

CONDITIONS

Z-22-1245595

C-1 (Local Commercial) to MU-4 (Mixed Use-4)

I. **Zoning District, Master Development Plan and Exhibits:**

The property consists of +/- 73.11 acres and has been proposed for a mixed-use development (the "Subject Property"). The Subject Property shall be rezoned to the MU-4 (Mixed-Use High Density) district. A Master Development Plan, prepared by Kimley-Horn and dated 04/25/2022, is attached hereto as Exhibit "A" (the "Master Plan"). The Master Plan is hereby approved as the long-term planning document that will provide a guide for future growth and development. It is expressly recognized that the Master Plan is intended to be dynamic and to allow for future flexibility in both the design of the project and its development and reasonable modifications are both anticipated and authorized, as provided for in Article 27-7.3.10 of the Zoning Ordinance. However, the street layout and percentage mix of land uses, maximum square footages of land use types, and minimum square footage of open space in the development shall be substantially the same as those shown on the Master Plan. Similarly, the cross-hatched areas on the Master Plan are intended as flexible areas limited to the following uses: commercial, commercial and townhomes or townhomes only in Block C and commercial, townhouses, or multi-family residential in Block F. A DeKalb Master Sign Program, prepared pursuant to Section 2.19.4.B.4.b. and attached as Exhibit "B" (the "Sign Package"), is incorporated herein as a condition of this rezoning. The architecture standards for shopfront commercial buildings, prepared pursuant to Section 2.19.4.B.4.a., are attached as Exhibit "C" and incorporated herein as a condition of this rezoning. In addition, the Subject Property will be subdivided in the future and a subdivision map is attached hereto as Exhibit "D" (the "Subdivision Plan") and incorporated herein as a condition of this rezoning.

II. **Phasing:**

- a. Developer shall build no more than 750 multi-family units until 140,000 square feet of non-office commercial space (to include existing non-office commercial space proposed for renovation) has been constructed or renovated.

III. **Uses and Building Heights:**

- a. Non-Office Commercial:
 1. Non-Office Commercial uses, to include Retail, Restaurant, and/or Entertainment uses, shall be developed for up to 320,000 square feet of combined space and any square footage not used under this commercial threshold may be transferred to other uses,

subject to these conditions, provided that non-commercial uses together with the office and hotel uses shall comprise a minimum of 20% of total building square footage.

2. Non-Office Commercial building heights shall be limited to a maximum of two stories or 50 feet, whichever is less, unless incorporated into a mixed-use building.

b. Office and Hotel:

1. Office uses shall be developed for up to 180,000 square feet, except that unused commercial square footage may be transferred to office uses, which shall increase this threshold proportionately (but not the DRI threshold for office uses)
2. Up to 150 hotel rooms are allowed. Additional hotel rooms may be added, but only if the amount of allowable commercial space is reduced by 500 square feet for each additional room (but not the DRI threshold for hotel rooms).
3. Office and hotel building heights shall be limited to a maximum of eight stories (100 feet).
4. Owner shall be allowed to locate office and/or hotel uses on the areas shown on the Site Plan interchangeably. Further, Owner shall be allowed to locate office uses above any retail building, so long as the square footage thresholds and maximum building heights herein are not exceeded.

c. Residential:

1. Residential uses shall consist of a combination of multi-family units and townhome units (for-sale and/or for-rent) and shall not exceed 1,800 total units. Further, multi-family units shall not exceed 1,700 units.
2. Multi-family building heights shall not exceed six-stories (75 feet) unless ground floor commercial is incorporated, in which case the maximum building height shall be seven-stories (85 feet). The height of Residential Building D3 shall not exceed six-stories (75 feet) within 100 feet of the townhouses located in Block E.
3. Townhome building heights shall be a maximum of three stories (45 feet). Rooftop structures on townhomes that do not exceed 50% of the total area of the roof deck surface shall not be considered as a building story, but shall be subject to the 45-foot height limitations herein.

d. Prohibited Uses:

1. The following use shall be prohibited in all portions of the development: Any use related to adult entertainment or adult service facility; pawn shop, title loan, check cashing, convenience store, gas station, and funeral home/crematorium.

IV. **Building Locations and Orientation:**

- a. The final location, size, and use of buildings and parking shown on the plan may vary as provided for in Article 27-7.3.10 of the Zoning Ordinance, but the overall density cannot exceed the proposed development program summary, except as may be allowed by these conditions.

- b. Block A shall have the following limitations:
1. The primary entrance to tenants in Building A20 shall be on Road A and its facade shall have windows and/or doorways that occupy at least fifty (50) percent of the width of the first-floor street-level façade.
 2. The primary entrance to tenants in Buildings A50 and A60 shall be on Road A, Road E and/or Road C and these facades shall have windows and/or doorways that occupy at least twenty-five (25) percent of the width of the first-floor street-level façade.
 3. The primary entrance to tenants in Buildings A65, A70, and A80 shall be on Mistletoe Extension or Road E. The facades facing Mistletoe Extension and Road E shall have windows and/or doorways that occupy at least fifty (50) percent of the width of the first-floor street-level façade.
 4. A minimum of one (1) fifteen (15) foot wide breezeway shall be provided from the lower level of the parking structure in Residential Building A1 to Road E. The breezeway shall be well-lit at all times, shall be surveilled with security monitors, and shall be open, accessible, and ungated at all times.
 5. The openings in Residential Building A1 for vehicular ingress and egress shall be high enough to accommodate sanitation and recycling vehicles.
 6. In the areas of Residential Building A1 which do not have ground floor retail, the ground floor residential units shall provide doorways to Road C. Such doorways can be secondary entrances but shall imitate front doors. The doorways and windows of said ground floor residential units shall comprise at least 30% of the front facades of the ground floor residential units.
 7. The rear of Building A10 and the service areas for A10 and A20 shall be screened from Road A with a combination of decorative walls and/or landscaping, subject to approval by the Director of Planning and Sustainability or designee.
- c. Block B shall have the following limitations:
1. The primary entrance to tenants in Building B30 shall be on Road A or the Mews and these facades shall have windows and/or doorways that occupy at least fifty (50) percent of the width of the first-floor street-level façade.
 2. The primary entrance to tenants in Buildings B70 and B80 shall be on Road A or Road C and these facades shall have windows and/or doorways that occupy at least twenty-five (25) percent of the width of the first-floor street-level façade.
 3. The side of Building B70 that faces Road A shall either have windows that comprise at least 50% of the façade; be decorated with a mural or painting; be a green wall; or have a comparable design treatment, subject to approval by the Director of Planning and Sustainability or designee.
 4. The primary lobby to Building B10 shall be on Road A or the Office Plaza adjacent to Road A and these facades shall have windows and/or doorways that occupy at least fifty (50) percent of the façade.
 5. The primary lobby to Building B75 shall be on Road C or the Mews and the facades shall have windows and/or doorways that occupy at least fifty (50) percent of the width of the first-floor street-level façade.
 6. A minimum of one (1) fifteen (15) foot wide breezeway shall be provided from the lower level of the parking structure in Residential Building B1 to Road A. "Breezeways" shall be provided on each side of the vehicular entrance to the parking structure. The

breezeways shall be well-lit at all times, shall be surveilled with security monitors, and shall be open, accessible, and ungated at all times.

7. The openings in the liner building around the structured parking in Block B for vehicular ingress and egress shall be high enough to accommodate sanitation and recycling vehicles.
 8. The primary entrance to tenants in Building B90 shall be on Road C. The façade facing Road C shall have windows and/or doorways that occupy at least fifty (50) percent of the façade.
- d. Block C shall have the following limitations:
1. The primary entrance to tenants in Buildings C5, C10, C30, and C40 shall be on Road A, Road C or Lemon Park and these facades shall have windows and/or doorways that occupy at least fifty (50) percent of the width of the first-floor street-level façade.
 2. The primary entrance to Building C50 (Existing Marshall's) shall remain in the existing store entrance location.
 3. The primary entrance to tenants in Buildings C90 and C110 shall be on Road A and Wild Honey Park, respectively, and these facades shall have windows and/or doorways that occupy at least fifty (50) percent of the width of the first-floor street-level façade.
 4. The primary entrance to tenants in Buildings C60 and C80 shall face Road C. The façade facing Road C shall have windows and/or doorways that occupy at least fifty (50) percent of the width of the first-floor street-level façade for building C80 and thirty-five (35) percent of the width of the first-floor street-level façade for building C60.
 5. The Flexible Area hatched location indicated on the Site Plan can be Commercial Uses only like shown on the Site Plan, Townhouses only with fronts facing on Wild Honey Park, or Townhouses facing on Wild Honey Park with a Commercial Building located to the south behind the townhouses.
- e. Block D shall have the following limitations:
1. The primary entrance to tenants in Buildings D5 and D10 shall be on Road A or Road C and these facades shall have windows and/or doorways that occupy at least fifty (50) percent of the width of the first-floor street-level façade.
 2. In the areas of Residential Building D1 which do not have ground floor retail, the ground floor residential units shall provide doorways to the adjacent roads. Such doorways can be secondary entrances but shall imitate front doors. The doorways and windows of said ground floor residential units shall comprise at least 30% of the front facades of the ground floor residential units.
 3. Ground floor retail can be constructed anywhere in Building D5 and in Residential Building D1 along Road A.
 4. Ground floor retail in Buildings D2 and D3 shall not be required. If ground floor retail is constructed in Buildings D2 and/or D3 it shall be limited to 5,000 SF in each location and shall be located along the parks adjacent to Road D. The primary entrance to tenants in these retail spaces shall be on the adjacent roads or parks and these facades shall have windows and/or doorways that occupy at least fifty (50) percent of the width of the first-floor street-level façade. At least thirty (30) percent of the facades of stories above the ground floor, and of the ground floor if the ground floor is residential, shall be comprised of window and door openings.
 5. The openings in Residential Building D1 for vehicular ingress and egress shall be high enough to accommodate sanitation and recycling vehicles if sanitation/recycling is

located in the parking structure, otherwise sanitation and recycling areas shall be screened.

6. Townhouses may be incorporated into Block D and the building locations may vary from those shown including the addition of internal streets as long the Shared-Use Path connecting Road B and Road C remains and a multi-use park and dog park at similar sizes to those shown on the Master Plan are constructed adjacent to the path.
 7. In the areas of Residential Building D2 and D3 which do not have ground floor retail, the ground floor residential units shall provide doorways to the adjacent streets. Such doorways can be secondary entrances but shall imitate front doors. The doorways and windows of said ground floor residential units shall comprise at least 30% of the front facades of the ground floor residential units. in all locations where adjacent sidewalk grades allow.
- f. Block E shall have the following limitations:
1. Only Residential Dwellings as allowed in Table 4.1 Use Table of the DeKalb County Zoning code shall be permitted in Block E.
 2. Where adjacent to single-family residential, building heights shall be limited by the transitional height plane as required by the DeKalb County code.
 3. Residential units adjacent to Road B and the shared-use path shall provide doorways to Road B or the shared-use path. Such doorways can be secondary entrances but shall imitate front doors. The doorways and windows of said ground floor residential units shall comprise at least 30% of the front facades of the ground floor residential units.
- g. Block F shall have the following limitations:
1. Uses shall consist of commercial buildings or residential buildings consisting either of townhouses or a multi-family building limited to 6 stories in height.
 2. Due to the elevation change across the site, street facing doorways may not be possible in all locations but a connection to the street from all entry doors shall be required.
- h. Block G – Open Space shall have the following limitations:
1. The area shall be limited to open space to include paved or unpaved trails, community gardens, and an existing detention pond by Orion Drive.

V. **Open Space:**

- a. Developer agrees to (a) contribute \$25,000 to DeKalb County (or other appropriate entity) towards improvements to the Community Garden, (b) construct a gravel driveway ramp to provide access to said Community Garden and (c) install piping between the existing storm drainage system and/or a detention pond to a 5,000-gallon cistern for use of the Community Garden. Developer shall make the funds in (a) above available within thirty (30) days of demand but in no case prior to the issuance of the first Certificate of Occupancy and shall complete items (b) and (c) as part of the first Land Development Permit issued for the project subject to all other necessary governmental approvals.
- b. A 12' wide Shared-Use Path and linear park shall be constructed between Wild Honey Park and Promenade Park in the general location shown on the Master Development Plan. An 8' wide sidewalk and linear park shall be constructed north of Promenade Park, a portion of which is located in the already cleared portion of the 50' transitional buffer, in the general location as shown on the Master Development Plan. These paths/sidewalks shall be located within a public

access easement and shall not be gated, although reasonable restrictions can be placed on the hours such paths are open to the general public.

- c. Lemon Park shall be built in the first phase of the project and shall consist of a combination of turf, grass, landscaping, hardscaping, seating and/or play areas. Outside dining and events shall be allowed if such dining and/or events remain inside the Park and do not obstruct pedestrian access to buildings via sidewalks and hardscaping around the buildings.
- d. A dog park and multi-use park shall be constructed in Block D adjacent to the Shared-Use Path. The multi-use park shall consist at a minimum of some turf or grass play areas as well as passive recreational areas. A dog waste disposal station shall be provided in the dog park.
- e. Promenade Park shall consist of the Shared-Use Path and seating and landscape areas, creating an entry/transition from the future Block G PATH trail into the site.
- f. Wild Honey Park shall consist of a mixture of hard surfaces, landscaped areas, and casual seating that can be activated by a variety of events.
- g. The Entrance Plaza on Mistletoe Extension shall be a pedestrian orientated park integrated into the area between the shared-use path and the retail uses to create an inviting activated entrance from Mistletoe Road into the project site. Outside dining may be provided in portions of the entrance plaza as long as pedestrian access is maintained through the park area. An entrance sign may be added in compliance with the Master Sign Program.

VI. **PATH Trail Connection:**

- a. The Developer(s) and/or Owners shall allow construction of a future PATH trail in Block G as shown on the Master Plan.

VII. **Infrastructure:**

- a. Contingent upon any necessary approvals, Developer agrees to contribute \$750,000 to DeKalb County (or other appropriate entity) to be exclusively applied towards the following improvements, which are public improvements: (a) the improvements to the intersection of Birch Road and North Druid Hills Road and (b) the improvements to the intersection of Orion Drive and Lawrenceville Highway, all as outlined in the GRTA Notice of Decision dated April 14, 2022, as well as (c) the construction of a Shared-Use Trail on Mistletoe Road extending from the project site to North Druid Hills Road (hereafter collectively the "Improvements"). Developer shall have no obligation to provide funding for the Improvements except as specified in this condition. Developer shall make said funds available within thirty (30) days of demand but in no case prior to the date Developer makes application for a Land Disturbance Permit. Further, Dekalb County shall cause the improvements identified in (a) and (b) above to be completed within 24 months of approval of this rezoning. In the event that a Tax Allocation District (TAD) capable of funding the above-referenced Improvements is created, Developer's obligation to fund said improvements and this condition shall immediately and automatically become null and void and, to the extent that Developer has already provided some or all of the funding for the Improvements identified herein, Developer shall be entitled to seek reimbursement for same from the TAD proceeds.
- b. The Developer will work with MARTA to develop the best design for a bus/transit stop on Sweetbriar Road.

- c. Unless noted otherwise, all “internal roads” shown on the plan are to be privately owned and maintained with a public access easement granted for vehicular and pedestrian traffic; internal roads will not be Private Streets as defined in the DeKalb County code. All lots will have frontage on internal roads or in the case of townhouses onto alleys which connect to internal roads.
- d. Road A, Road B, Road C, Road E, and Mistletoe Extension shall be built at locations that are substantially the same as the locations in the general location shown on the Master Plan and shall be built as part of the first phase of the Project.
- e. Road D may be built as part of a future phase and the exact location may vary as long as the shared-use path connection is maintained from the Future PATH trail to Road C. Additional “internal roads” may be constructed in Block D depending on the final building layout on this block.
- f. Streetscape dimensions for all internal road sections shall be as shown on Sheets C2-50 to C2-52, prepared by Kimley Horn, dated 02/21/22. Further, block and lot requirements shall be as shown on the Master Plan and the Subdivision Plan.
- g. Designated areas of internal roads may be periodically closed to vehicles to provide for street fairs, farmers markets, events, etc. as long as vehicular and pedestrian traffic routes are maintained to provide access to all parts of the site.
- h. The shared-use path shown on the Master Plan as connecting the Future PATH trail with Mistletoe Road shall be built in the first phase of the project. A temporary paved path may be provided from Road B to Road C until the permanent path is built when Road D is constructed.
- i. Bike Nodes consisting of a combination of bike racks, information kiosks, and/or bike maintenance stands shall be constructed at key points along the shared-use path in the general location shown on the Site Plan.
- j. Parking structures in Blocks A and D shall be screened with the use of liner buildings or other buildings to not be visible from public or internal roads.

VIII. Architecture:

- a. The architecture for the shopfront (stand-alone) commercial buildings such as Building A40, A30, A70, A80, C10, C5, etc. shall be substantially consistent with the architectural standards in Exhibit “B.”
- b. The front façade design of the ground floor of Buildings B50 and B60 shall be substantially consistent with that shown in the elevations titled, “Architectural Elevations (Sheet A-1.02), prepared by EDENS, and dated 1/18/22, except that the vehicular and pedestrian entrance to the parking garage shall be no wider than 48 feet, including two vehicular lanes of at least 12 feet each.
- c. West facades of Residential Buildings D1 and D3 shall be articulated with design features that shall echo or be compatible with the scale of the front facades of the townhomes on the opposite side of Road B.
- d. Ground floor retail uses, as well as stand-alone retail buildings, shall have functional door and window openings in the facades that face the sidewalks along the interior roads. Doors in the sidewalk-facing facades shall be unlocked and usable by customers during business hours. Windows in the sidewalk-facing facades shall be transparent and shall allow views into the interiors of the retail spaces.

IX. **Townhome Construction:**

- a. Townhouses shall be designed such that purchasers shall have the option to purchase a solar energy system.
- b. Townhouses shall be designed such that purchasers shall have the option to purchase and build an accessory dwelling unit, to be located on the lowest level of the unit.

X. **Signage:**

- a. Signage for the development shall be consistent with the standards in Exhibit "C."
- b. Flashing, animated, sound emitting, rotating and inflatable signs are prohibited.

XI. **Common Area Maintenance:**

- a. The common areas within the Development shall be kept and maintained in first class order and repair as compared to any other first class mixed-use development similar to the caliber, type and character of the Development and located in the Atlanta, Georgia metropolitan area.

XII. **Subdivision:**

- a. The Subject Property may be subdivided in general accordance with Exhibit D and parts of the Subject Property may be owned separately and/or conveyed as separate tracts and to separate owners with different ownership structures.
- b. Should there be separate ownership of parts of the Subject Property and/or a conveyance of part of the Subject Property to different owners, all conditions and variances, if any, shall remain applicable to any portion of the Subject Property, regardless of what person or entity owns the property. A true copy of the approved conditions and zoning agreement shall be attached to any and all legal documents transferring ownership of any part of the development.
- c. Separate ownership of parts of the Subject Property and/or conveyance of part of the Subject Property to different owners shall not create non-conforming lots or uses and shall not require any changes to the Site Plan for the development nor any variances. The newly created property lines which arise from these conveyances are not required to observe setback, buffer or other zoning requirements, except as may be reflected on the Site Plan.

XIII. Housing Affordability

- a. Developer agrees to provide 3 Affordable Housing Units (AHU) per multi-family building (15 total), defined as housing that is affordable to households earning no more than 60 percent of Area Median Income (AMI). In addition, the Developer agrees to provide 21 Workforce Housing Units (WHU), as defined by the Urban Land Institute, per multi-family building (105 total); for a total of 120 Affordable and Workforce Housing Units (7.1%). Subject to applicable laws, each multi-family building owner/operator shall establish a program to give a preference for rental of the AHU and WHU to individuals who work within the Project site.

XIV. Miscellaneous:

- a. Food trucks, shipping container stores, and similar structures shall be allowed in all locations except Blocks E and G as long as adequate pedestrian access is maintained. Food trucks and shipping container stores shall comply with all applicable State and County regulations.
- b. Outdoor dining associated with a restaurant or other commercial establishment shall be allowed throughout all Blocks except Blocks E and G.
- c. Temporary outdoor events may be held in all Blocks except Block E. The following temporary outdoor events are not subject to the Special Administrative Requirements of section 27-7.6 and/or 27-4.1.3, Table 1: temporary outdoor events, festivals, concerts, farmers markets, produce stands, Christmas tree sales, pumpkin and Halloween sales, ping pong or similar tournaments, ice skating rink, art shows, magic shows, athletic events (e.g., 5K races), yoga, meditation, antique car shows, etc. This list is intended to be representative, not exclusive.
- d. Information and advertising kiosks shall be allowed throughout all Blocks except Blocks E and G.
- e. Walk-up ATMs shall be allowed either integrated into buildings or free-standing. A Drive-up ATM shall be allowed subject to a Special Land Use Permit.
- f. Murals shall be allowed except in Block E and G.
- g. A drive-through pharmacy shall be allowed as indicated at Building A10 subject to a Special Land Use Permit.
- h. On all buildings in the development, roof mounted mechanical equipment and appurtenances shall be located so that they are not visible from the ground immediately adjacent to the building. Said equipment shall also be screened with screening materials that are compatible with the surrounding building materials and architectural design.
- i. The development shall provide a minimum of 1 bicycle/moped parking spaces per twenty (20) parking spaces in surface parking lots and parking structures (this provision shall not apply to townhouse garages) in accordance with Section 27-6.1.17. Parking structures shall provide covered bicycle park spaces at the above ratio.
- j. A minimum of 3 percent of all surface parking lots and non-residential portions of parking structures shall be striped and signed for alternative fuel vehicle parking. EV charging station parking spaces may be used toward this total.
- k. A minimum of two percent parking spaces in surface parking lots and parking structures shall have electric vehicle charging stations.
- l. All parking structures shall be designed to provide the infrastructure for future conversion to allow for electric vehicle charging stations for a minimum five (5) percent of the parking spaces.

- m. The site shall be provided with underground utilities for electricity, phone, cable and internet services.
- n. Developer shall employ pest and rodent abatement measures during demolition.
- o. Developer shall employ dust abatement measures during demolition.
- p. Setbacks shall be measured by existing right-of-way, versus any future right-of-way that County may demand incidental to development.
- q. No cell towers/structures/monopoles shall be permitted anywhere on project property, but non-tower-mounted flat antennas may be located on roof tops or parking structures.
- r. A Sustainability Program shall be developed and implemented for the overall development.
- s. Before County issuance of a land disturbance permit, the Developer shall submit a framework plan for refuse disposal. The framework plan shall outline the method of recycling that will be used in the development. Recycling bins shall be provided in all multi-tenant buildings in locations convenient for use by residents. Storage areas for construction materials and/or equipment shall be screened from view from residential properties and structures with opaque construction fencing.
- t. An outdoor lighting plan shall be submitted in conjunction with the application for a land disturbance permit and shall meet the standards of Sec. 5.6.1 of the DeKalb County Zoning Code.
- u. The approval of this rezoning application by the Board of Commissioners has no bearing on other approvals by the Zoning Board of Appeals or other authority, whose decision should be based on the merits of the application before said authority.