

**ORDINANCE NO. 2020-036**

ORDINANCE REPEALING AND RESCINDING HIALEAH, FLA., ORDINANCE 2019-067 (AUGUST 29, 2019); AND GRANTING A SPECIAL USE PERMIT (SUP) TO ALLOW THE EXPANSION OF THE NEIGHBORHOOD BUSINESS DISTRICT (NBD) OVERLAY PURSUANT TO HIALEAH CODE OF ORDINANCES § 98-1630.8; AND GRANTING A VARIANCE PERMIT TO ALLOW ONLY RESIDENTIAL USES, WHERE RESIDENTIAL AND COMMERCIAL USES ARE REQUIRED; ALLOW RESIDENTIAL USE ON THE GROUND FLOOR, WHERE RESIDENTIAL USES ARE ALLOWED ABOVE THE GROUND LEVEL ONLY; ALLOW 71 UNITS WITH AREA OF 650 SQUARE FEET, WHERE AREA OF 850 SQUARE FEET IS THE MINIMUM REQUIRED FOR 90% OF THE UNITS; ALLOW 38 FEET AND 112 FEET FRONT SETBACKS FACING WEST 78 ROAD, WHERE 10 FEET BUILT-TO-LINE ARE REQUIRED; ALLOW 104 PARKING SPACES, WHERE 176 PARKING SPACES ARE REQUIRED; ALLOW SURFACE PARKING AT THE FRONT SETBACK, WHERE SURFACE PARKING IS NOT ALLOWED AT THE FRONT; ALLOW 18.5% PERVIOUS AREA, WHERE 30% IS THE MINIMUM REQUIRED AND ALLOW 5 FEET LANDSCAPE BUFFER FACING WEST 78 ROAD, WHERE 7 FEET ARE REQUIRED; ALL CONTRA TO HIALEAH CODE OF ORDINANCES §§ 98-1630.1, 1630.2, 98-1630.3(e)(1), 98-1630.3(e)(4), 98-2189(16)a. AND 98-2056(b)(1). **PROPERTY LOCATED AT 340 WEST 78 ROAD, HIALEAH, FLORIDA, ZONED M-1, (INDUSTRIAL DISTRICT);** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Planning and Zoning Board at its meeting of June 24, 2020 recommended approval of this ordinance; and

**WHEREAS**, the developer has proffered a Declaration of Restrictions, to which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** Hialeah, Fla. Ordinance 2019-067 (August 27, 2019), attached hereto as Exhibit “A,” is hereby repealed and rescinded in its entirety.

**Section 2:** The below-described property is hereby granted a Special Use Permit (SUP) pursuant to Hialeah Code of Ordinances § 98-1630.8 to allow the expansion of the NBD (Neighborhood Business District) regulations.

**Section 3:** The below-described property is hereby granted a variance to allow only residential uses, where residential and commercial uses are required, contra to Hialeah Code of Ordinances § 98-1630.1 that as relevant provides: “No building or land shall be used and no building shall be hereinafter erected, constructed, reconstructed or structurally altered that is designed, arranged or intended to be used or occupied for any purpose, unless it provides residential use and one or more of the principal commercial uses...” ; allow residential use on the ground floor, where residential uses are allowed above the ground level only, contra to Hialeah Code of Ordinances § 98-1630.2 that as relevant provides: “Residential uses shall be allowed above the ground level only.”; allow 76 units with area of 650 square feet, where area of 850 square feet is the minimum required for 90% of the units, contra to Hialeah Code of Ordinances § 98-1630.2 that as relevant provides: “Each residential unit shall have minimum of 850 square feet, except that ten percent of residential units may have a minimum of 600 feet for studios or one bedroom units.”; allow 38 feet and 112 feet front setbacks facing West 78 Road, where 10 feet built-to-line are required, contra to Hialeah Code of Ordinances § 98-1630.3(e)(1) that as relevant provides: “Front setback and street side setback. For the pedestal or base of a building, a minimum setback of ten feet, built-to-line, or as provided in the urban design plan.”; allow 104 parking spaces, where 176 parking spaces are required, contra to Hialeah Code of Ordinances § 98-2189(16)a. that provides: “*Residential uses.* Parking for residential uses shall be two parking spaces for one or two bedrooms and one-half parking spaces for each additional bedroom. An additional one-quarter parking space for each dwelling unit shall be provided for guest parking. The guest parking requirement may be satisfied, in whole or in part, by the operation of valet

parking services for residential guests, approved by the city.” ; allow surface parking at the front setback, where surface parking is not allowed at the front, contra to Hialeah Code of Ordinances § 98-1630.3(e)(4) that provides: “Surface parking. To the extent that it is reasonably practical, no surface parking or loading areas shall be allowed on either a front setback or a side setback. Where surface parking is unavoidable, as in the example of retrofitting an existing site, the parking pavement shall be improved with stamped asphalt, brick pavers or similar distinct pavement.” ; allow 18.5% pervious area, where 30% is the minimum required and allow 5 feet landscape buffer facing West 78 Road, where 7 feet are required, contra to Hialeah Code of Ordinances § 98-2056(b)(1) that as relevant provides: “A minimum of 30 percent of the net residential land area shall be maintained in landscaped open space, which space may include recreation areas, swimming pools, and setback areas.”

**Section 4:** Property located at 340 West 78 Road, Hialeah, zoned M-1 (Industrial District) and legally described as follows:

A portion of the West ½ of Section 30, Township 52 South, Range 41 East, being more particularly described as:

Commence at the Northwest corner of said Section 30, and run S 3° 44' 17" East along the West line of said Section 30 for 953.50 feet to a point; thence run North 87° 02' 55" East along a line North of and parallel to the South line of said Section 30 for 401.37 feet to a point of beginning of the Tract of land hereinafter described: thence continue North 87° 02' 55" East for 183.82 feet to a point; thence run North 3° 44' 17" West along a line East of and parallel with the West line of said Section 30 for 414.52 feet to a point; thence run South 49° 26' 41" West along a line Southeasterly of and parallel with the Southerly right-of-way line of N.W. 119 Street expressly, as recorded in Plat Book 77, at Page 96 of the Public Records of Miami-Dade County, Florida, for 229.59 feet to a point; thence run South 3° 44' 17" East parallel with the West line of said Section 30 for 274.41 feet to the point of beginning; lying and being in the City of Hialeah, Miami-Dade County, Florida.

**Section 5: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6: Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 7: Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 8: Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 11 day of August, 2020.



Oscar De la Rosa  
Council Vice-President

Attest:

Approved on this 25 day of August, 2020.

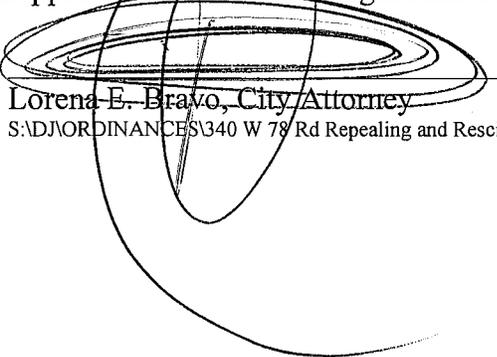


Marbelys Fatjo, City Clerk



Mayor Carlos Hernandez

~~Approved as to form and legal sufficiency:~~



Lorena E. Bravo, City Attorney

Ordinance was adopted by 5-1-1 vote with Councilmembers, Cue-Fuente, De la Rosa, Garcia-Roves, Tundidor, and Zogby, voting "Yes" and with Council Member Perez voting "No" and with Council President Hernandez absent.