

Cullison, David

From: Russ Haynie <russ.haynie@gmail.com>
Sent: Friday, February 10, 2017 6:37 AM
To: Cullison, David
Subject: Summary of community opposition to Minerva Homes' CoA application for 1551 Briarcliff Road
Attachments: Old Briarcliff Forest Letter of Support_Signed.pdf; Briarpark Court Nomination-Format-District-07.pdf; Briarpark Court Nomination Appendix FINAL.pdf; TelecommunicationsZoningInfo.pdf; DekalbZoningTeleOverlay.pdf; PCIA_Model_Zoning_Ordinance_June_2012.pdf; DHCA Letter in Support of Briarpark Court Historic District.pdf; Old Briarcliff Rd Forest

David,

Thank you for the advice about arrival time to the hearing next week. In light of the complexity of organizing attendance by our attorney who is presenting our case on our behalf and so many of our neighbors, I would advise keeping the agenda unchanged since I have advised everyone to plan to arrive between 8:30 and 9:00.

Thanks too for your update on the historic district nomination. I will look forward to receiving confirmation of the hearing once it is scheduled.

Lastly, as you requested, on behalf of the members of the Old Briarcliff Safety Alliance I would like to provide you with the following summary of our reasons to oppose Minerva Homes' CoA. Materials referenced in the summary are also attached so that they can be incorporated into the record in case of later review. Thank you in advance for sharing this with the Historic Preservation Commission ahead of the next hearing on February 13th.

As referenced, the Old Briarcliff Safety Alliance is a community group of approximately 150 neighboring households formed specifically to unconditionally oppose development of this important historic urban forest. Many of our members are planning to attend the hearing and will be wearing our green t-shirts as a show of their support for our cause.

Respectfully,

Russ Haynie

President, Old Briarcliff Safety Alliance LLC

Reasons We Oppose Minerva Homes' Proposal

(1) Negative environmental impacts. We share the assessment of local tree experts and ecologists whom have concluded that development of this forested land will have significant detrimental impacts to the larger contiguous forest and health of the watershed. I have attached the Letter of Support we received from Trees Atlanta which summarizes these concerns. We respectfully ask the Commission to deny Minerva Homes' request for a Certificate of Appropriateness and prevent the loss of this historic and rare urban forest in line with its mandate to uphold the spirit and vision of the DeKalb County Historic District. It is our conclusion that by including this forest within the boundary of the Historic District, the intent is simple and clear: preservation. In describing the original intent of drawing the District's boundaries, the Druid Hills Design Manual states, "An important historic and environmental component of Druid Hills is the Peavine and Lullwater Creek system. One area located on the Emory University campus, Peavine Creek and the open area buffering its west bank, has been included to protect this fragile natural historic resource". Further, in Section 8.1 "Open Space and Parkland

Preservation and Conservation“ the Design Manual states, “The open spaces, preserved in Olmsted’s original concepts for Druid Hills, remain as major open spaces today. These green spaces are connected by the stream corridors that extend through them. It is imperative that the large scale, historic, public and private open spaces be preserved to provide a rich habitat for plants and wildlife and to protect the stream corridors”.

Per the assessment provided by Trees Atlanta, “The wooded site is located in an important connectivity corridor for wildlife, vegetation and water. Deforestation around Fox 5’s tower would incur significant loss to the surrounding neighborhood in terms of carbon sequestration, wildlife habitat, air quality, and general public health. Furthermore, the steep grade of the land renders it unsuitable for responsible site development; the amount of tree loss, grading, topsoil removal, erosion, and corresponding pollution and sedimentation that would flow downhill into Peavine Creek would be tremendously destructive to the woodland and the watershed” (attached Letter from Christina Gibson, Canopy Conservation Coordinator, and Greg Levine, Co-Executive Director and Chief Program Officer, Trees Atlanta, November 10, 2016).

Christina Gibson, Canopy Conservation Coordinator and ISA Certified Arborist with Trees Atlanta also shared further concerns in the attached email she sent to the Druid Hills Civic Association President and Board on January 6th. Among her other concerns Christina stated, “The rolling and steep topography of the land here draining toward Peavine Creek currently provides an essential service of storm water management off Briarcliff Rd and the surrounding built environment. Construction here would certainly require mass grading and topsoil removal that could have disastrous effects on the functions and benefits provided by the forest (temperature cooling, carbon sinking, air cleaning, etc.) with expensive consequences on the water, land and forest downstream.

(2) Negative impacts on adjacent historic and architecturally significant single-family homes. I have attached the Nomination Form and supporting Appendix for the Briarpark Court Historic District which was recently reviewed and approved by the Historic Preservation Division of the Georgia Department of Natural Resources. The nomination will soon be considered via public hearings held by the Commission and we encourage its members to review the attached materials and become familiar with the bases for this nomination. A notable component of the deliberate design of the homes in the nominated district is the careful siting of the homes to capitalize on the vista of the surrounding forest that the elevated topography of the lots offer. Several of the Andre Steiner designed homes in the district feature walls of glass framing expansive views of the very forest threatened by the proposed Minerva Homes development. We believe the development will significantly alter a historic landscape and disrupt the harmony between the built and natural environments that characterize the progressive modern design philosophy realized in the residential designs of the Briarpark Court District.

I have also attached a Letter of Support for the district nomination from Anne Wallace, President of the Druid Hills Civic Association. In the letter President Wallace states, “The designation will protect a rare and well-preserved enclave of unique mid-20th century residential architecture.”

(3) Threats to public safety due to inappropriate television broadcast tower proximity. Our alliance recognizes that Fox 5 Atlanta has certain rights of use of its property in our neighborhood, however we feel in exercising their right to place an 1140’ tall broadcast tower on their property, they should be required to maintain a reasonable buffer between its tower and adjacent residential districts, existing or proposed, to mitigate the visual impacts of the tower and to protect public safety. In researching the DeKalb County Zoning Ordinance, our alliance has discovered a seeming lack of setback/buffer/fall zone regulations applicable to television and radio broadcast towers. We feel this inadvertent exclusion has enriched the property rights of Fox 5 at the expense of public safety. Following is a full summary of our alliance’s perspective on the issue.

I have attached the original (pre-2015) overlay to the DeKalb County Zoning Ordinance (Section 27-779 *Telecommunications towers and antennas*). Of note, this documents specifies:

- Telecommunications towers and antennas “...when inappropriately located, have the potential to pose a danger to surrounding property owners and the general public...” (27-779, section (a) *Findings, purpose and intent*)
- “The county finds there is a substantial need related to public health, safety and welfare to comprehensively address those concerns through the adoption of regulations.” (27-779, section (a) *Findings, purpose and intent*) Among its purpose and intent: “to avoid potential damage to adjacent properties and personal injury from falling ice and debris and tower failure” (27-229, section (a) *Findings, purpose and intent* (5))
- “Any tower or antenna located within any zoning district where permitted by special administrative permit which adjoins any residential district shall be set back from any property line of any such adjoining residential district a distance of one-half (1/2) the combined height of the tower and antenna, or two hundred (200) feet, whichever is greater.” (27-779, section (c) *Regulations*, (1), (b.))

According to the FCC registration records for the telecommunications tower on the Fox 5 property (<http://wireless2.fcc.gov/UlsApp/AsrSearch/asrRegistration.jsp?regKey=2603785>), the total height of the tower and antennae is 348.8 meters (about 1144 feet). The attached map shows an approximate overlay of the setback of ½ of this height. As you can see, the lot Minerva Homes is aiming to subdivide from the Fox 5 property and petition for a Certificate of Appropriateness to develop appears to be almost fully within the setback boundary.

I have also attached the "model ordinance" for cellular towers issued by PCIA, an association representing the interest of owners and operators of cell towers. If you compare the language of this document with the current DeKalb County Zoning Ordinance (section 4.2.57 *Wireless telecommunications (cell tower)*), it is apparent that the County used the "model ordinance" as the basis for its current Zoning Ordinance. The "model ordinance" excludes television and radio broadcast towers and therefore so now does the current DeKalb County ordinance (as stated under section D, #5). The section on Wireless Communication begins on page 39: http://planningdekalb.net/wp-content/uploads/2015/08/Article4_September_1_2015.pdf.

This leads to our questions:

- Might it be a reasonable conclusion that an industry association like PCIA would not wish to expose its constituents (cell tower owners and operators) to set-back regulations appropriate to much taller, and presumably riskier, television and radio broadcast towers, therefore the exclusion in their "model ordinance"?
- Did DeKalb County inadvertently exclude set-back regulations applicable to television and radio broadcast towers from its current Zoning Ordinance by using the PCIA Model Ordinance as a basis for its regulations pertaining to cell towers?
- If the exclusion was inadvertent, would it not be reasonable to correct the Zoning Ordinance to introduce a reasonable set-back between television and radio broadcast towers and antennas and adjacent residential districts to correct this error?
- If the current Zoning Ordinance's exclusion of television and radio broadcast towers was intentional, how and why have DeKalb County's conclusions regarding safety concerns related to proximity of telecommunications towers to residential districts changed? Is the County able to share a summary and the source of its findings that led to a change in the position that these towers pose a "danger to surrounding property owners and the general public" as stated in the original overlay document?
- By motion of its board, The Druid Hills Civic Association requested last month that Minerva Homes delay its CoA application for 2-3 months until the county could conduct due diligence on appropriate tower setbacks and Minerva promptly declined to comply with this common sense request.

I met with DeKalb County District 2 Commissioner Jeff Rader and Marian Eisenberg of the County Planning Department on February 3rd and Mr. Rader expressed support for investigating a

revision to the County Ordinance to correct the inadvertent exclusion of regulations for broadcast towers and asked Ms. Eisenberg to initiate review. Of course, without Minerva agreeing to accept any delay in its application, we are left now only with the discretion of the Historic Preservation Commission to consider either denying the application altogether or making approval of the CoA conditional on the county concluding its investigation and amending the ordinance accordingly since deferring the application seemingly can only occur with permission of the applicant.

(4) Threats to public safety due to road safety concerns. Old Briarcliff Road is well known to local residents as a speedway for commuter motorists turning off northbound Briarcliff Road onto Old Briarcliff Road. Even though the posted speed limit is 25 miles per hour, a high proportion of cars are hurtling at 40, 50, or even 60 miles per hour as they enter Old Briarcliff, especially during the morning and evening rush hours. All of us who walk or bicycle along Old Briarcliff Road have experienced “close calls” and other frights from speeding cars. Despite Minerva Homes’ efforts to minimize these concerns through site configuration and intersection redevelopment schemes, we do not believe it can be reasonably contested that, with more people walking or bicycling out onto Old Briarcliff Road from the new project, the risk of being struck by high speed traffic will increase. Traffic congestion is also a key concern. Anybody who has experienced the traffic on Old Briarcliff Road during rush hour knows that the traffic is heavy. It is especially severe during the evening rush hour, when cars commuting home from CDC and Emory use the road as a shortcut to southbound Briarcliff Road. Cars are often backed up as far as the entrance to Briar Park Court or further. There is no traffic light at the intersection of Old Briarcliff Road and Briarcliff Road. Southbound cars turning left try to merge with bumper-to-bumper traffic moving southbound on Briarcliff Road. The addition of a driveway servicing the residents of 24 new homes on Old Briarcliff Road will surely add to this congestion. The developer’s arguments that the target market of the homes will be empty-nesters content to wait out rush hour traffic is dubious and the proposed re-configuration of the Old Briarcliff Road and Briarcliff Road intersection raises as many concerns as it aims to solve. It is apparent to us that this increased congestion and stalled traffic flow will essentially trap residents of Briar Park Court and the proposed development and further clog a roadway that serves as an access route for emergency vehicles. Add to this mix the associated traffic related to routine trash collection, mail and parcel deliveries, etc. and this development will surely create a traffic nightmare in our community.

(5) Diminished bargaining power to affect optimized use (and buffers) for future proposals on the Fox 5 parcel. Throughout its presentations of its development proposal to the community and the Druid Hills Civic Association, Minerva Homes has claimed that what ‘could be’ from other builder/developers under the current zoning is less desirable than their proposal. Our view is that by allowing this dense development to occur today and losing the edge of the mature tree canopy at the boundary of this historically platted OI lot, our neighborhood loses the opportunity to negotiate the preservation of this edge of the important larger contiguous forest when negotiating future proposals that would aim to densely develop the core of the property. Speculating that Fox 5 will aim to vacate and sell its land at some point in the future, would it not be better to have a preserved mature tree canopy to serve as a natural boundary between the single-family homes of Briar Park Court and the future development? After all, with the current OI use and buffers, our neighborhood and WAGA/ Fox 5 have enjoyed a harmonious adjacency for many decades. It might be reasonable to assume therefore that with preserved natural borders, a different use (dense residential or other office/institutional development) could work well.

The streambed and steep topography of the lot renders the southern portion of the lot practically undevelopable as evidenced by Minerva’s latest proposal to preserve it as a conservation easement. We see this as a matter of practicality less than good will and believe any future development would also preserve the canopy at the corner due to these same constraints. We therefore ask the DHCA to consider that its leverage to negotiate future proposed uses is best maintained by keeping the Fox 5 parcel intact and denying this request to subdivide.

For the reasons described above, we believe denying Minerva Homes’ application best preserves the Druid Hills Civic Association and the Historic Preservation Commission’s bargaining position when and if future

development proposals are considered for the Fox 5 property under its current OI zoning. Conceding to allow this development today results in the loss of a significant and important edge of a rare contiguous urban forest and diminishes the chances for its preservation as a negotiated natural buffer between existing single-family homes and future dense developments at the Fox 5 parcel's core. We hope the Commission will consider this carefully arrive at this same conclusion.

From: Cullison, David [mailto:dccullis@dekalbcountyga.gov]
Sent: Thursday, February 9, 2017 1:17 PM
To: Russ Haynie <russ.haynie@gmail.com>
Subject: RE: Question RE: HPC Agenda

Russ,

The opposition will have ten minutes to speak. If your representative gets up first he/she can speak all ten minutes. If someone else get up first, they can take the full ten minutes. It does not matter when your speaker arrives as long as he/she is there when the case comes up.

It is always good to have written material provided ahead of time so that it can be incorporated into the record in case of later review. The preservation commission's policy is not to consider large amounts of information presented at the last minute.

I believe it is nearly impossible to get to this case before 8:00 and unlikely to get to it by 9:00. I hope it won't happen Monday, but some meetings have gone on until midnight.

I intend to cite the designation application and the state preservation office's recommendation in my report. I have already entered the report into the record. I apologize for not getting the designation to the Board of Commissioners before now. I am working to get it heard at the Board's March 14 meeting, but because of the long lead time to get on the Board's agenda, it might not be until March 28.

David Cullison
Senior Planner
DeKalb County Department of Planning & Sustainability
330 W. Ponce de Leon Avenue
Third Floor
Decatur, GA 30030
404/371-2247
404/371-4556 (fax)

The DeKalb County zoning map is now on-line at <http://maps.dekalbcountyga.gov/parcel/>. The DeKalb County Zoning Ordinance is now on-line at http://planningdekalb.net/?page_id=756#articles.

Please visit the Planning & Sustainability web site at www.planningdekalb.net for information about procedures to obtain certificates of occupancy or building permits.

From: Russ Haynie [mailto:russ.haynie@gmail.com]
Sent: Wednesday, February 08, 2017 10:23 PM
To: Cullison, David
Subject: RE: Question RE: HPC Agenda

David,

Thanks for your response, I know you are very busy, so no worries.

Assuming the Minerva application will be last on the docket, is there an approximate time to advise our attendees and speaker to arrive? Say, 8:00 or 9:00? I know it would be approximate at best, but I hate to make so many people sit through the entire meeting and despite your suggestion, organizing a way to alert so many people from the meeting seems very difficult to organize.

Also, does our speaker have to be there at the beginning or can he arrive later? Can you also please confirm that he will have 10 minutes to speak?

Sorry for so many questions, appreciate your guidance,
Russ

From: Cullison, David [<mailto:dccullis@dekalbcountyga.gov>]
Sent: Wednesday, February 8, 2017 9:35 AM
To: Russ Haynie <russ.haynie@gmail.com>
Subject: RE: Question RE: HPC Agenda

Russ,

I apologize for not getting back to you sooner.

I have forwarded your request to the preservation commission. The agenda is set now, but the commissioners can vote to modify it at the meeting. I don't think they will, because the reason the commission had for putting the more complicated cases at the end of the agenda was to not make all the other applicants wait. Also, the Minerva people or other people who might want to attend, but are not affiliated with your group, may plan to come to the meeting later in the evening.

A possible strategy would be to have an observer at the meeting who could text or email everyone else when the commission gets close to the application.

David Cullison
Senior Planner
DeKalb County Department of Planning & Sustainability
330 W. Ponce de Leon Avenue
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Decatur, GA 30030
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From: Russ Haynie [<mailto:russ.haynie@gmail.com>]
Sent: Friday, February 03, 2017 5:47 PM
To: Cullison, David
Subject: Question RE: HPC Agenda

Hi David,

As you know, the CoA application for Minerva Homes proposed project on Old Briarcliff Road is on the docket of the next (Feb. 13th) HPC hearing. I expect a large number of our alliance members will attend the hearing and our attorney will also be there to deliver a statement of opposition on our behalf. Given this, I need to see if there is any discretion for the commission to place the Minerva application near the top of its agenda as a courtesy to so many community members who are planning to attend so that they do not have to stay for the entire hearing. Please let me know if this is possible and thank you very much in advance for considering this request.

Best regards,

Russ Haynie
(404) 862-2314

Cullison, David

From: Christina Gibson <christina@treesatlanta.org>
Sent: Friday, January 06, 2017 10:55 AM
To: president@druidhills.org
Cc: landuse@druidhills.org; publicsafety@druidhills.org; firstvp@druidhills.org; commvp@druidhills.org; adminvp@druidhills.org
Subject: Old Briarcliff Rd Forest

Hello Ms. Wallace, and DHCA:

I am writing on behalf of the forest along Old Briarcliff Rd beneath the Fox 5 tower that has been proposed to be developed by Minerva Homes.

Trees Atlanta has serious concerns about the effect of construction and development on that land that go beyond the obvious danger of the broadcast tower fall zone location.

The forest displays signs of good health with diverse tree species, including a couple of species that we at Trees Atlanta rarely encounter so close to the city core. These species indicate old, rich soils and intact ecological function. Remnants of functional forest in the metro Atlanta area are *critical* for public health, and will only become increasingly so in a warmer, more crowded city. I urge you to look closely at the long-term value of this woodland if kept intact.

The rolling and steep topography of the land here draining toward Peavine Creek currently provides an essential service of stormwater management off Briarcliff Rd and the surrounding built environment. Construction here would certainly require mass grading and topsoil removal that could have disastrous effects on the functions and benefits provided by the forest (temperature cooling, carbon sinking, air cleaning, etc.) with expensive consequences on the water, land and forest downstream.

I have been following the project closely and have seen the limited renderings that Minerva has provided. Their proposed concessions seem negligible to unrealistic, and fail to acknowledge the realities of what the trend will be if this forest is sliced up and developed bit by bit. It's a fact that the more edge you create in a woodland, the more unhealthy and susceptible to drought and warmer temperatures those trees become. An increase in forest edge also ushers in opportunistic species like kudzu and English ivy, which as you know will colonize disturbed places in their effort to heal a wound on the land that has been rendered unsuitable (by human activity) for more desirable species to grow.

With the new president-elect's administration coming in that is preparing to set back the clock on environmental protections (which, of course, we do not have time for), it will be the seemingly small decisions like this one -- and the precedent, values and trends they represent -- made by local citizens and governing bodies that will absolutely count the most. Every single decision.

I am in favor of the proposed moratorium brought forth to Dekalb County by the concerned citizens in the Old Briarcliff Safety Alliance, and hope that the DHCA will take their public safety concerns into serious consideration, with the added layer of the forest services in mind. I strongly encourage you to regard and protect this woodland as the precious asset that it is to your neighborhood and its citizens. The forest's payoff and value may seem intangible and hard to quantify now, but I assure you these will be exponential the longer it is left intact.

Thank you for your efforts,

Christina Gibson

Canopy Conservation Coordinator
ISA Certified Arborist, SO-7353A

christina@treesatlanta.org

(404) 681-4906 (office)

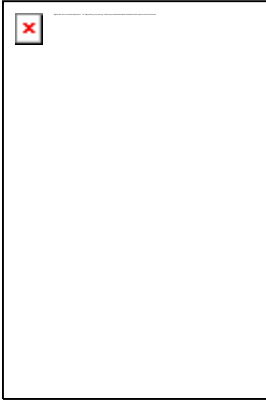
(404) 431-0717 (cell)

Trees Atlanta

225 Chester Avenue SE

Atlanta, GA 30316

www.treesatlanta.org



City of Atlanta residents can request their free yard tree at

treesatlanta.org/freeyardtree

Trees Atlanta is a nationally recognized nonprofit citizens' group that protects and improves Atlanta's urban forest by planting, conserving, and educating.

TREES ATLANTA

November 10, 2016

To Whom It May Concern:

Trees Atlanta is a nationally recognized nonprofit citizens' group that protects and improves Atlanta's urban forest by planting, conserving, and educating.

Trees Atlanta strongly supports the effort by Briar Park Court residents to prevent re-zoning and residential development by Minerva Homes for the sake of urban forest preservation along Old Briarcliff Road (Old Briarcliff Forest). The wooded site is located in an important connectivity corridor for wildlife, vegetation and water. Deforestation around Fox 5's tower would incur significant loss to the surrounding neighborhood in terms of carbon sequestration, wildlife habitat, air quality, and general public health. Furthermore, the steep grade of the land renders it unsuitable for responsible site development; the amount of tree loss, grading, topsoil removal, erosion, and corresponding pollution and sedimentation that would flow downhill into Peavine Creek would be tremendously destructive to the woodland and the watershed.

Notably, Trees Atlanta staff have observed rare species of trees thriving in this particular forested area that are uncommon in other pockets of Atlanta's urban forest. The canopy's diverse over-story and mid-story include healthy populations of the following trees: American beech (*Fagus americana*), northern red oak (*Quercus rubra*), ash (*Fraxinus pennsylvanica*), elm (*Ulmus spp.*), sassafras (*Sassafras albidum*), sourwood (*Oxydendrum arboretum*), basswood (*Tilia spp.*), ironwood (*Carpinus caroliniana*), and big-leaf magnolia (*Magnolia macrophylla*). These trees indicate healthy soil and a possibly rich and diverse herbaceous layer, which would be most visible in the springtime. Diverse layers of vegetation such as this support a complex ecosystem that is increasingly rare in the city and important to protect. In addition, the tallest sycamore tree (*Platanus occidentalis*) ever measured inside I-285 sits on the Fox 5 property in a deep ravine at over 140 feet tall; the tallest tulip poplar (*Liriodendron tulipifera*) observed inside the perimeter sits in this woodland on the Emory side of the property at 166 feet tall.

In summary, the remaining forested land on the Fox 5 property has the potential to serve as an example of urban forest stewardship and a sanctuary for community wellness, and Trees Atlanta fully supports the motion to protect this forest from development. Trees Atlanta is also available as a community resource for forest restoration and management should the neighborhood seek consultation.

Thank you for considering our request to protect this urban forest.

Sincerely,



Christina Gibson
Canopy Conservation Coordinator
ISA Certified Arborist SO-7353A
Christina@treesatlanta.org



Greg Levine
Co-Executive Director and Chief Program Officer
Greg@treesatlanta.org

Cullison, David

From: Baker, Andrew
Sent: Monday, April 17, 2017 8:55 AM
To: Beth Herndon
Cc: Cullison, David
Subject: RE: save the Old Briarcliff Forest

Ms. Herndon

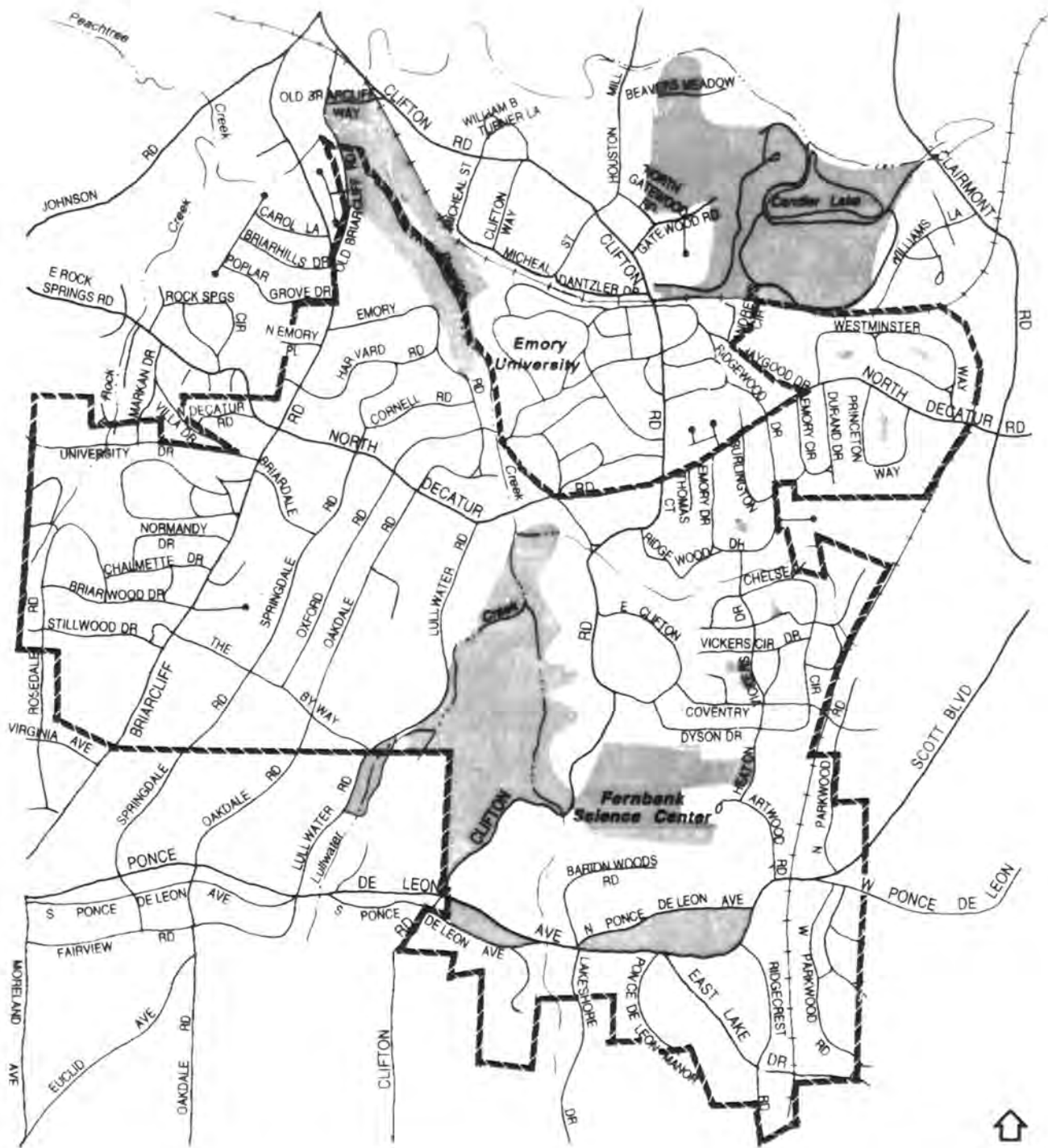
Thank you for your comments regarding the old forest at 1551 Briarcliff Road. By way of this email, I am forwarding your concerns to David Cullison the Senior Planner for petitions before the Historic Preservation Commission.

Andrew Baker

From: Beth Herndon [<mailto:beth4166@earthlink.net>]
Sent: Friday, April 14, 2017 3:34 PM
To: Baker, Andrew
Subject: save the Old Briarcliff Forest

Dear Mr. Baker - I am not able to attend the Historic Preservation meeting on Monday April 17 due to another Board meeting so I wanted express my concerns with the proposal to re-zone and clear cut the forest at 1551 Briarcliff Road (DH), Residential Recovery Fund, LLC ("Minerva USA"). I strongly encourage the commission to not approve this plan. We need to protect the old forest as the generations before us have done to date. Trees add beauty and buffer and air quality benefit for the city and we are losing too many trees to development.

Thank you,
Beth Herndon
DeKalb County Resident



Druid Hills Local Historic District
DeKalb County, Georgia

Illustration A

LOCAL HISTORIC DISTRICT

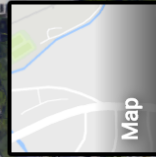
Legend	
District Boundary	
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Creek System	

Not to Scale





Search Google Maps



Map

Herbert Taylor Park

42

Candler Field

Peavine Creek Rd NE

David J. S
CDC Mu

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FOX 5 Atlanta

Carroll Ln NE

42

Briar Hills Dr NE

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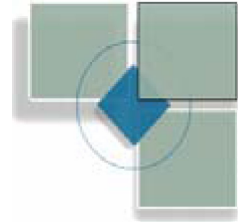
Measure distance
Click on the map to add to your path
Total distance: 521.72 ft (159.02 m)



DeKalb County Planning & Sustainability Department

Lee May
Interim Chief Executive Officer

Andrew A. Baker
Director



Special Administrative Permit

Sec. 27-779. - Telecommunications towers and antennas.

The following regulations shall apply to all telecommunications towers and antennas within DeKalb County:

- (a) *Findings, purpose and intent.* DeKalb County finds that the number, height, design characteristics and location of telecommunications towers and antennas in the county directly affect the public health, safety and general welfare. The county finds that such structures are likely to substantially increase in number in the immediate future. The county further finds that such structures, when inappropriately located, have the potential to pose a danger to surrounding property owners and the general public and substantially detract from the beauty and aesthetic appearance of the county. The county finds that there is a substantial need directly related to the public health, safety and welfare to comprehensively address those concerns through the adoption of regulations. The purpose and intent of the governing authority of DeKalb County in enacting this section are as follows:
- (1) Encourage the location of towers in nonresidential areas and minimize the total number of towers throughout the county;
 - (2) Encourage the joint use of new and existing tower sites;
 - (3) Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
 - (4) Minimize adverse visual and aesthetic effects of towers through careful design, siting, and vegetative screening;
 - (5) Avoid potential damage to adjacent properties and personal injury from tower failure and falling ice and debris through engineering, careful siting of tower structures, and other requirements;
 - (6) Ensure compliance with applicable federal statutes and regulations;
 - (7) Lessen traffic impacts on surrounding residential areas;
 - (8) Allow new towers in residential areas only if a comparable site is not available in a nonresidential area; and
 - (9) Comply with all necessary and relevant requirements of the Telecommunications Act of 1996, as amended.
- (b) *Compliance required.* It shall be unlawful for any person to erect, install, construct, enlarge, move, alter or convert any telecommunications tower or antenna or cause the same to be done within DeKalb County except in accordance with the provisions of this section. In addition, except as otherwise specifically provided herein, all towers and antennas shall also comply with all regulations applicable to the zoning district in which said tower or antenna is located and any permits authorizing said towers or antennas.
- (c) *Regulations.* The following regulations shall apply to all telecommunication towers and antennae, including those permitted by special administrative permit within a zoning district and those permitted by special land use permit:
- (1) In addition to meeting all of the development standards required by the zoning district within which the tower or antenna is proposed to be located, all telecommunications towers or antennae shall be set back as follows:

- a. Any tower or antenna located within any zoning district where permitted by special administrative permit shall be set back from all property lines which adjoin any other zoning district boundary in which telecommunications towers or antennae are also permitted by special administrative permit a distance of one-third of the combined height of the tower and antenna or one hundred (100) feet, whichever is greater, except that where any such adjoining property is used for residential use then said telecommunications tower or antenna shall be set back from any such off-site structure in residential use, including any accessory structure designed for regular human use, a distance of one-half (½) the combined height of the tower and antenna or two hundred (200) feet, whichever is greater;
 - b. Any tower or antenna located within any zoning district where permitted by special administrative permit which adjoins any residential district shall be set back from any property line of any such adjoining residential district a distance of one-half (½) the combined height of the tower and antenna, or two hundred (200) feet, whichever is greater; and
 - c. Any telecommunications tower or antenna which is approved by special land use permit by the board of commissioners to be located within any residential district shall provide setbacks as required by the board of commissioners in their grant of the special land use permit, but in no case shall the set back from any property line be less than two hundred (200) feet.
- (2) Telecommunications towers and antennas shall either maintain a galvanized steel finish or, subject to any applicable standards of the Federal Aviation Administration or Federal Communications Commission, be painted a neutral color, so as to reduce visual obtrusiveness. Said requirement shall not apply to an alternative tower structure.
 - (3) At a tower site, the design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening and landscaping that will blend the tower facilities to the natural setting and built environment.
 - (4) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment shall be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
 - (5) Towers shall not be artificially lighted, unless required by the Federal Aviation Administration, Federal Communications Commission or other applicable authority. If lighting is required, such lighting shall be to the minimum applicable standards so as to minimize the disturbance to the surrounding views.
 - (6) Telecommunications towers and antennas shall be entirely enclosed by a security fence not less than six (6) feet in height. Towers shall be equipped with an appropriate anti-climbing device. This requirement shall not apply to alternative tower structures provided equivalent alternative security measures are installed.
 - (7) In addition to any other landscaping or buffer requirements that may apply, telecommunications towers and antennas shall be landscaped with plant material that effectively screens the tower site from adjacent uses. Existing tree growth and natural land forms on-site shall be preserved to the maximum extent possible. At a minimum, a landscaped strip ten (10) feet in width shall be provided around the perimeter of the site. Said requirement shall not apply to alternative tower structures.
 - (8) Telecommunications towers and antennas shall be constructed to the minimum height necessary to accomplish their required telecommunications purpose.
 - (9) The environmental effects of radio frequency emissions shall not serve as a basis to approve, deny or otherwise regulate a telecommunications tower or antenna to the extent said emissions comply with Federal Communications Commission regulations concerning said emissions.

- (10) All decisions by the county or its officials denying a request to place, construct or modify a telecommunications tower or antenna shall be in writing and supported by a written record documenting the reasons for the denial and the evidence in support thereof. All such decisions shall be made within a reasonable time from the date a completed application is duly filed with the appropriate department. Applications in all cases where the telecommunications tower or antenna is a use which may be authorized by special administrative permit shall be made to and decided by the director of public works pursuant to all standards and requirements contained within this section, in Article V of this chapter, and any other applicable section of this chapter. Applications in all cases where the telecommunications tower or antenna is a use which may be authorized by special land use permit shall be made to and decided by the board of commissioners pursuant to all standards and requirements contained within this section, in Article V of this chapter, and any other applicable requirement of this chapter.
- (11) Each applicant requesting a special administrative permit for a telecommunications tower or antenna shall provide to the director of public works as a part of the application for special administrative permit and each applicant requesting a special land use permit for a telecommunications tower or antenna shall provide to the director of planning as a part of the application for special land use permit an inventory of its existing towers that are either within the jurisdiction of the governing authority or within one-quarter mile of the boundaries thereof, including information regarding the location, height and design of each tower. The director of public works or the director of planning, as the case may be, may share such information with other applicants applying for special administrative permits or special land use permits under the requirements of this chapter or with other organizations seeking to locate a telecommunications tower or antenna within the jurisdiction of DeKalb County, provided, however, that the director of public works and the director of planning are not, by sharing such information, in any way representing or warranting that such sites are available or suitable. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the director of public works in the case of application for a special administrative permit or the board of commissioners in the case of application for a special land use permit that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence shall be submitted at the time of application for special administrative permit or special land use permit, as the case may be, which demonstrates that no existing tower or structure can accommodate the applicant's proposed antenna and may consist of the following:
- a. No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.
 - b. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
 - c. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - e. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable.
 - f. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- (12) The placement of additional buildings or other supporting equipment necessarily required in connection with an otherwise authorized telecommunication tower or antenna is specifically authorized.
- (13) Any telecommunications antenna or tower that is not operated for a continuous period of 6 months shall be considered abandoned, and the owner of such antenna or tower shall remove

same within ninety (90) days of receipt of notice from the governing authority notifying the owner of such abandonment.

(Ord. No. 99-11, Pt. 1, 4-13-99)

I have read the above ordinance and requirements and affirm that the proposed

_____ located at _____
(Cell Tower/Antenna/Equipment) (Location Address)

will comply with all requirements of this ordinance.

Name (printed): _____

Company/Contractor: _____

Address: _____

Telephone #: _____

Name of Property Owner: _____

Address: _____

Telephone #: _____

District _____ Land Lot _____ Block _____ Parcel _____ Zoning District _____

Building Permit Application#: _____

Height of Monopole/Equipment: _____

Approved/Denied: _____ Date: _____

Zoning Officer/Zoning Plans Reviewer



MODEL WIRELESS TELECOMMUNICATIONS FACILITY SITING ORDINANCE

PCIA--THE WIRELESS INFRASTRUCTURE ASSOCIATION

2012

About PCIA

PCIA – The Wireless Infrastructure Association is the principal organization representing the companies that build, design, own and manage telecommunications facilities throughout the world. Its over 220 members include carriers, infrastructure providers, and professional services firms.

For more information, please go to www.pcia.com.

MODEL WIRELESS TELECOMMUNICATIONS ORDINANCE

I. Purpose and Legislative Intent.

The purpose of this Wireless Telecommunications Ordinance is to ensure that residents, public safety operations and businesses in [Jurisdiction] have reliable access to wireless telecommunications networks and state of the art communications services while also ensuring that this objective is achieved in a fashion that preserves the intrinsic aesthetic character of the community and is accomplished according to [Jurisdiction's] zoning, planning, and design standards. The Telecommunications Act of 1996 preserved, with certain limitations, local government land use and zoning authority concerning the placement, construction, and modification of wireless telecommunications facilities.

To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable Federal laws and is consistent with [the Jurisdiction's] land use policies, [the Jurisdiction] is adopts this single, comprehensive, wireless telecommunications ordinance. No provisions of this Ordinance shall apply to the siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage within a structure.

This Ordinance establishes parameters for the siting of Wireless Telecommunications Facilities. By enacting this Ordinance it is [the Jurisdiction's] intent to:

- (1) Ensure [Jurisdiction] has sufficient wireless infrastructure to support its public safety communications throughout [Jurisdiction];¹
- (2) Ensure access to reliable wireless communications services throughout all areas of [the Jurisdiction];²
- (3) Encourage the use of Existing Structures for the collocation of Telecommunications Facilities;³
- (4) Encourage the location of Support Structures, to the extent possible, in areas where any potential adverse impacts on the community will be minimized;

¹ Many public safety operations utilize commercial networks; this trend will continue to grow as commercial providers further deploy wireless broadband systems.

² This is important because wireless users depend on their mobile devices everywhere – in their homes and offices, and while on travel.

³ A core policy goal here is to encourage co-location of wireless facilities on existing structures.

- (5) Facilitate the responsible deployment of Telecommunications Facilities in residential areas to ensure comprehensive wireless services across [Jurisdiction];
- (6) Minimize the potential adverse effects associated with the construction of Monopoles and Towers through the implementation of reasonable design, landscaping, and construction practices;
- (7) Ensure public health, safety, welfare, and convenience.
- (8) To help jurisdictions amend their ordinances in light of federal legislative changes to zoning authority under the 1996 Telecommunications Act.

II. Definitions.

For the purposes of this Ordinance, the following definitions apply:

Abandon – Occurs when an owner of a Support Structure intends to permanently and completely cease all business activity associated therewith.

Accessory Equipment -- Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Administrative Approval -- Zoning approval that the [Zoning Administrator] or designee is authorized to grant after Administrative Review.

Administrative Review -- Non-discretionary evaluation of an application by the [Zoning Administrator] or designee. This process is not subject to a public hearing. The procedures for Administrative Review are established in Section IV E of this Ordinance.

Antenna -- Any structure or device used to collect or radiate electromagnetic waves for the provision of services including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

Carrier on Wheels or Cell on Wheels (“COW”) -- A portable self-contained Telecommunications Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

Collocation⁴ -- The act of siting Telecommunications Facilities on an Existing Structure without the need to construct a new support structure and without a Substantial Increase in the size of a Existing Structure.

Concealed Telecommunications Facility⁵ -- Any Telecommunications Facility that is integrated as an architectural feature of an Existing Structure or any new Support Structure designed so that the purpose of the Facility or Support Structure for providing wireless services is not readily apparent to a casual observer.

Existing Structure – Previously erected Support Structure or any other structure, including but not limited to, buildings and water tanks, to which Telecommunications Facilities can be attached.

Major Modifications -- Improvements to existing Telecommunications Facilities or Support Structures that result in a Substantial Increase to the Existing Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification.

Minor Modifications -- Improvements to Existing Structures that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a Substantial Increase. Minor Modifications include the Replacement of the structure.

Monopole --A single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.

Ordinary Maintenance -- Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure's foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas of a similar size, weight, shape and color and Accessory Equipment within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located.⁶ Ordinary Maintenance does not include Minor and Major Modifications.

Replacement -- Constructing a new Support Structure of proportions and of equal height or such other height that would not constitute a Substantial Increase to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.

⁴ This definition is consistent with the FCC's Declaratory Ruling on Wireless Infrastructure Siting.

⁵ The decision to employ Concealed technology involves a variety of engineering, structural and financial factors, and should be made by the network operators.

⁶ The description of antenna swaps as "ordinary maintenance" is important because carriers regularly upgrade antennas as part of periodic network improvements.

Substantial Increase:⁷ Occurs when:

(1) [t]he mounting of the proposed antenna on an Existing Structure would increase the existing height of the Existing Structure by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(2) [t]he mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) [t]he mounting of the proposed antenna would involve adding an appurtenance to the body of the Existing Structure that would protrude from the edge of the Existing Structure more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

(4) [t]he mounting of the proposed antenna would involve excavation outside the current Existing Structure site, defined as the current boundaries of the leased or owned property surrounding the Existing Structure and any access or utility easements currently related to the site.

Support Structure(s) – A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, and other freestanding self-supporting structures.

Telecommunications Facility(ies) -- Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunication Facility can consist of one or more Antennas and Accessory Equipment or one base station.

Tower -- A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

III. Approvals Required for Telecommunications Facilities and Support Structures.

(A) Administrative Review

(i) Collocations and Minor Modifications shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.⁸

⁷ This definition is taken from the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas.

⁸ Pursuant section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (H.R. 3630), state and local governments must approve an eligible facilities request for the modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. The Act was signed into law on February 22, 2012. The Act defines “eligible facilities request” as any request for modification of an existing wireless tower or base station that involves: (1) Collocation of new transmission equipment; (2) Removal of transmission equipment; or (3) Replacement of transmission equipment. *See also* Jeffery Steinberg, Deputy Chief, Spectrum & Competition Pol’y Division, Wireless Telecommunications Bureau, Fed. Comm’n’s Comm’n, FCC

(ii) New Support Structures that are less than sixty (60)⁹ feet in height shall be permitted in any zoning district except residential after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(iii) Concealed Telecommunications Facilities that are less than sixty (60) feet in height shall be permitted in any residential district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(iv) Concealed Telecommunications Facilities up to 150 feet shall be permitted in any zoning district other than residential after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance except as noted above.

(v) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in any Industrial District after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(vi) Monopoles or Replacement poles located in utility easements or rights-of-way shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(vii) The use of COWs shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance if the use is not otherwise exempt. If the use of the COW is either not in response to a declaration or emergency, or will last in excess of one hundred-twenty (120) days, Administrative Review and Administrative Approval shall also be required.

(B) Special Permit.¹⁰ Telecommunications Facilities and Support Structures not permitted by Administrative Approval shall be permitted in any district upon the granting of a Special Permit from the [Zoning Board] in accordance with the standards set forth in this Ordinance.

Presentation: The Legal Framework at the FCC Workshop: Promoting Mobile Broadband in your Community by Collocating Wireless Antennas on Communications Towers and other Structures (May 1, 2012) (available at <http://www.fcc.gov/events/collocation-workshop>).

⁹ Sixty feet is a suggested height but actual height requirements may vary based upon local topography.

¹⁰ This process refers to whatever quasi-judicial process the Jurisdiction already has in place. Such processes are also known as “special use” and “conditional use” among other names. Jurisdictions should conform this section to their existing language.

- (C) Exempt. Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this Ordinance: (1) antennas used by residential households solely for broadcast radio and television reception; (2) satellite antennas used solely for residential or household purposes; (3) COWs placed for a period of not more than one hundred twenty (120) days at any location within [the Jurisdiction] after a declaration of an emergency or a disaster; and (4) television and AM/FM radio broadcast towers and associated facilities.

IV. Telecommunications Facilities and Support Structures Permitted by Administrative Approval.

(A) Telecommunications Facilities Located on Existing Structures

- (1) Telecommunications Facilities are permitted in all zoning districts when located on any Existing Structure subject to Administrative Approval in accordance with the requirements of this Part.
- (2) Antennas and Accessory Equipment may exceed the maximum building height limitations within a zoning district, provided they do not constitute a Substantial Increase.
- (3) Minor Modifications are permitted in all zoning districts subject to Administrative Approval in accordance with the requirements of this Part.

(B) New Support Structures

- (1) New Support Structure less than sixty (60) feet in height shall be permitted in all zoning districts except residential districts in accordance with the requirements of this Part.
- (2) Concealed Telecommunications Facilities that are less than sixty (60) feet in height shall be permitted in any residential district after Administrative Review and Administrative Approval provided that it meets the applicable Concealed Telecommunications Facility standards in accordance with this Ordinance
- (3) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in all Industrial Districts in accordance with the requirements of this Part. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage or capacity objectives of the Facility. The setback of the structure shall be governed by the setback requirements of the underlying zoning district.

- (4) A Monopole or Replacement pole that will support utility lines as well as a Telecommunications Facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this Part.¹¹
- (a) The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.
 - (b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
 - (c) The height of the Monopole or replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures.
 - (d) Monopoles and the Accessory Equipment shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.
 - (e) Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (c) above.
 - (f) Poles that use the structure of a utility tower for support are permitted under this Part. Such poles may extend up to twenty (20) feet above the height of the utility tower.
- (5) Monopoles or Replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to Telecommunications Facilities shall be permitted in accordance with requirements of this Part. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of-way.

(C) Concealed Telecommunications Facilities

- (1) Concealed Telecommunications Facilities shall be permitted in all zoning districts after Administrative Review and Administrative Approval in accordance with the requirements below. Concealed facilities in residential areas must not exceed sixty (60) feet and comply with the requirements below in order to qualify for Administrative Review.
- (a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.

¹¹ This section allows for efficient use of public rights-of-way for the provision of wireless services.

- (b) Existing Structures utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.
 - (c) Setbacks for Concealed Facilities that utilize a new structure shall be governed by the setback requirements of the underlying zoning district.
- (D) COW Facilities and Minor Modifications
 - (1) The use of COWs shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance if the use of the COW is either not in response to a declaration or emergency by the Governor or will last in excess of one hundred-twenty (120) days.
- (E) General Standards, Design Requirements, and Miscellaneous Provisions
 - (1) Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to the applicable general standards and design requirements of Section VI and the provisions of Section VII.
- (F) Administrative Review Process
 - (1) All Administrative Review¹² applications must contain the following:
 - (a) Administrative Review application form signed by applicant.
 - (b) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms.
 - (c) Site plans detailing proposed improvements which complies with [Jurisdiction's existing site plan requirements].¹³ Drawings must depict improvements related to the requirements listed in this Part, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.
 - (d) In the case of a new Support Structure:

¹² The name of this process should be conformed to the jurisdiction's existing name for a similar process.

¹³ The jurisdiction should include a cross reference to its existing site plan requirements.

- (i) Statement documenting why collocation cannot meet the applicant's requirements. Such statement may include justifications, including why collocation is either not reasonably available or technologically feasible as necessary to document the reasons why collocation is not a viable option;¹⁴ and
 - (ii) The applicant shall provide a list of all the existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unavailable, or technologically or reasonably infeasible.
 - (iii) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered together as one application requiring only a single application fee.
- (e) Administrative Review application fee as listed in [Jurisdiction's published fee schedule].¹⁵
- (2) Procedure¹⁶
- (a) Within thirty (30) days of the receipt of an application for Administrative Review, the [Zoning Administrator] shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) deem the application complete. If the Zoning Administrator informs the Applicant of an incomplete application within thirty (30) days, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.
 - (b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's unreasonable failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal of the application without prejudice.¹⁷ An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.

¹⁴ This evidentiary requirement allows local jurisdictions an opportunity to review an application's alternatives, and requires providers to prove that collocation is not viable in a specific circumstance.

¹⁵ The jurisdiction should include a cross reference to its published fee schedule.

¹⁶ The FCC has issued a Declaratory Ruling establishing the timeframes for a jurisdiction to act on an application to site wireless infrastructure. The procedure here is reflective of that Ruling, however Jurisdiction can substitute its current procedure so long as it complies with the FCC's decision.

¹⁷ Jurisdictions should conform this time requirement to meet their existing code for information submission.

(c) The [Zoning Administrator] must issue a written decision granting or denying the request within ninety (90) days of the submission of the initial application unless:

- (i) [Zoning Administrator] notified applicant that its application was incomplete within thirty (30) days of filing. If so, the remaining time from the ninety (90) day total review time is suspended until the Applicant provides the missing information; or
- (ii) Extension of time is agreed to by the Applicant.

Failure to issue a written decision within ninety (90) days shall constitute an approval of the application.

(d) Should the [Zoning Administrator] deny the application, the [Zoning Administrator] shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this Ordinance.

(f) Applicant may appeal any decision of the [Zoning Administrator] approving, approving with conditions, or denying an application or deeming an application incomplete, within thirty (30) days to [the Local Appeals Board] in accordance with this Ordinance.¹⁸

V. Telecommunications Facilities and Support Structures Permitted by Special Permit.

(A) Any Telecommunications Facility or Support Structures Not Meeting the Requirements of Section IV Shall Be Permitted by Special Permit in all Zoning Districts Subject to:

- (1) The submission requirements of Section V (B) below; and
- (2) The applicable standards of Sections VI and VII below; and
- (3) The requirements of the special permit general conditions at Code Section _____. [Insert cross reference to Jurisdiction code section that establishes general conditions applicable to Special Permits.]¹⁹

(B) Submission Requirements for Special Permit Applications

- (1) All Special Permit applications for Telecommunications Facility and Support Structures must contain the following:

¹⁸ The jurisdiction should substitute its standard process for appeal.

¹⁹ This allows for Special Permit/Conditional Permit review of proposed facilities that do not meet the “preferred” standards of Section IV.

- (a) Special Permit application form signed by applicant.
- (b) Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms
- (c) Written description and scaled drawings of the proposed Support Structure, including structure height, ground and structure design, and proposed materials.
- (d) Number of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Support Structure.
- (e) When locating within a residential area, a written technical and operational analysis of why a Monopole or similar structure at a height of less than one hundred (100) feet cannot be used.²⁰
- (f) Line-of-sight diagram or photo simulation,²¹ showing the proposed Support Structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.
- (g) A statement justifying why Collocation is not feasible. Such statement shall include:
 - (i) Such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and
 - (ii) A list of the existing structures considered as possible alternatives to the proposed location and a written explanation why the alternatives considered were either unavailable or technologically infeasible.
- (h) A statement that the proposed Support Structure will be made available for Collocation to other service providers at commercially reasonable rates.
- (i) Notification of surrounding property owners as required by [insert Jurisdiction's relevant existing code provisions]
- (j) Special Permit application fee as listed in [Jurisdiction's published fee schedule].²²

²⁰ If you are proposing a monopole under 100' in a residential area no additional submission is required.

²¹ Photo simulations provide the community with valuable visual data showing the effect of the proposed new structure on the visual landscape.

²² The jurisdiction should include a cross reference to its published fee schedule.

(C) Procedure²³

- (1) Within thirty (30) days of the receipt of an application for Administrative Review, the [Zoning Administrator] shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) deem the application complete and meet with the applicant. If the Zoning Administrator informs the Applicant of an incomplete application within thirty (30) days, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.
- (2) If an application is deemed incomplete, an Applicant may submit additional materials to complete the application. An applicant's unreasonable failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal of the application without prejudice.²⁴ An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (3) A complete application for a Special Permit shall be scheduled for a hearing date as required by [insert Jurisdiction's relevant existing code provisions].
- (4) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered as one application requiring only a single application fee.
- (5) The posting of the property and public notification of the application shall be accomplished in the same manner required for any Special Permit application under this Ordinance.
- (6) The [Zoning Administrator] must issue a written decision granting or denying the request within one hundred-fifty (150) days of the submission of the initial application unless:
 - (i) [Zoning Administrator] notified applicant that its application was incomplete within thirty (30) days of filing. If so, the remaining time from the one hundred-fifty (150) day total review time is suspended until the Applicant provides the missing information; or
 - (ii) Extension of time is agreed to by the Applicant.

Failure to issue a written decision within one hundred-fifty (150) days shall constitute an approval of the application.

²³ Same as IV(E)(2) above.

²⁴ Jurisdictions should conform this time requirement to meet their existing code for information submission.

VI. General Standards and Design Requirements.

(A) Design

- (1) Support Structures shall be subject to the following:
 - (a) Shall be designed to accommodate a minimum number of collocations based upon their height:²⁵
 - (i) Support structures sixty (60) to one hundred (100) feet shall support at least two (2) telecommunications providers;
 - (ii) Support structures from one hundred (100) to one hundred-fifty feet (150) shall support at least three (3) telecommunications providers;
 - (iii) Support structures greater than one hundred-fifty (150) feet in height shall support at least four (4) telecommunications carriers.
 - (b) The compound area surrounding the Monopole must be of sufficient size to accommodate Accessory Equipment for the appropriate number of telecommunications providers in accordance with Section VI(A)(1)(a).
- (2) Concealed Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible.
- (3) Upon request of the Applicant, the [Zoning Board or Zoning Administrator] may waive the requirement that new Support Structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

(B) Setbacks

- (1) Property Lines. Unless otherwise stated herein, Support Structures shall be set back from all property lines a distance equal to their height measured from the base of the structure to its highest point.
- (2) Residential Dwellings. Unless otherwise stated herein, Monopoles, Towers and other Support Structures shall be set back from all off-site residential dwellings a distance equal to the height of the structure. There

²⁵ This provision will limit the proliferation of new structures by providing for future co-location opportunities.

shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or Replacement structures shall not be subject to a setback requirement.

- (3) Unless otherwise stated herein, all Accessory Equipment shall be set back from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory Equipment associated with an existing or Replacement utility pole shall not be subject to a setback requirement.
- (4) The [Zoning Board or Zoning Administrator] shall have the authority to vary any required setback upon the request of the applicant if:
 - (a) Applicant provides a letter stamped by a certified structural engineer documenting that the proposed structure's fall zone is less than the actual height of the structure.
 - (b) The Telecommunications Facility or Support Structure is consistent with the purposes and intent of this Ordinance.

(C) Height

- (1) In non-residential districts, Support Structures shall be designed to be the minimum height needed to meet the service objectives of the applicant.
- (2) In residential districts, Support Structures shall not exceed a height equal to one hundred ninety-nine (199) feet from the base of the structure to the top of the highest point, including appurtenances. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.
- (3) In all districts, the [Zoning Board] shall have the authority to vary the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its waiver request the Applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the [Zoning Board].

(D) Aesthetics

- (1) Lighting and Marking. Telecommunications Facilities or Support Structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
- (2) Signage. Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration

number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.

- (3) Landscaping. In all districts, the [Zoning Board or Zoning Administrator] shall have the authority to impose reasonable landscaping requirements surrounding the Accessory Equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The [Zoning Board or Zoning Administrator] may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the [Zoning Board or Zoning Administrator], landscaping is not appropriate or necessary.
- (E) Accessory Equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the Telecommunication Facility or Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.

The Accessory Equipment must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the [Zoning Board or Zoning Administrator].

VII. Miscellaneous Provisions.

- (A) Fencing
 - (1) Ground mounted Accessory Equipment and Support Structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the [Zoning Board] or [Zoning Administrator].
 - (2) The [Zoning Board or Zoning Administrator] may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location.
- (B) Abandonment and Removal. If a Support Structure is Abandoned, and it remains Abandoned for a period in excess of twelve (12) consecutive months, the [Jurisdiction] may require that such Support Structure be removed only after first providing written notice to the owner of the Support Structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the Support Structure within thirty (30) days of receipt of said written notice. In the event the owner of the Support Structure fails to reclaim the Support Structure within the thirty (30) day period, the owner of the Support Structure shall be required to remove the same within six (6) months thereafter. The [Jurisdiction] shall ensure and enforce removal by means of its existing regulatory authority.

- (C) Multiple Uses on a Single Parcel or Lot. Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

VIII. Telecommunications Facilities and Support Structures in Existence on the Date of Adoption of this Ordinance.

- (A) Telecommunications Facilities and Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.²⁶
- (B) The provisions of this Part are limited to those structures that do not meet the height or setback requirements set forth in these regulations.
- (C) Non-conforming Support Structures
 - (1) Non-conforming Support Structure. Ordinary Maintenance may be performed on a Non-conforming Support Structure or Telecommunications Facility.
 - (2) Collocation and/or Minor Modifications of Telecommunications Facilities on an existing non-conforming Support Structure shall not be construed as an expansion, enlargement or increase in intensity of a non-conforming structure and/or use and shall be permitted through the Administrative Approval process defined in Section IV.
 - (3) Major Modifications may be made to non-conforming Support Structures utilizing the regulatory approval process defined in Section V.

²⁶ This provides for the continued operation of existing facilities, which is necessary for maintenance of today's wireless networks, and which will serve as platforms for future network improvements.