

AGENDA ITEM SUMMARY SHEET
VILLAGE COUNCIL MEETING
May 1, 2019

Agenda Item:

Consideration of appeal of Estero Town Center (Aldi) Development Order pursuant to Ordinance 2019-22

Description:

A Development Order for Estero Town Center (Aldi- Development Order case number DOS 2018-E003)) was approved by the Design Review Board at its meeting on Wednesday evening, April 24, 2019. The Vice Mayor has requested that Council consider an appeal of the development order under Ordinance 2019-22 which was adopted on April 24th at the Village Council meeting. The ordinance which is attached allows the Council to take jurisdiction of a decision of either the Design Review Board, or Planning and Zoning Board, with a majority vote.

Upon the advice of the Village Attorney, since this is a new process it is being scheduled for discussion. The Vice Mayor believes there are some unanswered questions that justify an appeal. The Council can vote to appeal the development order, or not appeal the development order. If the development order is appealed, it would be scheduled for a future Council date to conduct a de novo hearing.

Action Requested:

Determine whether Council wishes to appeal.

Financial Impact:

Cost of an additional hearing.

Attachments:

1. Ordinance 2019-22

ATTACHMENT 1

VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2019 - 22

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, FURTHER AMENDING ORDINANCE NO. 15-01 REGARDING APPEALS FROM THE VILLAGE PLANNING AND ZONING BOARD AND FROM THE DESIGN REVIEW BOARD; AMENDING ORDINANCE 15-01 TO REQUIRE WRITTEN RECOMMENDATIONS FROM THE VILLAGE MANAGER OR HIS DESIGNEE TO THE PLANNING AND ZONING BOARD AND DESIGN REVIEW BOARD; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Estero adopted Ordinance No. 15-01 on April 17, 2015, which established the Village Planning and Zoning Board and the Village Design Review Board; and

WHEREAS, the Village Council amended Ordinance No. 15-01 in Ordinance No. 15-04 on May 20, 2015 (Ordinance No. 15-01, as thereby amended, is referred to herein as Ordinance No. 15-01); and

WHEREAS, given its experience with the said Land Use Boards since those dates, the Village has determined that it is in the best interest and welfare of the Village and its residents to further amend Ordinance No. 15-01.

NOW, THEREFORE, be it ordained by the Village Council of the Village of Estero, Florida:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed as being true, and the same are hereby incorporated as a part of this Ordinance.

Section 2. Amending Sec. 2-9(2). Advisory capacity; exceptions.

Section 2-9(2) of Ordinance No. 15-01 is hereby amended in regard to the Planning and Zoning Board to state as follows:

Sec. 2-9(2). Advisory capacity; exceptions.

The board shall review and approve, deny, or approve with conditions, administrative amendments and deviations relating to height of buildings and structures, variances and special exceptions. The village manager, or his designee, shall make a written recommendation to the

47 board of the action to be taken. In such instances, the decision of the board shall be reduced to
48 writing in the form of a resolution, signed by the chairman of the board, and filed with the
49 village clerk within 30 days of the signed resolution. Any party aggrieved by a decision of the
50 board shall, prior to seeking judicial review, file with the village clerk within 30 days from the
51 vote of the board a notice of appeal to the village council. Additionally, the village manager or
52 his designee, may file a notice of appeal with the village clerk within 30 days from the board's
53 decision. Further, the Village Council may, within 30 days from the board's decision, decide
54 to take jurisdiction of the decision and rehear the application. Neither the village manager nor
55 the village council shall be required to pay a fee. Upon the filing of a notice of appeal, or the
56 village council taking jurisdiction, the village council shall as soon as is practicable hold a
57 public hearing upon the matter and shall affirm, reverse or affirm with modifications the
58 decision of the board. The hearing shall be conducted as a *de novo* hearing. Any person may
59 speak at the appeal hearing, without the need of having appeared in the proceedings below.

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61 **Section 3. Amending Sec. 3-6. Appeals.**

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63 Section 3-6 of Ordinance No. 15-01 is hereby amended in regard to the Design Review
64 Board to state as follows:

65

66 Sec. 3-6. Appeals.

67

68 Any person aggrieved by a decision of the board shall file a notice of appeal with the
69 village clerk and pay the appeal fee as specified by the village within 30 days from the board's
70 decision. The notice of appeal shall specify the action taken by the board and in what respect
71 the appellant is aggrieved by such action, and the action which appellant desires the village
72 council to take with respect to the decision of the board. Additionally, the village manager or
73 his designee, may file a notice of appeal with the village clerk within 30 days from the board's
74 decision. Further, the Village Council may, within 30 days from the board's decision, decide
75 to take jurisdiction of the decision and rehear the application. Neither the village manager nor
76 the village council shall be required to pay an appeal fee. Upon the filing of a notice of appeal,
77 the village council shall as soon as is practicable hold a public hearing upon the matter and
78 shall affirm, reverse or affirm with modifications the decision of the board. The hearing shall
79 be conducted as a *de novo* hearing. Any person may speak at the appeal hearing, without the
80 need of having appeared in the proceedings below.

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82 **Section 4. Amending Sec. 3-3. Review of plans and specifications for certain**
83 **development orders and building permits.**

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85 Section 3-3(2) of Ordinance No. 15-01 is hereby amended in regard to the Design
86 Review Board to state as follows:

87

88 Sec. 3-3. Review of plans and specifications for certain development orders and
89 building permits.

90

91 * * *

92 (2) The design review board shall review every application for a development
93 order, including an application for a limited review development order, that has
94 any impact on building appearance and design, landscaping, hardscaping,
95 pedestrian and vehicular connectivity, open space, and the like, including but not
96 limited to site plans, requests for administrative deviations other than those related
97 to the height of buildings and structures, and any permit (i) to erect a building or
98 structure, or (ii) for a ground mounted monument style sign, or (iii) to materially
99 alter a front or side elevation of any existing building or structure in the village,
100 excluding applications related to single-family dwellings other than applications
101 related to front porches. The village manager, or his designee, shall provide the
102 board with a written recommendation regarding the application considered by the
103 board prior to the board's vote on the application.* * *

104
105 **Section 5. Severability.** If any section, subsection, clause or provision of this
106 Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the
107 remainder shall not be affected by such invalidity.

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109 **Section 6. Effective Date.** This ordinance shall take effect immediately upon
110 adoption.

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112 **PASSED** on first reading this 20th day of March, 2019.

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114 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero,
115 Florida this 24th day of April, 2019.

116
117 Attest: **VILLAGE OF ESTERO, FLORIDA**

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119
120 By: Kathy Hall
121 Kathy Hall, MMC, Village Clerk

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120 By: Bill Ribble
121 Bill Ribble, Mayor

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123 Reviewed for legal sufficiency:

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126 By: Nancy E. Stroud
127 Nancy E. Stroud, Esq., Village Land Use Attorney

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129 Vote:	AYE	NAY
130 Mayor Ribble	<u>✓</u>	_____
131 Vice Mayor Errington	<u>✓</u>	_____
132 Councilmember Batos	<u>✓</u>	_____
133 Councilmember Boesch	<u>✓</u>	_____
134 Councilmember Levitan	<u>✓</u>	_____
135 Councilmember McLain	<u>✓</u>	_____
136 Councilmember Wilson	<u>✓</u>	_____

Ellipses (* * *) show that adopted text is omitted for brevity.