

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

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 CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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 for 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 now requesting a maximum of ~~306350~~ 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 including one vertically integrated mixed use tract on the proposed commercial tract; and

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

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

46
47 **WHEREAS**, on May 24, 2017, the Council voted to not transmit the proposed
48 Comprehensive Plan Amendment, and continued the zoning case indefinitely to give the
49 applicant the opportunity to be considered under the new Comprehensive Plan which then was
50 being prepared; and

51
52 **WHEREAS**, the Comprehensive Plan was adopted by the Village Council on June 13,
53 2018; and

54
55 **WHEREAS**, the Plan is adopted and became~~but not yet effective~~ on November 21,
56 2019~~due to an administrative challenge~~; and

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

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

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

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

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

72
73 **WHEREAS**, at the first reading on October 16, 2019, the Council requested that
74 specific items be addressed by the applicant prior to second reading, and the applicant
75 subsequently revised the application; and

76
77 **WHEREAS**, a duly noticed second reading and public hearing was held before the
78 Village Council on January 29, 2020~~_____~~, 2019, at which time the Village
79 Council gave consideration to the evidence presented by the Applicant and the Village staff,
80 the recommendations of the Planning and Zoning Board and the comments of the public.

81
82 **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,
83 Florida:

Words that have been added are underlined. Words that have been deleted are ~~stricken through~~.

85 **Section 1. Rezoning.**

86
87 The Village Council approves with conditions the rezoning of the Property from
88 Commercial Planned Development District (CPD) to Mixed Use Planned Development
89 District (MPD), to allow residential and commercial use as outlined below, and subject
90 to the following conditions and deviations.

91
92 **Section 2. Conditions.**

93
94 1. Master Concept Plan

95
96 Development of this project must be consistent with the Master Concept Plan
97 (MCP) titled "Estero Crossing", stamped "Received January 14, 2020~~October 1,~~
98 ~~2019~~", except as modified by the conditions below.

99
100 2. Development Parameters

101
102 Development is permitted at a maximum as follows:

- 103
104
- 60,000 square feet of commercial use
 - ~~306338~~ multi-family units if all residential
 - ~~312~~ multi-family units if Tract H/R is developed as hotel
 - Mixed use~~alternative 120-room hotel on Tract M/U (included in the totals~~
108 ~~above)~~H/R

109
110 3. Maximum Building Height

111
112 Commercial - 45 feet (3-story) for commercial buildings ~~north of the~~
113 ~~reverse frontage road (including architectural features)~~

114
115 Residential and
116 Mixed Use Buildings - ~~4550~~ feet (~~34~~-story) with additional 5 feet for
117 architectural features for ~~Buildings 1, 2, 5 and 6~~

118
119 ~~45 feet with additional 5 feet for architectural features for~~
120 ~~Buildings 3 and 4~~

121
122 Hotel ~~50 feet (4-story) with additional 5 feet for architectural features~~

126 4. Uses and Site Development Regulations

127
128 The following limits apply to the project and uses:

- 129
130 a. Schedule of Uses
131 See attached Exhibit C.

132
133 Agricultural Uses are not permitted uses within this planned development.

- 134
135 b. Site Development Regulations
136 See attached Exhibit D.

137
138 Effective Date

139
140 ~~The rezoning shall not be effective until such time that the Village~~
141 ~~Comprehensive Plan adopted on June 13, 2018 is effective.~~

142
143 ~~6.5.~~ Traffic Signal

144
145 The developer, successor or assigns (owner) is responsible for a proportionate
146 share of the cost of signalization at the intersection of Corkscrew Road and Estero
147 Town Commons Place, as part of Phase I and prior to issuance of any
148 development order.

149
150 ~~7.6.~~ Reverse Frontage Road

- 151
152 a. The construction of the reverse frontage road and traffic signal at Estero
153 Town Commons Place and Corkscrew Road must be complete and fully
154 operational prior to the issuance of the first certificate of compliance for
155 vertical development within the planned development.

- 156
157 b. The reverse frontage road will contain planted medians as depicted in the
158 Pattern Book (see condition 189 herein) to create an attractive streetscape.
159 The reverse frontage road access must meet the 125-foot connection
160 separation Land Development Code (LDC) standard for a local street.

161
162 ~~8.7.~~ Right-of-Way

163
164 The developer is responsible as part of the first development order for dedication
165 of additional right-of-way for storage/stacking of vehicles at Estero Town
166 Commons Place to accommodate additional turn lane(s), if the Community

167 Development Director determines this is needed as part of the first development
168 order.

169
170 9.8. Construction Traffic

171
172 Heavy construction vehicles serving the project (vehicles having more than 2
173 axles) are prohibited from accessing the property via Corkscrew Woodlands
174 Boulevard.

175
176 10.9. Phasing

177
178 a. The first phase of the project will include construction of the reverse
179 frontage road, and the traffic signal at Corkscrew Road and Estero Town
180 Commons Place, residential landscape buffers and any work associated with
181 the preserve areas as shown on the Master Concept Plan.

182
183 b. The second phase of the project will include a minimum of 20,000 square
184 feet of commercial development, all placemaking elements on the north side
185 of the frontage road, and the public park. Remaining phases are as shown
186 on the Master Concept Plan. (residential and initial commercial
187 development) must also include at least half of the commercial project and
188 at least half of the placemaking elements to ensure that the project is
189 developed as a mixed-use development as proposed, and to justify the
190 maximum density.

191
192 11.10. Bonus Density

193
194 The Bonus Density request has been withdrawn by the applicant. Bonus density
195 for up to 38 units has been requested. Bonus density is not approved.

196
197 12.11. Maintenance

198
199 All common areas including, but not limited to, the reverse frontage road and the
200 platted portion of Corkscrew Woodlands Boulevard, shall be maintained in
201 perpetuity by a Property Owners Association or similar entity that will consist of
202 both the residential and commercial parcels.

203
204 13.12. Hours of Operation

205
206 Hours of Operation are limited to 5 a.m. to midnight 7 days a week for all
207 commercial uses, except the hotel for which hours are not limited.

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14.13. No Blasting

No development blasting is permitted as part of this project.

15.14. 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.

16.15. Elevators and Construction Materials

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

17.16. Public Pocket Park

The pocket park shown on the Master Concept Plan 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.

18.17. Outdoor Display/Storage

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

19.18. Pattern Book

The development must be consistent with the Pattern Book “Estero Crossing” dated January 2020 ~~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.

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

Signage, as shown in the Pattern Book, is illustrative for design purposes and must be in compliance with the Land Development Code and of a consistent color

Words that have been added are underlined. Words that have been deleted are ~~stricken through~~.

249 and design scheme with the buildings, except where deviations may be~~have been~~
250 granted.

251
252 20.19. Sidewalk & Pedestrian Connections

- 253
254 a. Sidewalks and pedestrian connections must be provided consistent with the
255 Pattern Book and Land Development Code. The proposed secondary egress
256 on the west side of the residential project must be a full access with
257 pedestrian connection to the property to the west (currently Lowe's Plaza).
258
259 b. Pedestrian walkways will be provided through parking lots to each entrance
260 to the residential buildings as part of the local development order. Main
261 walkways will be raised and constructed of paver bricks or similar
262 materials.

263
264 21.20. Entrance Gates/Gatehouses

265
266 Entrance gates and/or gatehouses shall be in conformance with the Land
267 Development Code for location, access, stacking, and turn-around except as may
268 be granted by deviation.

269
270 22.21. Billboard

271
272 The billboard located on the commercial parcel shall be removed in conjunction
273 with the issuance of a local development order for the commercial property and
274 prior to any certificate of completion being granted.

275
276 23.22. Hurricane Evacuation

277
278 The property developer shall provide a hurricane evacuation plan and any
279 mitigation, as necessary, in accordance with LDC section 2-485 prior to approval
280 of the first local development order for residential uses.

281
282 24.23. Buffers

283
284 As part of local development order approval, the development order plans must
285 demonstrate buffering consistent with the Master Concept Plan, the Land
286 Development Code, and the Pattern Book.

287
288 As part of local development order approval, all buffer plantings must be 100%
289 native vegetation.

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Residential perimeter buffers will be planted as part of the first phase of the residential project, along with any work associated with indigenous preserves.

25.24. Protected Species

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

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

26.25. Open Space & Indigenous Preserve

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

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

27.26. Replanting Plan

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

Words that have been added are underlined. Words that have been deleted are ~~stricken through~~.

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28-27. Vehicular/Pedestrian Impacts

Approval of this zoning request does not address mitigation of the project’s vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order. Additional right-of-way may be required to accommodate storage/stacking of vehicles at Estero Town Commons Place/Corkscrew Road.

29-28. Concurrency

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

30-29. Solid Waste Management

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

31-30. Mixed Use Building~~Hotel Use~~

The mixed use building will include commercial uses on the first floor and residential uses above.~~Any hotel use must contain retail, open to the general public on the ground floor. Retail uses may include uses that are ancillary to the hotel, such as restaurants, cafes, as well as fitness centers and spas that offer membership to the general public.~~

32-31. Promenade and Public Open Space Area

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

Words that have been added are underlined. Words that have been deleted are ~~stricken through~~.

372 33.32. Land Development Code (LDC) References

373
374 Where the Village LDC is referenced in these conditions of approval for
375 implementation of the condition at the time of development order, the LDC in
376 effect at the time of the development order approval shall be applicable.

377
378 **Section 3. Deviations.**

379
380 Deviation 1 (Overhead power lines)

381
382 Deviation from LDC Section 33-112 requiring all utilities be located underground
383 unless located within a public right-of-way to allow the existing overhead lines
384 on the south side of Corkscrew Road to remain overhead within the existing FPL
385 easement.

386
387 This deviation is approved for existing overhead lines only. New or replacement
388 lines must be underground.

389
390 Deviation 2 (Setback from Corkscrew Road)

391
392 Deviation from LDC Section 33-400 regulating setbacks within the Corkscrew
393 Road Overlay, ~~and~~ to allow the proposed site Development Regulations (Exhibit
394 D) included with this application as part of this approval.

395
396 This deviation is approved.

397
398 Deviation 3 (Setback from Corkscrew Road)

399
400 Deviation from LDC 34-2192 (b) (5) requiring parking lots, access streets and
401 drives to be setback a minimum of 75 feet from the Corkscrew Road right-of-way
402 to allow a minimum setback of 20 feet for parking lots on Corkscrew Road instead
403 of 75 feet.

404
405 This deviation is approved.

406
407 Deviation 4 (Package store separation)

408
409 Deviation from Estero LDC Section 34-1263(e) providing that package stores
410 may not be located closer than 500 feet to a park or dwelling unit to allow a
411 90-foot separation for all uses internal to the property.

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This deviation is approved.

Deviation 5 (Second monument sign)

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

This deviation is approved.

Deviation 6 (Offsite directional sign)

Deviation from LDC Section 30-181(a)(1)a. that allows a maximum of a 64-square foot non-illuminating directional sign to be placed along an arterial street within 500 feet of the nearest intersection involving a turning movement to the development but shall not be placed closer than 50 feet from the intersection to allow an illuminated directional sign at the intersection of Corkscrew Road and Estero Town Commons Place (aka the entrance to Lowe’s shopping center) with a 10-foot setback from the intersection. The deviation is for the residential project identification sign only.

This deviation is approved.

Deviation 7 (Sign setbacks)

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

This deviation is approved.

Deviation 8 (Building height)

Deviation from LDC Section 33-229 which limits the building height outside of the Interstate Highway Interchange Area to a maximum of 3 stories or 45 feet, whichever is less, to allow an additional 5 feet for architectural features, for a maximum building height of ~~50~~55 feet (~~34~~ stories) for the residential and mixed

454 ~~use hotel components within this development. The 55 feet would include 5 feet~~
455 ~~for architectural features.~~

456
457 This deviation is approved, ~~as requested for all buildings except Buildings 3 and~~
458 ~~4, which are approved for a maximum height of 45 feet plus 5 feet for~~
459 ~~architectural features.~~

460
461 Deviation 9 (Connection separation for residential road along public park)

462
463 Deviation from LDC Section 10-285(a) which requires a minimum roadway
464 connection separation distance of 125 feet for local roads, to allow for a
465 separation of 74 feet for the two one-way streets on the east and west side of the
466 public park on the Master Concept Plan.

467
468 This deviation is approved.

469
470 Deviation 10 (Landscape buffers)

471
472 Deviation from LDC Section 33-351 that requires a 20 foot Type D Buffer
473 between roadways and commercial & multi-family residential uses, to eliminate
474 the buffer requirement along the internal frontage roadway and instead provide
475 an enhanced streetscape plan.

476
477 This deviation is approved subject to the frontage road landscape plan contained
478 in the Pattern Book.

479
480 Deviation 11 (Gates)

481
482 Deviation from LDC Section 34-1748(1)d.1. which states that access gates must
483 be located a minimum of 100 feet back from the existing or planned intersection
484 street right-of-way or easement to allow a minimum setback of 40 feet for the
485 secondary access location.

486
487 This deviation is approved.

488
489 Deviation 12 (Connection separation for hotel access)

490
491 Deviation from LDC Section 10-285(a) [Table 1] which requires a minimum
492 roadway connection for separation distance of 60' for access roads or accessways
493 to allow a minimum separation of 48' for the hotel access from the internal
494 accessway serving the multi-family portion of the project.

495 This deviation is approved.
496

497 **Section 4. Findings and Conclusions.**
498

499 Based upon an analysis of the application and the standards for approval in the Land
500 Development Code, the Council finds and concludes as follows:
501

- 502 1. The applicant has provided sufficient justification for the rezoning by
503 demonstrating compliance with the Land Development Code.
504
- 505 2. The rezoning is consistent with the densities and uses in the Village
506 Comprehensive Plan ~~as amended and~~ with the proposed conditions. ~~The~~
507 ~~application will be consistent with the Village Comprehensive Plan adopted on~~
508 ~~June 13, 2018, upon the Plan becoming effective.~~
509
- 510 3. Urban services will be available and adequate to serve the proposed use.
511
- 512 4. The proposed uses, with the recommended conditions, are appropriate at the
513 subject location.
514
- 515 5. There will be additional trips generated by the project, but there will be fewer
516 trips generated on the roadways than if developed under the existing commercial
517 zoning. Approval of the request will not place an undue burden upon existing
518 transportation facilities because Interchange improvements have begun ~~are~~
519 ~~beginning~~ construction in October 2019. There is an intersection level of service
520 issue that will necessitate a traffic light for operational safety and which is
521 addressed by a condition of approval.
522
- 523 6. The recommended conditions to the Master Concept Plan and rezoning provide
524 sufficient safeguards to the public interest and are reasonably related to impacts
525 on the public's interest created by or expected from the proposed development.
526
- 527 7. The deviations recommended for approval:
528
- 529 (a) Enhance the planned development; and
530
- 531 (b) Preserve and promote the general intent of the LDC to protect the public,
532 health, safety and welfare.
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Section 5. Exhibits.

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

- Exhibit A Legal Description
- Exhibit B Master Concept Plan stamped Received January 14, 2020~~October 1, 2019~~
- Exhibit C Schedule of Uses
- Exhibit D Site Development Regulations
- Exhibit E Pattern Book dated January 2020~~stamped Received October 1, 2019~~

Section 6. Conflicts.

All ~~sections or part of Sections of the Code of Ordinances, all Ordinances or Resolutions,~~ or parts of Ordinances or Resolutions, granting prior approvals on the Property which are ~~and all Resolutions, or parts of resolutions,~~ in conflict with this Ordinance shall be repealed to the extent of such conflict upon the effective date of this Ordinance.

Section 7. Severability.

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

Section 8. Effective Date.

This Ordinance shall take effect immediately upon adoption~~be effective on the date that the Village Comprehensive Plan (Ordinance 2018-01) becomes effective.~~

PASSED on first reading this 16th day of October, 2019.

PASSED AND ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida on second reading this 29th day of January, 2020~~2019~~.

Attest: **VILLAGE OF ESTERO, FLORIDA**

By: _____ By: _____
Kathy Hall, MMC, Village Clerk Bill Ribble, Mayor

Words that have been added are underlined. Words that have been deleted are ~~stricken through~~.

577 Reviewed for legal sufficiency:
 578
 579 By: _____
 580 Nancy E. Stroud, Village Land Use Attorney
 581
 582 Vote: AYE NAY
 583 Mayor Ribble _____ _____
 584 Vice Mayor Errington _____ _____
 585 Councilmember Levitan _____ _____
 586 Councilmember McLain _____ _____
 587 Councilmember Boesch _____ _____
 588 Councilmember Batos _____ _____
 589 Councilmember Wilson _____ _____