



Professional Engineers, Planners & Land Surveyors



Diplomat North Property RPD/CPD

Minor Administrative Amendment to Planned Development

Narrative of Request

Request Summary

The applicant is requesting a minor administrative amendment to the approved Diplomat Property Residential Planned Development (RPD)/Commercial Planned Development (CPD) to codify and clarify condition 1 that the north 5.43-acre optional CPD allows residential development including single-family, duplex, two-family attached, multifamily and townhomes.

The applicant has verified this interpretation with the Zoning Manager and believes that the language is clear and is requesting clarification to avoid any confusion in the future.

Background and Approval History

The subject property is located on the north side of Diplomat Parkway East, just west of its intersection with N. Cleveland Ave/U.S. 41. The site is located in the Central Urban future land use category and within the Mixed Use Overlay within the North Fort Myers planning community.

The property is a ±38-acre portion of the ±65-acre Diplomat Property RPD/CPD which received zoning approval via Zoning Resolution Z-06-004. The project was approved for a maximum of 457 dwelling units and 200,000 square feet of commercial of which 100,000 square feet could be retail.

The original zoning approval was later amended administratively by ADD2007-00169 which amended the Master Concept Plan, revised the site development regulations for townhouses and added a deviation to allow curbside garbage pickup.

On March 21, 2011, an amendment to the northern ±35.2-acre RPD was approved for a maximum of 400 assisted living facility beds, 138 standard dwelling units, a maximum 50,000 square feet of medical office space including a conversion table and an amendment to the master concept plan.

Condition 1 on page 2 of Z-11-002 states the following which the applicant submits makes it clear that residential is permitted on the north 5.43-acre optional CPD area:

- Development must be substantially consistent with the new master concept plan AND the master concept plan previously approved by ADD2007-00169

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- The following text is in bold text within the resolution “NOTE: The portion of the project on the north side of Diplomat Parkway includes Commercial Development Parcels 1, 2 and 3 (West 3 and East 3). It also includes a 29.75 acres that may be developed either as an RPD, or and ALF/CCF, with or without a commercial component on the westerly portion of that site identified as the 5.43 acre North CPD parcel.”

Z-11-002, states that it is an amendment to the RPD/CPD and does not state anywhere that it is a rezoning a portion of the RPD to CPD. The legal descriptions attached to the resolution are the same RPD/CPD approved with the 2006 resolution and do not include a description for the north 5.43 acre CPD parcel. The 5.43 acre CPD is only depicted on the alternate MCP approved for the ALF/CCF.

ZVL2018-10080 was issued on December 21, 2018 stating that residential dwelling units were not allowed within the 5.43-acre CPD.

The ZVL determination would make the existing development order for residential development on the northern RPD (DOS2007-00255) for the property that is valid until 2023 inconsistent with the zoning since residential is not currently shown in the schedule of uses for the 5.43-acre north CPD. This was clearly not the intent of the rezoning which would be to add alternate entitlements to the property not remove existing entitlements. The alternate development plan approved by the 2011 zoning resolution never received development order approval. Residential development on the 5.43-acres would be less intense than 50,000 square feet of medical office.

A meeting was held on February 27, 2019 with Zoning staff, Zoning Manager and County Attorney's office to discuss the existing development order approval and that no paperwork to revoke the existing development order was provided during the zoning amendment. The currently approved residential development order furthers the fact that residential development is still allowed on the entire North RPD zoning area, including the 5.43-acre optional CPD.

An email was received from the Zoning Manager on March 7, 2019 that “Staff is in agreement that the 5.43 CPD area may be used for residential development as noted in Condition 1 of Z-11-002.”

LDC Consistency/Minimal Modification

LDC Section 34-377(a)(5) in part provides that applications for administrative approval will be processed as administrative amendments in accordance with Section 34-380. This section also states that administrative amendments may be granted by the Director upon a finding that public health, safety, and welfare will not be adversely affected by the request. LDC Section 34-380(a) provides that amendments to an approved master concept plan or its attendant documentation may be requested at any time during the development of or useful life of a planned development. LDC Section 34-380(b) provides that the Director may approve any change to the development that does not increase height, density or intensity (i.e., number of dwelling units or quantity of commercial or industrial floor area) except as permitted in chapter 2. This section of the code further specifies that “the Director may not approve a change that will: (1) Result in the substantial underutilization of public resources and public infrastructure committed to the support of the development; (2) Result in a reduction of total open space provided on the master concept plan

by more than ten percent or that would decrease the amount of indigenous native vegetation or open space required by the Code; (3) Decrease preservation areas. Changes to buffer or landscaping areas are permitted but must provide equivalent or better (by comparison with the approved Master concept plan) landscape or buffering; or (4) Adversely impact surrounding land uses.”

Conclusions

The request is consistent with the administrative amendment requirements contained in LDC Section 34-380(b). No changes are proposed to the existing intensity approved for the development. The request is simply to codify and clarify condition 1 that the north 5.43-acre CPD allows residential development including single-family, duplex, two-family attached, multifamily and townhomes. The proposed amendment does not increase the height, density or intensity within the development; does not underutilize public resources or infrastructure, does not reduce open space, does not decrease preservation areas or buffers; and does not adversely impact surrounding land uses. The requested amendment is a minimal necessary modification to the already approved planned development to allow the project to proceed with development. The proposed modifications do not change the fact that the project is consistent with the Lee Plan and the LDC.