

Application to Appeal a Decision of the DeKalb County Historic Preservation Commission

All appeals must comply with the procedures set forth herein.

Application to appeal a decision of the Historic Preservation Commission on application for a certificate of appropriateness must be filed within fifteen (15) calendar days after the issuance or denial of the certificate of appropriateness.

To be completed by County:

Date Received:

JUL 06 2017

To be completed by appellant:

Name: Jonathan R. Haynie

Address of appellant:

751 Briar Park Court NE, Atlanta, GA 30306

Address of Property: Parcel along Old Briarcliff Road to be subdivided as proposed from the parent property at 1551 Briarcliff Rd., Atlanta, GA 30306

This appeal is a review of the record of the proceedings before the preservation commission by the governing authority of DeKalb County, Georgia. The governing authority is looking for an abuse of discretion as revealed by the record. An abuse of discretion exists where the record presented to the governing authority shows that the preservation commission: (a) exceeded the limits of its authority; (b) that the preservation commission's decision was not based on factors set forth in the section 13.5-8(3) or the guidelines adopted by the preservation commission pursuant to section 13.5-6 or; (c) that the preservation commission's decision was otherwise arbitrary and capricious.

If the governing authority finds no abuse of discretion, then it may affirm the decision of the preservation commission. If the governing authority finds that the preservation commission abused its discretion in reaching a decision, then it may; (a) reverse the preservation commission's decision, or; (b) it may reverse the preservation commission's decision and remand the application to the preservation commission with direction.

Date(s) of hearing, if any: June 19, 2017

Date of Historic Preservation Commission decision: June 19, 2017

In the space provided below the Appellant must describe how the preservation commission's decision constitutes an abuse of discretion. Specifically, the appellant must, citing to the preservation commission's written decision, show at least one of the following: that the preservation commission exceeded the limits of its authority, or that the preservation commission's decision was not based on factors set forth in the section 13.5-8(3) of the DeKalb County Code or on the guidelines adopted by the preservation commission pursuant to section 13.5-6 of said code or that the preservation commission's decision was otherwise arbitrary and capricious.

Grounds for appeal: The preservation commission's decision was arbitrary and capricious and demonstrated an abuse of its discretion as described in the accompanying supplemental explanation.

The appellant may submit a written supplementary explanation in support of the appeal. The supplementary explanation shall be submitted with the appeal. The supplementary explanation may not exceed three pages and must be typewritten and double-spaced using a twelve-point font with a one-inch margin on all four sides. The governing authority will not consider text in excess of the page limit set forth herein.

Date: July 6th 2017 **Signature:** 

Instructions: The appellant shall also deliver copies of this appeal to the planning department and the county attorney. The appellant and any person who has filed a statement in opposition to, or in support of the appeal may attend the meeting at which the appeal is considered and may be called upon by any member of the governing authority to provide information or answer questions. There shall be no other public participation in the appeal.

My name is Jonathan R. Haynie and I live at 751 Briar Park Court NE, Atlanta, GA 30306. As allowed under DeKalb County Code section 13.5-8(12d), I am providing the following supplementary explanation to my appeal. This explanation is provided as evidence of how I am adversely affected by the resolution adopted by the DeKalb County Historic Preservation Commission at its June 19, 2017 hearing to approve the Certificate of Appropriateness application 21354 filed by Residential Recovery Fund, LLC ("Minerva USA"). The proposed development aims to divide the parent property at 1551 Briarcliff Road (Druid Hills) into two parcels and develop one of those parcels by constructing two multifamily buildings.

I contend that the preservation commission's decision was arbitrary and capricious and demonstrated an abuse of its discretion. Rather than engage in a deliberate consideration of the sections of the Druid Hills Design Manual that were cited in the Board of Commissioner's remand letter, the HPC allowed the developer to simply state that they had already satisfied the requirements of the Design Manual with no change to their original proposal except a slight shift of one of the proposed buildings to eliminate an overhang encroaching on the stream buffer. I and my neighbors who attended the hearing were subjected to a lecture from the HPC about how its members are more qualified than us to determine the appropriateness of the project and that our claims that the HPC failed to recognize the mandate to maintain greenspace in our neighborhood were unfounded since the guidelines only applied to the traditional Olmsted and Kauffman overlay maps cited in the Manual. In my humble, and presumably less qualified, opinion since I am just a lowly homeowner (i.e.: taxpayer and voter) who has

dedicated almost 12 years to restoring a historic home in the District, this narrow interpretation of the letter and spirit of the Manual is like arguing that the U.S. Constitution only applies to the original Thirteen Colonies. If the intentions of the Guide were to only cover land and homes within the original boundaries of the designed district, then why was this area included, and very specifically described, within the boundaries of the District? Clearly, the Manual intended to extend its protections to this lovely forest and clearly the HPC fails to appreciate the scope of mandate the Manual gives them.

The HPC also spent quite a lot of time engaging in mutual back-patting for having secured a conservation easement from the developer. Here's the truth: other than a very small portion of the lot to the southwest, the conservation easement is really just a stream buffer. The HPC essentially has bought hook, line and sinker the developer's re-branding as a conservation easement land that they cannot develop anyway due to the required set-back from the stream. None of us are fooled by this. Now is the time for the Board of Commissioners to call out this farce and set the record straight. Basically, the developer has exploited the county code and crammed twice the density allowed on a single acre by buying an additional undevelopable acre and claiming that they are conserving it out of the goodness of their hearts. The result is an inappropriately scaled set of buildings adjacent to single family homes and in place of an important buffer between those homes and the Fox 5 broadcast facility and tower.

Lastly, I ask the Board to please consider the impacts of allowing not only the construction of these inappropriately scaled buildings on an important connectivity corridor for wildlife and a natural sponge that prevents excessive runoff from overburdening the fragile creek, but also the irreparable harm that allowing the subdivision of this historically platted lot will have by limiting better future uses of the intact parcel. Fox 5 will one day vacate this parcel. Their decision to sell off the edges now can only lead to this conclusion. So, would it not be better for our historic neighborhood to have a preserved natural buffer at the edges of the parcel so that a new, dense use of the core can happen with minimized impact (noise, view, environmental, etc.)?

I sincerely appreciate that the Board saw fit to remand this case to the HPC and require further consideration of the proposal against the guidelines outlined in the Manual. Please know that the HPC again has clearly abused its discretion by not taking this action seriously at all. They used the opportunity to revisit this application by defending their original decision. This case is clearly well outside the league of the qualifications of the HPC members. They were way more engaged debating which shade of gray siding may be painted or the placement of shrubs on a lot than they were in debating this enormously impactful and harmful proposal. They have failed to recognize that the Manual very specially aimed to extend a preservation mandate to the unbuilt portions of our community which serve as the critical backdrop to the built environment that we all cherish so much. The HPC has failed to recognize its mandate and I am hopeful the Board will do the right thing and deny this application.

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To be completed by County:

Date Received:

JUL 05 2017

To be completed by appellant:

Name: Jean

Krugman

Address of appellant:

741 Briarpark Court NE Atlanta

GA30306

Address of Property: Parcel along Old Briarcliff Road to be subdivided as proposed from the parent property at 1551 Briarcliff Rd., Atlanta, GA 30306

This appeal is a review of the record of the proceedings before the preservation commission by the governing authority of DeKalb County, Georgia. The governing authority is looking for an abuse of discretion as revealed by the record. An abuse of discretion exists where the record presented to the governing authority shows that the preservation commission: (a) exceeded the limits of its authority; (b) that the preservation commission's decision was not based on factors set forth in the section 13.5-8(3) or the guidelines adopted by the preservation commission pursuant to section 13.5-6 or; (c) that the preservation commission's decision was otherwise arbitrary and capricious.

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Date(s) of hearing, if any: June 19, 2017

Date of Historic Preservation Commission decision: June 19, 2017

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Grounds for appeal: The preservation commission's decision was arbitrary and capricious and demonstrated an abuse of its discretion as described in the accompanying supplemental explanation.

The HPC approved the Minerva's application after it had been remanded by the Dekalb Board of Commissioners although it was essentially unchanged from the original. The only response Minerva had made to my grounds for appeal was to reiterate that the property is not within the original Olmstead plat. This had been clearly recognised and the argument made was that the continued development of Druid Hills, through Kauffman and on, was guided by the same design elements and philosophy. The Druid Hills Civic Association exists "to preserve the beauty and serenity" of Druid Hills, of which this land is a part. Many of the items in the first part of the HPC meeting were approved with the formula "no adverse effect". This cannot be said of the overall consequences of this new development.

The appellant may submit a written supplementary explanation in support of the appeal. The supplementary explanation shall be submitted with the appeal. The supplementary explanation may not exceed three pages and must be typewritten and double-spaced using a twelve-point font with a one-inch margin on all four sides. The governing authority will not consider text in excess of the page limit set forth herein.

Date: June 30 2017 Signature : **Jean Oliver**

Krugman Jean O. Krugman

Instructions: The appellant shall also deliver copies of this appeal to the planning department and the county attorney. The appellant and any person who has filed a statement in opposition to, or in support of the appeal may attend the meeting at which the appeal is considered and may be called upon by any member of the governing authority to provide information or answer questions. There shall be no other public participation in the appeal.

My name is Jean Krugman and I live at 741 Briarpark Court Atlanta GA 30306. As allowed under DeKalb County Code section 13.5-8(12d), I am providing the following supplementary explanation to my appeal. This explanation is provided as evidence of how I am adversely affected by the resolution adopted by the DeKalb County Historic Preservation Commission at its June 19, 2017 hearing to approve the Certificate of Appropriateness application 21354 filed by Residential Recovery Fund, LLC ("Minerva USA"). The proposed development aims to divide the parent property at 1551 Briarcliff Road (Druid Hills) into two parcels and develop one of those parcels by constructing two multifamily buildings.

I contend that the preservation commission's decision was arbitrary and capricious and demonstrated an abuse of its discretion.

The Preservation Commission continues to hew to the narrow interpretation of its guidelines, and in fact one member admitted that they felt able to address only "the letter, not the spirit" of their mandate. Their granting a COA to Minerva after the developer presented virtually the same arguments as before, suggests an arbitrary decision.

Most of the developer's arguments rested on part of the forest to be destroyed not being officially designated 'open space', and that a conservation easement would protect the part of Peavine Creek directly affected by construction. Whether on a map or not, valuable forest, an outstanding and well-loved feature of this neighborhood, clearly

exists and would be decimated. To argue that the HPC has no authority to protect such a feature of the Druid Hills landscape seems capricious.

Further, although a conservation easement would keep further development from the creek bank, it does little to prevent the pollution and run-off caused by increasing the adjacent impermeable surfaces. The Druid Hill guidelines 4.1.2 specifically list the green area adjacent to Peavine Creek in Emory University as worthy of protection. The existence of a property line does not change the continuing path of the creek nor alter the environmental consequences of harmful activity. It is capricious to maintain that declining to preserve soil, water, and air quality as well as the beauty of this section of Druid Hills would have no adverse effect on the neighborhood or the community.

Without repeating the guidelines' citations and arguments made in my original appeal, I submit that this COA should be revoked on the grounds of Guidelines 4.1.2 and 4.1.3

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To be completed by County:
Date Received:

JUL 06 2017

To be completed by appellant:
Name: Kathy McRitchie
Address of appellant:

1616 Briarcliff Rd. NE, #6, Atlanta, GA 30306

Address of Property: Parcel along Old Briarcliff Road to be subdivided as proposed from the parent property at 1551 Briarcliff Rd., Atlanta, GA 30306

This appeal is a review of the record of the proceedings before the preservation commission by the governing authority of DeKalb County, Georgia. The governing authority is looking for an abuse of discretion as revealed by the record. An abuse of discretion exists where the record presented to the governing authority shows that the preservation commission: (a) exceeded the limits of its authority; (b) that the preservation commission's decision was not based on factors set forth in the section 13.5-8(3) or the guidelines adopted by the preservation commission pursuant to section 13.5-6 or; (c) that the preservation commission's decision was otherwise arbitrary and capricious.

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Date(s) of hearing, if any: June 19, 2017

Date of Historic Preservation Commission decision: June 19, 2017

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Grounds for appeal: The preservation commission's decision was arbitrary and capricious and demonstrated an abuse of its discretion as described in the accompanying supplemental explanation.

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Date: July 6th 2017 **Signature:** Katherine M. McRitchie

Instructions: The appellant shall also deliver copies of this appeal to the planning department and the county attorney. The appellant and any person who has filed a statement in opposition to, or in support of the appeal may attend the meeting at which the appeal is considered and may be called upon by any member of the governing authority to provide information or answer questions. There shall be no other public participation in the appeal.

My name is Kathy McRitchie and I live at 1616 Briarcliff Rd. NE, #6, Atlanta, GA 30306. As allowed under DeKalb County Code section 13.5-8(12d), I am providing the following supplementary explanation to my appeal. This explanation is provided as evidence of how I am adversely affected by the resolution adopted by the DeKalb County Historic Preservation Commission at its June 19, 2017 hearing to approve the Certificate of Appropriateness application 21354 filed by Residential Recovery Fund, LLC ("Minerva USA"). The proposed development aims to divide the parent property at 1551 Briarcliff Road (Druid Hills) into two parcels and develop one of those parcels by constructing two multifamily buildings.

I contend that the preservation commission's decision was arbitrary and capricious and demonstrated an abuse of its discretion. Since Minerva homes has not altered its application/proposal nor has the HPC altered the rationale for its original approval of the application, my arguments against the proposed development are also unaltered since my original appeal. My neighbors and I will be adversely affected by this development because it will introduce extremely hazardous traffic conditions onto Old Briarcliff Rd. The blind curve and descent from the north off Briarcliff Rd. hinders the quick deceleration that would be required to either turn safely into the development or avoid impact with those attempting to turn into or out of it. Old Briarcliff is already heavily used as a shortcut between Briarcliff Rd., the CDC, Emory University and its medical center. Per DeKalb County, the road does not qualify for traffic calming measures since it is a route routinely used by emergency vehicles. State DOT data confirm that accidents at its intersection with Briarcliff are already routine (there have been 6 accidents on the

road in the past year and one of those resulted in 2 injuries). I believe that allowing this development to create new or exacerbate existing dangerous road conditions is inconsistent with the thoughtful site and road planning of inherent to the Olmsted design legacy.

This parcel is a key also part of a unique and rare contiguous urban forest and important watershed. Trees Atlanta issued a letter in support of the community's opposition to this development and they have concluded that, "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". They further state that, "the steep grade of the land renders it unsuitable for responsible development and would be tremendously destructive to the woodland and watershed". I believe that loss of such a prominent portion of this rare urban forest is inconsistent with the historic district's goal to protect the historic landscape design through preservation and rehabilitation of the natural elements, namely the urban forest and Peavine/Lullwater Creek system, on which it was based.

This proposed development will also significantly alter a historic landscape and disrupt the harmony between the built and natural environments of the adjacent Briarpark Court neighborhood; a neighborhood nominated last year as a DeKalb County Historic District, a nomination recently approved by the Historic Preservation Division of the Georgia Department of Natural Resources and now very slowly working its way through the county's review process.

I ask the Commissioners to consider that by including this undeveloped tract of forest, the vision of the historic district was clear: conservation, not development. This decision should not be borne of a debate about the building massing, style, materials, color and placement on this lot. The debate should be whether to allow the destruction of this rare and important forest that will be lost forever if the approval of this application is allowed to stand. This isn't just about the views from my windows, my property value or my love of trees. This is truly about fighting for the health of our environment, the safety of me, my family and my neighbors and the quality of our lives. I implore the Commissioners to consider that this proposal is inappropriate and clearly inconsistent with the vision and mandate of the historic district, therefore I respectfully ask that you deem it as such and reject the Historic Preservation Commissions approval of this application.

To conclude, I believe that this development is a threat to public health and safety and will have severely negative impacts on a rare contiguous urban forest and a very special historic neighborhood. I respectfully ask the Commission to overturn the Historic Preservation Commission's arbitrary and capricious decision to approve this Certificate of Appropriateness. Should you decide to let this decision stand and allow this ill-conceived development to occur, let this appeal stand as a public record of the notice the county has been given of the threats to public safety it will surely bring and a resource for any member of the community who may need evidence of such notice in the future should accident, injury or death occur as a result so that they can litigate the negligence and responsibility of DeKalb County, Minerva Homes and Fox News Corporation.

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To be completed by County:
Date Received:

To be completed by appellant:

Name: Frederic and Judy Shaw

Address of appellant: 765 Briar Park Court NE, Atlanta, GA

Address of Property: Parcel along Old Briarcliff Road to be subdivided as proposed from the parent property at 1551 Briarcliff Rd., Atlanta, GA 30306

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Date: July 3, 2017 Signature: *Fredrick Shaw*
For Fredrick + Judy Shaw

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Our name is Frederic and Judy Shaw and we live at 765 Briar Park Court NE, Atlanta, GA 30306. As allowed under DeKalb County Code section 13.5-8(12d), We are providing the following supplementary explanation to our appeal. This explanation is provided as evidence of how we are adversely affected by the resolution adopted by the DeKalb County Historic Preservation Commission (HPC) at its June 19, 2017 hearing to approve the Certificate of Appropriateness application 21354 filed by Residential Recovery Fund, LLC (“Minerva USA”). The proposed development aims to divide the parent property at 1551 Briarcliff Road (Druid Hills) into two parcels and develop one of those parcels by constructing two multifamily buildings.

In our filing of appeal for April 17, 2017 decision of the HPC, we argued that the HPC’s decision was arbitrary and capricious and demonstrated an abuse of its discretion by 1) interpreting Sections 8.1 (“Open Space Linkages”) of the Design Manual too narrowly, and 2) failing to inquire into the possibility of destroying “unknown archaeological materials” at the site, guided by Section 10.0. Now, we appeal to the Board of Commissioners (Board) the decision of the HPC on June 19, again arguing that the HPC’s decision is arbitrary and capricious on the bases listed below. We respectfully request that the Board reverse the HPC’s decision of June 19 and, instead of again remanding the matter to the HPC, deny the COA application in full.

1) By its own terms, the application for a COA by Minerva USA decided upon by the HPC on June 19 was not substantively and relevantly different from its application decided upon by the HPC on April 17. We submit that the Board cannot logically

therefore make a different decision on this appeal than it made on the earlier appeals on May 23. The application of Minerva USA for the June 19 meeting, on its own terms, betrays that the application was not substantively different from the one that formed the basis of the Board's May 23 action. The application states repeatedly, for example, that "the subject property still meets the specifically detailed guidelines of the Design Guidelines," merely restating its earlier position. The only substantive difference in Minerva USA's COA application decided upon on June 19 was the addition an archeological survey. But that was only one of the four bases stated by the Board for its decision by the Board on May 23, 2017 granting the appeals. The HPC, in its decision, added a conservation easement. But the addition of the conservation easement does not, and could not, address the issues underlying the Board's decision on May 23 relative to Guidelines 4.1.2, 4.1.3, 8.1, and 8.3.

2) The decision of the HPC on June 19 epitomized the meaning of the term, "abuse of discretion," when it granted a COA, even though Minerva USA provided no new substantive information on its application regarding Design Manual sections 4.1.2, 4.1.3, 8.1, and 8.3 than it did for the COA application decided on April 17. The HPC was on notice from the Board that it had abused its discretion on the earlier application, yet it persevered in making the same decision on the same facts with regard to Design Manual sections 4.1.2, 4.1.3, 8.1, and 8.3, aside from the conservation easement, which does not address those sections. Instead of granting the COA, we submit that the HPC had a duty to consider the issues underlying the Board's May 23 decision. Because it did not demonstrably do so, it again abused its discretion.

3) In its statement on June 19 at the HPC meeting, a representative of Minerva USA stated the company's belief that the reason for the Board's May 23 grant of appeal was that the record of the April 17 HPC meeting was not complete and had key information missing. We believe that this contention is invalid. The Board's grant of appeal on May 23 was based on a full record presented to it from the HPC, including all the details of the multi-part application. In addition, the Board had available to it the appeal documents of the appellants (including ours) and the responses from Minerva USA. The documents considered by the Board on May 23 were complete. We respectfully submit that Minerva USA should not be permitted to make an argument of incomplete record without providing some reasonable documentary basis for the assertion.

4) Although Minerva did conduct an archeological survey, as required by the Board, we submit that this does not fully meet the requirements of Section 10.0 of the Manual, and we submit that people opposed to the development should be allowed to conduct their own archaeological assessment. The drafters of the Manual could only have meant that such surveys should be conducted by a disinterested party that is not subject to conflicts of interest. We make no allegations of impropriety against anyone, but we cannot help but believe that the Manual's drafters must have taken into account the potential pressures on an archaeologist when making a survey for the same party that wishes to develop a property.