

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: December 2, 2013****CASE NUMBER**

5866

APPLICANT NAME

New Cingular Wireless PCS, LLC

LOCATION6311 Cottage Hill Road
(220' ± South of Cottage Hill Road, 780' ± East of Hillcrest Road)**VARIANCE REQUEST****HEIGHT:** Height Variance to allow a 150' monopole telecommunications tower in a B-2, Neighborhood Business District.**SETBACK:** Setback Variance to allow the tower within 37.5' of the lease parcel line.**RESIDENTIAL BUFFER SEPARATION:** Residential Buffer Separation Variance to allow the tower within 42.75' of residentially zoned property.**TREE PLANTING:** Tree Planting Variance to allow no tree plantings.**ZONING ORDINANCE
REQUIREMENT****HEIGHT:** The Zoning Ordinance limits structures to a 45' height in a B-2, Neighborhood Business District.**SETBACK:** The Zoning Ordinance requires telecommunications towers to be setback the height of the tower (150') from the lease parcel line.**RESIDENTIAL BUFFER SEPARATION:** The Zoning Ordinance requires a residential buffer separation of 200' or 150% of the height of the tower, whichever is greater (225').**TREE PLANTING:** The Zoning Ordinance requires one tree per every 30' of lease parcel perimeter.**ZONING**

B-2, Neighborhood Business

AREA OF PROPERTY

5,625 Square Feet

TRAFFIC ENGINEERING**COMMENTS**

requests.

No traffic impacts anticipated by these multiple variance

ENGINEERING**COMMENTS**

No comments.

URBAN FORESTRY**COMMENTS**

Site has various existing trees. If variance motion is to approve, then Urban Forestry requests full compliance with landscaping and tree requirements of the Zoning Ordinance to be coordinated with Urban Forestry. Tree removal permits are required before removing any Live Oak Tree 24" DBH or larger.

CITY COUNCIL**DISTRICT**

District 6

ANALYSIS

The applicant is requesting Height, Setback, Residential Buffer, and Tree Planting Variances to allow a 150' monopole telecommunications tower setback 37.5' from a lease parcel line and 42.75' from residential property, with no tree planting provided, in a B-2, Neighborhood Business District; the Zoning Ordinance limits structures to a 45' height, with telecommunications towers to be setback the height of the tower (150') from a lease parcel line, and with a residential buffer separation of 200' or 150% of the height of the tower, whichever is greater (225'), and with one tree per every 30' of lease parcel perimeter, in a B-2, Neighborhood Business District.

The applicant has also submitted a Planning Approval application to allow the proposed tower in a B-2 district, and a two-lot Subdivision application to separate the lease parcel for the tower from the parent lot, scheduled to be heard at the November 7th Planning Commission meeting. If the variance requests are approved, they should be subject to the approval of those two requests.

The Telecommunications Towers and Facilities Ordinance establishes specific criteria for granting setback and height variances. The Ordinance states that a modification to the setback requirement should be considered in situations where "the only alternative is to locate the tower at another site which poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land."

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

Concerning the Height Variance request, as required by Section 64-4.J.4.4 of the Zoning Ordinance, the applicant has submitted written, technical evidence from an engineer that the proposed Tower or Telecommunications Facilities cannot be installed or collocated on another tower or usable Antennae Support Structure in order to meet the coverage requirements of the applicant's wireless communications system. Propagation maps illustrating the need for the tower in the area have also been submitted. The applicant has submitted propagation maps indicating the in-fill coverage of the proposed tower within the area, and information indicating that the tower will be capable of accommodating three additional cellular carriers. Also submitted was evidence that the tower meets the structural requirements of Section 64-4.J.6 of the Zoning Ordinance. Specific to the Height Variance request, the applicant states that the radio signal emitting from the tower is a fixed technology dictated by physics, and the signal from each tower must work in tandem with the signal from other nearby towers. It is further stated that, due to these requirements and the hardships caused by topography and terrain, the 150' height is needed to meet the engineering requirements for this site. In light of the technical data submitted and the illustration of a hardship imposed by terrain and topography, the height Variance request would seem reasonable.

With regard to the Setback and Residential Buffer requests, the applicant states that the requirement to meet the Zoning Ordinance provisions for setbacks and residential buffer present a specific unnecessary hardship due to the constraints of the small parcel. It is stated that neither of these hardships is economic in nature or self-imposed by the applicant and it is believed that the proposal to place the proposed tower within a wooded area on the property best serves the need to provide the least visually obtrusive alternative. As the site is limited in area by surrounding properties, a hardship is illustrated in meeting the required lease parcel setbacks and the Setback Variance request would be justified. And as the technical data submitted supports the selection of this location for the proposed tower, and as a hardship in meeting the Residential Buffer Separation requirement is imposed by the site's location, the Residential Buffer Separation Variance would be justified. Although the closest residentially-zoned property is a cemetery approximately 43' North of the proposed tower, a single-family residential subdivision is located approximately 145' South of the proposed tower. Due to the proximity of the residential property to the South, the requirement for the provision of a wooden privacy fence along the South side of the lease compound would not be unreasonable.

The site plan submitted indicates only evergreen shrubs proposed to be planted around the interior of the lease parcel and the applicant requests a Tree Planting Variance due to the proposed site mostly being surrounded by existing mature trees. However, some trees would have to be removed to develop the tower site and no hardship has been illustrated to justify the granting of the Tree Planting Variance request, especially in light of the fact that sufficient area would be provided by the clearing for the tower lease parcel to provide the required number of trees.

The applicant has demonstrated that hardships would be imposed by a literal interpretation of the Zoning Ordinance with respect to the height limitations, setback, and residential buffer separation requirements for telecommunications towers. However, the applicant has not demonstrated a hardship would be imposed with respect to the tree planting requirements.

In light of the fact that the associated Planning Approval to allow the tower in the B-2 District and the two-lot Subdivision will not be heard by the Planning Commission until November 7th, it is recommended that the variance requests be heldover to the Board meeting of December 2nd to allow a determination to be made concerning the tower's allowance.

RECOMMENDATION: Based on the preceding, this application is recommended for holdover to the December 2nd meeting to allow the Planning Commission to make a determination concerning the tower's allowance in the B-2 District.

Revised for the December 2nd meeting:

This application was heldover at the October 7th meeting to allow the Planning Commission to make a determination concerning the tower's allowance in the B-2 District. The Commission heldover the applications at their November 7th meeting until their December 5th meeting and did not arrive at a determination. In order to prevent further delays, should this application be approved, it should be conditioned upon the Commission approving the Planning Approval and Subdivision applications.

Concerning the Height Variance request, the applicant states "Meeting the Zoning Ordinance requirements for the tower height also presents an unnecessary hardship to the applicant that is neither economic in nature or self-imposed. The radio signal emitted from the tower is a fixed technology dictated by physics. The location of this tower is dictated by such physics, as the signal from each tower must work in tandem with the signal from other nearby towers. Moving a tower "down the street" or "to the next corner" is not frequently an option when attempting to complete the "network" of cell sites. In order to meet AT&T's engineering requirements for this site, 135' is required."

With regard to the Setback and Residential Buffer Separation Variance requests, the applicant states "The requirement to meet the Zoning Ordinance provisions for setbacks and residential buffer present a specific unnecessary hardship due to the constraints of the small parcel and existing structures on the property. Neither of these hardships is economic in nature or self-imposed by the applicant. We believe our proposal to place the proposed tower within a wooded area on the property best serves the need to provide the least visually obtrusive alternative."

The applicant further states "Finally, due to the proposed site mostly being surrounded by existing mature trees, we respectfully request a waiver from any strict landscaping requirements. However, if parts of the surrounding area are in need of some landscaping, we will be happy to coordinate with the Urban Forestry Department to accomplish a mutually agreeable solution."

Revisions to the site plan have been submitted which now indicate a 135' high tower is proposed instead of the originally-requested 150' high tower. It would still have the capability of accommodating three additional antenna collocations. In addition to shortening the tower height, the tower is now proposed to be of a tree-simulation camouflage design. It should be noted, however, that the top antenna segment appears to extend above the top of the tower. This should be revised so that no portion of the tower or associated communications equipment extends above the requested 135' height.

The over-all configuration of the proposed lease parcel has been revised to match the revisions required by the Planning Approval and Subdivision reviews before the Planning Commission. A new State law requires lease parcels to be made legal lots of record which required a larger lease area to prevent a land-locked lot being within another land-locked lot. The location of the proposed tower on the site did not change. However, the expanded size of the lease parcel now revises the Setback Request from 37.5' from the lease parcel line to 42.75' from the lease parcel line. The Residential Buffer Separation request remains the same to allow the tower at 42.75' from residentially zoned property, that being the cemetery adjacent to the North of the subject site. The closest residentially-used property is approximately 145' South of the proposed tower. However, since the tower height now proposed has been reduced from 150' to 135', the required Residential Buffer Separation reduces from 225' to 202.5'. The site plan now includes a 6' high wooden privacy fence along the South side of the tower compound as previously recommended. However, as the fence would normally be along the property line, the site plan should be revised to indicate the 6' high wooden privacy fence along the South property line.

The applicant has revised the site plan to indicate tree plantings; however, not all required trees are indicated, and some which are indicated are off the proposed tower lease parcel lot and on the proposed adjacent lot to the South. Urban Forestry has determined that, due to the expanded size of the lease lot area, there is sufficient area provided to accommodate the required tree plantings.

As was previously mentioned, the applicant has demonstrated that hardships would be imposed by a literal interpretation of the Zoning Ordinance with respect to the height limitations, setback, and residential buffer separation requirements for telecommunications towers. However, the applicant has not demonstrated a hardship would be imposed with respect to the tree planting requirements.

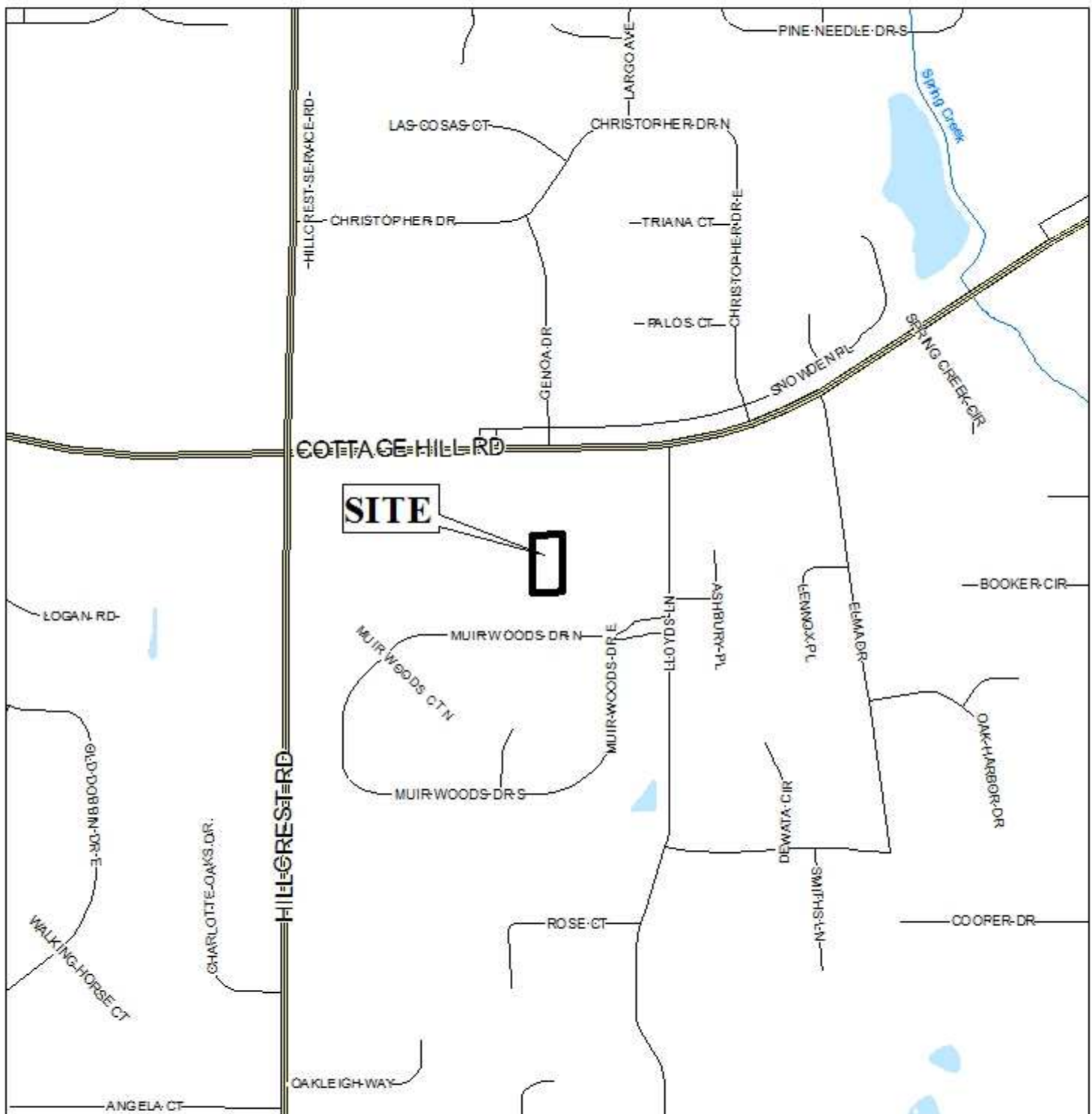
RECOMMENDATION: *Based on the preceding, the requests for Height, Setback and Residential Buffer Separation Variances are recommended for approval, subject to the following conditions:*

- 1) the tower is limited to a monopole design with a maximum height of 135';*
- 2) revision of the tower elevation to indicate that no communications equipment extends above the 135' tower height;*
- 3) revision of the site plan to provide the 6' high wooden privacy fence along the South property line of the lease area lot instead of the equipment compound;*

- 4) *subject to the Planning Commission approval of the Planning Approval and two-lot Subdivision applications; and*
- 5) *full compliance with all municipal codes and ordinances.*

The request for the Tree Planting Variance is recommended for denial and the applicant is advised to coordinate with Urban Forestry concerning an approved tree planting plan and tree removal permits.

LOCATOR MAP

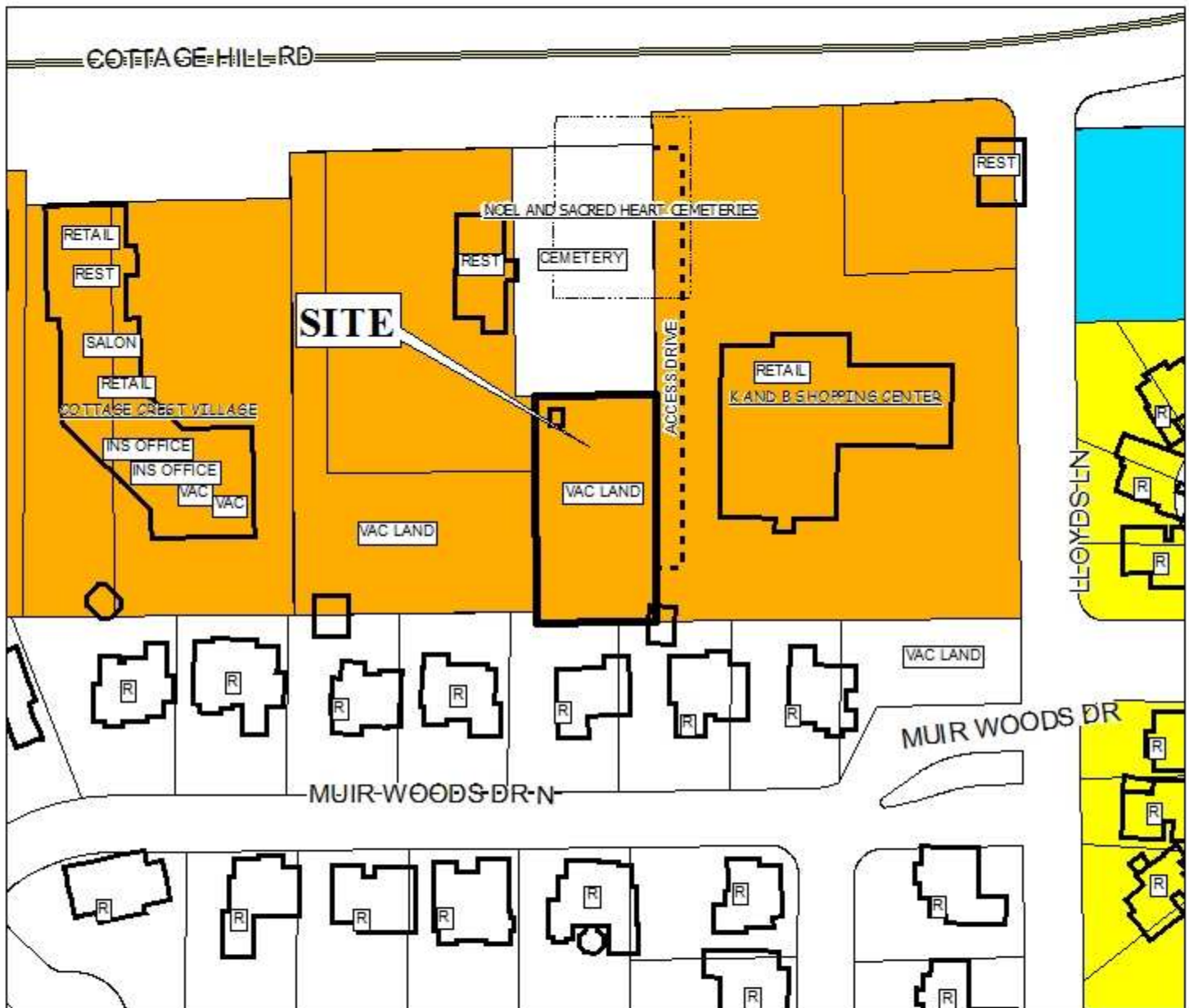


APPLICATION NUMBER 5866 DATE January 6, 2014
APPLICANT New Cingular Wireless PCS, LLC
REQUEST Height, Setback, Residential Buffer, and Tree Planting Variances



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by businesses and residences. A cemetery lies to the north of the site.

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LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	T-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2
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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

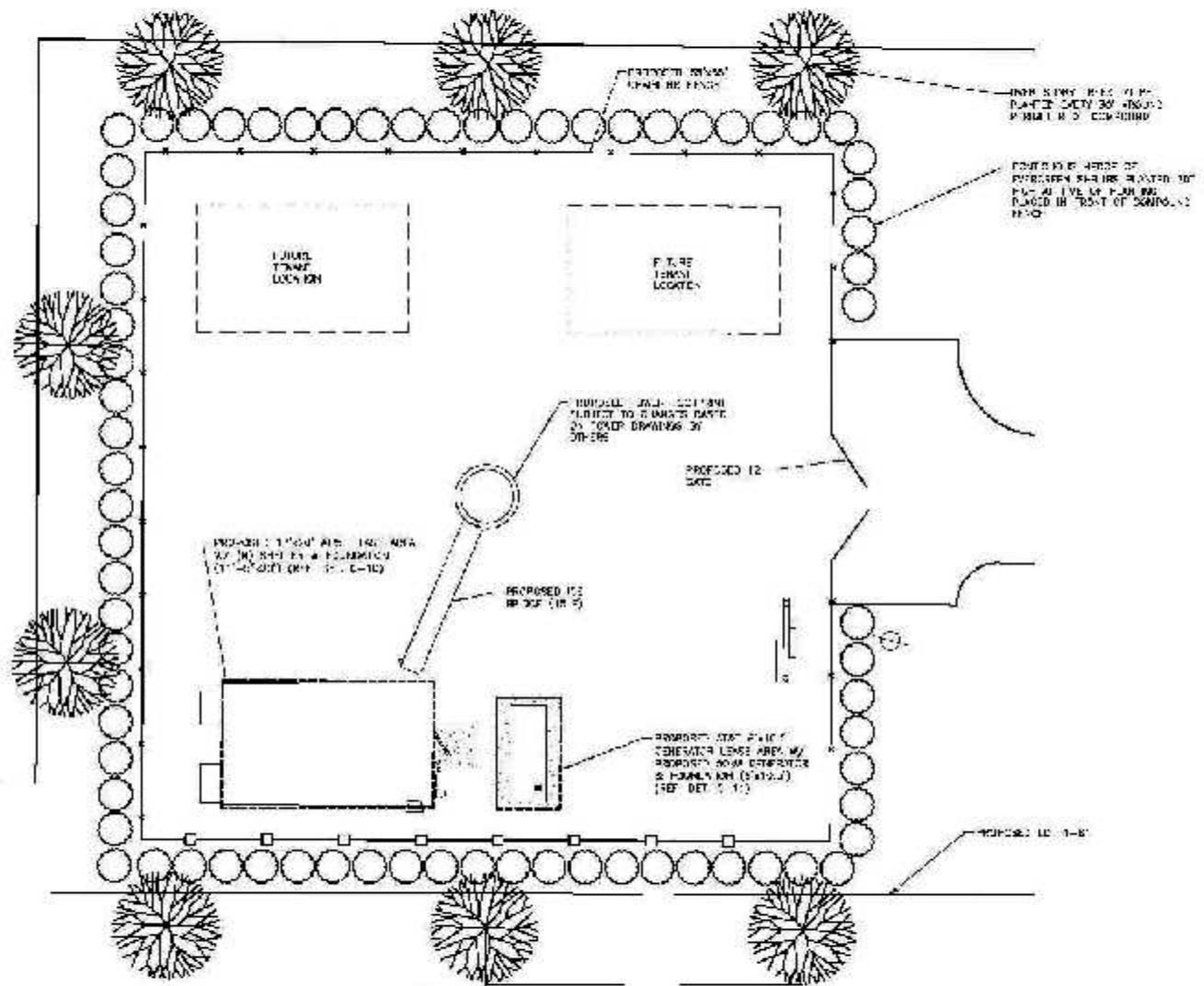


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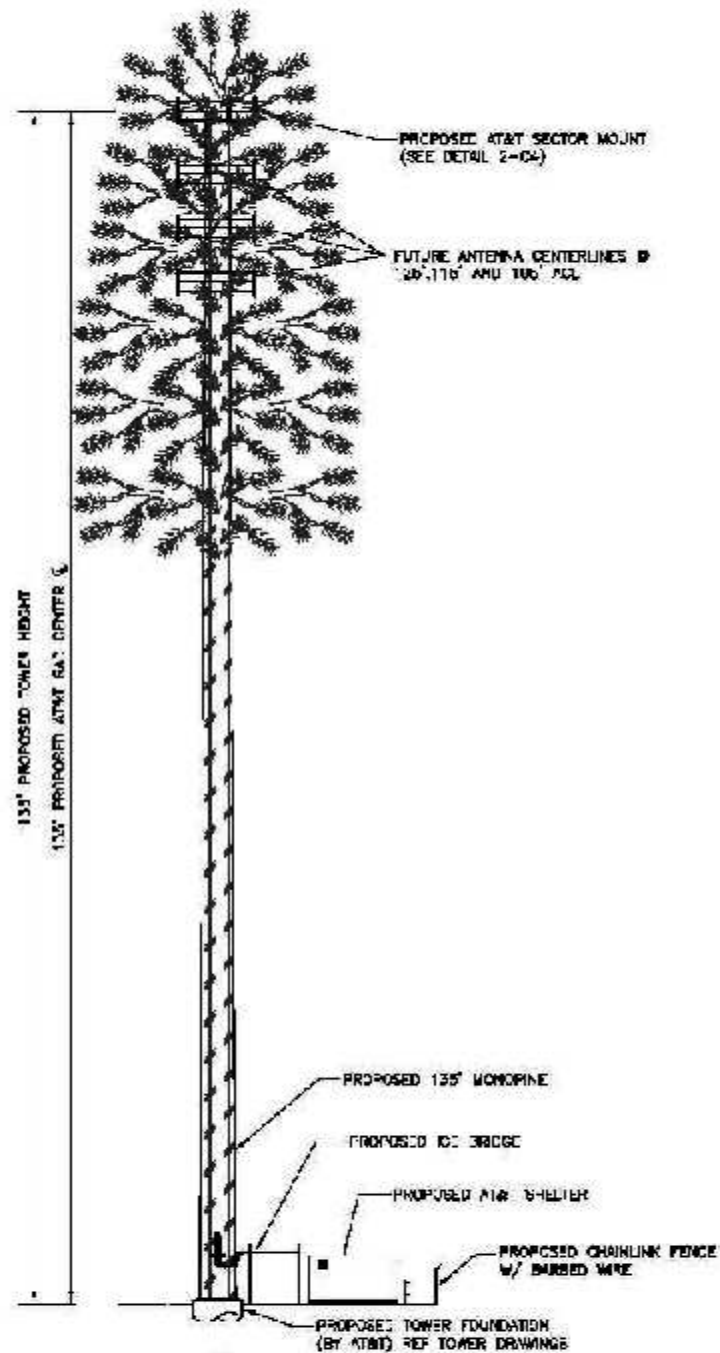
DETAIL SITE PLAN



APPLICATION NUMBER 5866 DATE January 6, 2014
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 REQUEST Height, Setback, Residential Buffer, and Tree Planting Variances



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