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**VILLAGE OF ESTERO, FLORIDA
ZONING
ORDINANCE NO. 2019 - 29**

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**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE
VILLAGE OF ESTERO, FLORIDA, APPROVING WITH
CONDITIONS A REZONING FROM COMMERCIAL
PLANNED DEVELOPMENT TO MIXED USE PLANNED
DEVELOPMENT TO ALLOW A MULTIPLE FAMILY
AND COMMERCIAL DEVELOPMENT ON PROPERTY
LOCATED 1,000 FEET WEST OF INTERSTATE 75 AND
SOUTH OF CORKSCREW ROAD CONSISTING OF
APPROXIMATELY 43 ACRES; PROVIDING FOR
SEVERABILITY; AND PROVIDING AN EFFECTIVE
DATE.**

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WHEREAS, ESTERO CROSSING, LLC represented by Keith Gelder, Stock Development (the “Applicant”), filed applications to amend the Transitional Comprehensive Plan by adding a new Policy, and a rezoning from Commercial Planned Development to Mixed Use Planned Development for a property located at 10500 Corkscrew Road, Estero, FL, consisting of approximately 43 acres (the “Property”); and

WHEREAS, the Property STRAP number is 35-46-25-E1-42192.2338, and the Property is legally described in Exhibit A attached hereto; and

WHEREAS, the Applicant requested a rezoning from the Commercial Planned Development District (CPD) to Mixed Use Planned Development District (MPD) (Case number DCI2015-00001); and

WHEREAS, the applicant is requesting a maximum of 350 multiple-family units on the residential portion of the site, with an alternative option for a 120-room hotel on one residential tract, and 60,000 square feet of commercial uses on the proposed commercial tract.

WHEREAS, the Applicant has requested several deviations; and

WHEREAS, the public information meeting was held on June 16, 2015 and after a duly noticed public hearing held on March 29, 2016 and continued to February 21, 2017 and March 21, 2017, the Planning and Zoning Board recommended transmittal of the Comprehensive Plan Amendment and approval with conditions of the rezoning request, including deviations; and

WHEREAS, a duly noticed first reading for the rezoning ordinance was held before the Village Council on May 24, 2017; and

WHEREAS, on May 24, 2017, the Council voted to not transmit the proposed Comprehensive Plan Amendment, and continued the zoning case indefinitely to give the applicant the opportunity to be considered under the new Comprehensive Plan which was being prepared; and

50 **WHEREAS**, the Comprehensive Plan was adopted by the Village Council on June 13,
51 2018; and

52
53 **WHEREAS**, the Plan is adopted but not yet effective due to an administrative
54 challenge; and

55
56 **WHEREAS**, the applicant has revised its zoning application and requests that the
57 application be reviewed under the new Comprehensive Plan;

58
59 **WHEREAS**, the Planning and Zoning Board considered the revised request on
60 February 19, 2019, with a tie vote (motion to approve failed); and

61
62 **WHEREAS**, the applicant made additional revisions to the request after the Planning
63 and Zoning Board meeting; and

64
65 **WHEREAS**, a duly noticed first reading (Ordinance 2017-05) was held before the
66 Village Council on May 24, 2017; and

67
68 **WHEREAS**, after the application was subsequently revised, a duly noticed first
69 reading and public hearing was held before the Village Council on October 16, 2019; and

70
71 **WHEREAS**, a duly noticed second reading and public hearing was held before the
72 Village Council on _____, 2019, at which time the Village Council gave
73 consideration to the evidence presented by the Applicant and the Village staff, the
74 recommendations of the Planning and Zoning Board and the comments of the public.

75
76 **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,
77 Florida:

78
79 **Section 1. Rezoning.**

80
81 The Village Council approves with conditions the rezoning of the Property from
82 Commercial Planned Development District (CPD) to Mixed Use Planned Development
83 District (MPD), to allow residential and commercial use as outlined below, and subject
84 to the following conditions and deviations.

85
86 **Section 2. Conditions.**

87
88 1. Master Concept Plan

89
90 Development of this project must be consistent with the Master Concept Plan
91 (MCP) titled “Estero Crossing”, stamped “Received October 1, 2019”, except as
92 modified by the conditions below.
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2. Development Parameters

Development is permitted at a maximum as follows:

- 60,000 square feet of commercial use
- 338 multi-family units if all residential
- 312 multi-family units if Tract H/R is developed as hotel
- alternative 120-room hotel on Tract H/R

3. Maximum Building Height

Commercial - 45 feet (3-story) for commercial buildings north of the reverse frontage road (including architectural features)

Residential - 50 feet (4-story) with additional 5 feet for architectural features for Buildings 1, 2, 5 and 6

45 feet with additional 5 feet for architectural features for Buildings 3 and 4

Hotel - 50 feet (4-story) with additional 5 feet for architectural features

4. Uses and Site Development Regulations

The following limits apply to the project and uses:

a. Schedule of Uses

See attached Exhibit.

Agricultural Uses are not permitted uses within this planned development.

b. Site Development Regulations

See attached Exhibit.

5. Effective Date

The rezoning shall not be effective until such time that the Village Comprehensive Plan adopted on June 13, 2018 is effective.

6. Traffic Signal

The developer, successor or assigns (owner) is responsible for a proportionate share of the cost of signalization at the intersection of Corkscrew Road and Estero Town Commons Place, as part of Phase I and prior to issuance of any development order.

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7. Reverse Frontage Road

- a. The construction of the reverse frontage road and traffic signal at Estero Town Commons Place and Corkscrew Road must be complete and fully operational prior to the issuance of the first certificate of compliance for vertical development within the planned development.
- b. The reverse frontage road will contain planted medians as depicted in the Pattern Book to create an attractive streetscape. The reverse frontage road access must meet the 125-foot connection separation Land Development Code (LDC) standard for a local street.

8. Right-of-Way

The developer is responsible for dedication of additional right-of-way for storage/stacking of vehicles at Estero Town Commons Place to accommodate additional turn lane(s), if the Community Development Director determines this is needed as part of the first development order.

9. Construction Traffic

Heavy construction vehicles serving the project (vehicles having more than 2 axles) are prohibited from accessing the property via Corkscrew Woodlands Boulevard.

10. Phasing

- a. The first phase of the project will include construction of the reverse frontage road, the traffic signal at Corkscrew Road and Estero Town Commons Place, residential landscape buffers and any work associated with the preserve areas as shown on the Master Concept Plan.
- b. The second phase of the project (residential and initial commercial development) must also include at least half of the commercial project and at least half of the placemaking elements to ensure that the project is developed as a mixed-use development as proposed, and to justify the maximum density.

11. Bonus Density

Bonus density for up to 38 units has been requested. Bonus density is not approved.

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12. Maintenance

All common areas including, but not limited to, the reverse frontage road and the platted portion of Corkscrew Woodlands Boulevard, shall be maintained in perpetuity by a Property Owners Association or similar entity that will consist of both the residential and commercial parcels.

13. Hours of Operation

Hours of Operation are limited to 5 a.m. to midnight 7 days a week for all commercial uses, except the hotel.

14. No Blasting

No development blasting is permitted as part of this project.

15. Utilities

Water and sewer services are available to the site, and this development must connect to those services as part of any local development order for the site.

16. Elevators and Construction Materials

Residential buildings will be constructed with concrete block materials and will include elevators as proposed by the applicant.

17. Pocket Park

The pocket park shown in the Pattern Book shall be open to the public and designed to include shade trees and seating areas through a public easement or similar document or condition acceptable to the Village attorney at time of development order.

18. Outdoor Display/Storage

No outdoor display or outdoor storage is allowed on any of the commercial parcels.

19. Pattern Book

The development must be consistent with the Pattern Book “Estero Crossing” dated October 2019. Specific details of the Placemaking elements including, but not limited to, a landmark or fountain feature, paseo, courtyard area, pocket park, and raised pedestrian connections will be provided prior to Design Review Board approval.

230 The Pattern Book is not conceptual. Photographic images may be illustrative, but
231 development must be in substantial compliance with the Pattern Book, including
232 a consistent architectural and landscape theme for all commercial and residential
233 development.

234
235 Signage, as shown in the Pattern Book, is illustrative for design purposes and
236 must be in compliance with the Land Development Code, except where
237 deviations have been granted.

238
239 20. Sidewalk & Pedestrian Connections

240
241 a. Sidewalks and pedestrian connections must be provided consistent with the
242 Pattern Book and Land Development Code. The proposed secondary egress
243 on the west side of the residential project must be a full access with
244 pedestrian connection to the property to the west (Lowe's Plaza).

245
246 b. Pedestrian walkways will be provided through parking lots to each entrance
247 to the residential buildings as part of the local development order. Main
248 walkways will be raised and constructed of paver bricks or similar
249 materials.

250
251 21. Entrance Gates/Gatehouses

252
253 Entrance gates and/or gatehouses shall be in conformance with the Land
254 Development Code for location, access, stacking, and turn-around except as may
255 be granted by deviation.

256
257 22. Billboard

258
259 The billboard located on the commercial parcel shall be removed in conjunction
260 with the issuance of a local development order for the commercial property and
261 prior to any certificate of completion being granted.

262
263 23. Hurricane Evacuation

264
265 The property developer shall provide a hurricane evacuation plan and any
266 mitigation, as necessary, in accordance with LDC section 2-485 prior to approval
267 of the first local development order for residential uses.

268
269 24. Buffers

270
271 As part of local development order approval, the development order plans must
272 demonstrate buffering consistent with the Master Concept Plan, the Land
273 Development Code, and the Pattern Book.

274 As part of local development order approval, all buffer plantings must be 100%
275 native vegetation.

276
277 Residential buffers will be planted as part of the first phase of the residential
278 project.

279
280 25. Protected Species

281
282 As part of local development order approval, a current protected species survey
283 must be submitted for the project site. For development in any areas that would
284 impact gopher tortoises, a gopher tortoise management plan must be submitted to
285 staff for review and approval. This plan must include information on onsite or
286 offsite relocation efforts as reviewed and approved by the Florida Fish and
287 Wildlife Conservation Commission (FFWCC).

288
289 Issuance of a vegetation removal permit for development in any areas that would
290 impact gopher tortoises does not authorize the property owner to commence
291 construction until such time as all other applicable state or federal permits are
292 obtained. Prior to excavation and moving of any gopher tortoises, a copy of the
293 appropriate gopher tortoise permit issued by the FFWCC must be submitted to
294 the Village Community Development Director.

295
296 26. Open Space & Indigenous Preserve

297
298 Development order plans must depict open space in compliance with the
299 approved Master Concept Plan open space calculations table.

300
301 Development order plans must also depict the preservation of 9.12 acres with
302 credits of indigenous preserves in compliance with the approved Master Concept
303 Plan as detailed in the Open Space and Indigenous Plan sheet.

304
305 27. Replanting Plan

306
307 In accordance with the South Florida Water Management District Environmental
308 Resource Permit (Exhibit 3.2, Page 5 of 9), the replanting within the enhanced
309 wetlands in the preserve area shall consist of 3-gallon pine trees to achieve a
310 density of 220 trees per acre and scattered clusters of shrubs when there are fewer
311 than 200± live native trees per acre greater than 10 feet in height, in addition to
312 the enhanced buffer requirements set forth in the Pattern Book.

313
314 28. Vehicular/Pedestrian Impacts

315
316 Approval of this zoning request does not address mitigation of the project's
317 vehicular or pedestrian traffic impacts. Additional conditions consistent with the
318 LDC may be required to obtain a local development order. Additional right-of-

319 way may be required to accommodate storage/stacking of vehicles at Estero
320 Town Commons Place/Corkscrew Road.

321
322 29. Concurrency

323
324 Approval of this rezoning does not constitute a finding that the proposed project
325 meets the concurrency requirements set forth in LDC Chapter 2 and the
326 Comprehensive Plan. The developer is required to demonstrate compliance with
327 all concurrency requirements prior to issuance of a local development order.

328
329 30. Solid Waste Management

330
331 As part of any local development order approval for vertical development, the
332 development order plans must include facilities in compliance with LDC Section
333 10-261 and Solid Waste Ordinance #11-27 for the pick-up/disposal of solid waste
334 and recyclables. The minimum area required for and specific locations of these
335 facilities, as well as the architectural and design features, will be reviewed at the
336 time of local development order application.

337
338 31. Hotel Use

339
340 Any hotel use must contain retail, open to the general public on the ground floor.
341 Retail uses may include uses that are ancillary to the hotel, such as restaurants,
342 cafes, as well as fitness centers and spas that offer membership to the general
343 public.

344
345 32. Promenade and Public Open Space Area

346
347 The promenade within the commercial area and the public open space area as
348 defined on the Master Concept Plan may be used for outdoor seating in
349 conjunction with restaurants. Outdoor service of alcohol beverages will require
350 consumption on premises approval by the Planning and Zoning Board in order to
351 review hours of operation and other relevant factors. Outdoor entertainment will
352 require a temporary or special event permit.

353
354 **Section 3. Deviations.**

355
356 Deviation 1 (Overhead power lines)

357
358 Deviation from LDC Section 33-112 requiring all utilities be located underground
359 unless located within a public right-of-way to allow the existing overhead lines
360 on the south side of Corkscrew Road to remain overhead within the existing FPL
361 easement.

362

363 This deviation is approved for existing overhead lines only. New or replacement
364 lines must be underground.

365
366 Deviation 2 (Setback from Corkscrew Road)

367
368 Deviation from LDC Section 33-400 regulating setbacks within the Corkscrew
369 Road Overlay and to allow the proposed Development Regulations included with
370 this application.

371
372 This deviation is approved.

373
374 Deviation 3 (Setback from Corkscrew Road)

375
376 Deviation from LDC 34-2192 (b) (5) requiring parking lots, access streets and
377 drives to be setback a minimum of 75 feet from the Corkscrew Road right-of-way
378 to allow a minimum setback of 20 feet for parking lots on Corkscrew Road instead
379 of 75 feet.

380
381 This deviation is approved.

382
383 Deviation 4 (Package store separation)

384
385 Deviation from Estero LDC Section 34-1263(e) providing that package stores
386 may not be located closer than 500 feet to a park or dwelling unit to allow a 90-
387 foot separation for all uses internal to the property.

388
389 This deviation is approved.

390
391 Deviation 5 (Second monument sign)

392
393 Deviation from LDC Section 30-153(3)(a) that allows each individual
394 establishment one (1) ground-mounted sign and Section 33-383(9) which
395 prohibits offsite directional signage sign to allow a second ground-mounted sign
396 in the commercial area to identify the Residential portion of the overall
397 development.

398
399 This deviation is approved.

400
401 Deviation 6 (Offsite directional sign)

402
403 Deviation from LDC Section 30-181(a)(1)a. that allows a maximum of a 64-
404 square foot non-illuminating directional sign to be placed along an arterial street
405 within 500 feet of the nearest intersection involving a turning movement to the
406 development but shall not be placed closer than 50 feet from the intersection to
407 allow an illuminated directional sign at the intersection of Corkscrew Road and

408 Estero Town Commons Place (aka the entrance to Lowe’s shopping center) with
409 a 10-foot setback from the intersection. The deviation is for the residential project
410 identification sign.

411
412 This deviation is approved.

413
414 Deviation 7 (Sign setbacks)

415
416 Deviation from LDC Sections 33-385(a)(3) and 30-153(3)(e) requiring the sign
417 setback be a minimum of 15 feet from the right-of-way. The applicant is
418 requesting to install the Residential Project Identification Sign and the
419 Commercial Outparcel Monument Signs at a 10-foot setback from Corkscrew
420 Road.

421
422 This deviation is approved.

423
424 Deviation 8 (Building height)

425
426 Deviation from LDC Section 33-229 which limits the building height outside of
427 the Interstate Highway Interchange Area to a maximum of 3 stories or 45 feet,
428 whichever is less, to allow a maximum building height of 55 feet (4 stories) for
429 the residential and hotel components within this development. The 55 feet would
430 include 5 feet for architectural features.

431
432 This deviation is approved as requested for all buildings except Buildings 3 and
433 4, which are approved for a maximum height of 45 feet plus 5 feet for
434 architectural features.

435
436 Deviation 9 (Connection separation for residential road along public park)

437
438 Deviation from LDC Section 10-285(a) which requires a minimum roadway
439 connection separation distance of 125 feet for local roads, to allow for a
440 separation of 74 feet for the two one-way streets on the east and west side of the
441 public park on the Master Concept Plan.

442
443 This deviation is approved.

444
445 Deviation 10 (Landscape buffers)

446
447 Deviation from LDC Section 33-351 that requires a 20 foot Type D Buffer
448 between roadways and commercial & multi-family residential uses, to eliminate
449 the buffer requirement along the internal frontage roadway and instead provide
450 an enhanced streetscape plan.

451

452 This deviation is approved subject to the frontage road landscape plan contained
453 in the Pattern Book.

454

455 Deviation 11 (Gates)

456

457 Deviation from LDC Section 34-1748(1)d.1. which states that access gates must
458 be located a minimum of 100 feet back from the existing or planned intersection
459 street right-of-way or easement to allow a minimum setback of 40 feet for the
460 secondary access location.

461

462 This deviation is approved.

463

464 Deviation 12 (Connection separation for hotel access)

465

466 Deviation from LDC Section 10-285(a) [Table 1] which requires a minimum
467 roadway connection for separation distance of 60' for access roads or accessways
468 to allow a minimum separation of 48' for the hotel access from the internal
469 accessway serving the multi-family portion of the project.

470

471 This deviation is approved.

472

473 **Section 4. Findings and Conclusions.**

474

475 Based upon an analysis of the application and the standards for approval in the Land
476 Development Code, the Council finds and concludes as follows:

477

478 1. The applicant has provided sufficient justification for the rezoning by
479 demonstrating compliance with the Land Development Code.

480

481 2. The rezoning is consistent with the densities and uses in the Village Plan as
482 amended and with the proposed conditions. The application will be consistent
483 with the Village Comprehensive Plan adopted on June 13, 2018, upon the Plan
484 becoming effective.

485

486 3. Urban services will be available and adequate to serve the proposed use.

487

488 4. The proposed uses, with the recommended conditions, are appropriate at the
489 subject location.

490

491 5. There will be additional trips generated by the project, but there will be fewer
492 trips generated on the roadways than if developed under the existing commercial
493 zoning. Approval of the request will not place an undue burden upon existing
494 transportation facilities because Interchange improvements are beginning
495 construction in October 2019. There is an intersection level of service issue that

496 will necessitate a traffic light for operational safety and which is addressed by a
497 condition of approval.

498
499 6. The recommended conditions to the Master Concept Plan and rezoning provide
500 sufficient safeguards to the public interest and are reasonably related to impacts
501 on the public's interest created by or expected from the proposed development.

502
503 7. The deviations recommended for approval:
504
505 (a) Enhance the planned development; and
506
507 (b) Preserve and promote the general intent of the LDC to protect the public,
508 health, safety and welfare.

509
510 **Section 5. Exhibits.**

511
512 The following exhibits are attached to this Ordinance and incorporated by reference:

- 513
514 Exhibit A Legal Description
515 Exhibit B Master Concept Plan stamped Received October 1, 2019
516 Exhibit C Schedule of Uses
517 Exhibit D Site Development Regulations
518 Exhibit E Pattern Book stamped Received October 1, 2019
519

520 **Section 6. Conflicts.**

521
522 All sections or part of Sections of the Code of Ordinances, all Ordinances or parts of
523 Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance
524 shall be repealed to the extent of such conflict upon the effective date of this Ordinance.
525

526 **Section 7. Severability.**

527
528 Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance
529 subsequent to its effective date be declared by a court of competent jurisdiction to be
530 invalid, such decision shall not affect the validity of this Ordinance as a whole or any
531 portion thereof, other than the part so declared to be invalid.
532

533 **Section 8. Effective Date.**

534
535 This Ordinance shall be effective on the date that the Village Comprehensive Plan
536 (CPA2018-01, Ordinance 2018-01) becomes effective.
537

538 **PASSED** on first reading this _____ day of _____, ____.
539

540 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero,
541 Florida on second reading this _____ day of _____, ____.

542

543

544 Attest:

VILLAGE OF ESTERO, FLORIDA

545

546

547 By: _____

By: _____

548 Kathy Hall, MMC, Village Clerk

Bill Ribble, Mayor

549

550 Reviewed for legal sufficiency:

551

552

553 By: _____

554 Nancy E. Stroud, Village Land Use Attorney

555

556 Vote: AYE NAY

557 Mayor Ribble _____

558 Vice Mayor Errington _____

559 Councilmember Levitan _____

560 Councilmember McLain _____

561 Councilmember Boesch _____

562 Councilmember Batos _____

563 Councilmember Wilson _____