



Michael L. Thurmond
Chief Executive Officer

DeKalb County Zoning Board of Appeals
Department of Planning & Sustainability
178 Sams Street,
Decatur, GA 30030

Wednesday, November 8, 2023

Planning Department Staff Analysis



Cedric Hudson
Interim Director

D5. Case No: A-23-1246441 Parcel ID(s): Unparcelled/Public Right of Way

Commission District 04 Super District 07

Applicant: CitySwitch II-A, LLC
1900 Century PI NE, Suite 320
Atlanta, GA 30345

Owner: CSX Transportation Inc.
500 Water Street, Suite 1208
Jacksonville, FL 32202

Project Name: Cell Tower – New Construction

Location: Intersection of Walker Rd & S Stone Mountain Lithonia Rd within the CSX right of way

Requests: Variance from Section 4.2.57(H)(3)(a) to increase the tower height limitation from 199' to 255'

Staff Recommendation: Discretion of the Zoning Board of Appeals.

If approved, staff recommends the following condition: The following information about this variance shall be noted on any site plan prepared for the subject property: case number, approval date, type of variance and condition(s) of approval.

STAFF FINDINGS:

CitySwitch II-A, LLC, in partnership with CSX and AT&T, is seeking to construct a telecommunications tower within the CSX railroad right-of-way. To accommodate the tower's design and unique physical constraints of the site, the applicant is requesting variances for setback, height, and landscape requirements. The ZBA approved two other variances in August 2023, but failed to make a motion on the remaining request to increase the height of the tower. The telecommunications tower is designed to collapse within a 40-foot radius if it fails. This distance is entirely within the railroad right of way.

Variance Analysis:

1. There is an extraordinary or exceptional physical condition(s) pertaining to the particular piece of property (such as, but not limited to, lot size, lot shape, specimen tree(s), steep slope(s), or preservation of historic characteristics of the property), which was not created by the current owner, previous owner, or applicant; by reason of a clearly demonstrable condition(s), the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district, as distinguished from a special privilege or convenience sought by the property owner.

The proposed increase in height of the telecommunications tower within the CSX railroad right-of-way may be justified by the intended use of the tower. The Letter of Intent states "This height limitation will not allow the tower to provide ample support the coverage area needed in this location. The coverage area provided by a tower is determined in part by the height of a tower, therefore the minimum height for coverage 255' is needed to maximize the use of the space. "The site's narrow dimensions, combined with a prior report that passed this criterion, express the exceptional nature of the property's conditions. These conditions are not a result of actions taken by the current owner, previous owner, or applicant.

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located:

The requested variance may not go beyond the minimum necessary to provide the required relief for the proposed telecommunications tower. The project design appears to be tailored to meet the specific needs of the site within the CSX railroad right-of-way. The variance may not be excessive and appears to be the minimum necessary to ensure the project's viability while covering the area effectively.

3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located:

The construction of the telecommunications tower is expected to provide essential cell service to the area, addressing a need for connectivity. In granting the approval of this increased height for a telecommunication tower there would be an added value to public welfare by allowing additional carriers to collocate antennas onto the proposed tower to provide additional coverage to first responders, the community, and its citizens, especially in an emergency event.

However, the tower may produce an adverse visual impact on the nearby park and residential areas. This aesthetic concern should be weighed against the significant public benefit of improved cell service, and consideration is required to ensure that any visual impact is minimized through appropriate design and screening measures. The potential visual impact should be balanced with the broader goal of enhancing public welfare through improved telecommunications services.

4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship:

A strict and literal interpretation of the zoning provisions would likely create undue and unnecessary hardship for the project. Telecommunications towers are typically much taller, ranging from 200 to 400 feet in height. The proposed height is necessary to serve

the area effectively and meet the demands of modern telecommunications infrastructure. Adhering strictly to the height requirements would prevent the project and impose restrictions on the development of crucial telecommunications services in the community. This represents a clear case of undue and unnecessary hardship necessitating the requested variance.

5. The requested variance would be consistent with the spirit and purpose of this Chapter and the DeKalb County Comprehensive Plan Text:

The proposed telecommunications tower may have a role in improving overall connectivity, there are considerations regarding its impact on these character areas. The SUB (Suburban) Land Use Area emphasizes enhanced connectivity and the preservation of green spaces, but there are concerns about whether the tower fully supports the community and pedestrian connectivity envisioned in the comprehensive plan. Similarly, the COS Land Use Area aims to preserve natural and ecological features and protect environmentally sensitive areas from development. The establishment of the proposed telecommunications tower near this area raises questions about its potential effects on conservation initiatives, potentially conflicting with the goals of the COS Character Area. The decision on the requested variance should carefully weigh these considerations in determining its alignment with the comprehensive plan's objectives.

FINAL STAFF ANALYSIS:

The hardship in this application is based on the proposed use, rather than on specific property. Granting approval of this increased height for a telecommunication tower would provide value to public welfare by allowing additional carriers to collocate antennas onto the proposed tower to provide additional coverage to first responders, the community, and its citizens, especially in an emergency event. However, the tower may produce an adverse visual impact on the nearby park and residential areas. This aesthetic concern should be weighed against the significant public benefit of improved cell service.

Staff recommendation: Discretion of the Zoning Board of Appeals.

If approved, staff recommends the following condition: The following information about this variance shall be noted on any site plan prepared for the subject property: case number, approval date, type of variance and condition(s) of approval.

Chief Executive Officer
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Interim Director
Cedric Hudson

ZONING BOARD OF APPEALS APPLICATION FOR PUBLIC HEARING (VARIANCES, SPECIAL EXCEPTIONS, APPEALS OF ADMINISTRATIVE DECISIONS)

BOA No. _____

Applicant and/or
Authorized Representative: _____

Mailing Address: _____

City/State/Zip Code: _____

Email: _____

Telephone Home: _____ Business: _____

OWNER OF RECORD OF SUBJECT PROPERTY

Owner: _____

Address (Mailing): _____

Email: _____

Telephone Home: _____ Business: _____

ADDRESS/LOCATION OF SUBJECT PROPERTY

Address: _____ City: _____ State: _____ Zip: _____

District(s): _____ Land Lot(s): _____ Block: _____ Parcel: _____

Zoning Classification: _____ Commission District & Super District: _____

CIRCLE TYPE OF HEARING REQUESTED:

- VARIANCE (From Development Standards causing undue hardship upon owners of property.)
- SPECIAL EXCEPTIONS (To reduce or waive off-street parking or loading space requirements.)
- OFFICIAL APPEAL OF ADMINISTRATIVE DECISIONS.

*** PLEASE REVIEW THE FILING GUIDELINES ON PAGE 4. FAILURE TO FOLLOW GUIDELINES MAY RESULT IN SCHEDULING DELAYS. ***

TO BE COMPLETED BY PLANNING AND SUSTAINABILITY DEPARTMENT:

Date Received: _____

Fee Paid: _____

ZONING BOARD OF APPEALS APPLICATION

AUTHORIZATION OF THE PROPERTY OWNER

I hereby authorize the staff and members of the Zoning Board of Appeals to
inspect the premises of the Subject Property

I hereby certify that the information provided in the application is true and correct.

I hereby certify that I am the owner of the property subject to the application.

DATE: _____ Applicant: Kendal Lotze
Signature

DATE: _____ Applicant: _____
Signature

DEPARTMENT OF PLANNING & SUSTAINABILITY

ZONING Board of Appeals 2023-24 Meeting, Sign Postings, and Filing Dates

Filing Deadline	Sign Posting Deadline	Meeting Date
Last Thursday of month before meeting (Except holidays)	30 days prior to meeting	1PM; 2nd Wednesday of month; Zoom
Thursday, November 24, 2022	Monday, December 12, 2022	Wednesday, January 11, 2023
Thursday, December 29, 2023	Monday, January 9, 2023	Wednesday February 8, 2023
Thursday, January 26, 2023	Tuesday, February 7, 2023	Wednesday, March 8, 2023
Thursday, February 23, 2023	Wednesday, March 14, 2023	Wednesday, April 12, 2023
Thursday, March 30, 2023	Tuesday, April 11, 2023	Wednesday , May 10, 2023
Thursday, April 27, 2023	Wednesday, May 15, 2023	Wednesday, June 14, 2023
Thursday, May 25, 2023	Wednesday, June 13, 2023	Wednesday, July 12, 2023
Thursday, Jun 29, 2023	Tuesday, July 11, 2023	Wednesday, August 9, 2023
Thursday, July 27, 2023	Wednesday, August 15, 2023	Wednesday, September 13, 2023
Thursday, August 31, 2023	Wednesday, September 8, 2023	Wednesday, October 11, 2023
Thursday, September 28, 2023	Tuesday, October 9, 2023	Wednesday, November 8, 2023
Thursday, October 26, 2023	Wednesday, November 14, 2023	Wednesday, December 13, 2023
Friday, November 30, 2023	Tuesday, December 9, 2023	Wednesday, January 10, 2024

* All applicants must have a pre-application meeting – contact plansustain@dekalbcountyga.gov

*Incomplete applications will not be accepted.

*Filing fees will not be returned after the legal advertisement has been sent.

*Visit [our website](#) for current agenda and applications.

DEPARTMENT OF PLANNING & SUSTAINABILITY

**Filing Guidelines for Applications to the
DeKalb County, Ga. Board of Appeals**

1. Order of Submitted Materials:

- a. Application Form
- b. Signatures and authorization (including permission to go on property)
- c. Letter of Intent
- d. Surveys, site plans.
- e. Other relevant materials (e.g., photographs, letters of support, citation, etc.)
- f. Filing Fee (\$300 payable to "DeKalb County")

2. Application Materials:

- a. Submit one (1) digital copy of the completed application and materials to plansustain@dekalbcountyga.gov and hjohnson@dekalbcountyga.gov. DO NOT USE E-permitting services (Project Dox).**
- b. One (1) hard copy of all materials is required along with the application fee. Contact the ZBA Senior Planner for delivery arrangements.**
- c.** Applications must be submitted in complete, collated packets.
- d.** All materials must be folded in stacks of 8½ x 11.

3. Surveys and site plans of the Subject Property:

- a. Must be stamped by a professional engineer or surveyor, registered in the State of Georgia.
- b. All plans and surveys must include the following information:
 1. Must show all property lines with dimensions.
 2. Must show the location of all existing and proposed buildings, structures, parking and setbacks (their relationship to the property boundaries).
 3. Must show any other features related to the request such as trees, fences, topography, streams, etc.
 4. Must be to-scale
 5. Must show lot area and lot coverage (impervious materials, including paving and structures).
 6. Larger and small-scale plans (8½ x 11) are generally required.
 7. If property is not located in a platted subdivision, a legal description must be included.

4. Letter of Intent:

- a. A typed statement indicating the request and clarifying justification for the proposal based on the criteria as indicated in Section 27-7.5.3 or 7.5.4 of the DeKalb County Zoning Ordinance (see attached information).
- b. Reference the section of the code you are requesting to vary and the amount of requested change, (such as to reduce the rear yard setback from forty (40) feet to twenty (20) feet to construct an addition).

5. Authorization:

- a. If property owner is different from the applicant, the form to authorize the application must be signed by the owner and stamped by a notary.
- b. If property is owned by more than one property owner, all property owners must authorize the request.
- c. Authorize staff and members of the Board of Appeals to go on the property for site analysis and to post signs.

6. Application Fee is \$300. All checks must be payable to "DeKalb County". There are no refunds after notice has been sent to the newspaper for advertisement.

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LETTER OF INTENT

Please address the following criteria as appropriate:

7.5.1 Applications for variances; and criteria to be used by the zoning board of appeals in deciding applications for variances.

The zoning board of appeals shall hear and decide applications for variances from the strict application of the regulations of this chapter and chapter 21 where the strict application of any regulation enacted under said chapters would result in exceptional and undue hardship upon the owner of such property. In determining whether or not to grant a variance, the board shall apply the criteria specified in this section to the facts of each case. The board may attach reasonable conditions to any approved variance in accordance with section 7.3.9. Once imposed, conditions shall become an integral part of the approved variance and shall be enforced as such. No changes to an approved condition attached to a variance shall be authorized except by re-application to the zoning board of appeals in full compliance with the applicable provisions of this division. No relief may be granted or action taken under the terms of this division unless such relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of this chapter and the comprehensive plan. The zoning board of appeals shall apply the following criteria to the types of applications specified below as follows:

- A. Variances from the provisions or requirements of this chapter other than variances described in section 7.5.4 shall be authorized only upon making all of the following findings in writing:
 - 1. There is an extraordinary or exceptional physical condition(s) pertaining to the particular piece of property (such as, but not limited to, lot size, lot shape, specimen tree(s), steep slope(s), or preservation of historic characteristics of the property), which was not created by the current owner, previous owner, or applicant; by reason of a clearly demonstrable condition(s), the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district, as distinguished from a special privilege or convenience sought by the property owner.
 - 2. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.
 - 3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.
 - 4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.
 - 5. The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.
- B. Appeals of decisions regarding building architectural design standards shall be evaluated using the same criteria as section 7.6.7(B).

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- C. Appeals to the height standards, but not to add stories, shall be evaluated using the criteria as follows:
1. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.
 2. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.
 3. Adequacy of public services, public facilities, and utilities to serve the proposed use.
 4. Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.
 5. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.
 6. Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

7.5.2 Applications for variances to reduce or waive off-street parking or loading space requirements.

The zoning board of appeals shall hear and decide applications for variances to reduce or waive required off-street parking or loading spaces in accordance with the provisions and standards of this section. All such applications shall be heard and decided based on the notice requirements of section 7.2.4. The zoning board of appeals may waive or reduce the required number of parking or loading spaces in any district only upon an expressed finding that:

- A. The character of the use of the building(s) is such as to make unnecessary the full provision of parking or loading spaces;
- B. The lot upon which the building(s) is located is within one thousand (1,000) feet of the boundary of a MARTA RapidTransit Station;
- C. The provision of the full number of parking spaces would have a deleterious effect on a historic building, site, district or archaeological resource;
- D. The use has a characteristic that differentiates it from the typical use example used in the formulation of this Zoning Ordinance;
- E. The location of the proposed development is relatively isolated where the opportunity for diversity of use, pedestrian access, and alternative modes is not available; or
- F. The developer is providing the additional spaces for general public parking (for hourly or daily parking charges) to serve surrounding development.

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Section 21-27. Sign Variances.

- (a) Where a literal application of this article, due to special circumstances, would result in an unusual hardship in an individual case, a variance may be granted by the zoning board of appeals after receiving evidence that the applicant meets all of the following criteria:
 - (1) Exceptional conditions pertaining to the property where the sign is to be located as a result of its size, shape, or topography, which are not applicable to other lands or structures in the area;
 - (2) Granting the variance would not confer on the applicant any significant privileges which are denied to others similarly situated;
 - (3) The exceptional circumstances are not the result of action by the applicant;
 - (4) The requested variance is the minimum variance necessary to allow the applicant to enjoy the rights commonly enjoyed by others similarly situated;
 - (5) Granting of the variance would not violate more than one (1) standard of this article; and
 - (6) Granting the variance would not result in allowing a sign that interferes with road or highway visibility or obstruct or otherwise interfere with the safe and orderly movement of traffic.
- (b) No variance shall be granted to the height of a sign or the aggregate area of signs permitted on a lot.
- (c) No variance shall be granted which increases the size of a sign more than twenty (20) percent of that allowed by this chapter. (Ord. No. 13-03, Pt. I, 6-10-03)

7.5.3 Appeals of decisions of administrative officials.

- A. *General Power.* The zoning board of appeals shall have the power and duty to hear and decide appeals where it is alleged by the appellant that there is error in any final order, requirement, or decision made by an administrative official based on or made in the enforcement of this Zoning Ordinance or as otherwise authorized by local law or the Code of DeKalb County as Revised 1988. Administrative officials must make final decisions covered by this section within one hundred and eighty (180) days of receipt of all necessary information to make such decision. A failure to act prior to the passage of one hundred and eighty (180) days shall not be construed to be a final order, requirement or decision within the meaning of this division. If a decision is not made by the 181st day, the requested decision is deemed denied, and becomes appealable. All such appeals shall be heard and decided following the notice requirements of section 7.2.4, and pursuant to the following criteria and procedural requirements.
- B. *Appeals of decisions of administrative officials.* Appeals of decisions of administrative officials may be filed by (1) any person aggrieved by; (2) any elected member of the DeKalb County Governing Authority affected by; or (3) an owner of property within two hundred and fifty (250) feet of the nearest property line of the property that is the subject of any final order, requirement, or decision of an administrative official, based on or made in the enforcement of this Zoning Ordinance, or as otherwise authorized by local law or the Code of DeKalb County as Revised 1988. by filing with the secretary of the zoning board of appeals an application for appeal, specifying the grounds thereof, within fifteen (15) days after the action was taken by the official that is the subject of the appeal.

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- C. *Appeal stays all legal proceedings.* An appeal of a decision of an administrative official stays all legal proceedings in furtherance of the action or decision appealed from unless the official from whom the appeal is taken certifies to the zoning board of appeals, after notice of appeal has been filed, that by reason of facts stated in the certificate, a stay would, in that official's opinion, cause imminent peril to life or property. In such a case, legal proceedings shall be stayed only pursuant to a restraining order granted by a court of competent jurisdiction directed to the officer from whom the appeal is taken and on due cause shown.
- D. *Appeal stays land disturbance or construction activity in certain situations.* If the action or decision appealed from permits land disturbance or construction activity to commence or continue on residentially zoned property, the appeal stays the land disturbance or construction activity until the zoning board of appeals issues a decision on the appeal. Thereafter, land disturbance or construction activity in such cases shall only be stayed by an order from a court of competent jurisdiction. In all cases involving non-residentially zoned property, the appeal to the zoning board of appeals does not stay land disturbance or construction activity; such activity shall only be stayed by an order from a court of competent jurisdiction.
- E. Thereafter, in such situations land disturbance or construction activity shall only be stayed by an order granted by a court of competent jurisdiction.
- F. *Time of hearing.* The zoning board of appeals shall fix a reasonable time for the hearing of the appeal and give notice thereof pursuant to the requirements of section 7.2.4 as well as written notice to the appellant. Any party may appear at the hearing in person, by an agent, by an attorney, or by the submission of written documentation.
- G. *Decision of the zoning board of appeals.* Following the consideration of all testimony, documentary evidence, and matters of record, the zoning board of appeals shall make a determination on each appeal and shall issue a written decision explaining the reasons for its decision. The zoning board of appeals shall decide the appeal within a reasonable time, but in no event more than sixty (60) days from the date of the hearing. An appeal shall be sustained only upon an expressed finding by the zoning board of appeals that the administrative official's action was based on an erroneous finding of a material fact, erroneously applied the Zoning Ordinance to the facts, or that the administrative official acted in an arbitrary manner. In exercising its powers, the zoning board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that end shall have all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit, provided all requirements imposed by any applicable laws are met.

7.5.4 Limitations of authority of the zoning board of appeals.

No variance shall be granted by the zoning board of appeals to:

- A. Allow a structure or use not listed as a permitted use or a special use in the applicable zoning district or a density of development that is not authorized within such district. This prohibition does not apply to any variance from the supplemental regulations of Article 4 of this Zoning Ordinance or from any other accessory feature or characteristic of a permitted or special use, unless said variance is otherwise prohibited by the regulations of this chapter.
- B. Allow any variance which conflicts with or changes any requirement enacted as a condition of zoning or of a special land use permit by the board of commissioners.
- C. Reduce, waive or modify in any manner the minimum lot width unless the purpose is to reverse a lot merger.
- D. Reduce, waive or modify in any manner the minimum lot area established by this chapter.
- E. Extend the time period for a temporary outdoor social, religious, entertainment or recreation activity approved by the director of planning.
- F. Permit the expansion or enlargement of any nonconforming use of land, nonconforming use of land and buildings in combination, nonconforming use of land and structures in combination, or nonconforming use requiring special land use permit.
- G. Permit the reestablishment of any nonconforming use of land, nonconforming use of land and buildings in combination, nonconforming use of land and structures in combination, or nonconforming use requiring special land use permit where such use has lapsed pursuant to the requirements and limitations of Article 8 of this chapter.
- H. Permit customer contact for a home occupation authorized by this chapter.
- I. Allow any variance to increase the height of a building which will result in adding a story.

DEPARTMENT OF PLANNING & SUSTAINABILITY

**GENERAL INFORMATION REGARDING APPLICATIONS TO THE
DEKALB COUNTY ZONING BOARD OF APPEALS:**

1. **Monthly Meetings.** The Zoning Board of Appeals meets once a month, on the second Tuesday of each month at 1:00 P.M. via Zoom.
2. **Application Submittals.** Submit one (1) digital copy of the completed application and materials to plansustain@dekalbcountyga.gov and hjohnson@dekalbcountyga.gov. DO NOT USE E-permitting services (Project Dox). One (1) hard copy of all materials is required along with the application fee. Contact the ZBA Senior Planner for delivery arrangements.
3. **Pre-application Meetings.** DeKalb County now mandates pre-application meetings. Please call (404) 371-2155 to discuss your application and set up an appointment to meet with the Senior Planner assigned to the Board of Appeals.
4. **Blue Public Hearing Signs.** Public notice signs to advertise the application and date and time of the public hearing are required to be posted along the property frontage by the DeKalb County Zoning Ordinance. **Signs are posted by staff. Signs must remain posted until final Board of Appeals action regarding the request. If application is deferred, please do not remove signs.**
5. **Staff Report.** Staff prepares reports and recommendations for each application. These recommendations are based on the attached criteria established by the DeKalb County Code. Final staff reports are available to the applicant and the public the Monday prior to the scheduled Board of Appeals meeting.
6. **Zoning Board of Appeals Actions.** The Board of Appeals is authorized to:
 1. Approve the application as submitted
 2. Approve a revised application
 3. Approve an application with conditions
 4. Deny an application (if an application is denied, no variance can be considered on the same site within 24 months)
 5. Allow an application to be “Withdrawn without Prejudice” at the request of the applicant.
7. **Public Hearing portion of Meeting.** Applicants and others in favor of an application are given a total of five (5) minutes to present to the Board. Anyone speaking in opposition also has a total of five (5) minutes to address the application.
8. **Applicant and/or Representative must be Present.** Applicants or their representative must be present at the public hearing to present the request to the Zoning Board of Appeals.
9. **Executive Session.** After the public hearing, the Board of Appeals will close the public hearing, go into executive session for discussion, and will then take an action on an application. Applicants are not allowed to address the Board of Appeals during Executive Session unless they are asked questions by members of the Board of Appeals.
10. **Revisions or amendments.** An application must be submitted in writing and must be received ten (10) days before the scheduled meeting to be addressed in the staff report.
11. **Compliance with standards upon denial.** In such case that a variance request is initiated due to an existing code violation and such application is denied, the violation shall be required to be brought into compliance within thirty (30) days of such denial or as specified by the board if a greater time period is approved.

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- 12. Successive applications.** Section 27-920 of the DeKalb County Zoning Ordinance states: An application for a variance or special exception affecting all or a portion of the same property which was denied by the Zoning Board of Appeals shall not be submitted more than once every twenty-four (24) months measured from the date of final decision by the zoning board of appeals. The Zoning Board of Appeals may waive or reduce this twenty-four-month time interval by resolution provided that if the application for a variance or special exception was denied by the Zoning Board of Appeals, the time interval between the date of said denial and any subsequent application or amendment affecting the same property shall be no less than six (6) months.
- 13. Appeals of Decisions.** Any person aggrieved by a final decision of the board, or any officer, department, board or agency affected by such decision, may seek review of such decision by petitioning the Superior Court of DeKalb County. Such petition shall be filed within 30 days after the final decision of the board is rendered.

DEPARTMENT OF PLANNING & SUSTAINABILITY

ZBOA APPLICATION AUTHORIZATION

Completion of this form is required if the individual making the request is not the owner of the property.

DATE: _____

CHECK TYPE OF APPLICATION:

- () ADMINISTRATIVE APPEAL
(X) VARIANCE
() SPECIAL EXCEPTION

TO WHOM IT MAY CONCERN:

(I) / (WE), CSX Transportation Inc.


[Name of owner(s)]

being (owner) / (owners) of the property described below or attached hereby delegate authority to


CitySwitch II-A, LLC with Agent Kendal Lotze

[Name of Applicant or Representative]

to file an application on (my) / (our) behalf.



Notary Public



Owner



Notary Public

Owner

Notary Public

Owner

Variance Application

Letter of Intent

CitySwitch II-A, LLC, in partnership with CSX and AT&T, respectfully requests variances for setback, height, and landscape requirements due to the unique size, shape, and terrain of the CSX right-of-way property.

The current required setbacks for towers according to the County Ordinance Section 4.2.57(H)(2)(a) are 100' or the tower height fall zone plus twenty feet from all property lines. The proposed telecommunication tower is designed such that, in the event of a catastrophic failure, the tower would collapse within a 40' fall zone radius which will be entirely contained within the railroad right-of-way as certified in that letter dated February 14, 2023 by Amy R. Herbst, registered engineer in the State of Georgia.

The tower height limitation according to the County Ordinance Section 4.2.57(H) (3)(a) is 199'. This height limitation will not allow the tower to provide ample support the coverage area needed in this location. The coverage area provided by a tower is determined in part by the height of a tower, therefore the minimum height for coverage 255' is needed to maximize the use of the space.

The landscape requirements for towers according to the County Ordinance Section 4.2.57(H)(4)(d) are a vegetative border a minimum of ten (10') feet in width and located outside of the fenced perimeter of the tower compound. The hardship claimed for the required landscaping is unique to this property due to railroad rights-of-way being long and narrow pieces of property used for railroad transportation. Due to line of site safety concerns, CSX will not allow additional landscaping to be installed within the right-of-way. In addition, the proposed tower will be located within a section of the right-of-way with an existing vegetative buffer along the east and western sides of the right-of-way creating a natural visual buffer between surrounding properties and the tower's base station as shown on the enclosed site drawings.

A. Responses to provisions and requirements of Section 7.5.4

1. There is an extraordinary or exceptional physical condition(s) pertaining to the particular piece of property (such as, but not limited to, lot size, lot shape, specimen tree(s), steep slope(s), or preservation of historic characteristics of the property), which was not created by the current owner, previous owner, or applicant; by reason of a clearly demonstrable condition(s), the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district, as distinguished from a special privilege or convenience sought by the property owner.

RESPONSE: The unique size and shape limitations of the parcel are not the result of the actions of the applicant. The railroad right-of-way size and shape are determined by its use as a railroad right of way and not the applicant.

2. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.

RESPONSE: The size, shape, and terrain of the property are not the result of the actions of the applicant and other parcels in DeKalb County do not have the same shape, design, or terrain challenges as a railroad right-of-way, thereby making this parcel unique and different from any other parcel. These aspects of this particular property are peculiar to this parcel and not applicable to other properties in Dekalb County.

3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.

RESPONSE: In granting the approval of this proposed telecommunication tower there would be an added value to public welfare by allowing additional carriers to collocate antennas onto the proposed tower to provide additional coverage to first responders, the community, and its citizens, especially in an emergency event. The proposed use will not be injurious to the area or public welfare since such proposed use will not emit noise, dust, odor, or fumes, and will not significantly increase traffic.

4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.

RESPONSE: The hardship imposed by strict application of the standard setback results from conditions that are unique to this property. In this case, the hardship results from the unique size of the property. The setback requirements specific for this use on this property would otherwise prohibit placement of a tower on the property. Railroad companies operate within a narrow width right of way.

5. The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.

RESPONSE: The proposed site within the railroad right-of-way will be consistent with the Comprehensive Plan in protecting existing single-family areas while allowing for additional densification of commercial and industrial activities. Additionally, construction of wireless facilities, and the expansion and densification of wireless networks, is necessary for the County to continue to support growth of both commercial, industrial, and residential areas.

B. Responses to appeals to height standards evaluation criteria:

1. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, offstreet parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.

RESPONSE: The proposed tower site will be enclosed by a 37'x 60' fenced compound which will be located entirely within the underlying railroad right-of-way. The site will be designed with one turnaround area which will also be utilized as a parking space. The tower is designed such that in the unlikely event of failure, the total fall radius will be a 40' engineered fall zone as certified by that letter dated February 14, 2023 by Amy R. Herbst, registered engineer in the State of Georgia.

2. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.

RESPONSE: The proposed tower use will be located within a railroad right-of-way which is treated as a utility right-of-way. The immediately adjacent property is a county owned mixed use recreation park. The surrounding area also includes the highly trafficked S. Stone Mountain Lithonia Road and residential uses.

The addition of a tower to a utility right-of-way is consistent and compatible with the uses in other utility rights-of-way. In granting the approval of this proposed telecommunication tower there would be an added value to public welfare by allowing additional carriers to collocate antennas onto the proposed tower to provide additional coverage to first responders, the community, and its citizens, especially in an emergency event. The proposed use will not be injurious to the area or public welfare since such proposed use will not emit noise, dust, odor, or fumes, and will not significantly increase traffic.

3. Adequacy of public services, public facilities, and utilities to serve the proposed use.

RESPONSE: The proposed facility will not require any public services and the only utility it will need is power, which is available at the proposed site.

4. Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.

RESPONSE: Due to line of site safety concerns, CSX will not allow additional landscaping to be installed within the right-of-way. However, the proposed tower site will be located within a section of the right-of-way with an existing vegetative buffer along the east and western sides of the right-of-way creating a natural visual buffer between surrounding properties and the tower's base station as shown on the enclosed site drawings.

5. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.

RESPONSE: The proposed tower and fenced compound will be entirely within the railroad right-of-way and more than 60 feet from the western property line and eastern public right-of-way line. The proposed tower will exceed the 199' height limitation but will be narrow and unobtrusive in nature to surrounding lots and buildings.

6. Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

RESPONSE: The proposed tower will be a narrow structure of lattice design. The impact will be a narrow shadow of the tower along adjacent public rights-of-way and along the edge of the adjacent recreation park. The shadow will not be a solid shadow, but will likely result in a mostly form shadow.