

PETITION TO AMEND THE FULTON COUNTY ZONING RESOLUTION

2005Z – 0102

COMMUNITY ZONING BOARD PUBLIC HEARINGS

October 18, 2005 (SOUTH) – DEFERRED FOR THIRTY (30) DAYS

November 15, 2005 (NORTH) - DENIAL

BOARD OF COMMISSIONERS PUBLIC HEARING

December 7, 2005 – DEFERRED UNTIL FEBRUARY 1, 2006

February 1, 2006 – DEFERRED UNTIL APRIL 5, 2006

This item was deferred without discussion at the February 1, 2006 Board of Commissioners meeting.

April 5, 2006 – DEFERRED UNTIL MAY 3, 2006

This will be the fourth meeting and the second public hearing.

May 3, 2006 – DEFERRED UNTIL MAY 17, 2006

No public hearing was held on May 3, 2006.

This will be the fifth meeting and the third public hearing.

***STAFF
RECOMMENDATION***

APPROVAL

PROPOSED AMENDMENTS

Part 1 – To amend Article 3, Section 3.3.1. to revise the definition of *alternative antenna support structure*.

Part 2 – To amend Article 4, Section 4.3.1.D. to add provisions for nonconforming telecommunications facilities.

Part 3 - To amend Article 19, Sections 19.3.1(1), 19.3.1(2), and 19.4.7. to revise the intent of these regulations and to revise and add development standards for telecommunications facilities.

Part 1

Alternative Antenna Support Structure. Clock towers, campaniles, free standing steeples, light structures and other alternative designed support structures that camouflage or conceal antennas as an architectural or natural feature (~~not to include man-made trees~~). (Added 3/5/97, Amended 5/7/97, 7/7/99)

Part 2

4.3.1. **NONCONFORMING LOTS, USES AND STRUCTURES.**

D. **Nonconforming Structures.**

Telecommunications Facilities.

1. All telecommunication facilities existing on the effective date of this ordinance shall be allowed to continue to be used as they presently exist.
 2. Routine maintenance (including modifications to accommodate the co-location of an additional user or users) shall be permitted on existing telecommunication facilities.
 3. Replacement of antennas on a structure with different antennas shall be considered routine maintenance so long as the replacement antenna(s) does not increase the height of any existing structure.
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Part 3

19.3.1(1) **ALTERNATIVE ANTENNA SUPPORT STRUCTURE TO EXCEED THE DISTRICT HEIGHT** (Added 03/5/97)

INTENT

Pursuant to Section 704(a) of the Federal Telecommunications Policy Act of

1996, it is not the intent of this section to prohibit or have the effect of prohibiting the provision of personal wireless services in unincorporated Fulton County. It is the intent of this Section to address the aesthetic effect of telecommunication facilities on our landscapes, our citizens' demands for these services, and the needs of service providers.

A. **Required Districts:** All

B. **Standards:**

1. Alternative structures are not allowed as an accessory to a single family use or as a principal use in a single family district.
2. ~~Alternative structures must be set back a distance equal to the height of the tower from a property line of any residential district and/or AG-1 district used for single family, unless said structure is proposed to be located on an existing building.~~

Alternative structures must be set back a distance equal to the height of the structure adjacent to residential and/or AG-1 zoned property unless said structure is proposed to be located on an existing building.
3. Above ground equipment shelters shall be surrounded by a minimum 10-foot wide landscape strip planted to buffer standards unless the Fulton County Arborist determines that existing plant materials are adequate.
4. Roof top antennas and associated structures shall not project more than 10 feet above roof line.
5. ~~Height shall not exceed 150 feet from existing grade.~~

Height shall not exceed 130 feet measured from the finished grade of the base structure.
6. The alternative structure shall comply with applicable state and local statutes and ordinances, including, but not limited to, building and safety codes. Alternative structures which have become unsafe or dilapidated shall be repaired or removed pursuant to applicable state and local statutes and ordinances.
7. Facilities shall not be artificially lighted except to assure human safety or as required by the Federal Aviation Administration

(FAA).

8. Communication towers shall be designed and constructed to ensure that the structural failure or collapse of the tower will not create a safety hazard to adjoining properties, according to applicable Federal Standards which may be amended from time to time.
9. Telecommunications facilities shall not be used for advertising purposes and shall not contain any signs for the purpose of advertising.
10. Any telecommunications facility may co-locate on any existing tower, pole or other structure as long as there is no increase in height to the existing facility.
11. A telecommunication facility that ceases operation for a period of 12 consecutive months shall be determined to have terminated and shall be removed within 90 days of termination at the property owner's expense. It shall be the duty of both the property owner and the tower owner to notify the county in writing of any intent to abandon the use of the tower.
12. An application for a telecommunications facility shall be submitted in accordance with the Department's Plan Review submittal requirements.
13. An application for a telecommunication facility shall include a certification from a registered engineer that the structure will meet the applicable design standards for wind loads.
14. Communications facilities shall not be located in 100-year flood plain or delineated wetlands.

19.3.1(2)

ANTENNA, TOWER, AND ASSOCIATED STRUCTURES (RADIO, T.V., MICROWAVE BROADCASTING, ETC.), TO EXCEED THE DISTRICT HEIGHT (TITLE AMENDED 3/6/91, AMENDED 03/05/97)

INTENT

Pursuant to Section 704(a) of the Federal Telecommunications Policy Act of 1996, it is not the intent of this section to prohibit or have the effect of prohibiting the provision of personal wireless services in unincorporated Fulton County. It is the intent of this Section to address the aesthetic effect of telecommunication facilities on our landscapes, our citizens' demands for these services, and the

needs of service providers.

The following regulations on design, location, placement, and height limits of antennas ~~in residential districts~~ implements Fulton County's governmental interest in land planning, aesthetics and public safety by requiring the following Administrative Permit Standards:

A. **Required Districts:** O-I, ~~MIX~~, C-1, C-2, M-1A, M-1, M-2 (See Use Permit, Section 19.4.7, for use in residential and AG-1 districts.)

B. **Standards:**

1. ~~Tower/accessory structures must be set back a distance equal to the height of the tower from all property lines of any residential district and/or AG-1 district used for single family.~~

Tower/accessory structures must be set back a distance equal to the height of the tower adjacent to residential and/or AG-1 zoned property.

2. Tower and/or associated facilities shall be enclosed by fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device.
3. A minimum 10-foot wide landscape strip planted to buffer standards shall be required around the facility exterior to any fence or wall unless the Fulton County Arborist determines that existing plant materials are adequate.
4. ~~Height shall not exceed 200 feet from existing grade.~~

Height shall not exceed 200 feet measured from the finished grade of the base structure.

5. The tower shall comply with applicable state and local statutes and ordinances, including, but not limited to, building and safety codes. Towers which have become unsafe or dilapidated shall be repaired or removed pursuant to applicable state and local statutes and ordinances.

6. Facilities shall not be artificially lighted except to assure human safety or as required by the Federal Aviation Administration (FAA).

7. Communication towers shall be designed and constructed to ensure that the structural failure or collapse of the tower will not create a safety hazard to adjoining properties, according to applicable Federal Standards which may be amended from time to time.
8. Telecommunications facilities shall not be used for advertising purposes and shall not contain any signs for the purpose of advertising.
9. Any telecommunications facility may co-locate on any existing tower, pole or other structure as long as there is no increase in height to the existing facility.
10. A commercial telecommunication facility that ceases operation for a period of 12 consecutive months shall be determined to have terminated and shall be removed within 90 days of termination at the property owner's expense. It shall be the duty of both the property owner and the tower owner to notify the county in writing of any intent to abandon the use of the tower.
11. Communication facilities not requiring FAA painting/marketing shall have either a galvanized finish or [be] painted a dull blue, gray, or black finish.
12. An application for a telecommunications facility shall be submitted in accordance with the Department's Plan Review submittal requirements.
13. An application for a telecommunication facility shall include a certification from a registered engineer that the structure will meet the applicable design standards for wind loads.
14. Communications facilities shall not be located in 100-year flood plain or delineated wetlands.

19.4.7. **ANTENNA TOWER, AND ASSOCIATED STRUCTURE (RADIO, T.V., MICROWAVE BROADCASTING, ETC.), TO EXCEED THE DISTRICT HEIGHT.** (Titled Changed 3/6/91, Amended 3/5/97)

INTENT

Pursuant to Section 704(a) of the Federal Telecommunications Policy Act of

1996, it is not the intent of this section to prohibit or have the effect of prohibiting the provision of personal wireless services in unincorporated Fulton County. It is the intent of this Section to address the aesthetic effect of telecommunication facilities on our landscapes, our citizens' demands for these services, and the needs of service providers.

The following regulations on design, location, placement, and height limits of antennas in residential and AG-1 zoned districts implements Fulton County's governmental interest in land planning, aesthetics and public safety by requiring the following Use Permit Standards:

A. **Required Districts:** Residential districts, MIX and AG-1 (See same heading in Section 19.3., for other non-residential districts.)

B. **Standards:**

1. ~~Towers must be set back a distance equal to the height of the tower from any residentially or AG-1 zoned or used property. (i.e., a 200-foot tower will require a 200-foot setback from any residential district and/or AG-1 district used as single family.~~

Towers must be set back a distance equal to one and one-half (1 ½) times the height of the tower adjacent to residential and/or AG-1 zoned property.

2. Height shall not exceed 300 feet from existing grade.

The maximum height, measured from the finished grade of the base structure, shall be based on the number of providers for which the tower is designed as follows:

One provider: 130 feet;
Two providers: 170 feet;
Three providers: 210 feet;
Four or more providers: 250 feet

3. Tower and associated facilities shall be enclosed by fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device.
4. A minimum 10-foot landscape strip planted to buffer standards shall be required surrounding the facility exterior to the required fence unless the Fulton County Arborist determines that existing plant materials are adequate.

5. Antennas or towers shall not have lights unless required by federal or state law.
6. Towers shall not be located within ~~one-quarter of a~~ one-half mile from any existing telecommunication tower above the district height, excluding alternative structures.
7. The tower shall comply with applicable state and local statutes and ordinances, including, but not limited to, building and safety codes. Towers which have become unsafe or dilapidated shall be repaired or removed pursuant to applicable state and local statutes and ordinances.
8. Facilities shall not be artificially lighted except to assure human safety or as required by the Federal Aviation Administration (FAA).
9. Communication towers shall be designed and constructed to ensure that the structural failure or collapse of the tower will not create a safety hazard to adjoining properties, according to applicable Federal Standards which may be amended from time to time.
10. Telecommunications facilities shall not be used for advertising purposes and shall not contain any signs for the purpose of advertising.
11. Any telecommunications facility may co-locate on any existing tower, pole or other structure as long as there is no increase in height to the existing facility.
12. A commercial telecommunication facility that ceases operation for a period of 12 consecutive months shall be determined to have terminated and shall be removed within 90 days of termination at the property owner's expense. It shall be the duty of both the property owner and the tower owner to notify the county in writing of any intent to abandon the use of the tower.
13. Communication facilities not requiring FAA painting/marketing shall have either a galvanized finish or [be] painted a dull blue, gray, or black finish or shall be screened through fencing and landscaping.
14. An application for a telecommunications facility shall be submitted in accordance with the Department's Plan Review submittal

requirements.

15. An application for a telecommunication facility shall include a certification from a registered engineer that the structure will meet the applicable design standards for wind loads.
16. Communications facilities shall not be located in 100-year flood plain or delineated wetlands.

APPENDIX

Initiated by:

This amendment to the Fulton County Zoning Resolution was initiated by the Department of Environment and Community Development to address various concerns expressed by the Commissioners regarding the potential health and aesthetic effects due to the proliferation of cell towers throughout the County.

Summary

This zoning amendment includes three parts. They are summarized below.

Part 1 – To amend Article 3, Section 3.3.1. to revise the definition of alternative antenna support structure.

- This allows for man made trees as alternative support structures

Part 2 – To amend Article 4, Section 4.3.1.D. to add provisions for nonconforming telecommunications facilities.

- This allows for routine maintenance, including antenna replacement, in non conforming structures.

Part 3 - To amend Article 19, Sections 19.3.1(1), 19.3.1(2), and 19.4.7. to revise the intent of these regulations and to revise and add development standards for telecommunications facilities. This section includes standards for alternative support structures, antennas in non-residential zoning districts and antennas in residential zoning districts. In all three instances, the amendment addresses:

- Measurement of antenna height from finished grade,
- Prohibition of lighting,
- Design and construction requirements,
- Prohibition of advertising,
- Permission for co-location,
- Removal requirement if facility is not used for 12 months,
- Application and submittal requirements, and
- Prohibition of tower location in 100 year flood plain and in wetlands

Alternative structures

- Tower setback from property line equal to the height of the tower is required when antenna is adjacent to residential and/or AG-1 zoned property.
- Reduces maximum the height to 130 feet from 150 feet.

Structures in non-residential zoning districts

- Removes MIX as allowed zoning category.
- Tower setback from property line equal to the height of the tower is required when

antenna is adjacent to residential and/or AG-1 zoned property.

- Maximum height of 200 feet measured from finished grade, instead of existing grade.

Structures in residential zoning districts

- Adds MIX to residential zoning districts.
- Increases setback distance of towers to 1 1/2 times the height of the tower from property line when adjacent to residential and/or AG-1 zoned property.
- Maximum height ranges from 130 ft for one carrier to 250 for four carriers, reduced from 300 ft.
- Towers must be 1/2 mile apart instead of 1/4 mile.

Changes from February 1, 2006 draft

Language was included that requires the owner of the property and the tower to notify the County of the intent abandon the use of the tower.

Other Metro Area Jurisdictions:

Local governments in the Atlanta Region have similar provisions in their cell tower ordinances. Staff compared the proposed standards to the current Fulton County standards as well as those from the cities in Fulton County and the counties surrounding Fulton County.

Comments and Questions: Staff's response to these comments follows after the hyphen-or at the end of the comments.

Cell tower representatives:

The cell tower industry has various concerns listed below.

- Prohibition of lighting is already included in federal standards.
- Design and construction requirements are included in federal standards.
- Prohibition of advertisement should be included in the sign section of the Zoning Resolution.
- Submittal requirements should not be included in Zoning Resolution.
- Application and submittal requirements are included in federal standards

All of these requirements that are included in the proposed amendment are often included in Telecommunication regulations throughout the Atlanta Region.

- Decreasing tower height of alternative structures will require more towers to provide adequate service. – The height of alternative structure is proposed to be lowered in order to camouflage this type of structure.

- Federal standards require an Environmental Impact Statement for construction of a tower in the 100 year flood plain. Army Corps of Engineer review is required when construction is in a designated wetland. – The Environment Division recommended not allowing the construction of telecommunication facilities in the flood plain or delineated wetlands in order to provide protection to environmental resources and minimize flooding.
- The height of towers in residential zoning districts with four or more providers should not exceed 300 feet. - The draft allows 50 feet between antennas. Industry requires approximately 20 feet between antennas. Four or more antennas can be accommodated in a 250 foot high tower.
- The required separation for ½ mile should be reduced to ¼ mile when existing towers do not meet service needs.

The Birmingham Hopewell Alliance (BHA) made several recommendations. These are:

- Cell towers should be prohibited in all residential and AG-1 zoning districts,
- The height limit of 250 feet for co-located antennas is too high,
- Cell towers should not be allowed to be placed within ½ mile of another.

These standards would restrict the location of telecommunication facilities. Substantial justification would be needed for staff to recommend these standards.

- Increased buffers and protection of tree lined areas as well as specimen and heritage trees need to be included. – Standards for the protection of trees are included in the tree preservation ordinance. This amendment requires an increase on tower setback but does not require buffers.
- Tower height should be measured from existing grade when calculating height. – In the Building Code and in Zoning Resolution, the height is measured from the finished grade. With this change, the way cell tower height is measured will be consistent with how other heights are measured.
- Non-conforming towers should not be allowed to increase in height. – The proposed amendment allows for replacement or antennas and routine maintenance as long as the height of the structure is not increased.
- Language encouraging the conversion of nonconforming towers to alternative towers should be included. Could incentives be provided?
- Cell towers should be encouraged to use newer technologies instead of locating in residential areas.

Verizon Wireless thru Troutman Sanders:

- The reduction in the height of alternative structures may lead to more towers and provides fewer opportunities for co-location. – The height of alternative structures is proposed to be lowered in order to camouflage these structures.
- Restrictions of towers from locating in the 100 year flood plain and wetlands should be included in the environmental section of the county code and apply to all structures. There may be situations where a sell tower would be appropriate in these areas and can meet all other environmental requirements. - The draft Environmental Standards Zoning Resolution Amendment incorporates standards for uses in special flood hazard (100 year flood plain) and flood prone areas. These standards do not allow for the construction of cell towers in the 100 year flood plain.
- The increase in tower setback to one and a half the tower height impacts the ability of wireless providers to identify sites to meet customer demands and service requirements. – This setback increase is only for towers in residential zoning districts. This provides for additional protection of residential uses. It is also consistent with setback requirements in Forsyth County and College Park.
- The increase in separation between towers from ¼ mile to ½ mile is inappropriate and could force carriers to seek residential areas when a commercial district has a tower. It would be appropriate to require a carrier to demonstrate why nearby towers are not acceptable.

Community Meeting Comments

- Cell towers are unsightly in residential neighborhoods. More should be done to protect residential areas from cell towers (The BOC approved a cell tower at a church next to a residential subdivision) What can we do about that? It's better to have one cell tower with height than several without the height. – This amendment recommends increasing the tower setback when adjacent to residential, encouraging co-location of antennas and increasing the distances between towers. These are designed to protect residential uses.
- Why does a cell tower have to look like a cell tower? It comes down to economics. Cell towers on the north side are gorgeous and you don't see them.
- How will staff know when a cell tower is no longer in use? - Language was included that requires the owner of the property and the tower to notify the County of the intent abandon the use of the tower.
- How much space is needed between antennas in a tower? The draft allows 50 feet between antennas. Industry requires approximately 20 feet between antennas.