

RESOLUTION NO. 18-

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A SITE PLAN APPLICATION FOR PUBLIX SUPERMARKETS TO PERMIT A COMMERCIAL MIXED-USE DEVELOPMENT CONSISTING OF 87,444 SQUARE FEET ON PROPERTY LOCATED EAST OF OLD CUTLER ROAD, WEST OF SW 92ND PLACE, NORTH OF SW 212 STREET, AND SOUTH OF SW 208TH STREET, AS LEGALLY DESCRIBED IN EXHIBIT “A”, CONSISTING OF APPROXIMATELY 13.18 ACRES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Publix Supermarkets, Inc. (the “Applicant”) has submitted a site plan application (the “Site Plan Application”) to permit an 87,444 square foot commercial mixed-use development on a proposed 13.6 acres development site consistent with the requirements set forth in Section 3-33 of the Town Code; and

WHEREAS, the commercial mixed-use development is to be located along Old Cutler Road between SW 212 Street and SW 208 Street on property zoned NC-1, as legally described in Exhibit “A”; and

WHEREAS, the proposed development provides for the location of pedestrian scaled shops, restaurants, services, and employment opportunities within walking distance of several neighborhoods along the Old Cutler Road corridor; and

WHEREAS, in addition to the Site Plan Application, on February 23, 2018, the Applicant submitted a new development application to the Town for conditional use and variance approvals; and

WHEREAS, public notice was provided in accordance with law; and

WHEREAS, after a duly noticed public hearing, the Town Council, based upon competent substantial evidence in the record, finds that the Site Plan Application meets the requirements of the Town Code and is consistent with the Town’s Comprehensive Plan; and

WHEREAS, the Town Council finds that this Resolution is in the best interest and welfare of the residents of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval. The Town Council, after review of competent substantial evidence in the record and a duly noticed public hearing, hereby approves the Site Plan Application in accordance with the plans entitled “Shoppes of Cutler Bay”, prepared by Zamora & Associates, Inc., dated September 9, 2018, as amended.

Section 3. Conditions. The approval granted by this Resolution is subject to compliance with the following conditions, to which the Applicant stipulated and agreed to at the public hearing:

1. General Conditions

1.1 The Applicant shall execute a covenant in lieu of unity of title to ensure access between parcels and to SW 208th Street, in a form approved by the Town Attorney, consistent with the requirements of the Town’s Land Development Code.

1.2 The Applicant shall install an electronic cart system to ensure that all shopping carts are kept within the property.

1.3 All impact fees shall be paid by the Applicant prior to issuance of the first building permit.

1.4 The Applicant shall provide a letter acknowledging compliance with the applicable Level of Services requirements prior to the issuance of the final building permit to the property.

1.5 Applicant shall submit verification from Miami-Dade County that the proposed new development has been reviewed and approved for all access management consideration prior to the issuance of the final building permit.

1.6 Flood elevations shall be reviewed and approved for consistency with FEMA requirements and the Town’s National Insurance Flood Program Ordinance prior to issuance of the first building permit.

1.7 The finish on the wall behind the grocery store which separates the residential area from the grocery shall be coated or constructed with graffiti resistant material.

1.8 The proposed project shall be built in substantial conformance with the plans entitled “Shoppes of Cutler Bay”, prepared by Zamora & Associates, Inc., consisting of 18 sheets dated September 9, 2018.

1.9 The Applicant shall comply with applicable conditions and requirements recommended by Miami-Dade County Public Works Department, Fire Rescue Department, and the Department of Regulatory and Economic Resources (DRER).

1.10 Prior to the issuance of a Certificate of Occupancy for the buildings in Parcel 1, the Applicant shall have secured a building permit for, and commenced construction of, at least one of the buildings fronting Old Cutler Road on Parcel 2 or Parcel 3. For the purposes of this condition, construction shall be deemed to have commenced once the building's footers have been poured in the ground.

1.11 The Applicant shall proffer a "cross-parking sharing agreement" that includes Parcels 2 through 3 and the 128 parking spaces required for Building B (Retail/Restaurants) in Parcel 1 prior to the issuance of the first building permit.

1.12 Prior to the issuance of the first principal building permit for Buildings B, C, D, and E, the Applicant shall post a performance bond of five (5) percent of the total cost of the building in order to secure performance and fulfillment of the Applicant's obligation to obtain the applicable green certification noted on the site plan. In lieu of the bond required by this Section, the Town may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution in the State of Florida in the name of the Applicant and the Town of Cutler Bay. The letter of credit or escrow shall be in the same amount of the bond if it were posted. If the project fails to meet the criteria required for certification within one (1) year after receiving the Town's certificate of occupancy, the Applicant shall either request an extension or forfeit one hundred percent (100%) of the bond. The Applicant, for good cause shown, may request an extension of time of up to one (1) additional year to achieve certification. Such extension may be granted at the sole discretion of the Town Council after having considered the factors and improvements necessary to achieve the requisite certification. If certification is not achieved within two (2) years after receiving the Town's certificate of occupancy, the Applicant shall forfeit one hundred percent of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Green Building Fund established by the Town.

1.13 Buildings A and B on Parcel 1 and Building D on Parcel 2 shall be built simultaneously.

1.14 Prior to the issuance of building permits for buildings C and E, Applicant shall submit elevations in compliance with Section 3-80(1).

2. Construction General Conditions

2.1 Construction Staging

2.1.1 The Applicant shall submit a construction staging plan for review and approval prior to commencement of construction.

2.1.2 A Construction and Maintenance of Traffic (MOT) Plan shall be provided by the Applicant to the Building and Public Works Departments for approval prior to start of construction. Access points by construction vehicles shall be provided within the MOT. No construction

vehicles shall access the property through the adjacent neighborhood. All construction vehicles must use Old Cutler Road, unless otherwise approved by the Department.

2.2 The Applicant shall provide a Construction Air Quality Management Plan to the Department prior to the start of construction.

2.3 A Construction, Demolition and Materials Management Plan (CDMMP) must be submitted by the Applicant at time of building permit.

2.4 The Applicant shall provide an Erosion Control Plan prior to the issuance of a building permit. The Applicant shall submit a plan for erosion and sedimentation control to be implemented before the site is cleared or graded including areas where top soil will be removed and contours of slopes will be cleared. The Plan shall also include location and type of erosion control measures, storm water and sediment management systems, and a vegetative plan for temporary and permanent stabilization. The Plan shall remain on-site for the duration of the construction activity.

3. Landscaping

3.1 The Applicant shall meet all of the minimum requirements of the Town Code, Chapters 18 and 24 of the Miami-Dade County Code and specifically comply with all conditions imposed by Miami-Dade County Department of Regulatory and Economic Resources (DRER).

3.2 The property shall be landscaped in accordance with the landscape plan, prepared by GSLA, dated October 8, 2018 and included with the site plan submittal.

3.3 The Applicant shall maintain the areas identified as “buffer” in the site plan, and shall be required to perpetually maintain the landscaping within the buffer with the identified native species and other plantings provided in the landscape plan. For five (5) years following the issuance of a certificate of occupancy for the buildings on Parcel 1, the Applicant or its designee shall provide an annual update on the maintenance of the buffer areas and natural storm water retention areas to the Town’s Department of Community Development.

3.4 The Applicant shall preserve existing trees (including native trees) during the development of the project, wherever possible. If the trees must be removed, the Applicant shall be required to mitigate the impact in accordance with DRER requirements. If the relocated trees do not survive, the Applicant shall be required to replace the trees in compliance with DRER requirements.

4. Traffic

4.1 Prior to the issuance of a building permit on the property, the Applicant shall execute the proffered “Declaration of Restrictions” providing for the construction of the following necessary roadway improvements:

- (a) Southwest-bound left-turn storage lane at Marlin Road.
- (b) Southwest-bound left-turn storage lane at Snapper Place.
- (c) An additional approach lane to the westbound approach of SW 208th Street and Old Cutler Road.

These improvements shall be completed prior to the issuance of a Certificate of Occupancy for any building on the property.

4.2 Delivery trucks shall only enter the property from Old Cutler Road. Delivery trucks leaving the grocery store shall exit the property through SW 208th Street east to SW 92 Avenue. No delivery trucks shall use the local neighborhood roads as a route to reach the property.

4.3 For the intersection of SW 87th Ave. at SW 208th St., all possible mitigation measures should be further evaluated by the developer and agreed upon by the County. Any improvements shall be completed prior to the issuance of a Certificate of Occupancy for any building on the property.

5. Off-Street Parking/Lighting

5.1 The number and type of trees for the parking lot shall be reviewed and approved by the Building Department prior to the issuance of a building permit.

5.2 The Applicant shall install and maintain parking area light fixtures which project the light rays directly to the parking surface, and shall include shields which restrict projection of light rays outward to adjacent properties and also restrict the upward projection of light rays into the night sky.

5.3 The parking lot lights and all other outdoor lighting (whether for security, roadway or parking) not attached to structures shall be designed, located and mounted at heights no greater than twenty-five (25) feet above grade.

5.4 Due to their high energy efficiency, long life and spectral characteristics, Pulse-Start Metal Halide or LED lamp sources shall be the illumination sources for outdoor lighting.

5.5 In an effort to illuminate the walkway/trail within the landscape buffer behind Parcel 1, as shown on the site plan, the Applicant shall install LED lighting mounted on bollards or other structures, which structures shall be no higher than five (5) feet above grade, along the sidewalk /trail behind the grocery store.

6. Noise

6.1 No loud music, large congregations of people, or noises from other activities not related to the operations of the grocery store shall be permitted near the residential community located on the eastern portion of the site.

6.2 Testing of the emergency generator shall be restricted to Monday through Friday, between the hours of 7:00 am and 7:00 pm. No testing shall occur during the weekends.

6.3 Sound barrier panels shall be installed on the roof to shield the sound from rooftop mechanical equipment.

7. Environmental

7.1 The Applicant shall provide a space for the collection and storage of recyclables. This provision provides convenient access to recycling facilities and encourages building occupants to utilize the recycling programs to their fullest. The Applicant shall ensure compliance with the minimum solid waste and recyclables storage requirements. The Applicant shall depict the collection and storage area(s) location on submitted plans.

7.2 The Applicant shall meet the requirements of the Miami-Dade County Water-Use Efficiency Standards Manual, effective January 2009, as may be amended from time to time.

7.3 All storm water shall be retained inside the property. All storm water drainage systems shall be maintained in working order at all times in order to avoid localize flooding during and after a storm. Parking shall be prohibited on top of any drainage inlet or drainage manhole.

7.4 Trash containers and mechanical equipment shall be located in a side parking area, if no rear parking is available. Trash containers and mechanical equipment shall be screened from view from the public right of way.

8. Operations

8.1 Service and delivery vehicles, including solid waste pick-up, shall be restricted to Monday through Friday, between the hours of 7:00 a.m. to 7:00 p.m. Saturday deliveries shall be allowed from 10:00 a.m. to 4:00 p.m.

9. Signs

9.1 The Applicant shall provide a Uniform Sign Plan prior to submitting for building permit approval.

9.2 The building signs shall be consistent with the Town's Sign Regulations in Article VIII of Chapter 3 of the Town Code.

10. Building

10.1 The main entrance of Buildings C, D, and E shall front Old Cutler Road.

10.2 The Applicant shall use interior paints and wood finishes with low volatile organic compound levels that do not exceed 50 grams per liter flat, or 150 grams per liter non-flat. This shall be noted on the approved plans.

10.3 Service, delivery and storage areas and equipment shall be adequately screened and located away from view of adjacent properties, in accordance with the proposed site plan. The compactor area shall be kept clean and odor free at all times.

11. Enforcement

11.1 Noncompliance with the approved site plan and the terms of this approval shall be considered a violation of the Town Code. Penalties for such violation(s) shall be prescribed by the Town Code, which include, but are not limited to, the revocation of the approval granted by this Resolution.

Section 4. Violation. Failure to adhere to the terms of this approval shall be considered a violation of the Town Code. Penalties for such violation shall be as prescribed by the Town Code, which include, but are not limited to, the revocation of the approval granted by this Resolution.

Section 5. Effective Date. This Resolution shall take effect immediately upon enactment.

PASSED AND ADOPTED this _____ day of October, 2018.

Attest:

PEGGY R. BELL
Mayor

DEBRA E. EASTMAN, MMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.
Town Attorney

Moved By: _____
Seconded By: _____

FINAL VOTE AT ADOPTION:

Mayor Peggy R. Bell _____

Vice Mayor Sue Ellen Loyzelle _____

Council Member Mary Ann Mixon _____

Council Member Michael P. Callahan _____

Council Member Roger Coriat _____