



**CASE# PLNZAD2019-01136
Administrative Interpretation
DECISION AND FINDINGS**

REQUEST:

This is a request for an administrative interpretation regarding the expansion of a nonconforming restaurant with a drive-through facility located at 753 East 2100 South (subject property). The subject property is located within the FB-SE (Form Based Special Purpose Corridor Edge Sub-district Boulevard). Restaurants are permitted uses in this zoning district; however, restaurants with drive-through facilities are prohibited. The following interpretation has been requested:

1. Section 21A.38.040.H.2 of the Salt Lake City Zoning Ordinance states that a nonconforming use can be expanded through the Special Exception process if the floor area of the nonconforming use does not increase by more than 25% or 1,000 square feet, whichever is less. The use of the subject property is a restaurant with a drive-through facility. Is the entire building restricted to 25% (or 1,000 square feet), or does the restriction only pertain to the portions of the building that service the drive-through facility.

DECISION:

The Zoning Administrator has made the following decisions pursuant to the findings below.

1. The restaurant and the associated drive-through facility can be considered two separate functions when determining the modifications that would be allowed per the nonconforming use regulations in the Salt Lake City Zoning Ordinance. Restaurants are an allowed use in the zoning district; therefore, improvements to the building associated only with the restaurant use are not limited per the nonconforming use regulations. Drive-through facilities are not an allowed use in the zone. Therefore, improvements associated with the drive-through use, such as: the kitchen, prep and work area are limited to 25% of the gross floor area or 1,000 square feet (whichever is less) and must be reviewed through the Special Exception process.

FINDINGS:

The use of the building on the subject property is a restaurant with a drive-through facility. A restaurant with a drive-through is not an allowed use in the zoning district (FB-SE), but a restaurant alone is a permitted use.

The Zoning Administrator finds that the two uses, "restaurant" and "drive-through facility" can be considered as separate functions or uses when determining allowable modifications to the building based on the following:

- Restaurant is shown as a permitted use in the FB-SE Table of Permitted and Conditional Uses for Form Based Districts (21A.33.080, Salt Lake City Zoning Ordinance);
- Restaurant with a drive-through facility is not listed as a use in this table, whereas in other land use tables in the Zoning Ordinance it is listed as a use. Therefore, a drive-through associated with a restaurant is not allowed in the Form Based zoning districts;
- Section 21A.40.060.B.2 of the Zoning Ordinance states, "*Drive-through facilities may be authorized as accessory uses to permitted uses or conditional uses as listed on the tables of permitted and conditional uses set forth in part III of this title*" (Emphasis added). This implies that, even though "Restaurant with drive-through facility" is listed as a specific land use in the land use tables, the drive through facility is a separate use/function because it is defined as an accessory use in the Accessory Use chapter of the Zoning Ordinance. Therefore, the restaurant and the drive-through facility can be considered as separate

uses/functions for the purpose of determining the allowable improvement to the subject property.

The proposed expansion can be reviewed as a Special Exception because the nonconforming use portion of the building, which is all areas of the building associated with the drive-through, is not increasing by more than 25% or 1,000 square feet. The applicant provided 2,184 square feet as the estimated square footage associated with the drive-through use. This portion, once determined to be accurate, is the specific square footage limited to either 25% or 1,000 square (whichever is less). The regulations and review process for a Special Exception can be found in Chapter 21A.52 of the Salt Lake City Zoning Ordinance.

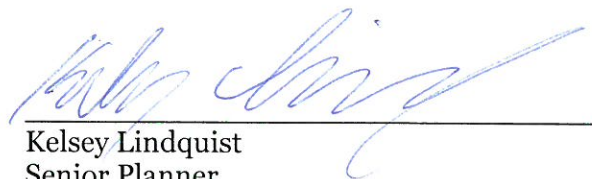
APPEAL PROCESS:

An applicant or any other person or entity adversely affected by a decision administering or interpreting this Title may appeal to the Appeals Hearing Officer. Notice of appeal shall be filed within ten (10) days of the administrative decision. The appeal shall be filed with the Planning Division and shall specify the decision appealed and the reasons the appellant claims the decision to be in error. Applications for appeals are located on the Planning Division website at <http://www.slcgov.com/planning/planning-applications> along with information about the applicable fee. Appeals may be filed in person at the Planning Counter, 451 South State Street, Room 215 or by mail at Planning Counter PO BOX 145471, Salt Lake City, UT 84114-5471.

NOTICE:

Please be advised that a determination finding a particular use to be a permitted use or a conditional use shall not authorize the establishment of such use nor the development, construction, reconstruction, alteration, or moving of any building or structure. It shall merely authorize the preparation, filing, and processing of applications for any approvals and permits that may be required by the codes and ordinances of the City including, but not limited to, a zoning certificate, a building permit, and a certificate of occupancy, subdivision approval, and a site plan approval.

Dated this 11th day of December, 2019 in Salt Lake City, Utah.


Kelsey Lindquist
Senior Planner
Salt Lake City Planning Division

CC: Nick Norris, Planning Director
Joel Paterson, Zoning Administrator
Wayne Mills, Planning Manager
Greg Mikolash, Development Review Supervisor
Posted to Web
Applicable Recognized Organization