, the review of the land development order applications for technical completeness, and the application review period. LDR provisions specifically governing the issuance of a variance include: Article IV, Part 3.0., Section 3.1., Variances, Subsection 3.1.4., Conditions and limitations; Subsection 3.1.5., Time Limit; Subsection 3.1.6., Votes required for approval for all variances; and Subsections 3.1.2 and 3.1.3 on notifications and publication of agenda and Requirements for variances respectively.

- A. Pre-application meeting. Land Development Regulations Article IV, Part 1.0., subsection 1.3.1. provides for a pre-application process. It provides for the Applicant to meet with Department staff to discuss the development review process, the type of review required (whether major or minor), and to be informed of which other City staff members to confer with about the application.

A pre-application meeting was held November 19, 2020 with G.I. of Commercial, LLC legal representative, Hope Calhoun, Esq. of Dunay, Miskel & Backman, LLP.

- B. Application filing and acceptance dates. Land Development Regulations Article IV., Part 1.0., subsection 1.3.2. provides for the Department to review any land development order application to determine its completeness and to issue a letter within five (5) working days determining whether or not the application is complete. If the land development order application is complete, then the Department must accept the application. If the land development order application is incomplete, the Department is required to reject the application and forward to the Applicant a notice of incompleteness specifying the data missing from the submitted application. In the event the Department fails to review the application within the required time, the Land Development Regulations provide

for the Department to accept the application for processing.

The variance application was filed on January 06, 2021. The application was complete.

- C. Application review period. Land Development Regulations Article IV., Part 1.0., subsection 1.4.4. provides that within 45 days from the acceptance of the application for development subject to major review, the City Planner shall compile the individual staff reports, prepare a written development review report with proposed findings and a recommendation, and notify the Applicant of the date the application will be presented to the Development Review Committee, Beautification Committee, Planning and Zoning Board, and City Commission, or any combination of the above. This is the written Development Review Report for the variance application.

The Owner was provided a copy of the Development Review Report and a Notice of Hearing on April 15, 2021 after the application was filed.

- D. Application amendments. Land Development Regulations Article IV, Part 1.0., subsection 1.3.5. provides an application for a development permit may be revised by the Applicant after it has been accepted. The City Planner is charged with the responsibility to examine the amendment to determine whether any portion of the review process must be repeated. If any such portion is repeated, the time limits may be extended up to an additional 45 days.

The application has not been subsequently amended since it was filed on January 06, 2021.

- E. Requirements for variances. Land Development Regulations Article IV., Part 3.0., Section 3.1., Subsection 3.1.3., provides no variance from the terms of these Land Development Regulations or the Code of Ordinances shall be authorized by the Board of Adjustment unless the Board finds facts supporting each of the five (5) standards. The Department's assessment of conformance with these standards is set forth below.

1. *That there are unique and special circumstances or conditions applying to the property in question, or to the intended use of the property, that do not apply generally to other properties in the same district. The matter of economic hardship shall not constitute a basis for the granting of a variance.*

Applicant's Justification:

There are unique and special circumstances or conditions applying to the property in question and the intended use of the property that do not apply generally to other properties in the same district. The 7050 Property has an Existing Popeye's in similar size to the Project. The Existing Popeye's is older and needs to be renovated to meet current Popeye's standards. Instead of renovating the Existing Popeye's to meet the current Popeye's

drive-through standards, the Applicant is proposing constructing a new Popeye's on the Property. The menu boards for the Existing Popeye's are at a similar location to the proposed menu board location on the Project. As the Property is narrow in width with substantial parking requirements, the Property requires a long and narrow building. Accordingly, the positioning of the menu boards on the site is unique to the Property's size and configuration. Further, the Applicant is proposing providing the surrounding area a new and improved product instead of the older product that currently exists today. It is also important to note that the neighbors to the south will not be adversely affected – the conditions will be substantially similar to the current Existing Popeye's conditions. Thus, there are unique and special circumstances or conditions applying to the property in question and the intended use of the Property that do not apply generally to other properties in the same district.

Staff supports the justification for this standard as there are unique and special circumstances or conditions applying to the property in question, or to the intended use of the property that do not apply generally to other properties in the same district.

Staff finds that there is a 123-foot front setback requirement from West Commercial Blvd (taken from the centerline) that restricts the placement of the new drive-through restaurant thus limiting the location of the proposed Outdoor Menu Board to a compatible setback as provided by the existing Outdoor Menu Board. The proposed building is also placed to be aligned with the existing in order to allow for shared access and shared parking as mandated in The Commercial Boulevard Shoppes No.2 Plat found in Broward County Official Record's Plat Book 107 page 43 (Attachment C). The Plat reveals a 7' R/W Easement, followed by a 26' Easement (consisting of a 12' Utility Easement), followed by a 24' Road & Related Purpose Easement that results in 57 feet dedicated to accommodate both a dedication and parking on the Northern portion of the property.

Additionally, Staff finds that the circumstance is unique to the subject site as the proposed Popeyes will replace the existing Popeyes one that was built in 2005 with the single Outdoor Menu Board placed approximately 110 feet from the Single Family Residential Zoning District to the South and the distance requirements were not yet in effect until 2018. The proposed Double Outdoor Menu Board is set to be placed at approximately 99.42 feet from the Single Family Residential Zoning District to the South.

2. *That any alleged hardship is not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of these regulations or any pertinent Code section.*

Applicant's Justification:

The alleged hardship is not self-created by any person having an interest in the Property nor is it the result of mere disregard for or ignorance of the provisions of these regulations or any pertinent Code section. The Existing Popeye's has been constructed on the Property for almost twenty years. The menu board for the Existing Popeye's is in a similar location abutting the residential zoned district as the Project is proposing. The building configuration is dictated based on the Property size and configuration. The Property's north frontage abuts Commercial Boulevard, an area in the City where commercial development is intended and encouraged (as evidenced by the Property's land use and zoning designations). Additionally, it is important to note that the majority of all commercially zoned property in the City either directly abuts residentially zoned property or is located within 200 feet of same. As the Applicant is providing substantial protections to the residential zoning district to the south, including adding a new eight foot (8') high wall, the proposed use is suitable for the Property as it already exists in the immediate area, a mere 50 feet west of the proposed location. Thus, the alleged hardship is not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of these regulations or any pertinent Code section.

Staff supports the justification for this standard as the proposed Popeyes will be replacing the Existing Popeyes with an Outdoor Menu Board at a compatible location that has been in existence for approximately 16 years and will be providing for additional screen to help mitigate any light and noise pollution to the Single Family Residential Neighborhood to the South as well as alleviating internal traffic congestion.

3. *That strict application of the provisions of these regulations or any pertinent Code section would deprive the property owner of reasonable use of the property for which the variance is sought.*

Applicant's Justification:

As mentioned, the Existing Popeye's has been existing at the Property for almost twenty years. The Property is located on a main arterial in the City. Since the majority of the City's Property is located along commercial corridors with residential uses bordering to the interior of the commercial uses, the City's 200' separation between residentially zoned property and menu boards is difficult to achieve based on the City's corridor design. The Applicant is not proposing an additional fast food with drive-through use, but is merely proposing relocating the Existing Popeye's use into a new building on the same Property. The Existing Popeye's will close before the new Project opens, and it is anticipated that the Existing Popeye's building will be utilized as a retail use. The Applicant is taking extra precautions to ensure there is minimal light spillage and minimal

noise pollution, while still consistently providing the surrounding area a convenient lunch and dinner option. Accordingly, strict application of the provisions of these regulations or any pertinent Code section would deprive the property owner of reasonable use of the Property for which the Variance is sought.

Staff supports the justification for this standard as the provisions of these regulations or any pertinent Code section would deprive the property owner of reasonable use of the property for which the variance is sought.

4. *That the variance proposed is the minimum variance that makes possible the reasonable use of the property.*

Applicant's Justification:

The Variance proposed is the minimum possible for the reasonable use of the Property. The Property is narrow in width, requiring a long, narrow building. As drive through uses are long and narrow buildings, a drive through use is suitable on the site, based on the platted dimensions. In order to provide the requisite minimum front setback of 123', the requisite 53 parking spaces, sufficient site circulation and double menu boards to allow minimal queuing and faster and more convenient ordering for patrons, the menu boards must be pushed closer to the residential zoning district. Accordingly, the proposed Variance is the minimum variance necessary to make possible the reasonable use of the Property.

Staff supports the justification for this standard as there is a 123-foot front setback requirement from West Commercial Blvd (taken from the centerline) that restricts the placement of the new drive-through restaurant thus limiting the location of the proposed Outdoor Menu Board to a compatible setback as provided by the existing Outdoor Menu Board. The proposed building is also placed to be aligned with the existing in order to allow for shared access and shared parking as mandated in The Commercial Boulevard Shoppes No.2 Plat found in Broward County Official Record's Plat Book 107 page 43 (Attachment C). The Plat reveals a 7' R/W Easement, followed by a 26' Easement (consisting of a 12' Utility Easement), followed by a 24' Road & Related Purpose Easement that results in 57 feet dedicated to accommodate both a dedicating and parking on the Northern portion of the property.

5. *That granting the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood or area, or otherwise detrimental to the public welfare.*

Applicant's Justification:

Granting the Variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood or area, or otherwise detrimental to the public welfare. As mentioned, the Existing Popeyes has been serving the needs of the surrounding neighborhood by providing a sustainable food option for lunch and dinner patrons. The Existing Popeyes, which is located approximately 50 feet east of the Project, also abuts residentially zoned property to the south. The Existing Popeyes features a drive-through window with outdoor menu board. Therefore, the outdoor menu boards that will be constructed for the Project will operate in the same manner as the outdoor menu boards for the Existing Popeyes. Further, the Property is bordered to the south by an existing fence, which provides a buffer between the commercial use and the residential use. Additionally, per Condition six of the Special Exception Approval, the Applicant is required to construct a new eight foot (8') high wall along the south property line pursuant to Art III Sec. 5.18.16, meeting all design standards in Schedule P—before the operation of the Project. Additionally, since the Project will replace the Existing Popeyes upon completion, there will be no additional disruption to the neighborhood or surrounding area. To the contrary, patrons will benefit from the updated drive-through facilities by providing a quicker and more efficient route to cycle through the drive-through lane.

Finally, it is important to note that the Property's north frontage abuts Commercial Boulevard, an area in the City where commercial development is intended and encouraged (as evidenced by the Property's land use and zoning designations). Notably, the majority of all commercially zoned property in the City either directly abuts residentially zoned property or is located within 200 feet of same. As the Project is a mere 50 feet west of the Existing Popeyes, the proposed use is suitable for the Property as it already exists in the immediate area. Thus, the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood or area, or otherwise detrimental to the public welfare.

Staff supports the justification for this standard, as the proposed Popeyes will be replacing an Existing Popeyes that has been operating for approximately 16 years. Granting the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood or area, or otherwise detrimental to the public welfare

- F. Conditions and Limitations. Article IV Section 3.1.4.A. provides that in authorizing any variance, the Board of Adjustment shall include, as part of such variance, any conditions, requirements or limitations which the Board may believe is necessary and desirable to protect adjacent properties and the surrounding neighborhood, to carry out the spirit and purposes of the Land

Development Regulations and Code of Ordinances, and to provide for the health, safety or welfare of the City and its residents.

The Department recommends the following variance conditions be imposed:

1. If this variance is not instituted, operated and maintained in full conformity with the terms and condition's of the board approval and the provisions of the Land Development Regulations then this variance is hereby declared to be an illegal use in violation of the zoning district regulations and shall be discontinued and removed forthwith.
2. A Recorded Deed Restriction shall be submitted before issuance of any Development Orders to condition that the property located at 7050 W Commercial Blvd shall subject to all Land Development Regulations governing Fast Food Restaurant with Drive Through Uses within the City of Lauderhill including separation requirements from the day that the proposed Popeyes Fast Food Restaurant located at 7040 W Commercial Blvd begins operation.
3. A Shared Access and Parking Agreement shall be provided at time of Site Plan Approval
4. An eight (8) foot high wall shall be required along South Property line pursuant Art III Sec 5.18.16 and shall meet all design standard in Schedule P. Said wall shall be erected before the operation of the proposed Restaurant, Fast Food Use, with Drive Through.
5. This variance shall expire 180 days after the date of final action on such variance unless a development order or permit is received within said period.

Article IV Section 3.1.4.B. provides any variance which is not instituted, operated and maintained in full conformity with the terms and condition's of the board approval and the provisions of the Land Development Regulations is hereby declared to be an illegal use in violation of the zoning district regulations and shall be discontinued and removed forthwith. If the City Commission grants the variance, then the Department would recommend that this provision be incorporated as a written condition of the Ordinance granting the variance.

- G. Time limit. Subsection 3.1.5. generally provides that any variance authorized by the Board of Adjustment that requires a development permit shall expire 180 days after the date of final action on such variance, unless a development order is issued within the affected period. It also provides the Planning and Zoning Director may extend this expiration time period without further action of the Board of Adjustment. It is the Director's policy that a time extension will not be granted unless the development order upon which the variance is granted is filed with the

City within the 180 day period. If the Board of Adjustment grants the variance, then the Department recommends the variance be conditioned upon a development order for which the variance is granted be filed with the City within 180 days after the variance is granted.

H. Votes required for approval of all variances. Subsection 3.1.6. provides that approval of any variance application shall require (4) votes by the Board of Adjustment and if the Board quorum is less than four Board members, then unanimous approval is necessary.

I. Notifications. Subsection 3.1.2 addresses mailed notice and posted notice provisions associated with variance applications.

1. *Mailed notice.* Subsection 3.1.2 provides all owners and occupants of property within 300 feet of the premises for which the Variance is requested shall be given notice of the hearing by mail at least ten (10) days before the public hearing.

The Planning and Zoning Department provided the required mailed notice for the variance and a list of those persons noticed is on file with the Department and incorporated herein by reference. Consequently, this variance application is in conformance with this requirement.

2. *Property Posted Notice.* Subsection 3.1.2 also provides that at least ten (10) days prior to the hearing, a sign shall be posted upon the property facing and visible from the street. The sign must be a minimum of three (3) square feet in size. Moreover, the Owner must provide a notarized affidavit to the Department stating that the sign was posted on the appropriate day, that the sign remained posted for the duration of the time required for the posting, and that a photograph of the sign in place be submitted.

The Owner has provided an affidavit stating the property will be posted during the required periods and a photograph has been provided showing the property is posted. Those documents are incorporated herein by reference. Thus, the application is in conformance with this requirement.

J. Publication of agenda. Section 3.3 requires that hearings of the Board of Adjustment be published in a newspaper of general circulation in Broward County at least 10 days prior to the meeting. The City Clerk has caused the meeting to be advertised in the Sun-Sentinel. In addition, the City Clerk will cause the public notice to be posted at the first and third floors of City Hall.

IV. ATTACHMENTS

Attachment A: Resolution No. 20R-11-238
Attachment B: Application

Attachment C: Plat
Attachment D: Plans

V. FINDINGS AND CONCLUSIONS

Based upon the information contained in this Development Review Report, the following findings of fact and conclusions of law are offered:

- A. The Department finds that Land Development Regulations, Article III., Section 5.32.2.G requires restaurant drive-through lane, outdoor menu board or ordering, pick-up or pay station shall be located a minimum distance of two hundred (200) feet from any residentially zoned property.
- B. The Department finds the applicant requests a variance from Land Development Regulations Article III., Section 5.32.2.G to provide an Outdoor Menu Board located approximately 99.42 feet from an abutting Residential Property where a minimum distance of 200 feet is required.
- C. The Department finds that the Applicant, G.I. of Commercial, LLC, filed a variance application was filed on January 06, 2021. The application was complete.
- D. Land Development Regulations Article IV., Part 3.1., Subsection 3.1.3, Requirements for variances, provides no variance from the terms of these Land Development Regulations or the Code of Ordinances shall be authorized by the Board of Adjustment unless the Board finds facts supporting each of the five (5) requirements for variances that must be supported by factual findings.
- E. The Planning and Zoning Department concludes conformance to each of the five standards has been factually demonstrated.
- F. The Board of Adjustment public hearing on the variance application has been duly noticed: the Planning and Zoning Department has provided written mailed notice to all owners within a 300 feet radius of the site, the City Clerk has advertised the hearing in the Sun-Sentinel, and the Owner has posted the property.

VI. ALTERNATIVE ACTIONS

The City Commission, sitting as the Board of Adjustment, may make one of the following determinations:

- A. Approve the application as submitted.
- B. Deny the application.
- C. Approve the application subject to conditions.

VII. RECOMMENDED ACTION

A. Department recommendation. The Planning and Zoning Department recommends the City Commission adopt an Ordinance granting G.I. of Commercial, LLC, a variance from Land Development Regulations Article III., Section 5.32.2.G to provide an Outdoor Menu Board located approximately 99.42 feet from an abutting Residential Property where a minimum distance of 200 feet is required on an approximately 1.33 acre site zoned General Commercial (CG) district and legally described as Lots 10 and 11, COMMERCIAL BOULEVARD SHOPPES NO. 2, according to the Plat thereof, as recorded in Plat Book 107, Page 43, of the Public Records of Broward County and more commonly known as 7040-7050 W Commercial Blvd, Lauderhill, Florida., subject to conditions:

1. If this variance is not instituted, operated and maintained in full conformity with the terms and condition's of the board approval and the provisions of the Land Development Regulations then this variance is hereby declared to be an illegal use in violation of the zoning district regulations and shall be discontinued and removed forthwith.

2. A Recorded Deed Restriction shall be submitted before issuance of any Development Orders to condition that the property located at 7050 W Commercial Blvd shall subject to all Land Development Regulations governing Fast Food Restaurant with Drive Through Uses within the City of Lauderhill including separation requirements from the day that the proposed Popeyes Fast Food Restaurant located at 7040 W Commercial Blvd begins operation.

3. A Shared Access and Parking Agreement shall be provided at time of Site Plan Approval

4. An eight (8) foot high wall shall be required along South Property line pursuant Art III Sec 5.18.16 and shall meet all design standard in Schedule P. Said wall shall be erected before the operation of the proposed Restaurant, Fast Food Use, with Drive Through.

5. This variance shall expire 180 days after the date of final action on such variance unless a development order or permit is received within said period.

B. City Commission action. The City Commission is scheduled to consider the Variance application for first reading at its duly noticed May 10, 2021 regular public hearing. The City Commission is scheduled to consider the Variance application for second reading at its duly noticed June 14, 2021 regular public hearing.