

**ORDINANCE NO. 2018-135**

ORDINANCE REZONING PROPERTY FROM M-1 (INDUSTRIAL DISTRICT) AND A (AGRICULTURAL) TO C-2 (LIBERAL RETAIL COMMERCIAL DISTRICT) AND GRANTING A TEMPORARY WAIVER OF PLAT, PROVIDED THAT A FINAL PLAT IS APPROVED WITHIN 18 MONTHS OF APPROVAL OF THIS ORDINANCE PURSUANT TO LAND DEVELOPMENT CODE § 10-4 (C), AND GRANTING THE FOLLOWING VARIANCES SPECIFIC TO EACH PROSPECTIVE TRACT TO ALLOW FOR THE CONSTRUCTION OF A NEW MIXED-USE DEVELOPMENT PURSUANT TO THE NBD (NEIGHBORHOOD BUSINESS DISTRICT) REGULATIONS, TO INCLUDE 260 RESIDENTIAL UNITS AND APPROXIMATELY 11,000 SQUARE FEET OF RETAIL; AS TO PROSPECTIVE TRACT A COMPRISING APPROXIMATELY 5.02 ACRES IN AREA- GRANTING A VARIANCE PERMIT TO ALLOW LESS THAN 600 SQUARE FEET ON 18 STUDIO RESIDENTIAL UNITS, WHERE 600 SQUARE FEET IS THE MINIMUM AREA ALLOWED AND ALLOW LESS THAN 850 SQUARE FEET ON 60 RESIDENTIAL UNITS, WHERE 850 SQUARE FEET IS THE MINIMUM ALLOWED, CONTRA TO HIALEAH CODE OF ORDINANCES § 98-1630.2; GRANTING A VARIANCE PERMIT TO ALLOW A BUILDING MASS WITHOUT A DELINEATED BASE, MIDDLE AND CAP, WHERE A SEGMENTED MASS IS REQUIRED, CONTRA TO HIALEAH CODE OF ORDINANCES § 98-1630.3(C); GRANTING A VARIANCE PERMIT TO ALLOW A BUILDING FRONTAGE OF 71% AT THE BASE, WHERE 100% IS REQUIRED, CONTRA TO HIALEAH CODE OF ORDINANCES § 98-1630.3(D); GRANTING A VARIANCE PERMIT TO ALLOW 89.5 FEET FRONT SETBACK, WHERE 10 FEET BUILT-TO-LINE IS REQUIRED, CONTRA TO HIALEAH CODE OF ORDINANCES § 98-1630.3 (E)(1); GRANTING A VARIANCE PERMIT TO ALLOW FOR SURFACE PARKING ALONG THE FRONT SETBACK, WHERE SURFACE PARKING IS NOT ALLOWED AT THE

FRONT SETBACK, CONTRA TO HIALEAH CODE OF ORDINANCES § 98-1630.3(E)(4); AND GRANTING A VARIANCE PERMIT TO ALLOW 368 PARKING SPACES, WHERE 664 PARKING SPACES ARE REQUIRED, CONTRA TO HIALEAH CODE OF ORDINANCES § 98-2189 (16)a. AND b.; AS TO PROSPECTIVE TRACT B COMPRISING APPROXIMATELY 2.01 ACRES IN AREA- GRANTING A VARIANCE PERMIT TO ALLOW 7.6 FEET FRONT SETBACK FOR A PROPOSED TWO STORY COMMERCIAL BUILDING, WHERE 20 FEET IS THE MINIMUM REQUIRED, CONTRA TO HIALEAH CODE OF ORDINANCES §§ 98-1115 AND 98-1069(a); AS TO PROSPECTIVE TRACT C COMPRISING APPROXIMATELY 1.26 ACRES IN AREA- GRANTING A VARIANCE PERMIT TO ALLOW APPROXIMATELY 1.5 FEET LANDSCAPE BUFFER FOR A DISTANCE OF 200 FEET ALONG WEST 29TH STREET, WHERE 7 FEET IS THE MINIMUM REQUIRED, CONTRA TO THE LATEST EDITION OF THE HIALEAH LANDSCAPE MANUAL DATED JULY 9, 2015 PARAGRAPH D(7); AND AS TO PROSPECTIVE TRACT D COMPRISING APPROXIMATELY .61 ACRES IN AREA – GRANTING A VARIANCE PERMIT TO ALLOW 22 PARKING SPACES, WHERE 25 PARKING SPACES ARE REQUIRED, CONTRA TO HIALEAH CODE OF ORDINANCES § 98-2189 (7) AND (10) FOR THE CONSTRUCTION OF A COMMERCIAL DEVELOPMENT CONSISTENT WITH THE C-2 (LIBERAL RETAIL COMMERCIAL DISTRICT) REGULATIONS;. **PROPERTY LOCATED AT 2901 WEST 16 AVENUE, HIALEAH, FLORIDA.** ZONED M-1 (INDUSTRIAL DISTRICT); REPEALING ALL 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 October 24, 2018, recommended approval of this ordinance; and

**WHEREAS**, the developer has proffered a Declaration of Restrictive Covenants, which provides in part for reciprocal cross access and parking easements for the mutual benefit of all developments on prospective Tracts A, B, C and D, and to adequately manage the flow of vehicular traffic on site, to which the City accepts.

**WHEREAS**, the purpose of the NBD neighborhood business district is to provide mixed residential, retail, office and/or service-oriented uses that promote and encourage pedestrian access and regular use.

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

**Section 1: Rezoning/Temporary Waiver of Plat.**

The below-described property is hereby rezoned from M-1 (Industrial District) and A (Agricultural District) to C-2 (Liberal Retail Commercial District) to allow for the construction of a new mixed-use development including 260 residential units and approximately 11,000 square feet of retail pursuant to the NBD Neighborhood Business District as provided for herein; and allow a temporary waiver of plat provided that a final plat gets approved within 18 months of approval of this ordinance pursuant to § 10-4 (c) of the Hialeah Land Development Code that provides: “Temporary waiver of plat. A temporary waiver of plat is of a limited time duration and may be granted only conditioned on obtaining an approved plat within a reasonable time agreed to by the city.”

**Section 2:** The below-described property is hereby granted a variance permit as to prospective Tract A comprising approximately 5.02 acres in area to allow an area of less than 600 square feet on 18 studio residential units, where 600 square feet is the minimum area allowed, and allow area of less than 850 square feet on 60 residential units, where 850 square feet is the minimum allowed, contra to Hialeah Code of Ordinances § 98-1630.2 that provides: “Retail and professional uses shall be allowed only on the ground level of any building in mixed-use buildings. Office uses shall be allowed on all levels. Residential uses shall be allowed above the ground level only. 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 building mass without a delineated base, middle and cap, where a segmented mass is required, contra to Hialeah Code of Ordinances § 98-1630.3(c) that provides: “Building mass.

A building shall be defined a delineated base or pedestal, middle or tower and cap or penthouse. The building mass shall provide a segmented, reduced mass as the building reaches its full height, from a greater mass at the base to a lesser mass in the middle to smaller mass at the cap or penthouse.”; allow building frontage of 71% at the base, where 100% is required, contra to Hialeah Code of Ordinances § 98-1630.3(d) that in relevant part provides “Building frontage. Any building that fronts an existing or proposed street shall provide building frontage of 100 percent, at the base;...””; allow 89.5 feet front setback, where 10 feet built-to-line is 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 for a surface parking along the front setback, where surface parking is not allowed at the front setback, contra to Hialeah Code of Ordinances § 98-1630.3 (e)(4) that provides: “Surface parking. To the extent that is 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.”; and allow 368 parking spaces, where 664 parking spaces are required, contra to Hialeah Code of Ordinances § 98-2189 (16)a. and b. that provide: “a. 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. b. Commercial uses. The parking requirements for commercial uses as designated in this section shall apply...”;

**Section 3:** The below-described property is hereby granted a variance permit as to prospective Tract B comprising approximately 2.01 acres in area to allow 7.6 feet front setback for proposed two story commercial building, where 20 feet is the minimum required, contra to Hialeah Code of Ordinances §§ 98-1115 and 98-1069(a) that respectively provide: “In the C-2 liberal retail commercial district, the front yard shall be the same as in the C-1 district.”; “In the C-1 restricted retail commercial district, setbacks on all retail commercial property shall be 20 feet unless a setback is already established by two or more buildings in the block,...”;

**Section 4:** The below described property is hereby granted a variance permit as to prospective Tract C comprising approximately 1.26 acres in area to allow approximately 1.5 feet landscape buffer for a distance of 200 feet along west 29th street, where 7 feet is the minimum required, contra the latest edition of the Hialeah Landscape Manual Dated July 9, 2015 Paragraph (D)(7) that in relevant part provides: "Parking lot buffers. All parking lots adjacent to a right-of-way or private street shall be screened by a continuous planting and/or three (3)-foot high wall within a seven (7)-foot landscaped strip...";

**Section 5:** The below described property is hereby granted a variance permit as to prospective Tract D comprising approximately .61 acres in area for the construction of a commercial development consistent with the C-2 liberal retail commercial district regulations, to allow 22 parking spaces, where 25 parking spaces are required, contra to Hialeah Code of Ordinances § 98-2189 (7) and (10) that respectively provide: "Commercial uses, not found elsewhere in this section. One parking space for each 200 square feet of gross floor area of the floor with the greatest floor area within the building, and one parking space for each 500 square feet of the remaining floor area. Parking spaces under the building shall not be considered in the calculation of floor areas.";

**Section 6:** Property located at **2901 West 16 Avenue, Hialeah, Florida** and legally described as follows:

The West ½ of Tract 10, less the West 35 feet thereof, and the West ½ of Tract 9, less the West 35 feet thereof, less the East 8 feet and less the South 30 feet thereof, of FLORIDA FRUIT LAND COMPANY'S SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 2, at Page 17, of the Public Records of Miami-Dade County, Florida, in Section 11, Township 53 South, Range 40 East.

**Section 7: Repeal of Ordinances in Conflict**

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

**Section 8: 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 9: Severability Clause.**

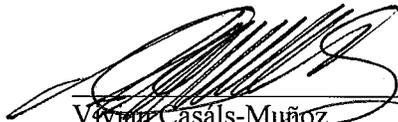
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or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

**Section 10: 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.

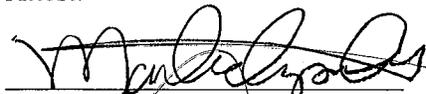
PASSED and ADOPTED this 27 day of November, 2018.

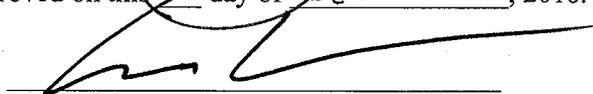
THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

  
Vivian Casals-Munoz  
Council President

Attest:

Approved on this 6 day of December, 2018.

  
Marbelys Fatjo, City Clerk

  
Carlos Hernandez, Mayor

Approved as to legal sufficiency and form:

  
Lorena E. Bravo, City Attorney

Ordinance was adopted by a 5-0-2 vote with Councilmembers, Zogby, Lozano, Casals-Munoz, Garcia-Martinez, Hernandez, voting "Yes" and with Councilmember Caragol and Cue-Fuente absent.