

# VETOED

ORDINANCE REZONING PROPERTY FROM R-1 (ONE FAMILY RESIDENTIAL DISTRICT) TO R-2 (ONE AND TWO FAMILY RESIDENTIAL DISTRICT) AND GRANTING A VARIANCE PERMIT TO ALLOW A DUPLEX ON A SUBSTANDARD-SIZED LOT HAVING A WIDTH OF 50 FEET, WHERE A MINIMUM AVERAGE WIDTH OF 75 FEET IS REQUIRED, HAVING A TOTAL AREA OF 6,750 SQUARE FEET, MORE OR LESS, WHERE AT LEAST 7,500 SQUARE FEET IS REQUIRED, TO ALLOW ONE OF THE UNITS WITH A TOTAL FLOOR AREA OF 428 SQUARE FEET, WHERE A MINIMUM TOTAL FLOOR AREA OF 1,000 SQUARE FEET IS REQUIRED, TO ALLOW A REAR SETBACK OF 1.10 FEET, WHERE 25 FEET ARE REQUIRED, AND A WEST SIDE SETBACK OF 1.05 FEET, WHERE 7.5 FEET ARE REQUIRED, CONTRA TO HIALEAH CODE §§ 98-544, 98-546, 98-547(a) AND 98-548. **PROPERTY LOCATED AT 117 EAST 10 STREET, HIALEAH, FLORIDA.** 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 May 14, 2014 recommended approval of this ordinance; and

**WHEREAS**, the applicant proffered to evict tenants from all illegal units no later than June 10, 2014, to redesign the proposed porch such that it integrates with the layout of the front unit, and to complete all improvements, including demolition and legalization, as required, within 180 days from the date a building permit is issued;

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

**Section 1:** The below-described property is hereby rezoned from R-1 (One Family Residential District) to R-2 (One and Two Family Residential District) and is hereby granted a variance permit to allow a duplex on a substandard-sized lot having each a width of 50 feet, where a minimum average width of 75 feet is required, having a total area of 6,750 square feet, more or less, where at least 7,500 square feet is required, to allow one of the units with a total floor area of 428 square feet, where a minimum total floor area of 1,000 square feet is required, to allow a rear setback of 1.10 feet, where a minimum 25 feet are required, to allow a west side setback of 1.05 feet, where a minimum 7.5 feet are required, contrary to Hialeah Code §§ 98-544, 98-546, 98-547(a) and 98-548 which provide in pertinent part: “The minimum building area in the R-2 one- and two-family residential district shall be one lot or parcel of land containing at least 7,500 square feet of area for each one-family or two-family residence. Such parcels or lots shall have an average width of at least 75 feet and shall have a minimum average depth of 100 feet.”, “In the R-2 one- and two-family residential district, there shall be side yards, the width of each to be not less than ten percent of the average width of the lot, but in no case shall each such side yard be less than 7 ½ feet in width.”, “In the R-2 one- and two-family residential district, every principal residential building shall provide a rear yard of a minimum depth of 25 feet to a rear lot line or front of an accessory building, and every accessory building shall provide a rear yard with a minimum depth of 7½ feet.” and “In the R-2 one- and two-family residential district, the total minimum floor area of two-family residences shall be 1,500 square feet, with the minimum ground floor area of two-

family residences to be 1,000 square feet, and the total living area of one unit to be not greater than 60 percent of the total living area of the two-family residence.”, respectively. Property located at 117 East 10 Street, Hialeah, Miami-Dade County, Florida and legally described as follows:

LOT 22, BLOCK 47, OF AMENDED PLAT OF FIRST ADDITION TO TOWN OF HI-A-LE-AH, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 5, AT PAGE 122, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

**Section 2: Repeal of Ordinances in Conflict.**

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

**Section 3: 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 4: 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 5: 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 10 day of June, 2014.

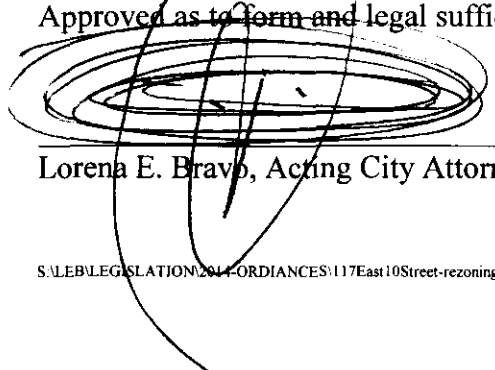
  
\_\_\_\_\_  
Isis Garcia-Martinez  
Council President

Attest: Approved on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

  
\_\_\_\_\_  
Marbelys Fatje, City Clerk

\_\_\_\_\_  
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
Lorena E. Bravo, Acting City Attorney

**VETOED**

Mayor Carlos Hernandez vetoed Ordinance 2014-33. There was no motion to override the Mayor's veto; therefore, the veto stands.

June 20, 2014

Dear Members of the Hialeah City Council:

In accordance with the authority vested in the Mayor of the City of Hialeah, Florida, pursuant to Hialeah Charter §2.01(a)(7), I hereby exercise my veto over Hialeah, Fla., Ordinance 14-33 passed by the Hialeah City Council on June 10, 2014 for the following reasons and objections:

1. Hialeah, Fla. Ordinance 14-33 rezones property located at 117 East 10 Street, Hialeah Florida, from R-1 (One-Family Residential) to R-2 (One- and Two Family Residential) and grants several variances from the R-2 zoning regulations including, lot size, and floor area and setbacks as they pertain to the second unit.
2. Upon consideration of the characteristics of the neighborhood, radius map, proposed site plan, tapes of the meetings, planner's report, the property's extensive code enforcement history, existing conditions on the property, and relevant provisions of the City's comprehensive plan and zoning regulations, I disagree with the rezoning and associated variances granted for the creation of a second residential dwelling on this property.
3. The City Council did not fully consider the negative impacts on neighboring properties of the creation of a second unit in a cottage that was built approximately in 1936. The cottage, when built, was not intended to be used a second residential dwelling. It was originally built as a 335-square foot structure to accommodate temporary or occasional guests.
4. Over time, the structures on the property where modified without building permits to allow for multiple family occupancy. The cottage, despite being a non-conforming use, was expanded without a permit and utilized as an additional residential unit. The multiple family occupancy of the property negatively impacted the neighborhood by allowing for overcrowding and reducing green space for recreation on the subject property.
5. The use, the size, and the distance from neighboring properties (setbacks) are not in harmony with the general purpose and intent of the Code regulations.
6. The Ordinance grants a 60% variance of the floor area requirements and allows the proposed second unit to remain 1-foot, more or less, from the rear property and the side property. Furthermore, the proportion of the floor area of the second unit to the total floor area exceeds 60%.

7. The City Council did not consider that allowing a second unit of the size proposed and 1-foot away from the rear and side property lines:
  - a. does not provide for proportionality in design or in living area between the units;
  - b. does not provide adequate yards for light, ventilation and recreation to the second unit; and
  - c. infringes on the neighboring properties' privacy in the use of their yards.
  
8. The Ordinance basically allows the legalization of an expanded non-conforming cottage in present condition, without any considerable structural improvements or redevelopment of the entire property, to justify the rezoning and variances sought. This is contrary to the public interest in that it allows the applicant a greater use of its property while unnecessarily burdening the neighboring properties.

Based on the foregoing and pursuant to the powers granted me under the Charter of the City of Hialeah, I hereby exercise my right to veto Hialeah, Fla., Ordinance 14-33.

Sincerely,

Carlos Hernandez  
Mayor