

PROPOSED ZONING CONDITIONS – SPIVEY LAKE – 01/13/22

NOTE: THE CONDITIONS BELOW SHALL ACCOMPANY THE PROPOSED REZONING OF THE SPIVEY LAKE PROPERTY AND, IF ACCEPTED, SHALL BE RECORDED WITH THE ZONING APPROVALS.

1. **Regulatory Approvals.** The approval of this rezoning application by the Board of Commissioners has no bearing on the requirements for other regulatory approvals under the authority of the Zoning Board of Appeals or other entity whose decision should be based on the merits of the application under review by such entity.
2. **NOT YET AGREED UPON: Community Engagement.** Any action or attempt to add, modify, or remove conditions from the approved set of conditions shall be communicated to community leaders and made available to the community at large. Community leaders include leaders of the group Norman Road Neighborhoods (the “NRN Representatives”), the names of which shall be provided to the Applicant and DeKalb County (the “County”) at the time of rezoning approval. NRN Representatives shall also keep the Applicant and County abreast of any change in its members on an ongoing basis.
3. **Property Buffers.** A buffer of at least 40 feet from the subject property perimeter to any subject property structure shall be maintained along Norman Road and around the entire proposed development (the “Project”), which comprises the six parcels (i.e., 18-095-03-005, 18-095-03-006, 18-095-03-008, 18-095-03-009, 18-095-03-090, and 18-095-03-094) surrounding Spivey Lake (the “Site”) in the. A minimum 20 feet of this buffer will be vegetated. Two exceptions relating to the Property Buffer shall be made for the land west of Spivey Lake on parcels 18-095-03-090, 18-095-03-006, and 18-095-03-094 (the “Northwest Parcel”):
 - a. A fee-simple home abutting 4019 Norman Road shall be allowed to be constructed no less than 20 feet from the Site’s property line, with a 20-foot transitional buffer required along the western perimeter of the new lot.
 - b. A home abutting the existing gravel driveway adjacent to 4029 Norman Road shall be permitted, and a transitional buffer shall not be required, nor shall the home be required to be 40 feet from the property line of 4029 Norman Road.
4. **House Types.** There shall be only single family detached homes (i.e., conventional, cottage, and urban-single family dwellings) and single family attached homes (i.e., duplexes) constructed at the Site. Single-family detached conventional homes shall be fee simple. Cottages, urban single-family dwellings, and duplexes shall have a condo form of ownership. No townhomes or triplexes shall be permissible.
 - a. The “Main Site Perimeter” (defined as the homes to the east of Spivey Lake on parcels 18-095-03-005, 18-095-03-009, and 18-095-03-008 along the perimeter of the site parallel to Norman Road, parallel to Viking Drive, and parallel to Bontura Court) shall have conventional fee simple homes with two car garages.
 - b. Homes on the “Main Site” (defined as all land to the east of Spivey Lake on parcels 18-095-03-005, 18-095-03-009, 18-095-03-006 and 18-095-03-008) that back to Spivey Lake and are numbered lots 22-30 on the “Final Site Plan” (defined as the Site Plan that accompanied the Board of Commissioners Approval) shall have conventional fee simple homes with garages. The Applicant shall seek to build two-car garages unless engineering studies and land topography present challenges to garage size, in which case one-car garages will be acceptable.

Commented [SG1]: We have agreed to the condition, but I am looking into how to word the language referring to NRN Representatives appropriately. I have reached out to a lawyer and will follow up with all parties once I have heard back. It may take a few days.

- c. All homes on the Northwest Parcel shall be conventional fee simple homes with two-car garages.
5. **General Compliance with the Site Plan.** There shall be general compliance with the locations of single family detached homes (i.e., conventional, cottage, and urban-single family dwellings) and single family attached homes (i.e., duplexes) shown on the Final Site Plan. To the extent that there is any conflict between the site plan and the other approved conditions set forth below, the written condition shall control. Changes to the location of homes that are the result of necessity due to engineering or topography challenges shall be permitted.
6. **Number of Homes.** A maximum of 120 total residential dwelling units may be developed on the Site. Any request to increase the number of units will be deemed a major condition change and thus require a Major Modifications Application be submitted with the County and follow the full County rezoning process. Any duplex structures shall count as two homes.
 - a. No less than thirty (30) fee simple conventional homes shall be built on the Main Site unless fee simple homes from the Final Site Plan on the Main Site are required to be removed due to issues with floodplain or buffered areas, in which case the number of fee simple homes on the Main Site may be reduced.
 - b. No more than eighty-eight (88) homes in total shall have a condo form of ownership. Of these, no more than twenty-four (24) homes shall be duplexes (i.e., 12 duplex structures).
 - c. No more than two (2) homes total shall be constructed on the Northwest Parcel in accordance with the Final Site Plan unless the engineering study and land topography require the removal of homes elsewhere on the Site Plan. In that case, a maximum of four (4) fee-simple homes total shall be constructed on the Northwest Parcel.
7. **Rental Restrictions.** The Project shall not be constructed as a rental community. Homes shall be offered For Sale to individual buyers and neither owned by the Applicant or any future developer, nor sold in any bulk transactions (a sale of 3 or more homes to any single buyer) to investors, property management companies, or corporations. Rentals of less than a one-year lease shall be prohibited, and a fifteen percent (15%) cap on the percentage of rentals shall be established. This restriction shall be written into the covenants of the HOA described in Condition 27.
8. **Spacing Between Homes.** The distance between homes shall be measured from foundation to foundation as follows:
 - a. A minimum of 15 feet shall be required between fee-simple, conventional homes along the Main Site Perimeter.
 - b. A minimum of 15 feet between fee-simple, conventional homes along the eastern side of Spivey Lake (lots numbered 22-30 on the Final Site Plan) and the Northwest Parcel shall be diligently pursued. If engineering studies and land topography present unexpected challenges to achieving a minimum of 15 feet between homes, a minimum of 12 feet shall be required.
 - c. A minimum of 10 feet shall be required between cottages, urban single-family homes, and duplexes.
9. **Perimeter Transition.** All homes along the Main Site Perimeter shall be fee-simple, conventional homes to better transition to the density of surrounding properties and maintain consistency with existing homes in the surrounding neighborhoods. No homes shall face abutting properties. A 6-foot-high wood, vinyl, or composite fence shall be provided behind all fee-simple homes that abut homes along Viking Drive and Bontura Court.

10. **Minimum House Size.** All homes shall have at least 1,000 heated square feet. No home shall exceed two stories.
11. **Enhanced and Unenhanced Space.** No less than 60% of the Site shall be maintained as enhanced and unenhanced open space, which shall include buffered and floodplain areas, Spivey Lake, and the community forest, as well as amenitized open spaces, such as the community plaza and cottage courtyards.
12. **NOT YET AGREED UPON: Partnerships and Consultations.** An environmental consultant that is reasonably mutually agreeable to Mosaic and the NRN Representative shall be hired to review the tree preservation, tree replacement, and lake restoration plans prior to issuance of a Land Disturbance Permit and shall remain available as a partner for additional consultation as needed throughout the construction period. Additionally, the Applicant shall procure and fund the services of a qualified engineer to assess all wetlands, floodplains, and stream buffers (including the areas shown as part of lots 5 and 6 on the Final Site Plan) within or adjacent to the subject properties and document those findings. Findings shall be confirmed by County Wetland/Floodplain experts and presented to the adjacent neighborhoods along Bontura, Viking, the Northwest parcel, Spartan Lane, and Norman Rd and residents on Norman Rd across from the development prior to issuance of a Land Disturbance Permit. ~~The Applicant Mosaic will shall be responsible for selecting the environmental consultant, and shall seek input from~~ diligently seek to utilize an environmental consultant that is agreeable to NRN Representatives, ~~in selecting the environmental consultant and engineer.~~
13. **Tree Preservation.** The Applicant shall comply with the DeKalb County Tree Protection Ordinance, including submitting to the County Arborist the required tree survey, and tree protection plan for the property. A copy of the tree survey and the proposed tree protection plan shall be delivered to NRN Representatives and made available to community members, and the Applicant shall deliver proof to the County Arborist of such delivery prior to the approval of the tree protection plan for the property. No trees shall be removed from within any floodplains or buffered areas of the Site, except in cases where the tree has died or is diseased and removal is recommended by a County-approved arborist. The Applicant also shall seek to preserve as many healthy specimen trees as possible elsewhere on the property, provided that the Applicant shall be able to remove specimen trees to effectuate the development of the property in accordance with the approved site plan and productive landscaping plan. All ivy, wisteria, and kudzu on existing healthy trees remaining on site shall be removed prior to the recording of the final plat. Following construction completion, specimen trees may not be cut down or removed from the Site, except in cases where the tree has died or is diseased and removal is recommended by a County-approved arborist. Efforts shall be made to preserve strands of trees versus single specimen trees. In addition, healthy existing trees within the designated 20-foot vegetated buffer shall be supplemented as required in Article 5.4.5 with new evergreens, native trees, and naturalized trees with a minimum planted height of 6 feet and a projected mature height of at least 10 feet to form an effective visual screen, as approved by the County Arborist prior to the issuance of any certificates of occupancy. The Applicant shall not plant crepe myrtles; Leland cypress; white maples; or Georgia invasive species, including but not limited to nandina, cherry trees, privet, Bradford pear trees, and dogwood species other than Kousa Dogwoods. The following trees have been expressed as preferred trees by NRN Representatives and The Applicant will seek, though shall not be required, to incorporate these species: hemlocks, magnolias, green giants, hollies (Nellie Stevens, American, oak leaf), cryptomeria, and viburnums, elms, red maples, Southern maples, oaks (willow and pins), hornbeam, and Kousa dogwoods.
14. **Tree Replacement.** The Applicant shall comply with the DeKalb County Tree Protection Ordinance, including submitting to the County Arborist the required tree survey and tree replacement plan

Commented [SG2]: The community wants this language rather than the highlighted language below. There are people in the community who have worked for environmental nonprofits and are environmentalists. We are looking at the removal of thousands of trees, dislocation/death of wildlife, and death of aquatic life—destruction of the ecosystem as it is now. We want to be sure that the right consultant is hired.

Commented [SG3]: We do not agree to this language per my comment above.

prior to issuance of a land disturbance permit by DeKalb County. Any specimen trees within buildable areas that are removed as part of the project shall be accounted for in the tree replacement plan and replaced with native, county-approved tree species in accordance with the County's tree ordinance. The County Arborist must approve the tree replacement plan prior to the issuance of a land disturbance permit.

15. **Lake Preservation.** Spivey Lake shall be improved and maintained according to federal, state, and County standards, including care for soil erosion, stormwater runoff, clearing of debris, and wastecleanup. Any remediation or improvements to Spivey Lake that may be required to comply with federal, state, and/or county provisions regarding privately-owned bodies of water shall be completed prior to the recording of the final plat for the Project and issuance of any building permits. Lake restoration plans will be developed, shared with NRN Representatives and residents with homes on the lake prior to implementation, and implemented with a primary goal of preserving the existing natural habitat. Actions such as draining the lake shall be avoided to prevent aquatic life destruction.
16. **Exterior Finishes.** Vinyl siding shall be prohibited. Fiber cement and/or brick/stone masonry shall be allowed. All homes shall have eaves on all four sides around the perimeter along the roofline to maintain consistency with homes in the existing neighborhood and protect the homes from the elements. All homes shall include a front porch with eaves and/or wall offsets with a minimum of depth or projection of two (2) feet so that no single wall pane exceeds twenty-five (25) feet in width. Street-facing garage façades of single-family detached conventional units shall not comprise more than forty-five (45) percent of the total width of the traditional single family detached residence's front façade. Street-facing garages shall not extend beyond the primary front façade plane of a single-family detached residence, which includes the front porch. Two-car garage interior dimensions shall be at least 20 feet by 20 feet. One-car, detached garages shall have a similar aesthetic to homes on the property and have an interior dimension of at least 10 feet by 20 feet.
17. **Cabin Preservation.** The historical Spivey family cabin may not be removed from the site and shall be professionally maintained.
18. **Walking Trails.** No walking trails shall be constructed along the western and/or southern perimeter of Spivey Lake or within 40 feet of any adjacent home owners' properties. Any walking trails within flood zones or stream/lake buffers shall be constructed of pervious materials such as mulch or other natural material; no synthetic or rubber mulch shall be used. The ends of trails will be marked by barricades that will prevent passage onto surrounding properties.
19. **Parking.** On-street parking shall be limited at entrances to prevent the obstruction of the line-of-sight required to detect oncoming traffic. Parking shall be allowed only on one side of the street in the development. This shall be designated by parallel parking lines on the side where parking is allowed and "No Parking" signs on non-parking side of the street. No overflow parking shall be allowed on neighboring streets surrounding the development, including but not limited to Spartan Lane, Viking Drive, Bontura Court, Norman Road, and Otello Avenue.
20. **Stormwater Management.** The Applicant shall diligently pursue 1) the incorporation of bio-swales and rain gardens into its engineering plans to facilitate stormwater runoff and removal of debris, and 2) the use of special pervious pavement and landscaping materials to increase the amount of pervious surfaces.
21. **NOT YET AGREED ON: Debris Removal.** Applicant agrees to coordinate and fund the removal of trash (e.g., bottles, paper, cans, etc.) on the property. These activities shall be completed

Commented [SG4]: The community is concerned about flood damage to existing neighbors' homes due to issues on the property (e.g., clearcutting, failure of drainage system) and debris. We do not want homeowners to have to sue the developer or to face increased homeowner's insurance costs. Two neighbors in a nearby area ended up losing their homes because they could not afford the costs or to sue the developer. Can we set something up to help protect existing neighbors from having to sue the developer to recoup costs?

immediately after all required erosion control is installed, and a second cleaning of trash shall occur prior to the approval and recording of the final plat. To the extent that there are any blockages to the flow of the Site streams or lake caused by fallen trees or other debris, the Applicant shall contact the DeKalb County Floodplain Coordinator to coordinate the permission(s) needed to mitigate the blockage. The Applicant shall be responsible for obtaining the required approvals from DeKalb County, and if necessary, the U.S. Army Corp of Engineers, including any fees and expenses associated with receiving the required approvals. Upon receiving the required approvals, the Applicant (developer) shall deliver to the DeKalb County Planning Manager a copy of the written approval from the Floodplain Coordinator and if required, the permit(s) from the U.S. Army Corp of Engineers and Georgia Environmental Protection Division, authorizing the removal of the blockage. The Applicant shall mitigate downstream blockages in Snapfinger tributaries and any existing creeks caused by Site development as authorized provided that the mitigation does not require any heavy equipment or specialized tools, and the aggregate mitigation costs do not exceed \$10,000.00.

22. **Lighting.** Only outdoor lighting fixtures that shield the light source to minimize glare and light trespass, including but not limited to full-cutoff lights, fully shielded fixtures, flush-mounted or side shielded under-canopy fixtures, and/or fully shielded walkway bollards to help prevent light pollution shall be installed at the Site. Any lighting added by homeowners shall comply with these restrictions.
23. **Solar and EV.** All housing units built in the development shall be “solar ready” and have electric service panels with sufficient capacity to accommodate electric vehicle charging within any attached garages and solar roof panels. The electrical panel shall be sized to accommodate a 40- amp double pole breaker on the opposite end of the panel labeled “reserved for solar”. A minimum of one 240 V AC plug will be installed in each attached garage to accommodate electric vehicle charging.
24. **Productive Landscaping.** Productive urban landscaping shall be incorporated into the design of and implementation of the pocket parks, transitional buffers and trails when proper light and soil.
25. **NOT YET AGREED ON: Construction.** Construction and demolition activity or deliveries shall only be performed between the hours of 8:00 a.m. and 6:00 p.m., 7:00 a.m. and 7:00 p.m. on weekdays, or between the hours of 8:30 a.m. and 3:30 p.m., 8:00 a.m. and 5:00 p.m. on Saturdays. No heavy equipment may be delivered or removed from the Site between 7:00 a.m. and 8:30 a.m. on weekdays through the Northwest Parcel or Norman Road access points. There shall be no construction or demolition activity or deliveries on Sundays or Federal holidays unless such activity arises from an emergency which puts the site or neighboring property owners and their property at risk of harm or loss. During construction, the Developer shall post a contact phone number those nearby residents can call to discuss development and construction issues. The developer shall use Best Management Practices (BMPs) for run-off and sedimentation control in compliance with Section 14.38 (Soil Erosion and Sediment Control) subject to approval of the Land Development Division of the Planning and Sustainability Department.
 - a. Blasting shall be permitted only with the written approval of the County under the requirements of Section 14-324.C of the DeKalb County Code of Ordinances. The Applicant shall notify residents on Viking, Bontura, Norman, and Spartan Lane, the Jolly Elementary School administrators. Notifications will be made by way of mailbox flyers, 24 hours in advance of any blasting, with every effort made to provide notice at least 48 hours in advance if possible.
 - b. Development-related trucks, vehicles, and equipment shall not park on Spartan Lane, Norman Road, Viking Drive, or anywhere else in the surrounding residential neighborhoods. All construction vehicles must be kept on the construction site. No construction vehicles shall be

Commented [SG5]: See below for why this is important to the community.

Commented [DM6]: The ability to start at 7:00 am is important in the current development conditions to securing high quality trades on this site. We have received that feedback very clearly from our development partners. Restricting this to a later start time will negatively impact the quality of contractors that can be procured and will cause the project duration to be extended. As a compromise, we can restrict heavy equipment traffic in/out of the site through the Norman and NW parcel entrances during the morning hours to avoid school and rush hour traffic.

Commented [SG7R6]: Noise and vibrations from land disturbance and construction are going to disrupt the lives of existing neighbors and Jolly elementary six days a week for years. We do not want folks to be dealing with this every day from 7 am to 7 pm. It is disturbing now when neighbors have trees cut down. The mass clearcutting will be unbearable. We want the project to be successful but also want folks to have some protection. We are asking for 8 am-6 pm on weekdays and 8:30-3:30 on Saturdays. No work on Sundays.

stored on the site until construction permits have been issued. Only the construction vehicles being used for the Northwest parcel shall be stored there. The property shall not be used as a staging ground for other planned developments within the area.

- c. Appropriate measures required by the County including but not limited to the watering of roads must be taken to mitigate dust and debris from construction and truck traffic. Any debris and mud must be cleaned and removed from any areas outside of the property.
26. **Board of Education.** The Applicant, developer, or builder shall deliver to the DeKalb County Board of Education Districts 7 Representatives an annual development progress report through the year in which the final building permit for the last residential unit is issued.
27. **HOA.** Prior to the issuance of any land disturbance permit, the Applicant must provide evidence of a legal mechanism under which all land to be held in common and used for greenspace purpose within the development, including Spivey Lake, private roads, and 6-foot-high fencing behind fee-simple homes shall be protected in perpetuity. Such legal mechanism shall include a declaration of restrictive covenants and the formation of a homeowner association (“HOA”), which assures in perpetuity the mandatory requirements detailed below. The HOA shall be established prior to the issuance of any certificate of occupancy for a home.
- a. That all land held as greenspace, Spivey Lake, and private roads will be properly maintained and that no liability or maintenance responsibilities shall accrue to the County;
 - b. That a legal entity exists for notice of deficiencies in maintenance of the land held as green space, Spivey Lake, and private roads, and correction of these deficiencies, and assessment of liens against the properties for the cost of the correction of these deficiencies by a third party or the County;
 - c. That the legal mechanism will become effective and enforceable prior to or at the time of recording the final plat and the sale of any individual properties within the Subject Property;
 - d. That all requirements of the legal mechanism used to comply with the regulations of this condition will be specified on the final plat to be recorded with the Clerk of Superior Court of Dekalb County;
 - e. Equal access and right of use to all greenspace, Spivey Lake, and private roads by all homeowners;
 - f. Mandatory and automatic membership in the homeowners' association for all homeowners and their successors, including homeowners of fee simple and condo homes;
 - g. A fair and uniform method of assessment and collection/payment for dues, maintenance and related costs;
 - h. Homeowners' association lien authority to ensure the collection of dues from all members;
 - i. Perpetual and continued maintenance and liability by the homeowners' association of land held as greenspace, Spivey Lake, private roads, and 6-foot-high fencing behind fee-simple homes;
 - j. Common and privately owned greenspaces shall be clearly designated so that there is no ambiguity for responsibility of upkeep.
 - k. Filing of all required covenants, declarations, and restrictions with the Clerk of the Superior Court of DeKalb County. All sequential property owners in this development will be placed on notice of this development restriction through the deed records file.
 - l. The HOA shall establish, fully fund, and maintain a reserve account specifically for the maintenance and upkeep of Spivey Lake in accordance with federal, state, and County standards. All lake maintenance and upkeep plans and any future restoration plan shall

be implemented with a primary goal of preserving the existing natural habitat. Actions such as draining the lake shall be avoided to prevent aquatic life destruction. No money from this reserve account may be used for any purpose outside of maintenance and upkeep of Spivey Lake. A minimum required reserve amount sufficient for maintenance of Spivey Lake throughout the land development and construction period shall be established prior to site development, and shall be funded prior to the commencement of site development. After site development and construction is complete, the reserve account shall be funded with an amount equal to one (1) year of lake maintenance and upkeep costs.

- 28 **Condo HOA.** Prior to the issuance of any land disturbance permit, the Applicant must provide evidence of a legal mechanism under which all land to be held in common and used for condo home yards and driveways shall be protected in perpetuity. Such legal mechanism shall include a declaration of restrictive covenants and the formation of a condo homeowner association, which assures in perpetuity the mandatory requirements detailed below. The condo HOA shall be established prior to the issuance of any certificate of occupancy for a home.
- a. That all land held as condo home yards and driveways will be properly maintained and that no liability or maintenance responsibilities shall accrue to the County;
 - b. That a legal entity exists for notice of deficiencies in maintenance of the land held as condo home yard and driveways, and correction of these deficiencies, and assessment of liens against the properties for the cost of the correction of these deficiencies by a third party or the County;
 - c. That the legal mechanism will become effective and enforceable prior to or at the time of recording the final plat and the sale of any individual properties within the Subject Property; and
 - d. That all requirements of the legal mechanism used to comply with the regulations of this condition will be specified on the final plat to be recorded with the Clerk of Superior Court of DeKalb County.
 - e. Mandatory and automatic membership in the homeowners' association for all homeowners and their successors of condo homes;
 - f. A fair and uniform method of assessment and collection/payment for dues, maintenance and related costs;
 - g. Homeowners' association lien authority to ensure the collection of dues from all members;
 - h. Perpetual and continued maintenance and liability by the homeowners' association of land held as condo yards and driveways;
 - i. Filing of all required covenants, declarations, and restrictions with the Clerk of the Superior Court of DeKalb County. All sequential property owners in this development will be placed on notice of this development restriction through the deed records file.